

Special Series No. 21

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An Inventory of Local Government Land Use Ordinances in North Carolina

David W. Owens and Nathan Branscome

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UNC
SCHOOL OF GOVERNMENT

School of Government, UNC Chapel Hill

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An Inventory of Local Government Land Use Ordinances in North Carolina

David W. Owens and Nathan Branscome

This report summarizes the responses of North Carolina cities and counties to a survey asking about their adoption of a variety of ordinances related to land use. Each local government in the state was asked whether it had adopted zoning, subdivision regulations, housing codes, and a variety of other related regulations. In addition to the textual summary, the report Appendix includes two large charts showing the status of ordinance adoption for each county and city responding to the survey.

The report begins with a summary of the survey methodology and response rate. It then provides an overview of the responses, followed by a report on the various types of ordinances adopted. For each type of ordinance, a brief description of the ordinance is followed by summaries of adoption rates by cities and counties—usually accompanied by a breakdown by population size.

Survey

The survey was mailed in October 2004 to all 548 incorporated cities and all 100 counties in the state. It was addressed to the jurisdiction's zoning administrator if our records identified such an officer; if they did not, the survey was sent to the planner; and if neither a planner nor a zoning administrator could be identified, the mailing went to the city or county manager or clerk. A second copy was mailed in November 2004 to all jurisdictions that had not responded to the initial mailing. E-mail reminders were sent in January 2005 to nonresponding jurisdictions for which electronic contact information was available.¹

The survey response rate was high and represents a strong cross-section of cities and counties in the state. In all, 407 of

1. Survey responses were coded by Adam Levine and Nathan Branscome, both graduate students in the UNC Master of Public Administration Program, during the spring of 2005. If there were inconsistencies or obvious misunderstandings present, Levine and Branscome contacted the jurisdiction for clarification. Otherwise the data were entered as reported.

the 648 jurisdictions in the state responded to the survey—a 63 percent response rate. Fifty-seven percent of the cities and 95 percent of the counties responded (Table 1). The populations of responding jurisdictions amount to 90 percent of the state's total population (Table 2).

Table 1. Survey Response by Population of Jurisdiction

Cities	<i>Total Number</i>	<i>Number Responding</i>	<i>Response Rate (%)</i>
1,000 or less	231	92	40
1,000–9,999	249	160	64
10,000–24,999	43	36	84
25,000 or more	25	24	96
Subtotal	548	315	57
Counties	<i>Total Number</i>	<i>Number Responding</i>	<i>Response Rate (%)</i>
9,999 or less	11	9	82
10,000 or more	89	86	97
Subtotal	100	95	95
TOTAL	648	410	63

Table 2. Population of Responding Jurisdictions

<i>Jurisdiction</i>	<i>Total Population</i>	<i>Population of Responding Jurisdictions</i>	<i>Percent of Total</i>
Counties (unincorporated area)	4,019,839	3,755,257	93
Cities	4,398,251	3,857,715	88
Total	8,418,090	7,612,972	90

Over the summer and fall of 2005, additional inquiries and reviews of local government Web sites were made to secure additional ordinance inventory information and to resolve any data conflicts. A particular effort was made to secure information regarding zoning, subdivision, and housing codes from all counties and from all cities with populations over 10,000. As a result, information on these key ordinances from an additional 5 counties and 8 municipalities became available (for a total of 100 counties and 323 municipalities).

Survey respondents did not provide answers to every question on the survey. Therefore, there is generally a slightly different total response for each question. Throughout the report, the percentages given are based on the total number of responses to that particular question (that is, missing data and nonresponses are not considered in computing the percentages). For individual types of ordinances, the tables show the total number of responding jurisdictions in each category as well as the percentage of respondents that have adopted such ordinances.

It should be noted that this report presents the responses of survey respondents as they were received. Unless there were clear inconsistencies in responses, or notations on the returned survey forms indicating that respondents may have misinterpreted a survey question, we made no attempt to independently verify the accuracy of a response. Thus it is possible that an individual zoning officer, planner, manager, or clerk misunderstood the definition of a particular type of ordinance. Some caution in the interpretation of this data is therefore warranted, particularly in regard to newer and more unusual forms of regulations (such as a “unified development ordinance” or an “adequate public facility ordinance”). There are varying local understandings of just what these ordinances entail.

Overview

Land use and development regulations have been adopted by most North Carolina local governments. Zoning and subdivision regulations are the most widely used ordinances for both cities and counties. Special-purpose regulations that address junk and abandoned cars, signs, manufactured-home parks, noise, telecommunication towers, junkyards, flood hazard areas, and adult entertainment facilities are also in wide use. At least two-thirds of the jurisdictions responding to the survey have imposed these regulations; some of them are included in a zoning or unified development ordinance and some are adopted as separate ordinances. Table 3 summarizes the frequency with which they are adopted.

There are several other notable aspects of these responses. While the general frequency of adoption of most types of ordinance is similar for cities and counties, there are several notable exceptions.

