

G.S. Chapter 160D Checklist of Changes to Local Ordinances, Policies, and Practices

August 2020 Update

This checklist outlines provisions in the new Chapter 160D of the North Carolina General Statutes (hereinafter G.S.) as well as related statutory changes that will be incorporated into Chapter 160D. The changes to the statutes affect the language of local ordinances, the options for local decision processes, and the administrative practices related to development regulations.

This checklist is one piece of a larger set of resources and training materials, including an explanatory book, *Chapter 160D: A New Land Use Law for North Carolina*. Each item on this checklist is described more thoroughly in those additional resources. Section headers in this checklist note the corresponding chapter and section of the Chapter 160D book [in brackets]. Check nc160D.sog.unc.edu for additional resources and training.

The checklist has specific notations, which are accompanied by specific icons, as follows:

- ☐ Denotes legislative changes for which local governments **must** take action (statutory citations are in parentheses) (Many changes may already be reflected in the local ordinance. If so, no additional change is necessary for the ordinance.)
- Denotes permissive legislative changes for which local governments **may** take action
- △ Denotes notable legislative changes that do not require local action but of which local governments must **be aware**

Session Law 2020-25 (S.B. 720) amended Chapter 160D to incorporate other legislative changes from 2019 and make technical corrections. Those changes are noted in this updated checklist with new language underlined and cut language shown with strikethrough. Notably, S.L. 2020-25 altered the effective date of Chapter 160D. All powers and actions authorized under Chapter 160D are available as of June 19, 2020 (local ordinances may be updated and made effective immediately), but local governments have until July 1, 2021, to update local ordinances and policies to comply with the requirements of Chapter 160D. For that reason, the asterisks from the original checklist are removed. For the time before a local government amends its ordinances to comply with Chapter 160D, the rules and requirements of Chapter 160A (for municipalities) or Chapter 153A (for counties) will effectively remain controlling for that local government.

~~*For items noted with an asterisk, local governments do not have authority for the change until January 1, 2021, unless legislation authorizes earlier effectiveness. Noted changes may be incorporated into ordinances and policies, but they must not be effective until 2021. All other changes may be adopted and effective immediately.~~

I. Terminology and Citations [Chapter 1, Section III]

- Must** update any references to provisions in G.S. Chapter 160A or 153A to indicate relevant provisions in Chapter 160D. (See appendixes B and C in the Chapter 160D book.)
- Must** align ordinance terminology with Chapter 160D terminology for *conditional zoning* and *special use permits*; must delete use of the terms *conditional use permit*, *special exception*, *conditional use district zoning*, and *special use district zoning*. (See G.S. 160D-102.)
- Must** ensure that ordinance definitions for the following terms are not inconsistent with definitions provided in state law and regulation: *building*, *dwelling*, *dwelling unit*, *bedroom*, and *sleeping unit*. (G.S. 160D-706; S.L. 2019-111, § 1.17.)
- May** align ordinance terminology with Chapter 160D terminology, including for the following terms: *administrative decision*, *administrative hearing*, *determination*, *developer*, *development*, *development approval*, *development regulation*, *dwelling*, *evidentiary hearing*, *legislative decision*, *legislative hearing*, *planning and development regulation jurisdiction*, and *quasi-judicial decision*. (G.S. 160D-102.)

II. Geographic Jurisdiction [Chapter 2, Section I]

- For extension of extraterritorial jurisdiction (ETJ), a municipality **must** provide mailed notice thirty days prior to ETJ hearing; municipality **may** hold one hearing (with single mailed notice) regarding ETJ and initial zoning amendment. (G.S. 160D-202(d).)
- Municipality **may** hold hearings in anticipation of change in jurisdiction. (G.S. 160D-204.)
- For a parcel in two jurisdictions, the owner and the jurisdictions **may** agree for development regulations from one jurisdiction to apply to the entire parcel. (G.S. 160D-203.)
- In ETJ, the county **may** elect to exercise development regulations that the municipality is not exercising. (G.S. 160D-202(b).)
- For counties, the county **may** apply zoning and subdivision regulations to all or part of the county's planning and development regulation jurisdiction. Cities with zoning must apply zoning jurisdiction-wide. (G.S. 160D-201; S.L. 2020-25.)

