

# 2021 LOCAL GOVERNMENT LEGISLATIVE UPDATE



SCHOOL OF  
GOVERNMENT



# Agenda

11:10	Criminal Law; Motor Vehicle Law
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11:30	Child Welfare
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12:10	Public Health
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12:30	S.L. 2021-138: FAQs
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1:00	Planning and Development Regulations
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# Materials

## Collected Legislative Summaries

- <https://lrs.sog.unc.edu/lrs/legsumms/2021>

## Coates' Canons Blog

- <https://canons.sog.unc.edu/>

# What's next?



Non-voting sessions until  
December 10

Adjourn on December 10

Return on December 30

January?





# What Will They DO?

veto overrides

selection,  
appointment, or  
confirmation

gubernatorial  
nominations or  
appointments

districts for any  
elected officials

responding to  
litigation challenging  
legislative  
enactments

bills returned to  
original chamber for  
concurrence by Dec.  
10

adoption of  
conference reports if  
conferees appointed  
by Dec. 10

impeachment

organizational  
matters

adjournment

# **Criminal Law and Motor Vehicle Law**

Brittany Williams



# **Disclosure of felony convictions**

**S.L. 2021-107 (H 312)**

- Disqualifies a person who has been convicted of any felony from holding the office of sheriff
- Requires any candidate for sheriff to file a valid disclosure statement verifying that the individual has no prior felony convictions or expunctions of felony convictions

# Law enforcement duty to intervene

**S.L. 2021-137 (H 536)**

- Establishes the duty of law enforcement officers who observe another officer using excessive force to intervene, if safe to do so, to prevent the use of excessive force
- Observing officer is required to report use of excessive force within 72 hours

# Police vehicles and equipment

## S.L. 2021-167 (H 761)

- Breaking or entering vehicles owned or operated by any law enforcement agency
- Larceny of law enforcement equipment from a law enforcement vehicle
- Both Class H felonies



# Vehicle modifications

## S.L. 2021-128 (H 692)



After the third or subsequent violation, license revoked for at least a year



# Modified utility vehicles

## S.L. 2021-33 (S 241)

- is manufactured or upfitted for off-road use;
- has four wheels;
- has headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, speedometer, seat belts, and a vehicle identification number (VIN);
- is at least 110 inches long, at least 58 inches wide, and at least 60 inches tall;
- has a maximum speed of at least 40 miles per hour; and
- does not require an operator or passenger to straddle a seat.



**Questions?**



# Child Welfare

Sara DePasquale



# Materials

## It's October and Child Welfare Legislative Changes Are in Effect!

Contributed by Sara DePasquale on October 6, 2021 at 9:23 am and is filed under Child Welfare Law.



This entry was tagged with the following terms: abuse neglect and dependency, department of social services, Juvenile Code, new legislation

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## Legislative Changes Focus on Foster Parents

This entry was contributed by Sara DePasquale on October 18, 2021 at 1:35 pm and is filed under Child Welfare Law.



During the 2021 Legislative session, there have been numerous and significant amendments made to the laws addressing child welfare, most of which are in G.S. Chapter 7B (the Juvenile Code) and became effective October 1st. This is my third post explaining those legislative changes. Today's post focuses exclusively on legislative changes that relate to foster parents. The issues addressed include the consideration of foster parents for placement at nonsecure custody, their participation in permanency planning hearings, required training, and the creation of a Foster parents' Bill of Rights.

# **“Neglected Juvenile”**

Added (December 1<sup>st</sup>)

“Parent, guardian, or custodian has refused to follow recommendations of the Juvenile and Family Team made pursuant to Article 27 of this Chapter”

Relates to “vulnerable juvenile” (6-9 y.o.)



“Vulnerable Juvenile” (6-9 y.o.)

Juvenile Consultation, JFT Meeting

Services to juvenile and P, G, C

Refusal = Report

DSS *May* File Petition





## ~~REL: Human Trafficking (10/1)~~

Not a parent, guardian, custodian, or caretaker

- DSS cooperate w/ law enforcement & DA to determine safest way if possible to give notice
  - Mental/physical harm or danger to juvenile
  - Undermine criminal investigation
  - Jeopardize state's ability to prosecute
- Document if not possible, no further action

# Court Actions

Significant Changes

Oct. 1 (unless says otherwise)



# G.S. 7A-49.6

- Proceedings of all types may be conducted by audio and video
  - A/N/D
  - TPR
  - RIL
- Good Cause to Object
- June 18, 2021



# Placement Issues



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2021 LOCAL GOVERNMENT LEGISLATIVE UPDATE

# Nonsecure Custody

7B-505(b)

DSS shall use due diligence to identify & notify relatives/persons with legal custody of sibling w/in 30 days of initial order

File with the court the attempts

# SIBLINGS

Nonsecure: 7B-505(a1)

Disposition: 7B-903.1(c1)

42 USC 671(a)(31)





# SIBLINGS

- DSS shall make reasonable efforts to place together
  - Unless document contrary to safety/well-being of any of the siblings
  - If unable, reasonable efforts to provide frequent visitation and ongoing interaction, unless...