Table 3. Frequency of Ordinance Use

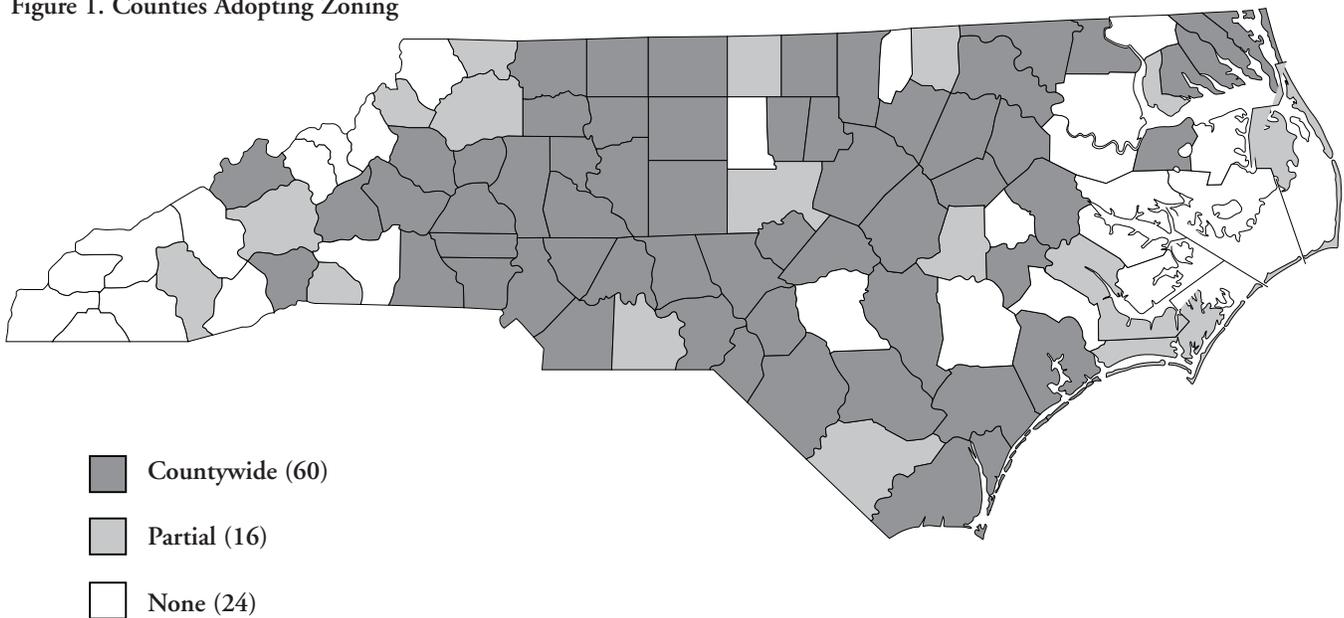
<i>Type of Ordinance</i>	<i>Percentage of Cities</i>	<i>Percentage of Counties</i>
Zoning	89	77
Junk cars	84	80
Subdivision	83	88
Signs	82	81
Nuisance lots	81	27
Manufactured-home parks	79	93
Noise	77	69
Telecommunication towers	70	78
Junkyards	69	80
Flood hazard	68	98
Adult entertainment	67	74
Housing code	52	27
Stormwater	46	35
Watershed	46	82
Building code	37	100
Sediment and erosion control	32	44
Historic district/landmark	30	21
Adequate public facilities	29	21
Unified development ordinance	27	21
Airport perimeter	15	59

Because many smaller cities contract with counties for building code enforcement and several large cities have merged their building inspection function with the county's, only 37 percent of cities handle building code enforcement, compared to 100 percent of the counties. (Although local governments are required by law to enforce the state building code, they have the option of allowing another unit of government to conduct the required inspections and permitting within their jurisdiction.)

Other regulations are more frequently adopted by cities than counties. The substantially higher municipal adoption rates are for issues traditionally considered to be municipal concerns, such as nuisance-lot regulations and housing codes. On the other hand, counties are substantially more likely than cities to have airport perimeter protection, watershed protection (a state mandate), and flood hazard regulations (which are required for flood insurance coverage). In some respects, these differences seem to have diminished over time, though it will be interesting to see whether future surveys document a trend in that direction.

Broken down by population levels, the data show that the frequency of adoption for virtually every type of ordinance increases along with the population of the jurisdiction. The more-populous cities and the counties with higher populations in unincorporated areas are far more likely to have adopted any particular form of land use regulation than their less-populous counterparts.

Figure 1. Counties Adopting Zoning



With counties, the only exceptions to this rule are housing codes and adequate public facility regulations. In both these instances, counties with the lowest unincorporated populations (under 20,000) were slightly more likely to have regulations in place than mid-sized counties (with unincorporated populations in the 20,001 to 50,000 range).

With cities, the adoption rate for most types of regulation (such as zoning and subdivision regulations) is often markedly lower when the population is under 1,000. For several other types of regulations, the population threshold for markedly high adoption rates is higher. Unified development ordinances and adequate public facility requirements, for example, are unlikely to be adopted by cities under 5,000 population; and for airport regulations the population threshold is at the 10,000 level.

Zoning

The principal land use regulatory ordinance used in North Carolina is zoning. These ordinances divide the city or county land area into districts and prescribe a separate set of development regulations for each zone or district. The principal difference between the districts is the range of land uses permitted. Zoning regulations also typically include standards pertaining to the height and size of structures, lot design and layout, and density of development. Many zoning ordinances also address such topics as signs, landscaping, buffer areas, off-street parking, and stormwater control.

Most populous North Carolina cities adopted zoning soon after it was first authorized for municipal governments in 1923. Zoning spread to smaller cities in the 1950s.

Of the North Carolina cities responding to the survey, 89 percent have now adopted zoning. As Table 4 indicates, all cities with populations over 10,000 have zoning, as do virtually all cities with populations over 1,000. The percentage of very small towns that have adopted zoning may be somewhat overstated by these figures, as those with such regulations are perhaps more likely to have responded to the survey. On the other hand, it is also common for small towns to request that county zoning be applied to them.

Table 4. Municipalities Adopting Zoning Ordinances

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	90	69
1,000–4,999	122	94
5,000–9,999	40	98
10,000–24,999	44	100
25,000–49,999	9	100
50,000 or more	16	100
Total	321	89

The same pattern relative to population exists for county adoption of zoning (Table 5). Just over half of the counties with populations under 20,000 in their unincorporated areas have adopted zoning, while 96 percent of the counties with an unincorporated population over 50,000 have done so.

The location of counties that have adopted zoning is depicted in Figure 1. Adoption of county zoning is closely related to population density. Of the twenty-four counties with

no county zoning, only two have population densities higher than the statewide average of 165 persons per square mile (Alamance at 304 and Vance at 169).² Twenty-one of these twenty-four counties have population densities under 100 persons per square mile, and nine have densities under 50 persons per square mile.

Table 5. Counties Adopting Zoning Ordinances

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of All Counties</i>
1–19,999	29	55
20,000–49,999	43	79
50,000 or more	28	96
Total	77	77

There is also a decided trend toward adoption and extension of zoning by counties. County zoning was first authorized by local legislation for Forsyth County in 1947 and Durham County in 1949. Most counties received zoning authority in 1959 with adoption of statewide enabling authority (although thirty-one counties were initially exempted from this grant of authority). As the population of the state increased, county zoning adoption also increased. This increase is shown in Table 6.

Table 6. Counties with Zoning, 1979–2006

<i>Year</i>	<i>Countywide</i>	<i>Partial</i>	<i>No Zoning</i>
1979	25	19	56
1992	37	27	36
1997	40	27	33
2003	56	18	26
2006	60	16	24

Subdivision

Subdivision ordinances regulate the creation of new lots or separate parcels of land. These ordinances typically govern new residential developments but can also be applied to commercial, industrial, and mixed-use developments. North Carolina cities were first authorized to adopt subdivision ordinances in 1929, and this authority was extended to counties in 1959.

