



# Chapter 160D and Other New Permitting Laws

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NCPA Conference  
November 4, 2019

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## Additional Resources

[nc160D.sog.unc.edu](http://nc160D.sog.unc.edu)

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## Chapter 160D Organization

<ul style="list-style-type: none"> <li>• Art. 1. General Provisions</li> <li>• Art. 2. Jurisdiction</li> <li>• Art. 3. Boards, Organization</li> <li>• Art. 4. Administration, Enforcement, Appeals</li> <li>• Art. 5. Planning</li> <li>• Art. 6. Process to Adopt and Amend Regulations</li> <li>• Art. 7. Zoning</li> </ul>	<ul style="list-style-type: none"> <li>• Art. 8. Subdivision</li> <li>• Art. 9. Particular Uses, Areas</li> <li>• Art. 10. Development Agreements</li> <li>• Art. 11. Building Code and Building Condition</li> <li>• Art. 12. Housing Codes</li> <li>• Art. 13. Miscellaneous Additional Authority</li> <li>• Art. 14. Judicial Review</li> </ul>
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Effective January 1, 2021



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### Jurisdiction, Boards, and Administrative Authority

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### General Administrative Authority

- Chapter 160D, Article 4
- General rules applicable across development regulations



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**New Staff Conflicts of Interest**

- Not make a decision if
  - the outcome would have a direct, substantial, and readily identifiable financial impact on the staff person
  - the staff person has a close familial, business, or other associational relationship with the applicant or other person subject to the decision
- Prior standard is preserved
  - No financial or employment interest in development in the jurisdiction
  - No work inconsistent with duties to local government

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**Enforcement**

- Inspections
- Stop Work Orders
- Certificates of Occupancy
- Notice of Violation
- Revocation of Development Approvals
- General Enforcement (penalties, fines, court order)
- Historic Preservation Enforcement

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**Geographic Jurisdiction**

- No change in basic allocation between cities and counties
- County can adopt development regulation for ETJ if city fails to adopt comparable city regulation there
- Simplify county ETJ appointments to city boards

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## Geographic Jurisdiction

- Can accept and process applications and hold hearings in anticipation of jurisdiction shift; final decision after shift
- Can mutually agree that one jurisdiction will handle development regulation if city or county boundaries split a parcel

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## Boards

- Must have board to make recommendations on zoning amendments
- Simplify calculation of number of ETJ members needed
- Allow rules of procedure for each board
- Require oath of office for all board members
- Clarify appointment process

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## Substance of Development Ordinances

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### Building and Housing Codes

- Move periodic inspection limits from building code to housing code Article
- Uniform process for abandonment of intent to repair
- Apply standard 160D procedures for specialized regulations

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### Maps

- Official maps may be incorporated by reference (specific map or most recent)
- Clerk or other specified office must maintain for public inspection
  - Current and past zoning maps
  - Current maps incorporated by reference
- Paper or digital format is allowed

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### Subdivision

- Revised performance guarantee requirements (SL 2019-79)

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**Exactions**

Exactions and performance guarantees generally allowed for zoning regulations to the same extent and limitations as with subdivision regulation

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**Planning Requirement**

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**Planning Requirement**  
Chapter 160D, Article 5

Comprehensive plan will be required as condition of having zoning regulations

Grace period until July 1, 2022

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**Plan process and updates**

- No need to re-adopt existing plan
- Adoption process for future plans: same as legislative zoning decision
- “reasonably maintained”
- Still advisory
- May be coordinated with other plans (CAMA, functional plans, regional plans)

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**Legislative Land Use Decisions**  
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**Plan Consistency**

- Simplify plan consistency statements
- Can do with single motion
- Minutes can suffice if no formal statement
- Delete requirement to use one of three forms of consistency statement
- FLUM deemed amended, not entire plan

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## Reasonableness

- Only mandatory for zoning map amendments, optional for other amendments
- Factors set out
- Can combine plan consistency and reasonableness statements

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## Quasi-Judicial Land Use Decisions

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## Uniform Terminology

- All are to be called "special use permits"
- All former "conditional use permit" or "special exception" become a "SUP"

