

## CITY-COUNTY PLANNING BOARD STAFF REPORT

**DOCKET:** UDO-CC10  
**STAFF:** [Chris Murphy](#)

### **REQUEST**

This text amendment is proposed by Planning and Development Services staff, in consultation with the City and County Attorney offices, to modify numerous sections of the *Unified Development Ordinances* (UDO) to align with the North Carolina General Assembly's combination of the Planning and Development statutes (NCGS 153A and NCGS 160A for counties and cities, respectively) into a combined NCGS 160D.

### **BACKGROUND**

The creation of Chapter 160D is the first comprehensive recodification and modernization of city and county development regulations since 1905. This process began with the North Carolina Bar Association (NCBA) in 2013 – along the way, the North Carolina League of Municipalities (NCLM), the North Carolina Association of County Commissioners (NCACC), the North Carolina Homebuilders Association (NCHBA), and members of the North Carolina chapter of the American Planning Association (APA-NC) provided feedback on draft legislation. In 2015, the proposed changes passed the NC House but failed to achieve NC Senate approval; in 2017, the opposite occurred. Finally, in 2019, SB 355 was approved and signed into law on July 11. There have been a few changes since – the most important being the deadline for local adoption being pushed delayed to June 30, 2021 (from January 1, 2021) due to the pandemic.

Chapter 160D consolidates the previous county enabling statutes (153A) and city enabling statutes (160A) into a single, unified chapter. Further, related statutes for city and county development regulations spread throughout other General Statutes were relocated to Chapter 160D. The intent behind the consolidation is to have a uniform set of standards applicable to cities and counties that is common to all development regulations. Although not always intentional, over the years, the city and county regulations evolved differently. This consolidation should be more user-friendly and keep regulations consistent moving forward.

These changes are not optional. However, most of our UDO complies with the new provisions. The 122-page Chapter 160D and the associated guidebook published by the UNC School of Government (255 pages) translates to approximately 26 pages of text amendments in UDO CC10.

### **ANALYSIS**

This analysis will examine each of the Sections of UDO CC10 individually, including the anticipated level of impact.

#### **Section 1:**

This section is a catch-all to correct the existing NCGS section references in the UDO to their new references. This assists in simplifying UDO CC10; instead of calling out each of these individual changes, these references will be changed administratively with approval of UDO CC10. **NO IMPACT**

Section 2:

This section is similar to Section 1 in that it seeks to simplify the process and methodology for making wholesale changes – this time, using “Design Review Standard or Standard(s)” in place of “Design Review Guideline or Guideline(s).” This is consistent with the changes made as part of NCGS 160D for uniformity across the various Historic (H) and Historic Overlay (HO) districts across the State. **NO IMPACT**

Section 3:

This section makes the vesting provisions in the UDO consistent with the revised statutes. Specifically, it clarifies the duration of various vesting provisions based on the type of approval: building permits (6 months); site-specific development plans (2-5 years); large, multi-phase development plans (7 years); and joint development agreements (negotiated). These changes provide a broader range of options – often necessary with larger projects – that may not have been included in our UDO. Internally, we have allowed projects, once started under the specified timeframe, to continue under the approved plan, regardless of the duration of construction, so long as work continues on the various phases at reasonable expediency. **MINIMAL IMPACT**

Section 4:

This section provides guidance/allows projects to be submitted and reviewed by the future governing body pending the transfer of jurisdiction (voluntary annexation), so long as the final decision on the approval isn’t made until the jurisdiction change becomes official. Both actions can be considered concurrently. **NO IMPACT**

Section 5:

This section amends the exempt subdivision provisions to match the language in NCGS 160D-802. This change simplifies and better explains some of the language pertaining to exempt subdivisions. **NO IMPACT**

Section 6:

This section caps the amount of contingency that can be required on a surety bond for a final plat at 25 percent. This reduces the amount of contingency locally from 50 percent to 25 percent. This makes our ordinance consistent with NCGS 160D, but it also requires Engineering staff to be diligent in its review of detailed cost estimates to ensure that there is adequate contingency in place to complete any outstanding work in the event of default by the developer. **MINIMAL IMPACT**

Section 7:

This section provides another category of minor subdivisions. If the stated criteria is met for this type of a minor subdivision, only a plat must be submitted for signature (similar to Exempt Subdivisions). **NO IMPACT**

Section 8:

This section removes the verified motion process for Elected Body Special Use Permits for the City. NCGS 160D-603 prohibits sending any information to the Elected Body except for names/addresses of those commenting. The revised language provides this process for both the City and County. **MINIMAL IMPACT**

Section 9:

This section clarifies the publication requirement for notices of public hearings for UDO text amendments. Published notice must be posted once a week for two (2) successive calendar weeks, the first notice not published less than ten (10) days prior to the date fixed for the hearing. The City and County already do this, but now the language is consistent in the UDO. **NO IMPACT**

Section 10:

This section provides that written statements may be submitted for UDO text amendments and that such comments must be forwarded to the governing board, either before its hearing or at the hearing, if received at least two (2) days prior to the hearing. **NO IMPACT**

Section 11:

This section clarifies the publication requirement for notices of public hearings for zoning map amendments. Published notice must be posted once a week for two (2) successive calendar weeks, the first notice not published less than ten (10) days prior to the date fixed for the hearing. The City and County already do this, but now the language is consistent in the UDO. **NO IMPACT**

Section 12:

This section updates the conflict of interest provision for the Elected Body when considering approvals by further specifying that an Elected Body member should not participate when they have a close familial, business, or other associational relationship with the petitioner. This has historically been the practice of our local governing boards, but the amendment provides further clarity. **NO IMPACT**

Section 13:

This section provides that written statements may be submitted for zoning map amendments and that such comments shall be forwarded to the governing board, either before its hearing or at the hearing, if received at least two (2) days prior to the hearing. **NO IMPACT**

Section 14:

This section provides for what can and cannot be approved through the staff change process. The new standards for the City and County are derived directly from their respective resolutions/memos authorizing staff changes, which we have used to process staff changes for the previous 42 years (they were adopted in 1979). NCGS 160D specifies that this information must be included in the UDO, not simply authorized via resolutions or memos. **NO IMPACT**

Section 15:

This section adds amateur radio antennas, up to a maximum height of 90 feet, as another element that may exceed the maximum height specified in any given zoning district. While not codified, this is something that we have allowed consistent with existing FCC policies. The FCC policy has now been incorporated into NCGS 160D-905, which states that the height of towers below 90 feet cannot be restricted unless there is a clearly defined health, safety, or aesthetic objective included as part of the more restrictive regulation. Planning and Development Services staff has received fewer than ten (10) inquiries for amateur radio antennas over the last decade. **NO IMPACT**

Section 16:

This section provides guidance to applicants and local governments regarding how properties with split jurisdiction can be treated for development approvals. Local governments **may**, by mutual agreement **AND** with permission of the landowner, assign exclusive planning and development regulation jurisdiction for the entire parcel to any of those local government entities. This is permissive and is **NOT** a requirement; rather, this provides an option. For example, instead of sending a rezoning request to the City and County for a project that split the jurisdictions, **IF** all parties agree, the development approval may be assigned to a single unit of government. **MINIMAL IMPACT**

Section 17:

This section further clarifies what can be regulated as it pertains to single- and two-family residences. NCGS 160D-703 sets forth that “building design elements,” such as exterior cladding type, color, or style; style or materials of exterior roofing and porches; exterior nonstructural architectural ornamentation; and the location and architectural stylings or locations of exterior doors and windows, including garage doors, can only be regulated if **ALL** property owners agree. We have added this NCGS 160D-703 reference to the Neighborhood Conservation Overlay (NCO) provisions to ensure that future NCOs are compliant, as most NCOs in the past have not had full participation, and some have had requirements that may conflict with this standard. **MINIMAL IMPACT**