## 7B-903.1(b1) (Rylan's Law) Before DSS recommends ...

unsupervised visits or trial  
placement with *removal* P,G, C,C



Observe 2 visits w/in 30 days  
of hearing where DSS  
recommendation being made



# **Two Different Tracks**

## **w/in 90 Days of Initial Disposition**

**REVIEW ONLY**

**PPH ONLY**



Continue in Custody of  
Parent, Guardian,  
Custodian, Caretaker\*



Removed from Custody  
of Parent, Guardian, or  
Custodian



## Review Hearing: 7B-906.1(d)(1a), (d1), (d2)

Continuation

Appropriateness of continuation  
in home of parent, guardian, or  
custodian  
  
(Removal can occur)

## Review Hearing: 7B-906.1(d)(1a), (d1), (d2)

Completion

Absent extraordinary circumstances, when P, G, or C completes court-ordered services and juvenile in safe home,  
  
court may waive further hearings or termination its jurisdiction




# Switching Tracks

Order different  
placement or remove  
custody from P, G, C

PPH within  
30 days





First PPH after 17 and every  
one after,  
documents include  
information about Foster Care  
18-21

7B-912

# DSS Report

## G.S. 7B-912(b1)

- Efforts to identify/secure viable placement options for when 18
- Adults who can be resources
- Contact info for Foster Care 18-21 contact
- How to maintain contact with family (if appropriate)
- Contact for Medicaid & maintain physical and mental health services
- Info about educational or vocational plans

# Young Adults: Foster Care 18-21

7B-910.1

Termination of agreement

DSS must go to court if young adult objects



# New Emergency Hearing (eff. Jan. 1<sup>st</sup>)

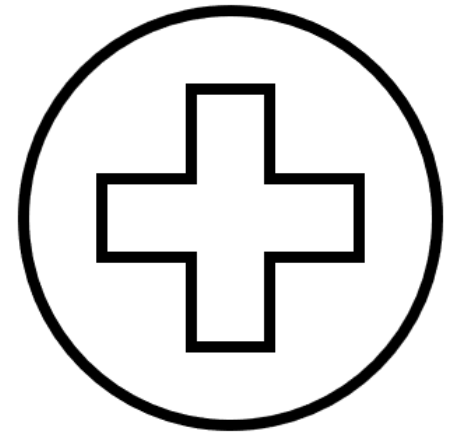


Juvenile in DSS Custody  
Who Presents to Hospital  
for Mental Health Treatment

# First, Effective Oct. 1 G.S. 122C-142.2

DSS contacts LME/MCO or prepaid health plan

w/in 24 hours of determination juvenile should not remain at hospital and no appropriate placement immediately available



# w/in 5 Business Days

LME

- Arrange Assessment

DSS

- Level 1 or traditional foster home identified
- Provide placement/transport

LME

- Care require prior authorization
- Authorize, identify, assign care coordinator
  - DSS place when identified/transport

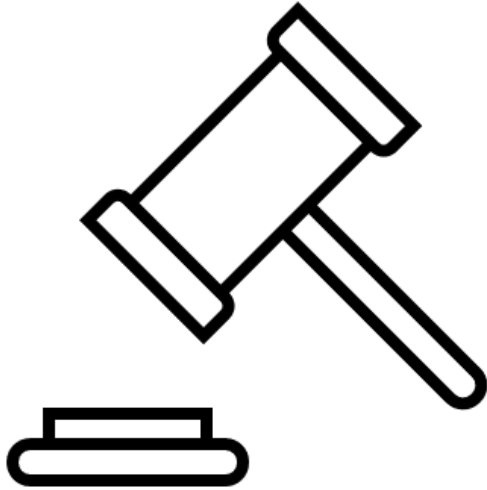
DHHS

- Unable, DSS notify Rapid Response Team
- Evaluate and coordinate response

# New Emergency Hearing (eff. Jan. 1<sup>st</sup>)

## G.S. 7B-903.2

If provisions of G.S. 122C-142.2 not met



- Any party, DHHS, hospital, LME/MCO, PHP, can file re: continued stay at hospital
- Rule 5 service (automatically a party)
- Limited appearance/purpose (hearings/comply with orders)



# Findings and Conclusions

Clear and convincing  
evidence no medical  
necessity for  
hospitalization

Responsible party  
not satisfied G.S.  
122C-142.2(b)-(f)

# Relief



May order

- Responsible party to comply with 122C-142.2
- Pay reasonable hospital charges (after no longer medically necessary)
- Pay property damage (after no longer medically necessary)
- Any appropriate relief
- Parties bear own costs



# Foster parents' Bill of Rights (14 provisions)

131D-10.9C



No private cause of action

Does not override existing law

G.S. 131D-10.9C

# Read the Materials Talk to Your Attorneys

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Questions?



# Public Health

Jill Moore



# Consent for vaccination of a minor child

S.L. 2021-110, sec. 9, eff. 8/20/21

G.S. 90-21.5(a): An unemancipated minor with decisional capacity may give effective consent for medical health services for the prevention, diagnosis, or treatment of:

- Venereal disease and other reportable communicable diseases/conditions
- Pregnancy (includes family planning, except for sterilization; does not include abortion, which falls under G.S. 90-21.7)
- Abuse of alcohol or controlled substances
- Emotional disturbance

S.L. 2021-110, sec. 9 adds a new subsection (a1), requiring the written consent of a parent or legal guardian for administration of a vaccine that is under an emergency use authorization to an unemancipated minor.