III. Boards [Chapter 2, Section II]

A. In General

- Must** adopt broadened conflict-of-interest standards for governing and advisory boards. (G.S. 160D-109.)
- Must** keep minutes of proceedings of each board. (G.S. 160D-308.)
- Must** have each board member take an oath of office before starting his or her duties. (G.S. 160D-309.)

- Must** update ETJ population estimate, at least with each decennial census (also calculation for proportional representation is simplified and process for appointment is clarified). (G.S. 160D-307.)
- Must** provide proportional representation for ETJ on preservation commission if any districts or landmarks are designated in the ETJ. (G.S. 160D-307.)
- May** have detailed rules of procedure for each board; **may** be adopted by governing board; if not, then **may** be adopted by individual board; if adopted, **must** maintain board rules of procedure (by clerk or other officer as set by ordinance) and **must** post board rules of procedure to website, if the jurisdiction has a website. (G.S. 160D-308.)
- May** establish reasonable procedures to solicit, review, and make appointments; governing board typically makes appointments but may delegate that appointment-making authority. (G.S. 160D-310.)
- May** establish additional advisory boards related to development regulations. (G.S. 160D-306.)

B. Planning Board

- May** assign to planning board the coordination of citizen engagement for planning. (G.S. 160D-301.)
- May** assign planning board to serve as preliminary forum for review and comment on quasi-judicial decisions, provided that no part of the preliminary forum or recommendation may be used as a basis for the deciding board. (G.S. 160D-301.)

C. Board of Adjustment

- May** assign board of adjustment to hear and decide matters under any development regulation, not just zoning. (G.S. 160D-302.)
- May** assign duties of housing appeals board to board of adjustment. (G.S. 160D-305.)

IV. Land Use Administration [Chapter 2, Section III]

A. In General

- Must** incorporate new staff conflict-of-interest standards into ordinance or policy. (G.S. 160D-109.)
- Must** maintain in paper or digital format current and prior zoning maps for public inspection. (G.S. 160D-105.)
- Must** maintain in paper or digital format any state or federal agency maps incorporated by reference into the zoning map. (G.S. 160D-105.)

- **May** enact ordinances, procedures, and fee schedules relating to administration and enforcement of development regulations. (G.S. 160D-402(b).)
- **May** charge reasonable fees for support, administration, and implementation of development regulation; **must** use any such fees for that purpose, not for other purposes. (G.S. 160D-402(d).)

B. Enforcement

- **Must** issue notices of violation (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different; may deliver to occupant or person undertaking the activity; delivery by hand, email, or first-class mail; may be posted onsite; administrator to certify NOV for the file.) (G.S. 160D-404(a).)
- If inspecting, **must** enter the premises during reasonable hours and upon presenting credentials; **must** have consent of premises owner or an administrative search warrant to inspect areas not open to the public. (G.S. 160D-403(e).)
- For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)
- **May** perform inspections for other development approvals to ensure compliance with state law, local law, and the terms of the approval; **must** perform (or contract for) inspections for building permits. (G.S. 160D-1113; -403(e).)
- **May** perform inspections for general code compliance and enforcement (inspections unrelated to a development approval). (G.S. 160D-402(b).)
- **May** require a certificate of compliance or occupancy to confirm that permitted work complies with applicable laws and terms of the permit; still **must** require certificate of occupancy for work requiring a building permit. (G.S. 160D-403(g).)
- **May** issue stop-work orders for illegal or dangerous work or activity, whether related to a permit or not. (G.S. 160D-404(b).)
- **May** continue to use general enforcement methods, including civil penalties, fines, court ordered actions, and criminal prosecution. (G.S. 160D-404(c).)
- △ **Be aware** that a local government must bring a court action in advance of the applicable five- and seven-year statutes of limitation. (G.S. 1-51 and -49; established prior to Chapter 160D.)
- △ **Be aware** that a local government must comply with existing rules for uses that were previously nonconforming situations. If a use loses its nonconforming status, by amortization or change of use or otherwise, the local government must bring an enforcement action within ten years of the loss of nonconforming status. (160D-1405(c1); established prior to Chapter 160D.)