Subdivision ordinances serve a variety of purposes. First, they facilitate record keeping on land ownership by setting clear standards for surveying lots, marking them on the ground, and recording plat maps with the register of deeds. Second, subdivision ordinances usually include standards on the size and shape of new lots and the layout of public

2. Population densities are from the April 2000 Census reported by the state demographer. They are available online at <http://www.demog.state.nc.us/>.

facilities (such as street location, intersection design, and the like). Third, most subdivision ordinances require that essential infrastructure (such as roads, utilities, recreation land, and open space) be provided for and prescribe how those components are to be laid out and constructed. Such ordinances often require the developer to dedicate land and make improvements for infrastructure (or, in lieu of these improvements, pay a fee to the public agency that will be responsible for its provision). Subdivision ordinances do not, however, address the ultimate land uses proposed for the subdivided land.

Most cities with populations over 1,000 have subdivision ordinances (Table 7). Counties are even more likely to have adopted a subdivision ordinance than a zoning ordinance (Table 8).

Table 7. Municipalities Adopting Subdivision Ordinances

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	87	59
1,000–4,999	122	88
5,000–9,999	40	98
10,000–24,999	44	95
25,000–49,999	9	100
50,000 or more	16	100
Total	318	83

Table 8. Counties Adopting Subdivision Ordinances

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of All Counties</i>
1–19,999	29	72
20,000–49,999	43	91
50,000 or more	28	100
Total	100	88

Building Code

Building codes set the standards for new construction and substantial renovations. In North Carolina, the state has adopted a single, uniform building code, and local governments are charged with the responsibility of enforcing it. The State Building Code sets a wide variety of building standards on construction practices, permissible materials, loads, and stresses; electrical, plumbing, heating, and air conditioning systems; lighting and ventilation; chimneys, heating appliances, elevators, and other mechanical systems; means of ingress and egress; and activities within buildings that pose a danger of fire

or explosion. In addition to regulating new construction, state statutes allow cities and counties to inspect existing buildings for defects and to order correction of code violations. If inspectors find unsafe structures, they may order them to be vacated, repaired, or demolished.

While all cities and counties are required by state law to enforce the North Carolina State Building Code, each jurisdiction has several options for securing the mandated compliance. Jurisdictions may, by mutual agreement, arrange to have building inspections carried out by another unit of government, as when a municipality agrees to have the county conduct inspections within the city. A few jurisdictions contract with private entities for building code enforcement, another option authorized by the state. These options are most frequently employed by jurisdictions with small populations, as shown by Table 9. Whereas every county has a building inspection program, only 14 percent of cities with populations under 1,000 report that they employ their own building inspectors.

Table 9. Municipalities Enforcing Building Code

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	84	14
1,000–4,999	119	33
5,000–9,999	38	37
10,000–24,999	44	70
25,000–49,999	9	56
50,000 or more	16	81
Total	310	27

Housing Codes

Housing codes set minimum standards for structures used for residential purposes. For example, a housing code may require a minimum square footage of space for each occupant, adequate sanitary facilities, an adequate heat source, and an absence of unsafe conditions (such as exposed wiring or holes in the floor).

Housing codes are authorized but are not mandatory in North Carolina. They are adopted at the option of each city and county. Cities and counties with housing codes can order repairs to be made to substandard residential structures and can direct those not repaired to be closed or demolished. Many local governments coordinate housing code enforcement with various revitalization programs, such as financial assistance to low-income residents for home repairs.

While frequently adopted by cities with populations over 10,000, housing codes are less often adopted by counties and cities with populations under 1,000 (Tables 10 and 11).

Table 10. Municipalities Adopting Housing Code

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	82	21
1,000–4,999	115	50
5,000–9,999	37	62
10,000–24,999	44	86
25,000–49,999	9	89
50,000 or more	16	94
Total	303	52

Table 11. Counties Adopting Housing Code

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	29	31
20,000–49,999	42	17
50,000 or more	26	39
Total	97	27

Unified Development Ordinances

An increasing number of jurisdictions have merged all of their development-related ordinances into a single, unified development ordinance (often referred to as a UDO). The state amended various statutes in 2005 to explicitly authorize jurisdictions to combine development ordinances with common definitions, procedures, and institutional arrangements. A few North Carolina jurisdictions also use this terminology to refer to a common ordinance adopted by both the city and county to facilitate intergovernmental coordination and simplify compliance for landowners, developers, and citizens whose property may be affected by the ordinances of several nearby jurisdictions.

The use of UDOs, while increasing in frequency, is still relatively uncommon in North Carolina, where only about a quarter of the state’s jurisdictions has exercised this option. Like many ordinances, UDOs are much more likely to be adopted by more-populous jurisdictions (Tables 12 and 13).

Table 12. Municipalities Adopting UDOs

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	76	13
1,000–4,999	109	15
5,000–9,999	36	42
10,000–24,999	43	49
25,000–49,999	8	50
50,000 or more	16	69
Total	288	27

Table 13. Counties Adopting UDOs

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	27	11
20,000–49,999	38	21
50,000 or more	20	35
Total	85	21

Adequate Public Facility Regulations

Adequate public facility regulations tie development approval to the availability of essential public services. Development is not permitted at a particular site unless and until a defined level of public services is available.

This requirement can be imposed in a variety of ways. One is to adopt a long-term capital improvement program and then to proceed with development approvals as the required services become available. Another approach is to set a specific limit on the number of development approvals that can be issued in a particular timeframe—such as the number of housing units per year—with the permitted volume tied to projected increases in service availability. A third approach is to require an analysis of service availability and development impacts for each proposed development; a development is approved when adequate public services are available and denied when the project would lead to a degradation of services. These programs are widely used by local governments in many parts of the country.

To date, however, they have been sparingly applied in North Carolina. Less than a third of the responding cities and less than a quarter of the responding counties have adopted adequate public facility requirements. Further, it is likely that only a small portion of even this relatively small number of regulations are full fledged adequate public facility ordinances. It is more likely that at least some of the survey respondents replied affirmatively to indicate that the adequacy of public facilities is included as a standard for some zoning approvals (such as a special- or conditional-use permit). A more detailed

survey would be necessary to pinpoint the precise nature of the regulations that are being employed in the state.

Unlike most of the regulations inventoried, there is not a strong tie between the population of the jurisdiction and the likelihood of adoption of an adequate public facility regulation. In fact, as Tables 14 and 15 indicate, mid-sized cities and lower-population counties were more likely than their more-populous counterparts to have adopted this type of regulation.