# COVID vaccines for children & adolescents as of 12/8/21

Kids HAVE A **SPOT** TO TAKE THEIR **SHOT**.

## Children 5+ can receive their COVID-19 vaccine in their arm or leg.

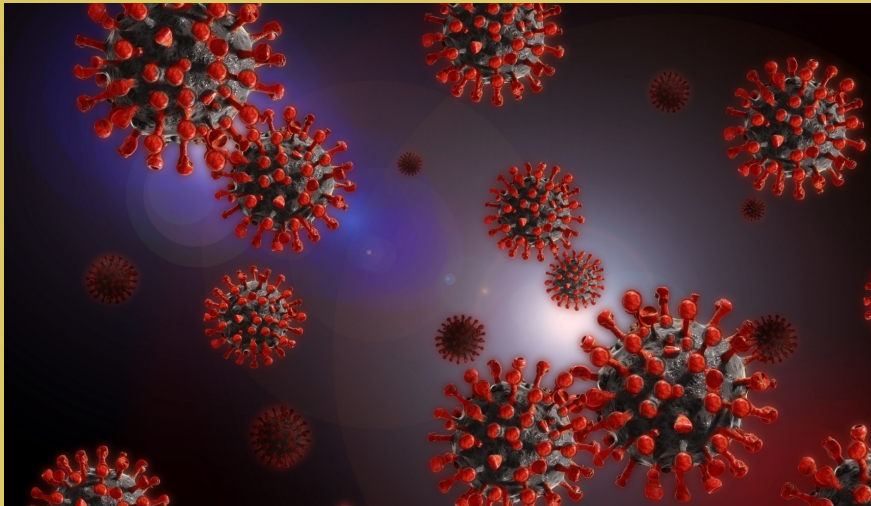
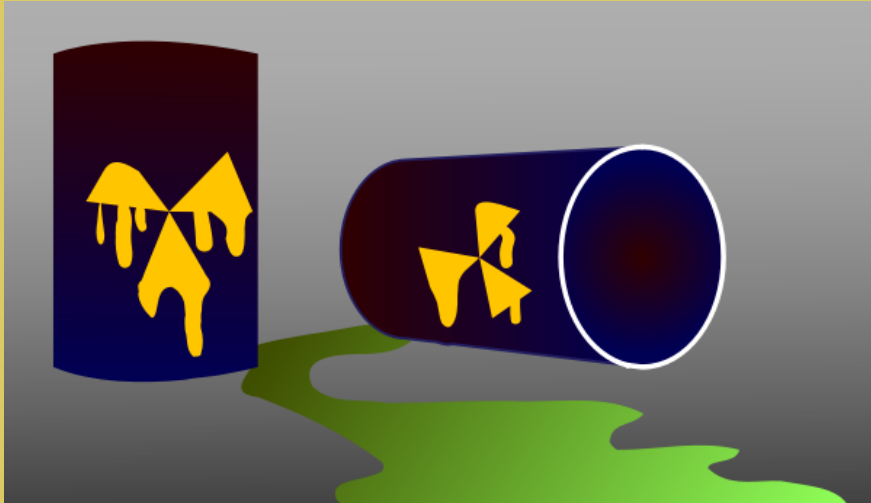
The COVID-19 vaccine dose for children between the ages of 5 and 11 is one-third of an adult dose. Kids can get their shot in their arm or leg, whichever works best for them!



Visit [MySpot.nc.gov](https://www.myspot.nc.gov) to locate a pediatric vaccine provider near you.



- The Pfizer product is the only COVID-19 vaccine that is authorized for use in minors. It is fully licensed for some populations/uses and under emergency use authorization (EUA) for other populations/uses. At this time children under 18 are not eligible for booster shots.
- Fully licensed: Minor with decisional capacity may consent
  - 16 & 17 year olds: Pfizer primary series (two shots)
- EUA: Written consent of a parent or guardian required
  - Immunocompromised 16 & 17 year olds: Pfizer third shot
  - 12-15 year olds: Pfizer primary series (two shots)
  - 5-11 year olds: Pfizer pediatric primary series (two shots, smaller dose)



## Imminent hazard authority

**Definition:** “a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.” G.S. 130A-2.

**Authority:** Certain state and local public health officials may order the abatement of imminent hazards. G.S. 130A-20.

# Changes to imminent hazard authority

## S.L. 2021-180, sec. 19E.6, effective 1/1/23

### Local imminent hazards

- Local health director may order abatement of an imminent hazard on a “specific identified” property.

### Statewide imminent hazards (defined as 2/3 or more counties)

- State Secretary of Health & Human Services may determine that a class or category of properties constitutes a statewide imminent hazard and order owners, operators, or other persons in control of such properties to abate the hazard for a period of up to 7 days.
- Secretary’s order valid for up to 7 days; may be extended for up to 30 days at a time with notice to Governor and concurrence of Council of State.