V. Substance of Zoning Ordinance [Chapter 3, Section I]

- Must** maintain current and prior zoning maps for public inspection (local government clerk or other office may be the responsible office); **may** adopt and maintain in paper or digital format. (G.S. 160D-105.)
- Must** eliminate conditional use district zoning; existing conditional use district zoning converts to conditional district ~~on January 1, 2021~~ upon adoption of updated local ordinances or July 1, 2021. (G.S. 160D-703; S.L. 2020-25; S.L. 2019-111, § 2.9(b).)
- Must not set a minimum square footage for structures subject to the One- and Two-Family Residential Building Code.** (G.S. 160D-703; S.L. 2019-174.)
- May** incorporate maps officially adopted by state or federal agencies (such as flood-insurance rate maps (FIRMs)) into the zoning map; **may** incorporate *the most recent officially adopted version* of such maps so that there is no need for ordinance amendment for subsequent map updates; **must** maintain current effective map for public inspection; **may** maintain in paper or digital format. (G.S. 160D-105.)
- May** require certain dedications and performance guarantees for zoning approvals to the same extent as for subdivision approvals. (G.S. 160D-702.)
- May** use form-based codes. (G.S. 160D-703(a)(3).)
- May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define “minor modification” by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)
- May** apply zoning standards jurisdiction-wide, not just on a zoning district by zoning district basis. (G.S. 160D-703(d).)
- May** regulate development over navigable waters, including floating homes. (G.S. 160D-702(a).)

VI. Substance of Other Development Ordinances [Chapter 3, Section II]

- Must** conform subdivision performance guarantee requirements with statutory standards. (G.S. 160D-804.1; S.L. 2020-25; S.L. 2019-79 (S.B. 313), ~~to be incorporated into G.S. Chapter 160D-~~)
- Must** conform subdivision procedures for expedited review of certain minor subdivisions. (G.S. 160D-802, established prior to G.S. Chapter 160D.)
- Must not require a developer, as a condition to subdivision approval, to bury a power line existing above ground and outside of property to be subdivided.** (G.S. 160D-804; S.L. 2019-174.)

- Must** exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)
- Must** not exclude manufactured homes based on the age of the home. (G.S. 160D-910.)
- Must** follow standardized process for housing code enforcement to determine owner’s abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)
- May** adopt moratoria for development regulations (subject to limitation on residential uses); moratoria do not affect rights established by permit choice rule. (G.S. 160D-107.)
- Municipalities may petition court to appoint a receiver for vacant structures. (160D-1130.)

A. Historic Preservation

- Must** follow standard quasi-judicial procedures for preservation certificates of appropriateness. (G.S. 160D-947(c).)
- Must** frame preservation district provisions as “standards” rather than “guidelines.” (G.S. 160D-947(c).)
- May** choose for appeals of preservation commission decisions to go to board of adjustment. Default rule is that preservation appeals go directly to superior court rather than to board of adjustment. (G.S. 160D-947(e).)

B. Development Agreements

- Must** process a development agreement as a legislative decision. (G.S. 160D-105.)
- Must** have a local government as a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently). (G.S. 160D-1001(b).)
- May** consider a development agreement concurrently with a rezoning, subdivision, or site plan; **may** consider a development agreement in conjunction with a conditional zoning that incorporates the development agreement. (G.S. 160D-1001(d).)
- May** address fewer topics in development agreement content (list of mandated topics is shortened). (G.S. 160D-1006.)
- May** mutually agree with a developer for the developer to provide public improvements beyond what could have been required, provided such conditions are included in the development agreement. (G.S. 160D-1006(d).)
- May** include penalties for breach of a development agreement in the agreement or in the ordinance setting the procedures for development agreements; either party may bring legal action seeking an

injunction to enforce a development agreement. (G.S. 160D-1008.)

VII. Comprehensive Plan [Chapter 4, Section I]

- Must** adopt a comprehensive plan or land-use plan by July 1, 2022, to maintain zoning (no need to re-adopt a reasonably recent plan). (G.S. 160D-501(a).)
- Must** adopt a plan or a plan update following the procedures used for a legislative decision. (G.S. 160D-501(c).)
- Must** reasonably maintain a plan. (G.S. 160D-501(a).)
- May** coordinate a comprehensive plan with other required plans, such as Coastal Area Management Act (CAMA) plans. (G.S. 160D-501(a).)
- May** coordinate with other local governments, state agencies, or regional agencies on planning processes. (G.S. 160D-503(a).)