Table 14. Municipalities Adopting Adequate Public Facilities Requirements

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	77	25
1,000–4,999	103	26
5,000–9,999	35	54
10,000–24,999	42	21
25,000–49,999	8	38
50,000 or more	14	36
Total	279	29

Table 15. Counties Adopting Adequate Public Facilities Requirements

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	25	28
20,000–49,999	37	19
50,000 or more	16	19
Total	78	22

Aesthetics

Local governments in North Carolina may adopt a variety of ordinances to address the aesthetic impact of new development. The survey gathered information on two particular types of regulations: sign regulations and those governing historic districts and landmarks.

Sign regulations are sometimes included within zoning ordinances, but they may also be adopted as a separate ordinance. The regulations often limit the size, location, and form of various types of signs. While state law also regulates outdoor advertising near federal highways (see G.S. 136-126 to 136-140.1), the state regulatory scheme does not preempt local sign regulations.

Sign regulations are very common in North Carolina. As Tables 16 and 17 indicate, nearly all cities with populations over 1,000 and counties with unincorporated populations over 20,000 reported adoption of sign regulations.

Figure 2. Local Governments in North Carolina with Historic Preservation Commissions as of February 2005

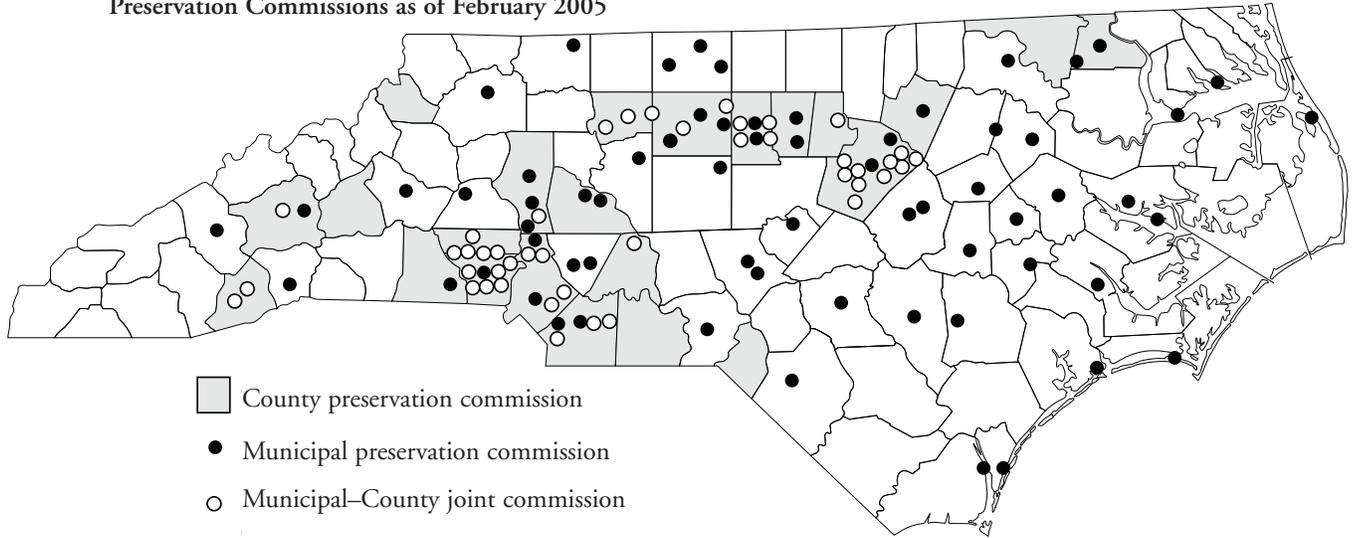


Table 16. Municipalities Adopting Sign Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1-999	85	59
1,000-4,999	121	91
5,000-9,999	40	95
10,000-24,999	43	84
25,000-49,999	9	100
50,000 or more	16	94
Total	314	82

Table 17. Counties Adopting Sign Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1-19,999	25	52
20,000-49,999	39	87
50,000 or more	26	100
Total	90	81

The statutory framework for local historic district and landmark protection programs is set out at G.S. 160A-400.1 through 160A-400.14. A historic district designation is generally incorporated within a zoning ordinance, often as an overlay zoning district. Within such a district, any new construction, exterior alteration, or demolition must receive a certificate of appropriateness and is required to be congruent with the historic character of the district.

While such districts are relatively uncommon in very small towns, a substantial number of medium-size and most large-population municipalities report that they have adopted

regulations protecting these cultural resources (Table 18). Fewer counties have yet availed themselves of this opportunity (Table 19).

Table 18. Municipalities Adopting Historic District/Landmark Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1-999	79	9
1,000-4,999	112	24
5,000-9,999	38	19
10,000-24,999	43	42
25,000-49,999	9	78
50,000 or more	16	88
Total	297	30

Table 19. Counties Adopting Historic District/Landmark Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1-19,999	26	12
20,000-49,999	37	14
50,000 or more	18	36
Total	81	21

This reported level of activity is consistent with other reports of local government activity related to historic preservation. The State Historic Preservation office reports that as of February 2005 nearly eighty local governments had established historic preservation commissions, as shown in Figure 2.

Particular Uses

For the most part, the question of whether and how to regulate particular uses is left to the discretion of local elected officials. However, state and federal law impose certain limitations on how local regulations affect several key land uses, such as county regulation of bona fide farms, restrictions on small family care homes, and facilities selling alcohol. The survey asked whether cities and counties had adopted regulations on three uses that are subject to state and federal limitations: manufactured housing, adult entertainment facilities, and telecommunication towers.

Manufactured Housing

Manufactured housing is an increasingly important component of North Carolina’s overall housing market. In 2000, over 16 percent of the state’s housing units were manufactured homes. The 2000 Census reported that there were 3,523,944 housing units in the state, of which 577,323 were mobile homes.

G.S. 160A-383.1 was added to the statutes in 1987 and is applicable to both cities and counties. It directs local governments to consider allocating more land to manufactured-housing sites as a way of providing more affordable housing in the state. Under the statute, local governments may regulate the location, appearance, and dimensions of manufactured homes but may not exclude them entirely from their zoning jurisdiction. Restrictions are generally applied to units constructed in a factory and built to the uniform national standards for manufactured homes promulgated by the U.S. Department of Housing and Urban Development. Federal law also preempts local construction and safety standards for manufactured housing but allows local governments to impose aesthetic standards.