### Use of imminent hazard authority by Secretary of Environmental Quality

- State Secretary of Environmental Quality may use imminent hazard authority to enforce the provisions of Ch. 130A Art. 9 (Solid Waste Management) and Art. 10 (NC Drinking Water Act) in accordance with the provisions that apply to the HHS Secretary’s authority.

# Isolation & quarantine authority



## Definitions:

*Isolation* means limitation of the freedom of movement or action of a person known or suspected to be infected.

*Quarantine* means:

- Limitation of the freedom of movement or action of a person known or suspected of being exposed; or
- Limitation of access to an area or facility contaminated with an infectious agent; or
- Limitation of the freedom of movement or action of unimmunized persons if state or local health director determines immunizations are required to control an outbreak. G.S. 130A-2.

**Authority:** State health director or local health director may exercise isolation or quarantine authority. G.S. 130A-145.

## Changes to isolation & quarantine authority

S.L. 2021-180, sec. 19E.6, eff. 1/1/23

- Amends G.S. 130A-145 to authorize State Health Director to order isolation or quarantine for a class or category of persons for up to 7 days, upon a determination that it is necessary for public health.
- The period may of isolation/quarantine may be extended for up to 30 days at a time under the following circumstances:
  - If isolation/quarantine order applies statewide (defined as 2/3 or more counties), State Health Director must notify Governor, Governor must obtain concurrence of Council of State, and Superior Court must approve the extension.
  - If order applies less than statewide, State Health Director may institute an action in Superior Court for approval of the extension.

# Environmental health: Water protection

- S.L. 2021-38 (eff. 7/1/21):
  - Adds a licensed soil scientist to the membership of the NC On-Site Wastewater Contractors and Inspectors Certification Board
- S.L. 2021-117 (eff. 8/23/21):
  - Sec. 12A amends G.S. 130A-336.1(j) to waive the requirement for a post-construction conference for certain types of on-site wastewater systems
  - Sec. 12.1 adds definition of “prefabricated permeable block panel system” to G.S. 130A-343
- S.L. 2021-180 (eff. 7/1/21):
  - Sec. 9G.7 transfers Well Contractors Certification Commission to N.C. DHHS



# Environmental health: Childhood lead poisoning prevention



- S.L. 2021-69: Reduces threshold for lead in drinking water requiring remediation from 15 to 10 parts per billion and directs Commission for Public Health to adopt rule (effective 12/1/21)
- S.L. 2021-180 (budget), sec. 9G.8:
  - Allocates \$32.8M for public school drinking water program and requires public schools to test for lead in school drinking water.
  - Allocates \$117M for lead & asbestos remediation in public schools and child care facilities and requires schools and child care facilities to inspect for lead paint and asbestos hazards in their facilities.

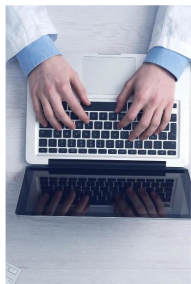


# Budget highlights

## S.L. 2021-180

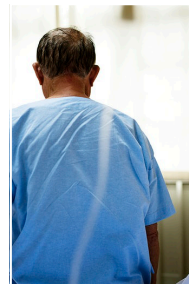
- Support for communicable disease activities and COVID-19 response
  - \$36M (NR) over two years for local health departments to expand capacity for communicable disease detection and response
  - \$62M (NR) to expand and sustain public health workforce (25% to go to school-based health services personnel – school nurses, psychologists, counselors, and social workers)
  - \$27M (NR) for disease intervention workforce & technology to support response
  - \$14M (NR) for Nursing Home & Long-Term Care Facility Strike Team
  - \$20.2M (NR) for detection and mitigation of COVID-19 in confinement facilities
- Juul Settlement
  - Creates Youth Electronic Nicotine Dependence Abatement Fund
  - \$13M (NR) allocated to Division of Public Health for tobacco and nicotine prevention and cessation programs for youth and young adults (\$2M to be transferred to NC DOJ)

# Other Legislation of Interest



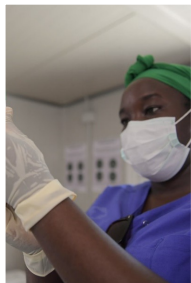
## Health Information Exchange (NC HealthConnex) (S.L. 2021-26, sec. 1)

- Connection deadlines extended to July 1, 2023 for some providers (was June 1, 2022)



## No Patient Left Alone Act (S.L. 2021-171 & 2021-181)

- Requires hospitals and other residential health care facilities to allow compassionate care visits and other visitation “subject to, and to the fullest extent permitted” under federal requirements



## Immunizing pharmacists (S.L. 2021-110)

- Authorizes immunizing pharmacists to dispense and administer certain vaccines and other therapies, including nicotine replacement, prenatal vitamins, & post-exposure prophylaxis for HIV



## School face covering policies (S.L. 2021-130, sec. 10)

- Requires all public school units to have a policy on face coverings for the 2021-22 school year, and for boards to vote at least once per month on whether policy should be modified

Questions?



