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June 2020

Overview

This guidance provides rules of thumb and practical procedures to assist with updating a development ordinance to comply with Chapter 160D, the comprehensive re-write of the statutes governing development regulation in North Carolina. Chapter 160D outlines a range of changes that are either allowed or required for local development ordinances and policies. While other guidance documents and related resources outline the specifics of those changes, this guidance explores the practice and principles of updating an ordinance. The sections of this guidance walk through Ordinance Basics, Principles for Ordinance Drafting, Mechanics of Drafting Amendments, the Process for Adopting Amendments, and Implementing the Newly Adopted Ordinance.

The task of drafting ordinance updates deserves care and attention. Development ordinances help a community manage change and address topics including public safety, community appearance, social equity, economic success, and more. And the community—including citizens, stakeholders, applicants, boards, staff, and more—has to live with the ordinances over an extended period of time.

As always, local government administrators should coordinate with legal counsel to ensure that amendments and procedures meet the legal requirements.

A Step-by-Step Approach to Each 160D Topic

For any given topic of Chapter 160D, an ordinance drafter might consider this set of quick, step-by-step questions for a local ordinance update.

- Is there a tool or resource for this topic?
- Is the revised statutory provision required, optional, or applicable to your community?
- What are the policy and legal considerations for your community? Is there an opportunity to improve your code?
- Where does it belong in your code?
- How should it be phrased to fit into your code?
- Does it conflict with existing provisions in your code?

This Chapter 160D Guidance is one in a series of guidance documents intended to provide supplemental information on specific topics. Additional guidance documents, training videos, an explanatory book, and other Chapter 160D resources are available at nc160D.sog.unc.edu.

Ordinance Basics

Structure and Elements

A code of ordinances or unified development ordinance is structured into a hierarchy of sections. Those sections may be termed as chapters, articles, sections, and subsections, or they may have different terms. Regardless of the names, pay attention to the structure—it matters for the applicability of terms, requirements, enforcement, and more.

For a Chapter 160D update to local ordinances, you may need to make changes to zoning, subdivision, historic preservation, minimum housing, and other development regulations. Depending on the local ordinance, all of those topics may be gathered into a unified development ordinance, or the topics may be scattered into independent, topic-specific ordinances.

Even within a zoning ordinance, there are many distinct topics: administration, review procedures, zoning districts, development standards, nonconforming situations, enforcement, definitions, and more. This organization makes the ordinance more user-friendly and reduces the chance that provisions are lost or forgotten over time. Pay attention to the organization of topics, and place new provisions where they belong. Avoid miscellaneous sections to gather random provisions.

Definitions

Definitions eliminate tedious repetition of unnecessary words. Once defined, use a term consistently throughout the code. A drafter may place a definition into a general definitions section or within a specific section. If a code contains a general definitions section, there is no need to repeat a definition in a specific section (but it may be helpful to cross-reference for clarity). If a term is specific to a particular section, place a definition within that section. If a term is already defined in statute, it may be helpful to cross-reference that statute.

Considerations for Ordinance Drafting

What then makes for a good ordinance? Among other things, a good ordinance is one that:

- Fairly and effectively manages land use issues in the community
- Appropriately reflects the desired policy direction of the governing board
- Is clear and understandable to the range of users, including boards, applicants, staff, community stakeholders, and others
- Can be readily administered and enforced
- Can handle a range of different projects that will be subject to its standards
- Includes clear relief mechanisms for unusual cases

Principles for Ordinance Language

Simple

Write in plain English. Avoid jargon. Use no unnecessary words. For example, “FLAG ~~is defined as and shall mean~~ means a piece of cloth, paper, or other similar flexible material displayed on a flagpole.” Avoid unnecessary flowery legal language such as “hereby,” “hereinafter,” and “aforementioned.”

Clear

Say exactly what you mean. Be sure that each word accurately expresses the idea. Be specific. If you are creating a requirement, clearly state who must do what. (“The administrator shall post notice on the property.”) Avoid vague and ambiguous terms such as *substantial*, *significant*, *insufficient*, *unacceptable*, *without delay*, *reasonable*, *adequate*, and *unreasonable*.

Consistent

Use consistent terminology and avoid internal conflicts between code sections. Once a term is defined, use it consistently throughout the code. Once a procedure is set, provide cross-references to that procedure rather than restating the same language.

Additional Language Guides

Grammar and Word Choice

- Use active voice. Write “*The petitioner shall give notice* to the clerk within 30 days.” Do not write “*Notice shall be given* to the clerk within 30 days.” It is unclear who must give notice.
- Use present tense. “A violation of this ordinance ~~shall be~~ is a Class 3 misdemeanor.”
- Use gender neutral language. Use “chair” instead of “chairman.” “The appointee holds office until ~~his~~ a successor is sworn.”
- “Shall” is required. “May” is permissive. Avoid “should”—it is unclear.
- Use brief sentences. Avoid lengthy run-on sentences.
- Do not use contractions.
- Do not use “etc.”
- Avoid abbreviations.

Structure

- Develop a logical order of steps and standards to make them easier to follow and understand
- Consider listing each standard as a numbered and/or lettered bullet
- Avoid listing standards in definitions where they can be harder to find
- When using lists, be clear whether all, some, or only one item need apply

Content

- Balance predictability and flexibility. If code drafters are not careful, pursuing one of these ends can come at the expense of the other. Some communities handle this challenge by providing clear standards, and then providing clear mechanisms for resolving unusual cases.
- Use illustrations as needed, and clarify their status legally (often ordinances note that illustrations are for explanatory purposes only, and in cases of potential conflict, the text of the ordinance controls)

Mechanics of Updating an Ordinance

Start with the Current Code

Start with the most current version of the law. Gather each ordinance or code that may be affected. Begin with a scan through the ordinance(s) to get acquainted with the structure, terminology, and numbering conventions. Make note of simple streamlining and re-organization that may improve the ordinance. For example, consider pulling all definitions to a general definitions section, establishing a section on administrative procedures, and cutting outdated provisions.