Typical zoning requirements that have been adopted in North Carolina include limiting manufactured housing to specified zoning districts or to manufactured-home parks. It is also common for ordinances to include special provisions regarding replacement and repair of nonconforming units. Many ordinances include various appearance standards to integrate the units aesthetically with site-built homes in surrounding neighborhoods. These standards typically require a pitched roof, skirting around the underside of the unit or construction of a permanent foundation, and orienting the unit to face the front of the lot.

Most zoning ordinances do not apply the manufactured-housing requirements to factory-built housing that is built to State Building Code standards. The latter, generally referred to as “modular” rather than “manufactured” homes, are often, but not always, treated as the equivalent of site-built homes for zoning purposes. G.S. 143-139.1 does, however, set minimum design standards governing the roof pitch, eave projection, exterior siding, and foundations of modular units.

It is also common for local governments to adopt regulations on manufactured-home parks that address issues such as density of units, streets, signage, trash receptacles, and the like. These regulations are very common in North Carolina, having

been adopted by a majority of jurisdictions in all population categories (Tables 20 and 21).

Table 20. Municipalities Adopting Regulations for Manufactured-Home Parks

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	87	63
1,000–4,999	120	84
5,000–9,999	40	93
10,000–24,999	43	79
25,000–49,999	9	100
50,000 or more	15	87
Total	314	79

Table 21. Counties Adopting Regulations for Manufactured-Home Parks

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	27	70
20,000–49,999	41	100
50,000 or more	26	100
Total	94	93

Adult Entertainment

Local governments frequently impose special land use regulations on businesses that cater to an adults-only clientele. As adult bookstores, bars with erotic dancing, and massage parlors are deemed to have potential negative impacts on neighborhoods and communities, limits on their location are common. Other restrictions are also applied to the operation of these businesses. G.S. 160A-181.1 provides that local governments may regulate the operation of facilities, adopt new licensing requirements, and impose reasonable licensing fees. Similar restrictions are usually not imposed on comparable businesses such as conventional bookstores, theaters, and bars.

To avoid invalidation under the First Amendment, regulations on nonobscene adult materials and dance must be “content neutral.” The courts deem a regulation imposed on adult businesses to be “content neutral” if the predominant purpose leading to its enactment is prevention of the adverse secondary impacts of the speech. Secondary effects include impacts on the viability of surrounding neighborhoods but not potential psychological damage to viewers of sexually explicit material.

As indicated by Tables 22 and 23, land use regulations on adult businesses are common in North Carolina. With the exception of the least-populous cities and counties, a substantial majority of jurisdictions regulate these activities.

Table 22. Municipalities Adopting Adult Entertainment Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1-999	86	40
1,000-4,999	114	69
5,000-9,999	40	93
10,000-24,999	44	77
25,000-49,999	9	100
50,000 or more	16	94
Total	309	67

Table 23. Counties Adopting Adult Entertainment Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1-19,999	27	41
20,000-49,999	37	78
50,000 or more	23	100
Total	87	72

Telecommunication Towers

The proliferation of cellular telephones and other mobile communication devices has led to a substantial increase in demand for telecommunication towers. In response, many local governments have adopted ordinances to regulate their location, set height limits, require security fencing and landscaping, persuade multiple providers to use a single tower, encourage use of existing structures (water towers, church steeples, tall buildings) for antenna location, promote use of camouflage for towers (use of “stealth” designs), and provide for removal of abandoned towers.

The federal Telecommunications Act of 1996 allows local regulators to determine the location of personal wireless facilities (47 U.S.C. § 332(c)(7)(B) (Supp. 1996)). However, local regulations may not unreasonably discriminate among providers of functionally equivalent services and may not prohibit, or take actions that have the effect of prohibiting, the provision of personal wireless services. Local restrictions based on the environmental health effects of radio frequency emissions are prohibited, and local governments must act on permit requests within a reasonable time. Denials must be in writing and be supported by substantial evidence. When a special- or conditional-use permit is required, the more demanding North Carolina law applicable to

all quasi-judicial land use decisions directs that written findings of fact and substantial, competent, and material evidence be placed in the record to support the decision.

Most North Carolina cities and counties now regulate telecommunication towers (Tables 24 and 25).

Table 24. Municipalities Adopting Telecommunication Tower Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1-999	83	40
1,000-4,999	118	74
5,000-9,999	38	95
10,000-24,999	44	82
25,000-49,999	9	89
50,000 or more	16	94
Total	308	70

Table 25. Counties Adopting Telecommunication Tower Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1-19,999	27	59
20,000-49,999	39	82
50,000 or more	26	92
Total	92	78

Airport Zoning

In 1941 the state adopted the Model Airport Zoning Act, codified as G.S. 63-30 through 63-37. Using procedures substantially similar to the general zoning enabling act, the act authorizes cities and counties to create zones around airports to limit the height of structures and trees. As local governments subsequently adopted general zoning ordinances, these provisions were usually incorporated into the zoning ordinance, although several jurisdictions retain separate airport zoning ordinances pursuant to this separate authority.

As Tables 26 and 27 indicate, focused airport perimeter regulations are rarely applied by municipalities with very small populations (probably because there are few airports within their jurisdictions). However, such regulations are relatively common for cities with populations over 25,000 and in counties with comparable populations in their unincorporated areas.

Table 26. Municipalities Adopting Airport Perimeter Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	78	1
1,000–4,999	113	7
5,000–9,999	37	19
10,000–24,999	43	23
25,000–49,999	9	78
50,000 or more	16	63
Total	296	18

Table 27. Counties Adopting Airport Perimeter Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	25	32
20,000–49,999	38	66
50,000 or more	23	78
Total	86	59

Environmental Regulation

North Carolina cities and counties have increasingly incorporated into their regulations provisions addressing the environmental impacts of development. The survey examined the frequency with which local governments adopted four types of regulations—those directed toward floodplain development, stormwater management, water supply watershed protection, and control of sedimentation.

Floodplain Development

Regulation of flood hazard areas is often incorporated into local zoning ordinances, but it may also be adopted as a separate ordinance. Under federal law, a community’s property owners are not eligible for federal flood insurance unless the local government has adopted floodplain zoning regulations that meet minimum federal standards. These standards generally prohibit development in the floodway, require that the lowest habitable floor of any building be higher than the 100-year flood level of the broader floodplain, and ban manufactured housing in the floodplain. State law (G.S. 143-215.51 to 143-61) requires that local flood hazard prevention ordinances meet federal requirements. G.S. 166A-6A(b)(2) also provides that local governments are eligible for state public assistance funds for flood damage assistance only if they are participating in the national flood insurance program.