# **S.L. 2021-138: Frequently Asked Questions**

Kristina Wilson



# Decriminalization of Ordinances

- Modifies G.S. 153A-123 and G.S. 160A-175
- Ordinance violations can only carry a criminal penalty under G.S. 14-4 if the ordinance so provides
  - FAQ: What about catch-all provisions?
- Cannot exceed maximum penalties in G.S. 14-4
- No ordinances carrying criminal penalties may be enacted on date of introduction
- Several different types of ordinances cannot carry a criminal penalty at all
  - 160D (except for unsafe buildings)
  - Outdoor advertising
  - Solar collection
  - Tree regulation

# Decriminalization, cont'd

- Modifies G.S. 14-4
  - 30-day grace period OR
  - Proof of good-faith effort to seek assistance
- FAQ: What constitutes proof of a good faith effort? What constitutes assistance? What might relate to the person's ability to comply with the ordinance?





# Deadline!

- Local governments had until December 1, 2021 to bring their ordinances into compliance.
- FAQ: What if I missed the deadline?
  - Ordinances with catch-all criminal penalties will not be criminally enforceable
  - Ordinances on the prohibited list with criminal penalties will not be criminally enforceable
  - Prosecutions under former G.S. 14-4 will be subject to dismissal



# Law Enforcement Recording Disclosures

- Focus has been on body-worn camera footage but applies to dashcam and audio recordings as well
- Modifies G.S. 132-1.4A
  - In cases of serious bodily injury or death, law enforcement agencies must petition superior court for an order within three business days of a request for disclosure.
  - Court has seven business days to issue a ruling
    - List of factors that must be considered in reaching decision
  - If disclosure denied based on confidentiality of criminal investigation concerns, court must hold subsequent hearing within 20 business days to reconsider disclosure
- FAQ: Doesn't this slow down the process?
  - Practical problems?

# Other S.L. 2021-138 Details

- Criminal Justice Reform
  - Database creation
    - Critical Incident Database (Part III, Section 17C-2, 17C-15, 17E-2, 17E-15)
  - Early warning system
    - Document and track behaviors of law enforcement officers with the purpose of performance improvement (Part VIII, Section 17A-10)
    - Uses of force, citizen complaints, discharges of firearms, vehicle collisions
    - Confidential information remains confidential
  - Duty to intervene/report excessive force
    - Part XVI, Section 16.a(d1)

Questions?



# Planning and Development Regulations (Part 1)

Adam Lovelady





# Outline

Comprehensive and Land Use Planning  
Zoning and Development Regulations  
Affordable Housing  
Signs and Billboards  
Fees and Exactions  
Keep Your Eye On \_\_\_\_\_



# 7.1.22

is the deadline for NC local govs to have a comp or land use plan



## PlanNC Guidebook

A Practitioner's Guide to Preparing  
Streamlined Community Plans



 **SCHOOL OF  
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- 7 Step Process
- NC Examples
- Fillable Templates and Worksheets
- Planners Learning Network
- <https://go.unc.edu/PlanNC>



# Outline

Comprehensive and Land Use Planning

**Zoning and Development Regulations**

Affordable Housing

Signs and Billboards

Fees and Exactions

Keep Your Eye On \_\_\_\_\_



# Decriminalize Zoning

## S.L. 2021-138

- Prohibits criminal enforcement of some local ordinances including  
“Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.”
- Appears to impact
  - Zoning enforcement
  - Illegal subdivision
  - Other land use enforcement
- Unclear for local environmental regulations
- Still have notice of violation, civil penalty, withholding permits, and court action

# Land Use Clarifications

## S.L. 2021-168

- Vested Rights
  - 1 year vesting for development approval
  - 24 months cessation of development
- Permit Choice
  - 18 months permit choice for multiple permit
- New language
  - permit choice 18-months does limit the other vested rights

# Land Use Clarifications

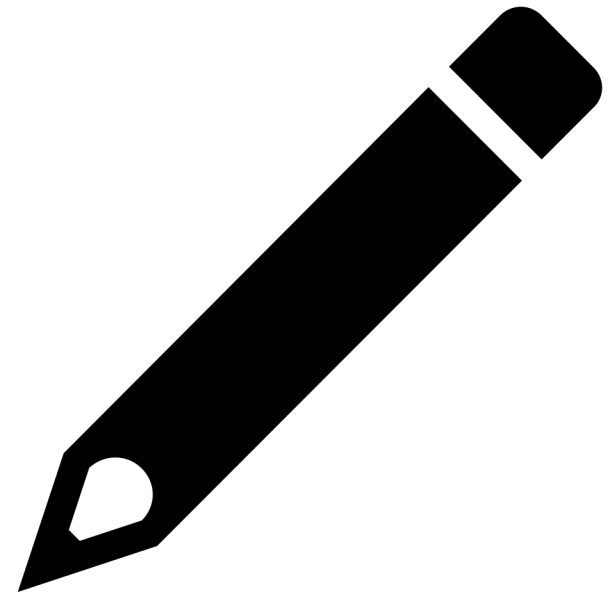
## S.L. 2021-168

- When laws conflict, the more restrictive controls . . . But that does not mean you can adopt unconstitutional or illegal ordinances.
- Quasi-Judicial Technical Matters
  - Governing board can settle litigation
  - Failure to object to conflict of interest does not waive the issue
  - Special use permit issued on remand makes appeal of remand or issuance moot

# 160D Technical Corrections

## S.L. 2021-88

- correcting cross-reference citations
- altering word choice
- plan consistency includes “land use plan”



# Manufactured Housing

## S.L. 2021-117

160D-910(g):

“A local government may require by ordinance that manufactured homes be installed in accordance with the Set-Up and Installation Standards adopted by the Commissioner of Insurance;

“provided, however, a local government shall not require a masonry curtain wall or masonry skirting for manufactured homes located on land leased to the homeowner.”