Sections 18 and 19:

These sections (one for the City and one for the County) provide for and authorize small wireless facilities to be included as colocations, consistent with the provisions of NCGS 160D 930-938. These provisions prevent local governments from prohibiting the installation of small wireless facilities within public rights-of-way, so long as the poles installed are not taller than forty (40) feet in residential-zoned areas and no taller than fifty (50) feet in other areas. This is consistent with existing FCC policies and practices locally, but in reviewing our ordinances, we need to ensure that this is included. **MINIMAL IMPACT**

Section 20:

This section permits temporary health care structures as temporary uses – they **MUST** be allowed – consistent with NCGS 160D-915. The NCGS provisions, as well as the proposed UDO language, provide guidance on who/what qualifies and how and for how long these structures are permitted. **MINIMAL IMPACT**

Sections 21 and 22:

These sections outline an additional type of temporary fencing that is exempt from permitting for temporary construction activities. Fence wraps placed on site security fencing that displays the name(s) and logo(s) of the companies involved with the construction are permitted without regulations. The County provisions were expanded to match the City provisions – they have been viewed as exempt but the language needs to match. We have not been regulating fence wrapping, but these provisions provide additional clarity. **NO IMPACT**

Section 23:

This section provides an additional penalty for illegally transferring a lot in an unapproved subdivision; the new penalty is clear authorization to deny building permits for illegally subdivided lots. **NO IMPACT**

Section 24:

This is the companion change to the changes set forth in Section 5. This section amends the exempt subdivision provisions to match the language in NCGS 160D-802. This change simplifies and better explains some of the language pertaining to exempt subdivisions. **NO IMPACT**

Section 25:

This section updates the conflict of interest provision for the Planning Board when considering approvals by further specifying that a Planning Board member should not participate when they have a close familial, business, or other associational relationship with the petitioner. This has historically been the practice of our Planning Board, but the amendment provides further clarity. **NO IMPACT**

Section 26:

This section clearly lists the types of actions subject to review on appeal to the Zoning Boards of Adjustment. Further, it provides that any items appealed to the Zoning Boards of Adjustment are subject to the requisite fees and submittal requirements. **NO IMPACT**

Section 27:

This section provides an additional enforcement mechanism for Special Use District zoning; specifically, it provides that the revocation of a Special Use District permit is authorized, so long as such revocation goes through the same process as the initial approval (public hearing process). **NO IMPACT**

Section 28:

This section amends the current definition for a Bona Fide Farm to be consistent with the definition in state statutes; it eliminates the three (3) acre minimum and expands on the types of activities that qualify as agricultural uses. **NO IMPACT**

Section 29:

This section amends the current definition of Subdivision to be consistent with the definition in state statutes. It also eliminates the current County definitions of Major and Minor Subdivisions, which are covered in the definition of Subdivision. This section provides clarity for what constitutes an exempt and/or minor subdivision, in conjunction with the changes outlined in Sections 5, 7, and 24, which also change various subdivision provisions and definitions. **NO IMPACT**

**RECOMMENDATION: Approval**

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**CITY-COUNTY PLANNING BOARD  
PUBLIC HEARING  
MINUTES FOR UDO-CC10  
MARCH 11, 2020**

Chris Murphy presented the staff report.

**PUBLIC HEARING**

FOR: None

AGAINST: None

**WORK SESSION**

MOTION: Clarence Lambe recommended approval of the ordinance amendment.

SECOND: Jack Steelman

VOTE:

FOR: Melynda Dunigan, Jason Grubbs, Clarence Lambe, Chris Leak, Mo McRae, Brenda Smith, Jack Steelman

AGAINST: None

EXCUSED: None

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Aaron King  
Director of Planning and Development Services