These federal and state incentives have encouraged widespread adoption of local flood hazard regulations. As indicated by Tables 28 and 29, a substantial majority of jurisdictions have adopted these ordinances.

Table 28. Municipalities Adopting Flood Hazard Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	86	41
1,000–4,999	119	71
5,000–9,999	40	83
10,000–24,999	44	84
25,000–49,999	9	89
50,000 or more	16	94
Total	314	68

Table 29. Counties Adopting Flood Hazard Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	27	89
20,000–49,999	40	100
50,000 or more	27	93
Total	92	98

Stormwater Management

State and federal requirements mandate that certain North Carolina local governments adopt stormwater management programs. These programs must include both structural stormwater controls and such management measures as education and used-oil recycling programs—programs designed to manage both the quality and quantity of stormwater runoff.

State statutes and regulations (G.S. 143-214.7 and 15A NCAC 2H .1000) require stormwater protection provisions for many large development projects in the twenty coastal counties and those adjacent to waters classified as “outstanding resource waters” or “high quality waters.” These projects must maintain a low density of impervious surfaces on site (or include installation of structures to control stormwater) and maintain vegetative buffers adjacent to the water. Federal regulatory mandates under the Clean Water Act are also being phased in for local governments. Beginning in 1990, some industrial facilities and municipal systems serving populations of 100,000 or more were required to adopt stormwater programs. This mandate affected Raleigh, Durham, Fayetteville/Cumberland County, Charlotte, Winston-Salem, and Greensboro. This mandate is in the process of being extended to a much larger group of smaller cities and counties.

A majority of responding cities with populations over 5,000 reported having stormwater regulations (Table 30). These regulations are less common in the counties (Table 31).

Table 30. Municipalities Adopting Stormwater Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	83	28
1,000–4,999	113	40
5,000–9,999	39	62
10,000–24,999	42	60
25,000–49,999	9	89
50,000 or more	16	81
Total	302	46

Table 31. Counties Adopting Stormwater Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	25	28
20,000–49,999	38	34
50,000 or more	21	47
Total	82	35

to adopt a “high-density” option that permits more-intensive development if the developer takes measures to control runoff, such as installing a pond to collect rainwater.

Table 32. Municipalities Adopting Watershed Protection Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	80	30
1,000–4,999	116	42
5,000–9,999	36	53
10,000–24,999	42	60
25,000–49,999	9	89
50,000 or more	15	80
Total	298	46

Table 33. Counties Adopting Watershed Protection Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	27	48
20,000–49,999	39	92
50,000 or more	26	100
Total	92	82

Water Supply Protection

In 1989 the legislature mandated that local governments whose jurisdictions contain surface water used for public water supplies adopt minimum land use regulations to prevent harmful runoff and thereby protect the quality of those waters.

This law affects a substantial portion of North Carolina, as some 20 percent of the state’s land area is in a water supply watershed. Over 250 local jurisdictions were required to adopt watershed protection regulations, either as part of a zoning ordinance or as a separate ordinance. Tables 32 and 33 show that this mandate has led to adoption of a substantial number of city and county water supply watershed protection ordinances.

The local regulations must limit certain land uses near these bodies of water (for example, landfills or hazardous materials storage facilities) and impose density limits on development land that drains into them. Density limits take the form of minimum lot sizes for residential construction and restrictions on the amount of a lot that can be used for commercial and industrial development. State rules allow local governments

Sedimentation Control

Local governments may adopt ordinances to control sedimentation and manage soil erosion on sites undergoing development. The state Sedimentation Pollution Control Act establishes a statewide regulatory program that requires sedimentation control plans for land-disturbing activity affecting an acre or more of land (G.S. 113A-50 through 113A-66). G.S. 113A-60 provides that local governments may, subject to state approval, adopt local ordinances that supplant the requirement for state approval of sedimentation control plans. Local ordinances must meet (and may exceed) the state’s minimum standards for sediment control. As of early 2004, some forty-nine local governments had adopted state-approved programs (including three joint city–county programs).

In addition, a significant number of other cities and counties report adopting some form of sediment and erosion control regulation. As indicated in Tables 34 and 35, one third of responding cities and nearly half of responding counties report adopting sediment and erosion control regulations.

Table 34. Municipalities Adopting Sediment and Erosion Control Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	81	25
1,000–4,999	111	24
5,000–9,999	36	36
10,000–24,999	44	45
25,000–49,999	9	56
50,000 or more	16	56
Total	297	32

Table 35. Counties Adopting Sediment and Erosion Control Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	24	32
20,000–49,999	39	66
50,000 or more	19	78
Total	82	44

Nuisance Regulation

In addition to regulating land development, local government ordinances can address particular nuisance-type activities. The survey examined the use of four such ordinances—regulations on junkyards, junk and abandoned cars, noise, and unkempt properties.

Junkyards

To avoid financial penalties under federal statutes, states must regulate junkyards that are (1) within 1,000 feet of the right-of-way of an interstate or federally assisted primary highway and (2) visible from such roads. Existing junkyards must be removed or screened from view. In 1967, in response to this mandate, the state enacted the Junkyard Control Act (G.S. 136-144). This statute prohibits the establishment, maintenance, or operation of junkyards within 1,000 feet of interstate and federal primary highways unless the facilities are screened from view or are located in an industrially zoned area or an unzoned area that is in fact used for industrial purposes.

The statute establishes minimum standards and does not preempt additional local regulation of junkyards. Tables 36 and 37 indicate that a substantial majority of populous cities and counties have adopted regulations on junkyards.

Table 36. Municipalities Adopting Junkyard Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	80	46
1,000–4,999	117	72
5,000–9,999	39	87
10,000–24,999	42	76
25,000–49,999	9	89
50,000 or more	16	88
Total	303	69

Table 37. Counties Adopting Junkyard Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	28	43
20,000–49,999	40	90
50,000 or more	27	100
Total	95	79

Junk Cars

In addition to regulating junkyards, local governments may control storage areas for inoperable and abandoned cars. After several local governments had secured local legislation to permit such regulation, the General Assembly granted general authorization for junk car regulation (G.S. 160A-303, 160A-303.2, 153A-132, 153A-132.2). The prevalence of concern about this issue is reflected in the very widespread adoption of such local regulations, even by low-population jurisdictions (Tables 38 and 39).