# Outline

Comprehensive and Land Use Planning

Zoning and Development Regulations

**Affordable Housing**

Signs and Billboards

Fees and Exactions

Keep Your Eye On \_\_\_\_\_

# No Harmony Standard (Budget Bill)

- 160D-703 amended as follows

(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.

# Winston Salem Local Legislation

## S.L. 2021-44

- Authorizing Winston-Salem to convey city-owned property for affordable housing development
  - With or without consideration,
  - with a deed restriction that the property reverts back to municipality if it is not used for affordable housing for the specified time frame,
  - authorized by resolution of governing body





# Outline

Comprehensive and Land Use Planning

Zoning and Development Regulations

Affordable Housing

**Signs and Billboards**

Fees and Exactions

Keep Your Eye On \_\_\_\_\_

# Override NCDOT Rules

## S.L. 2021-117

- Session Law 2021-117 (House Bill 366)
  - Overrides new DOT rules adopted for Local Zoning Authority, Applications, and Repair/Maintenance of Conforming and Nonconforming Signs
  - Revert back to prior rules
  
- City of Austin v. Reagan National Advertising of Austin

# Sign Relocation

## S.L. 2021-180

- New G.S. 136-131.5
- Relocation of any billboard
  - On the same parcel or adjoining conforming parcel
  - 10-year layover for changing parcels
- Relocation of billboards condemned or obstructed
  - Removed by condemnation
  - Obstructed by sound barrier
  - Applies to any lawfully erected billboard, even if not under NCDOT jurisdiction
- No new NCDOT permit nor revoked permits (addendum allowed)

# Sign Relocation

## S.L. 2021-180

- Requirements for Relocation
  - (1) Within 660 feet of a highway in the same zoning jurisdiction as the original site
  - (2) Conform to NCDOT standards
  - (3) Along the same highway as the original site (same route number or letter)
  - (4) Reconstruction must conform with G.S. 136-131.2
  - (5) Not be in a designated local historic district
  - (6) Not be adjacent to a scenic highway (allowance for a sign currently on scenic highway)
  - (7) Construction on the new site must begin within one year after the date of removal.



# Outline

Comprehensive and Land Use Planning

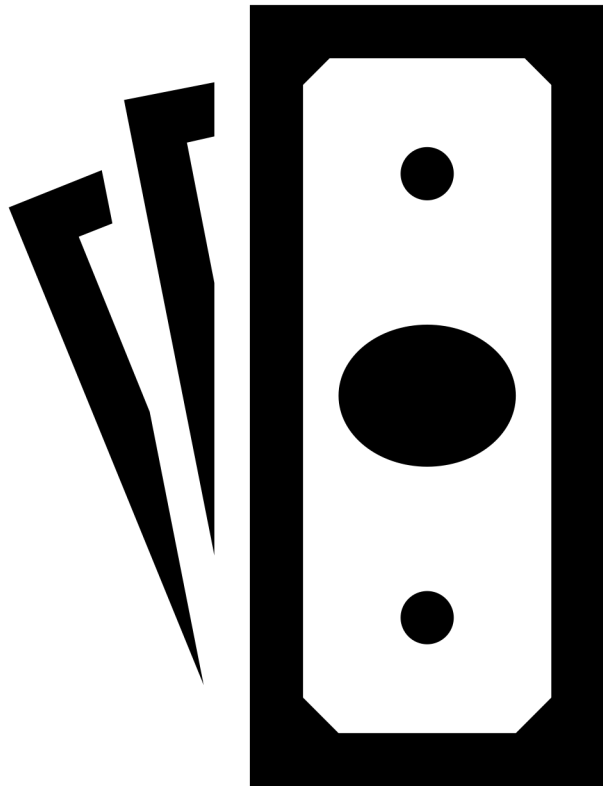
Zoning and Development Regulations

Affordable Housing

Signs and Billboards

**Fees and Exactions**

Keep Your Eye On \_\_\_\_\_



- System Development Fees (S.L. 2021-76)
  - wholesale water arrangements under the definition of water and sewer “service”
  - adds gallons per day analysis as part of the supporting analysis required for a system development fee
  - Clarifies that utility is responsible for income taxes from taxable contributions
- Utilities for Charter School (Budget Bill)



# Outline

Comprehensive and Land Use Planning

Zoning and Development Regulations

Affordable Housing

Signs and Billboards

Fees and Exactions

**Keep Your Eye On \_\_\_\_\_**

# Missing Middle Housing





# Missing Middle Housing

## H 401/S 349

- Proposed Legislation
- Missing middle housing: duplex, triplex, quadplex, townhouse
- Missing middle housing must be allowed in any residential zoning district
- Accessory dwelling unit allowed with each single-family home
- Urban services caveat
- Additional Zoning Changes
  - Permit choice and vested rights
  - Prohibit down-zoning
  - Remedies for violations (choose your zoning)
  - Appeals

# Proposed Limits on Exactions

## H 821

Proposed language would amend 160D to state ***no*** general authority to:

- Impose impact fees for development.
- Condition a development approval on the existence of a community benefits agreement.
- Require a developer to provide funds for affordable housing or construct, set aside, or designate one or more dwellings or developments as affordable housing.
- Require a completed traffic impact analysis prior to a development approval.
- Require a developer to construct a greenway.