Be Systematic

Use a checklist, summary page, or other tool to keep track of what is done and what is to be done. The [Chapter 160D Checklist](#) may be helpful. Add drafter's notes (as comments or bracketed text) to identify a policy choice, explain an interpretation, or highlight lingering questions.

Avoid adding the same language multiple times. Define a term once in the general definitions and use that term consistently. State a procedure once, and then cross-reference to that procedure when needed. ("The town shall process each special use permits as a quasi-judicial decision and follow evidentiary hearing procedures as specified in Section __.") Increasingly, ordinances online include a hyperlink to the referenced section.

Engage Stakeholders and Decisions-Makers for Policy Input

Identify and discuss policy choices associated with the different ordinance provisions. Think about whether the proposed provisions are likely to have the intended effect, and work to make sure stakeholders and board understand these considerations.

Keep Track of Changes

When preparing the proposed ordinance for public review and board consideration, new language to be added to the current ordinance is noted with an underline like this. Language that will be deleted from the current ordinance is noted with a ~~strike through like this~~. If substantially all of the language will be deleted and amended, it may be more appropriate to repeal the entire section and adopt the entire new section.

Word processing programs such as Microsoft Word and Google Docs provide some ability for tracking changes. These tools can be useful, but they require careful management. If changes are accepted or rejected, they no longer appear as changes. Additionally, if multiple individuals make changes, the changes may show up in multiple colors.

Regardless of whether you use conventional underline and strike-through or track-changes, document management is critical. Keep careful records of the versions of the draft ordinance and keep careful control of the main document.

Look Again (and use Ctrl + F)

When making a change, search the ordinances for key related terms to make sure the change is consistent throughout the code. Old ordinances can have duplication, overlapping requirements, conflicting provisions, and plain mistakes.

Use the search function (control key + F) to identify key terms and make appropriate changes. For example, when updating the statutory citations, search for “General Statute”, “G.S.”, “160A”, “153A” and related statutory terms to ensure that all are located and updated appropriately.

Be Careful with Cut-And-Paste

While it can be tempting (and quick) to merely cut-and-paste language from another ordinance or from the statutes, one must take care when doing that. Here are some keys to success.

- Tailor the language to the specific jurisdiction and ordinance. Make sure that jurisdiction name, section numbering, cross-references, and other identifying information is customized to this jurisdiction.
- Take care that the new cut-and-paste language aligns with existing ordinance provisions.
- If the ordinance will merely restate a lengthy statutory provision, consider simply cross-referencing to the statute rather than reciting it. A local checklist or policy guide can be used to detail the specific statutory requirements.

Get a Second Opinion and Test Hypotheticals

Have multiple individuals review the proposed ordinance amendments. This may include staff from other departments, outside consultants, legal advisors, industry representatives, advisory boards, or others. Even the best drafter needs an editor, and complex legislation benefits from multiple perspectives.

Test any new standards with common hypothetical projects or scenarios.

Process for Adopting Ordinance Amendments

Planning Board Review, Public Notice, and Public Hearing

Once the proposed 160D zoning text amendment has been drafted, it is time to run it through the board review and adoption process. State law calls for the following steps. Local rules may add steps to this process.

- The zoning text amendment must be referred to the jurisdiction’s planning board for review.
- The planning board may hold a legislative hearing as part of its advisory review of the proposed text amendment.
- If the planning board holds a legislative hearing, it must follow the procedure for legislative hearings, including running a published notice in a newspaper of general circulation in the area for two successive weeks, with the first week not being less than 10 days nor more than 25 days before the date of the public hearing.
- When reviewing the proposed zoning text amendment, the planning board must advise and comment on whether the proposed amendment is consistent with any adopted comprehensive plan and any other officially adopted plan that is applicable.
- If the governing board does not receive a written report on the text amendment from the planning board within 30 days of referral of the text amendment to the planning board, the governing board may act on the amendment without the planning board report.
- The governing board is required to conduct a legislative hearing before taking action on the proposed text amendment.
- Published notice must be provided for the legislative hearing, with the notice running in a newspaper of general circulation in the area for two successive weeks, with the first week not being less than 10 days nor more than 25 days before the date of the public hearing
- When adopting or rejecting any zoning text or map amendment, the governing board must approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest. An example is provided below.

Sample Consistency Statement

The [INSERT NAME OF GOVERNING BOARD] concludes that the proposed ordinance amendment is reasonable and in the public interest because it brings the local ordinances into compliance with applicable North Carolina law. Additionally, the proposed ordinance amendment [SUPPORTS/DOES NOT SUPPORT] the following policies and goals in the [TYPE OF JURISDICTION]’s adopted Comprehensive Plan:

[LIST APPLICABLE GOALS, SECTIONS, OR LANGUAGE]

Implementing the Newly Adopted Ordinance

The work does not end with ordinance adoption. Once the governing board has adopted the updated ordinance, then it is time to implement it. Common implementation considerations include the following:

- Train staff and boards on the updated procedures
- Update internal procedures and checklists
- Educate applicants and other community stakeholders about the updated procedures

In addition, it may be helpful to remind upper management and local advisory and appointed boards that major ordinance updates often require some fine-tuning, and that minor revisions to the updates may be needed after they have been tested in practice for a time.