Table 37. Municipalities Adopting Junk Car Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	82	70
1,000–4,999	122	90
5,000–9,999	39	95
10,000–24,999	44	80
25,000–49,999	9	100
50,000 or more	16	94
Total	312	84

Table 39. Counties Adopting Junk Car Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	26	58
20,000–49,999	41	83
50,000 or more	25	100
Total	92	80

Noise

Local ordinances to limit the off-site impacts of noise generation are also relatively common, particularly in municipalities. A majority of all responding cities, and of more-populous counties, have adopted noise ordinances (Tables 40 and 41).

Table 40. Municipalities Adopting Noise Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	83	64
1,000–4,999	119	80
5,000–9,999	40	90
10,000–24,999	43	72
25,000–49,999	9	100
50,000 or more	16	88
Total	310	77

Table 41. Counties Adopting Noise Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	28	43
20,000–49,999	41	73
50,000 or more	22	95
Total	91	69

Unkempt Properties

Another very common form of regulation targets nuisance lots. These ordinances are typically directed at weedy, overgrown properties and may also limit accumulations of other refuse. They have been adopted by almost all responding cities with populations over 5,000 (Table 42). Such regulations are far less common in counties; only about a quarter of responding counties in each population category have adopted nuisance lot ordinances (Table 43).

Table 42. Municipalities Adopting Nuisance Lot Regulations

<i>Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–999	80	68
1,000–4,999	118	84
5,000–9,999	40	93
10,000–24,999	44	80
25,000–49,999	9	100
50,000 or more	16	88
Total	307	81

Table 43. Counties Adopting Nuisance Lot Regulations

<i>Unincorporated Population</i>	<i>Number Responding</i>	<i>Percentage of Respondents</i>
1–19,999	26	24
20,000–49,999	38	29
50,000 or more	19	26
Total	83	27

Appendix

**Chart A.
County Ordinance Inventory**

● County has applied ordinance countywide. ○ County has applied ordinance in part of the county. * No data available.
Blank field means ordinance is not applied.

County	Zoning	Subdivision	State building code	Housing code	Unified development ordinance	Historic district/ landmark regulation	Sign regulation	Manufactured-home park	Adult entertainment regulation	Telecommunication tower regulation	Adequate public facility requirements	Floodplain or flood hazard regulation	Stormwater regulation	Watershed protection	Sediment and erosion control	Airport perimeter regulation	Junkyard regulation	Junk/abandoned car regulation	Noise regulation	Nuisance lot regulation	
Alamance		●	●	*		*	*	*	*	*	*	*	*	●	*	*	●	●	●	●	*
Alexander	●	●	●											●			●	●	●	●	
Alleghany	○	●	●				*	○						●			●	●			
Anson	○	●	●	●				●					*	●			●	●		●	
Ashe		●	●		●		●	●	●	●				●	●	●	●	●	●	●	
Avery	○	●	●		●		●		●					●	●	●	●	●	●	●	
Beaufort	○	●	●	*				●	●				○		*	*	*	*		*	
Bertie			●	●										●							
Bladen	●	●	●				●	●	●	●				●			●	●	●	●	
Brunswick	●	●	●				●	●	●	●				○			●	●	●	●	
Buncombe	○	●	●	●		●	●	●	●	●											
Burke	●	●	●	●			●	●	●	●				●							
Cabarrus	●	●	●	●			●	●	●	●				●							
Caldwell	●	●	●	●			●	●	●	●				●							
Camden	●	●	●	●	●		●	●	●	●				●							
Carteret	○	●	●				●	●	●	●			*	●							
Caswell	○	●	●		*		*	●	●	●				●	*						
Catawba	●	●	●				●	●	●	●				●							
Chatham	○	●	●				●	●	●	●				●							
Cherokee		●	●											●							
Chowan	○	●	●											○							
Clay		●	●		*		*	●	●	●				*							*
Cleveland	●	●	●	●			●	●	●	●				●							
Columbus	○	●	●					●	●	●				●							
Craven	○	●	●					●	●	●				●							

Nuisance lot regulation	*				*			*	●	●						●	●		
Noise regulation	●	*		●	●	*	●	*	●	●	●		●	●	●	●	●		
Junk/abandoned car regulation	●	●	●	●	●	*		●	●	●	●	●	●	●		●	●		
Junkyard regulation	●	●	●	●	●	*		●	●	●	●	●	●	○	●	●	●		
Airport perimeter regulation	●	●	●		●	*		●	●		*		●	○	●				
Sediment and erosion control	●	*				*		*	●	○		●	●			●	●		
Watershed protection		*	●	●	●	*	●	●	●	●	●	●	●	○	●	●	●		
Stormwater regulation		*				*		*	●	●		●	●		●		●		
Floodplain or flood hazard regulation	●	●	●	●	●	*	●	●	●	●	●	●	●	●	●	●	●		
Adequate public facility requirements	●	*	●			*		*		*		●				●	●		
Telecommunication tower regulation	●	●	●	●	●	*	●	●	●	●	●	●	●		●		●		
Adult entertainment regulation	●	●	*	●	●	*		●	●		*	●	●			●	●		
Manufactured-home park	●	●	●	●	●	*	●	●	●	●	●	●	●	●	●	●	●		
Sign regulation	●	●	●	●	●	*	●	●	●	●	●	●	●	●	○	●	●		
Historic district/ landmark regulation		*				*	●	*		○			○			*	●		
Unified development ordinance		*			*	*		●								●			
Housing code																	●		
State building code	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●		
Subdivision	●	●	●	●	●		●	●	●	●	○	●	●	●	●	●	●		
Zoning	●	●	●	●	●			●	●	○	●	○	○	○	○	●	●		
County	Sampson	Scotland	Stanly	Stokes	Surry	Swain	Transylvania	Tyrrell	Union	Vance	Wake	Warren	Washington	Watauga	Wayne	Wilkes	Wilson	Yadkin	Yancey

**Chart B.
Municipal Ordinance Inventory**

● Applied by municipality. * No data available. Blank field means ordinance is not applied.