# Short-Term Rentals

## H 911

- Current law
- Wilmington litigation
- Proposed language
  - Local gov may not require owner “to obtain any permit or permission under ~~Article 11 or Article 12 of this Chapter~~ from the local government to lease or rent residential real property”

# Conditions on Affordable Housing

## H 712

- Proposed language would have provided that if a development contains affordable housing units for families or individuals with incomes below eighty percent of area median income, then the conditional zoning may only have the following conditions:
  - (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 496

- Proposed language would have limited local authority for tree protection ordinances
  - No general authority under police powers or 153A/160A/160D
  - Require local legislation

# Planning and Development Regulations (Part 2)

Jim Joyce





# Outline

Subdivision

Infrastructure

Agricultural

Local Environmental Regulation

Building and Housing Code

# Subdivision – Street Acceptance

- **S.L. 2021-121 (H 489)**
  - **Sec. 3:** Sight triangles and similar sight measurements at intersections “must begin within the roadway or edge of pavement”
  - **Sec. 9:** NC Board of Transportation must approve addition of public subdivision streets to state highway system within 90 days after (1) DOT receives a petition for road addition and (2) DOT determines that the streets meet the BOT’s minimum standards







# Outline

Subdivision

**Infrastructure**

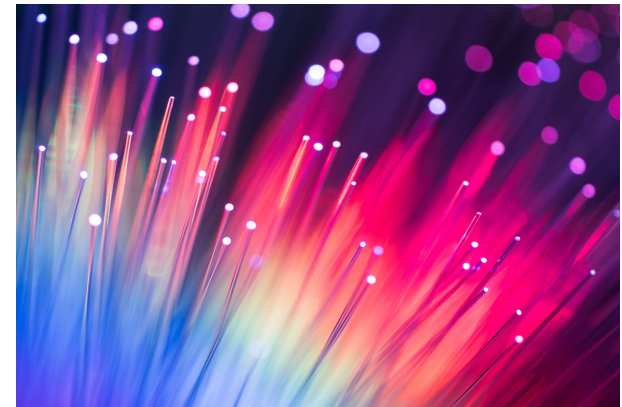
Agricultural

Local Environmental Regulation

Building and Housing Code

# Infrastructure – Broadband

- **S 105 (budget bill) Sec. 38.1 through 38.10** relate to broadband and small-cell wireless
- Broadband siting provisions:
  - **Sec. 38.9(a):**
    - municipalities must decide on applications for broadband deployment-related work in city ROWs within 30 days;
    - denials must provide reasons and allow resubmittal



# Infrastructure – Small Cell Wireless

- **S 105 (budget bill)**, on small-cell siting provisions, **Sec. 38.10(m)**:
  - No fees or recurring charges for a wireless provider
    - to collocate a small wireless facility or
    - to install, modify, or replace a utility pole,
  - except the city's per-pole collocation charges, pole attachment fees, and rates for attaching to city utility poles as described in G.S. 160D-937



# Outline

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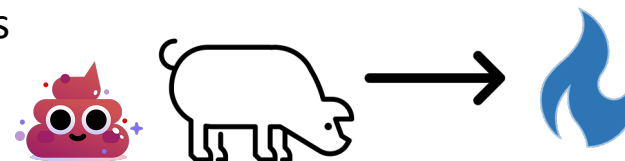
Local Environmental Regulation

Building and Housing Code

# Agricultural

## 2021 Farm Bill – S 605 / S.L. 2021-78:

- Section 1 – Voluntary Agricultural District Changes
  - Governing board can delegate to agricultural advisory board
  - Advisory board should be best possible representation of different regions and different sectors of production
- Section 3 – Open Burning Exception
  - Fires used “for cooking, warming, or ceremonial events” exempted if in an enclosure or protected area
- Section 11 – Digester rules
  - EMC to develop a water quality “general permit” for digester systems
  - Pre-Oct 1995 swine farms can build or renovate digesters without complying with rules for newer swine farms