VIII. Legislative Decisions [Chapter 4, Section II]

A. Notice

- Must** follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; **must** adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)
- For zoning map amendments, **must** provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)
- For zoning map amendments, **must** provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)
- For extension of ETJ, **may** use single mailed notice for ETJ and zoning-map amendment pursuant to statutory procedures. (G.S. 160D-202.)
- For zoning map amendments, **may** require applicant to notify neighbors and hold a community meeting and **may** require report on the neighborhood communication as part of the application materials. (G.S. 160D-602(e).)

B. Planning Board Comment

- Must** refer zoning amendments to the planning board for review and comment; **must** not have governing board handle planning board duty to review and comment on zoning amendments. (G.S. 160D-604(c), (e).)

- Must** have planning board consider any plan adopted according to G.S. 160D-501 when making a comment on plan consistency. (G.S. 160D-604(d).)
- May** refer development regulation amendments (other than zoning) to the planning board for review and comment. (G.S. 160D-604(c).)

C. Plan Consistency

- When adopting an amendment to the zoning ordinance, **must** adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. (G.S. 160D-605(a).) *(This eliminates the 2017 requirement that statements take one of three particular forms.)*
 - May** adopt plan consistency statement when acting upon the zoning amendment or as a separate motion. (G.S. 160D-605(a).)
 - May** meet the requirement for plan consistency even without formal adoption of a written statement if the minutes of the governing board meeting reflect that the board was fully aware of and considered the plan. (G.S. 160D-605(a).)
 - May** concurrently consider a comprehensive plan amendment and a zoning amendment; must not require a separate application or fee for plan amendment. (G.S. 160D-605(a).)
- Must** note on the applicable future land use map when a zoning map amendment is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved. (G.S. 160D-605(a).) *(This clarifies that a rezoning inconsistent with a plan does not amend the text of the plan, but it does amend the future land use map.)*
- For a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan-amendment process. (G.S. 160D-501.)
- Must** adopt a statement of reasonableness for zoning *map* amendments; for such statements, **may** consider factors noted in the statutes; **may** adopt a statement of reasonableness for zoning *text* amendments. (G.S. 160D-605(b).)
 - May** consider and approve a statement of reasonableness and a plan consistency statement as a single, combined statement. (G.S. 160D-605(c).)

D. Voting

- Must** permit adoption of a legislative decision for development regulation on first reading by simple majority; no need for two-thirds majority on first reading, as was required for cities under prior law. (G.S. 160A-75; S.L. 2019-111, § 2.5(n).)

E. Certain Legislative Decisions

- Must** prohibit third-party down-zonings; **may** process down-zonings initiated by the local government or landowner (G.S. 160D-601; S.L. 2019-111, Pt. I.)
- Must** obtain applicant's/landowner's written consent to conditions related to a conditional zoning approval to ensure enforceability. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)
- May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional use district zoning. (G.S. 160D-102.)
- With applicant's written consent, **may** agree to conditional zoning conditions that go beyond the basic zoning authority to address additional fees, design requirements, and other development considerations. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)
- May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification: by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

IX. Quasi-Judicial Decisions [Chapter 4, Section III]

A. Procedures

- Must** follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)
- Must** hold an evidentiary hearing to gather competent, material, and substantial evidence to establish the facts of the case; the evidentiary hearing **must** have testimony under oath; **must** establish written findings of fact and conclusions of law. (G.S. 160D-406.)
- Board chair **must** rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling **may** be appealed to the full board. (G.S. 160D-406(d).)
- Must** allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; **may** allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)
- May** continue an evidentiary hearing without additional notice if the time, date, and place of the continued hearing is announced at a duly noticed hearing that has been convened; if quorum is not present at a meeting, the evidentiary hearing is automatically continued to the next regular meeting of the board with no notice. (G.S. 160D-406(b).)

- **May** distribute meeting packet to board members in advance of the evidentiary hearing; if this is done, then **must** distribute the same materials to the applicant and landowner at the same time; **must** present such administrative materials at the hearing and make them part of the hearing record. (G.S. 160D-406(c).)
- **May** have the planning board serve as a preliminary forum for review in quasi-judicial decisions; if this is done, the planning board must not conduct a formal evidentiary hearing, but must conduct an informal preliminary discussion of the application; the forum and recommendation must not be used as the basis for the decision by the board—the decision must still be based on evidence presented at the evidentiary hearing. (G.S. 160D-301.)
- **May** require recordation of special use permits with the register of deeds. (G.S. 160D-705(c).)
- △ **Be aware** that the definition of *close family relationship* as used for conflicts of interest includes spouse, parent, child, brother, sister, grandparent, or grandchild (including step, half, and in-law relationships). (G.S. 160D-109(f).)
- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (S.L. 2019-111, § 1.9.)