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**Uniform Procedures**

- Same rules for all quasi-judicial by any board
- Continuation of hearing allowed
- Meeting packets allowed
- Administrative packet entered as evidence
- Anyone may be allowed to present relevant evidence, but only parties may cross-examine, object, etc.
- Advisory review allowed, but may not be used as evidence for decision

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**Administrative Land Use Decisions**  
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**“Development Approvals”**

- Written (print or electronic)
- Applications by property owner or person with lease, option, or easement on the property
- Community notice and/or informational meetings may be required
- 12-month expiration (as general rule)

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**Determinations**

- Ordinance may designate official to make determination
- Written determination provided to the owner and requester (if different)

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**Minor Modifications**

- Staff authorized to make modifications to
  - Development Approvals
  - Special Use Permits
  - Conditional Zoning
- Defined in the ordinance; parameters for amount of change
- No change in permitted uses or the density
- Major modification goes through standard approval process

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**Appeals of Administrative Decisions**

- Quasi-judicial process
- To board of adjustment (unless stated otherwise)
- Covers all dev. regs (state or local law may alter)
- Notice effective 3 days after the notice is mailed
- Staff decision-maker must be witness (or current office holder)
- Enforcement actions, including fines, are paused during appeal

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# Vested Rights and Permit Choice

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## Types and Terms

- Building Permit (6 months)
- Development Approval (1 year)
- Site-Specific Vesting Plan (2-5 years)
- Multi-Phase Development (7 years)
- Development Agreement (per agreement)
  
- Common Law Vested Rights (reasonable)



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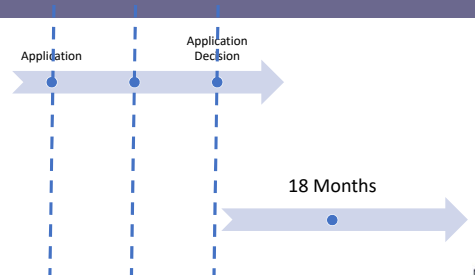
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## Permit Choice



The diagram shows a horizontal timeline with two vertical dashed lines. The first line is labeled 'Application' and the second is labeled 'Application Decision'. A blue arrow points from the 'Application' line to the 'Application Decision' line. Below this, a larger blue arrow points to the right and is labeled '18 Months'.



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### Permit Choice

- Applicant not required to wait for new rule to be approve
- If applicant wins court challenge, may be able to choose original rules
- Applicant must be actively pursuing the approval; six-month delay waives rights

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### Other Legislation

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### Environment

- EMC to develop standards for decommissioned wind and solar equipment
- Cites may not regulate off-site wastewater that has state approval
- New program for alternative on-site wastewater systems

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### Small Houses

- Zoning may not set minimum house size
- Applies to any structure built to one- and two-family building code
- Private restrictive covenants not affected

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### Building Code

- Exempts movie, television, stage sets if one year or less life and have fire code inspection
- May issue temporary CO
- One- and two-family initial plan reviews must be complete in 15 days
- DOI to provide guidance paper on plan review and interpretation

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### Short Term Rentals

- Short term rentals are subject to some limitations on inspections and permitting, but basic zoning authority remains

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**Short Term Rentals:  
Housing Code Inspections Limits**

- Inspections only when
  - Reasonable cause, for fire prevention code, or within limited blighted areas
- Limitations on rental registration and permitting
- No taxes or fees unless levied against other commercial and residential properties
- No inspection before utility service

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**Short Term Rentals:  
Zoning Remains**

- Define the land use
- Establish locational and development standards
- Require a permit to establish the land use

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**Pending**

- Temporary Event Venues (S. 553, Regulatory Reform Bill, veto)
- Agritourism Exemptions (S. 315, Farm Bill, conference)
- Outdoor Advertising (H. 645, Outdoor Advertising, veto)

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**CHAPTER 160D**  
A NEW LAND USE LAW FOR NORTH CAROLINA

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A NEW LAND USE LAW FOR NORTH CAROLINA

Additional Resources  
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