# Outline

Subdivision

Infrastructure

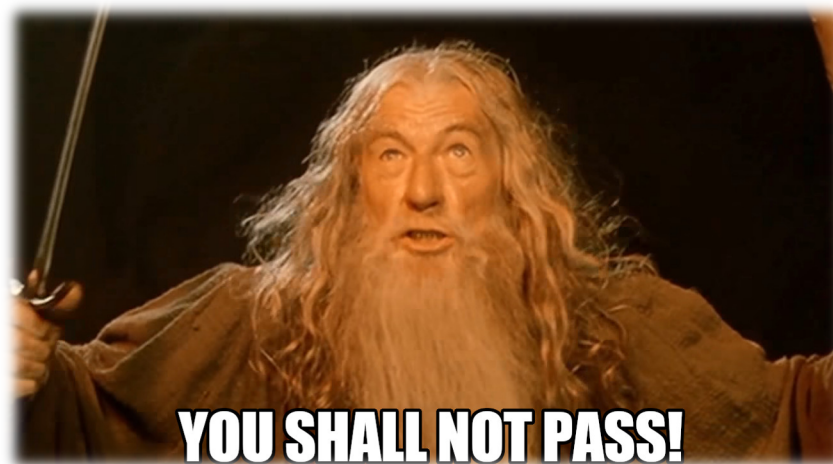
Agricultural

**Local Environmental Regulation**

Building and Housing Code

# Local Environmental Regulations

- Did NOT pass ... so far ...
  - Preemption of local tree protection ordinances;
  - Preemption of local stormwater regulations that exceed State minimums;
  - Requirements to allow schools in all zoning districts (except industrial);



# Water Quality Changes

- **Redevelopment in Water Supply Watershed (H 218; S.L. 2021-164)**
  - Projects can exceed density under water supply watershed rules if:
    1. Property was developed *prior to effective date* of local water supply watershed program;
    2. Property *has not been combined* with additional lots after January 1, 2021;
    3. Property has not participated in a *density averaging transaction* under GS 143-214.5(d2);
    4. Property's current use is *nonresidential*
    5. Stormwater from all new and existing built-upon area is *treated in accordance with all applicable regulations*, in the property owner's sole discretion; **and**
    6. Vegetated *buffers are preserved* in accordance with the local water supply watershed protection program requirements



# CAMA and Stormwater Changes

- S.L. 2021-158 (S 389)

- CAMA

- Alters conditions for funds for beach access (incl lease)
    - Removes mailed notice requirement for permits and applications to modify major permits



- Stormwater

- Alters EMC considerations for the 17 basin-wide water quality resources management plans
    - Removes in-person notice requirement for sedimentation and erosion control violations
    - Stop work orders are no longer specifically final agency decisions and the attorney general does not need to file a suit to abate violations

Deadlines: adjusts deadlines for CAMA Permit third-party appeals (15->30 days) and requests for remission of Sedimentation and Erosion Control penalties (60->30 days)

# Erosion and Sedimentation Control

- For single-family residential lots where the lots or disturbed areas are less than one acre in size (**S.L. 2021-121, Sec. 5**):
  - Financial responsibility for land-disturbing activity transfers from builder or developer to homeowner on deed recordation and notification to local program
  - Fees for review of sedimentation and erosion must be \$100/lot or less
  - If builder and developer are the same, can't require separate erosion control plan for lot if approved erosion control plan is in place for the entire development
  - Local erosion control programs cannot require periodic self-inspections or rain gauge installation on individual lots of this type
  - For land-disturbing activity on more than one lot, the person doing the land disturbing activity can choose to submit a single erosion control plan for all disturbed lots or separate erosion control measures for each lot.

# Erosion and Sedimentation Control

- Other Erosion and Sedimentation Control Changes (**S.L. 2021-121, Sec.5**)
  - Fees for most developments (except for single-family lots in a development that are less than one acre) must be calculated based on the number of acres disturbed
  - No silt fence or other erosion control measure, and no wire-backed reinforced silt fence, where measure “would not substantially and materially retain” sediment generated by land-disturbing activity due to topography
  - No civil penalties 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 NOV.

# Building and Housing Code

- Building Code and Dev. Reform (**S.L. 2021-121**) (some provisions already covered)
  - **Sec. 3:** Building Code Council must conduct *independent* cost-benefit analysis when revising State Building Code
  - **Sec. 4:** No fee for reinspecting new violations at one- or two-family dwellings;
  - **Sec. 6:** No automatic sprinklers required in one- or two-family dwellings with fewer than 100 units on a single fire access road with access from one direction
  - **Sec. 7:** Residential Code and Plumbing Code must allow AWWA C900 standard for PVC pipe
- Builder property tax exemption
  - **S.L. 2021-113:** Adds townhouses to the exemption for property a builder holds for sale



# Outline

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**Building and Housing Code**

# Building and Housing Code

- Inspection Reform (**S 308, S.L. 2021-183**)
  - When an inspection to verify correction of violations finds new violations, the new violations can't delay issuance of temporary CO and there's no fee for reinspection
  - Electric wiring for houses or buildings still required to conform to State Building Code, but statute no longer references the National Electric Code
  - Fire Code to be adjusted so that access roads are not farther apart than is technically feasible for a one- or two-family dwelling development



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# Ratified but not yet signed into law

- **SB 329** – Modification of engineer / architect seal and building permit exemption criteria
  - Presented to governor on 12/1;
  - Raises commercial building exemption from architectural license and supervision requirements from \$200k to \$300k
  - Applies exceptions for alteration and repair of less than \$300k and of 3,000 SF or less to architectural seal requirement
  - No building permit required for construction, repair, etc. within a 12-month period costing \$20,000 or less in commercial structures (with usual limitations)



Image from <https://www.jeditemplearchives.com/news/images2018b/AlmostThere.JPG>



Questions?





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# 2021 LOCAL GOVERNMENT LEGISLATIVE UPDATE

Thank you!



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