B. Certain Quasi-Judicial Decisions

- **Must** not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. (G.S. 160D-705(c); S.L. 2019-111, Pt. I.)
- **Must** obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability. (G.S. 160D-1402(k); G.S. 160D-1403.2; S.L. 2019-111, Pt. I.)
- **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; **must** presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- **May** adjust variance standards to provide for reasonable accommodation under the federal Fair Housing Act. (G.S. 160D-705(c).)
- **May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional use district zoning. (G.S. 160D-102.)
- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification" by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

X. Administrative Decisions [Chapter 4, Section IV]

A. Development Approvals

- Must** provide development approvals in writing; **may** provide in print or electronic form; if electronic form is used, then it **must** be protected from further editing. (G.S. 160D-403(a).)
- Must** provide that applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property. (G.S. 160D-403(a).)
- Must** provide that development approvals run with the land. (G.S. 160D-104.)
- For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)
- May** require community notice or informational meetings as part of the decision-making process for administrative development approvals (quasi-judicial and legislative decisions already had notice and hearing requirements). (G.S. 160D-403(h).)
- May** set expiration of development approvals if work is not substantially commenced; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).) Building permits expire after six months, as under prior law (no change to building permits). (G.S. 160D-1111.)
- May** extend expiration for development approvals for which construction is commenced and then is discontinued; default rule is that such approvals are valid for 24 months after discontinuation. (G.S. 160D-108(d).) Building permits for which work has been discontinued expire after twelve months, as under prior law (no change to building permits). (G.S. 160D-1111.) ~~**May** set expiration of development approvals if work is discontinued; default rule is twelve months, unless altered by state or local rule.~~ (G.S. 160D-403(c).) ~~**Be aware** that legislation will clarify the provisions on duration of development approvals.~~ (G.S. 160D-403(c); S.L. 2019-111, § 1.3.)
- May** authorize administrative staff to approve minor modifications of development approvals and conditional-zoning approvals; if this is done, then **must** define “minor modifications” by ordinance and **must** not include modification of permitted use or density of development; major modifications **must** go through full applicable approval process. (G.S. 160D-403(d); -703(b); -705(c).)

B. Determinations

- Must** provide written notice of determination by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner. (G.S. 160D-403(b).)
- May** designate an official to make determinations for a particular development regulation. (G.S. 160D-403(b).)

- **May** require owner to post notice of determination on the site for ten days; if such is not required, then owner has option to post on the site to establish constructive notice. (G.S. 160D-403(b).)

C. Appeals of Administrative Decisions

- **Must** allow administrative decisions of any development regulations (not just zoning) to be appealed to the board of adjustment, unless provided otherwise by statute or ordinance. (Appeals relating to erosion and sedimentation control, stormwater control, or building code and housing code violations are not made to the board of adjustment unless specified by local ordinance.) (G.S. 160D-405.)
- **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- **Must** require the official who made the decision (or his or her successor if the official is no longer employed) to appear as a witness in the appeal. (G.S. 160D-406.)
- **Must** pause enforcement actions, including fines, during the appeal. (G.S. 160D-405.)
- **May** assign the duty of hearing appeals to another board (other than the board of adjustment); if this is done, such board must follow quasi-judicial procedures. (G.S. 160D-405.)
- **May** designate that appeals be filed with the local government clerk *or* another official. (G.S. 160D-405.)

XI. Vested Rights and Permit Choice [Chapter 5, Section I]

A. Vested Rights

- **Must** recognize that building permits are valid for six months, as under prior law. (G.S. 160D-1111 ~~G.S. 160D-108(d)(1).~~)
- **Must** recognize the default rule that development approvals/permits are valid for twelve months, unless altered by statute or extended by local rule ~~adjusted by statute or local rule.~~ (G.S. 160D-108(d)(2).)
- **Must** identify site-specific vesting plans (formerly site-specific development plans) with vesting for two to five years, as under prior law, except for specified exceptions. (G.S. 160D-108.1 ~~G.S. 160D-108(d)(3); 108(f).~~)
- **Must** recognize multi-phase developments—long-term projects of at least 25 acres—with vesting up to seven years, except for specified exceptions (160D-108(c)(~~d~~)(4); -108(f).) (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)
- **May** provide for administrative determination of vested rights and for appeal to the board of adjustment. (G.S. 160D-108(h)(~~e~~), -405.)