Municipality	Zoning	Subdivision	State building code	Housing code	Unified development ordinance	Historic district/ landmark regulation	Sign regulation	Manufactured-home park	Adult entertainment regulation	Telecommunication tower regulation	Adequate public facility requirements	Floodplain or flood hazard regulation	Stormwater regulation	Watershed protection	Sediment and erosion control	Airport perimeter regulation	Junkyard regulation	Junk/abandoned car regulation	Noise regulation	Nuisance lot regulation	
Aberdeen	●	●	●	●		●	●	●	●	●	●	●		●					●	●	●
Albemarle	●	●							●										●	●	
Alliance																					
Angier	●	●	●	●			●	●						●			●	●	●	●	●
Ansonville	●	●			*	●	●	●	●		●	●									
Apex	●	●	●	●		●	●	●	●						●				●	●	●
Archdale	●	●	●				●	●	●												
Asheboro	●	●	●				●	●	●										●		
Asheville	●	●	●	●		●	●	●	●		●	●				●					
Askewville																					
Atkinson	●	●					●	●		●									●	●	●
Atlantic Beach	●	●	●	●			●	●	●												
Autryville																					
Badin	●	●																			
Bald Head Island	●	●	●	●			●	●											●	●	●
Banner Elk	●	●		*	●	●	●	●	●		●	●							●	●	●
Beaufort	●	●	●	●			●	●	●										●	●	●
Beech Mountain	●	●	●	●			●	●	●												
Belwood	●	●						●													
Bermuda Run																					
Bessemer City	●	●					●	●	●		●	●							●	●	●
Bethania																					
Beulaville	●	●					●	●	●		●	●							●	●	●
Blitmore Forest	●	●					●	●	*										●	●	●
Blowing Rock	●	●					●	●	●												

Nuisance lot regulation	●	●	●	●	●		●	●	●		●		●	*		●	●	●	*		●		●	●	●	●	●	*
Noise regulation	●	●	●	●	●		●	●	●		●	●	●	*		●	●	●	●		●		●	●	●	●	●	*
Junk/abandoned car regulation	●	●	●	●	●		●	●	●		●	●	●	*		●	●	●	●		●	*	●	●	●	●	●	*
Junkyard regulation	●	●	●	●	●		●	●	●		●		●	●		●	●	●	●		●		●	●	●	●	●	*
Airport perimeter regulation				●		*								*			●	*		●		●		*				*
Sediment and erosion control				●		*	●	●					*		●	●							*	●	●			*
Watershed protection	●			●	●		●	●	●				*		●	●	●	*		●		●		●	●			*
Stormwater regulation	*	●		●	●			●	●		●		●	●			●	●			●					●	●	*
Floodplain or flood hazard regulation	●			●	●		●	●	●		●		●	●		●	●	●			●		●		●	●	●	*
Adequate public facility requirements	*	●		●		●				●			●			●	*	*		●					*	●	●	*
Telecommunication tower regulation	●	●	●		●	●	●	●	●		●		●	●	●					●		●		●		●	●	*
Adult entertainment regulation		●	●		●		●	●	●		●		●	●			●	●			●		●		●	*	●	
Manufactured-home park	●	●	●	●	●	●	●	●	●		●		●	●		●		●			*		●	●	●	●	●	●
Sign regulation	●	●	●	●	●	●	●	●	●		●	●	●	●		●	●	●			●		●		●	●	●	
Historic district/ landmark regulation		●			●		●		●				●	*				●	*		●							
Unified development ordinance	*				●		●		●		●			*				*								*	●	
Housing code	●	●						●	●		●		●	*			●	*		●	●	●	●	●	●	●	●	
State building code		●							●				*			●	●			●		●						
Subdivision	●	●		●	●	●	●	●		●		●	●	●		●	●	●		●		●	●	●	●	●	●	
Zoning	●	●	●	●	●	●	●	●	●		●	●	●	●		●	●	●		●		●	●	●	●	●	●	●
Municipality	Coats	Columbia	Columbus	Como	Concord	Connelly Springs	Conover	Conway	Cornelius	Cove City	Cramerton	Creswell	Dallas	Dillsboro	Dover	Drexel	Duck	Durham	East Laurinburg	Eden	Edenton	Elizabeth City	Elizabethtown	Elk Park	Elkin	Elm City	Elon	Eureka

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School of Government Publications of Interest

North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction

David W. Owens

Special Series No. 20, January 2006

North Carolina statutes allow cities to conduct planning and apply zoning, subdivision, and other development regulations to areas adjacent to city limits. This publication first examines the law related to this extension of municipal jurisdiction and reviews the authority for this power and the process required to exercise it. Based on a comprehensive survey of North Carolina cities and counties, it then discusses how cities have exercised this power. Topics addressed in the survey report include how frequently municipal extraterritorial jurisdiction (ITJ) is used, which city powers are applied in ITJs, how extraterritorial residents are represented on city boards, and the interaction of cities and counties regarding this issue.

Survey of Experience with Zoning Variances

Adam Brueggemann and David W. Owens

Special Series No. 18, February 2004

Summarizes and analyzes the responses to a survey of North Carolina cities and counties to determine how they have used the zoning variance power. Reviews administrative aspects of variance practice, including which local boards make these decisions, the experience and training of board members, their workloads, and fees charged.

Locally Initiated Inclusionary Zoning Programs: A Guide for Local Governments in North Carolina and Beyond

Edited by Anita R. Brown-Graham

2004

A guide to help local governments balance the myriad legal and policy concerns raised by inclusionary zoning, a strategy for local governments to create more affordable housing for low- and moderate-income residents. A collaborative effort between the UNC School of Government and the UNC School of Law, this publication also contains appendixes on inclusionary zoning ordinances and research methodology.

Land Use Law in North Carolina

David W. Owens

Forthcoming, Summer 2006

A legal reference work for those interested in law related to development regulation in North Carolina. It builds and expands on the material originally covered in two editions entitled *Legislative Zoning Decisions: Legal Aspects*. Addresses various aspects of local government jurisdiction for development regulation, procedures for adopting and amending ordinances, spot zoning, contract zoning, vested rights, and nonconformities. New topics covered include quasi-judicial zoning decisions, ordinance administration, and enforcement.

Introduction to Zoning

David W. Owens

Second edition, 2001

Provides a clear, understandable explanation of zoning law for citizen board members and the public. Serves as both an introduction for citizens new to zoning law and a refresher for those who have been involved with zoning for some time. Each chapter deals with a distinct aspect of zoning, such as where a city can apply its ordinances, the process that must be followed in rezoning property, or how ordinances are enforced. Although North Carolina ordinances and cases are cited, this book is useful to anyone interested in zoning law. Contains an index and appendixes that include zoning statutes and references to North Carolina land use law.

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