- △ **Be aware** that a person claiming vested rights may bring an original civil action in court, skipping administrative determination and board of adjustment consideration. (G.S. 160D-108(h); 160D-405(c).)
- △ **Be aware** that vested rights run with the land, except for state-permitted outdoor advertising permits that run with the owner of the permit. (G.S. 160D-108(i)(g); S.L. 2019-111, Pt. I.)

B. Permit Choice

- **Must** not make an applicant wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules. (G.S. 143-755; G.S. 160D-108(b).)
- △ **Be aware** that if a local development regulation changes after an application is submitted, the applicant may choose the version of the rule that applies; but **may** require the applicant to comply with new rules if the applicant delays the application for six months. (G.S. 143-755; G.S. 160D-108(b); S.L. 2019-111, Pt. I.)
- △ **Be aware** that an application for one development permit triggers permit choice for permits under any development regulation; such permit choice is valid for eighteen months after approval of the initial application. (G.S. 143-755; G.S. 160D-108(b); S.L. 2019-111, Pt. I.)

XII. Judicial Review [Chapter 5., Section II]

A. Declaratory Judgments

- △ **Be aware** that an individual may bring a declaratory judgment action to challenge legislative zoning decisions, vested rights claims, and challenges to land use authority related to administrative decisions, subject to specified procedures. (G.S. 160D-1401; G.S. 160D-1403.1)
- △ **Be aware** that other civil actions may be authorized—G.S. Chapter 160D does not limit availability of other actions. (G.S. 160D-1404.)

B. Appeals of Quasi-Judicial Decisions

- **Must** update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts; default rule is that such appeals go straight to court; local government may opt for such appeals to go to the board of adjustment, as under prior statutes. (G.S. 160D-947.)
- **Must** provide that appeals of certificates of appropriateness must be filed within thirty days after the decision is effective or written notice is provided, the same as for appeals of other quasi-judicial decisions. (G.S. 160D-947; -1405.)
- △ **Be aware** that on appeal a party may request a stay of the approval or enforcement action. (G.S. 160D-1402(e).)

- △ **Be aware** that a local government may seek a stay in favor of itself (to prevent development under an approval). (G.S. 160D-1402(e).)
- △ **Be aware** that if, in the absence of a stay, an applicant proceeds with development, the person does so at his or her own risk. (G.S. 160D-1402(l).)
- △ **Be aware** that on appeal, the superior court now must allow for supplementing the record on questions of standing, conflicts of interest, constitutional violations, or actions in excess of statutory authority. (G.S. 160D-1402; S.L. 2019-111, § 1.9.)
- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (G.S. 160D-1402; S.L. 2019-111, § 1.9.)
- △ **Be aware** of specific judicial instructions for decisions of appeals of quasi-judicial decisions. (G.S. 160D-1402(k); S.L. 2019-111, § 1.9.)

C. Subdivision Decisions

- **May** establish a rule that administrative subdivision decisions are appealed to the board of adjustment. (G.S. 160D-1405.)
- △ **Be aware** that appeals of administrative subdivision decisions may be appealed directly to superior court. (G.S. 160D-1403.)
- △ **Be aware** that quasi-judicial subdivision decisions are appealed to superior court in the nature of certiorari. (G.S. 160D-1402.)

D. Attorneys' Fees

- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a city or county violated a statute or case law setting forth unambiguous limits on its authority. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a local government took action inconsistent with, or in violation of, the permit choice ~~and vested rights~~ statutes. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court *may* award attorneys' fees in other matters of local government litigation. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)

E. Additional Judicial Rules

- △ **Be aware** that a court may join a civil action challenging an ordinance with an appeal in the nature of certiorari. (G.S. 160D-1402(m).)

- △ **Be aware** that a local government **must** not assert the defense of estoppel to enforce conditions to which an applicant did not consent in writing. (G.S. 160D-1403.2; S.L. 2020-25; S.L. 2019-111, Pt. I.)

- △ **Be aware** that an action is not rendered moot if the party loses the relevant property interest as a result of the local government action being appealed, subject to applicable case law limits. (G.S. 160D-1402(j1); S.L. 2019-111, Pt. I.)