

UDO-CC10

Request

- Planning and Development Staff, in conjunction with the City Attorney's Office and the County Attorney's Office, has drafted a text amendment modifying numerous sections of the Unified Development Ordinances (UDO) to align with the General Assembly's combination of the separate City and County planning and development-related statutes into a combined set of statutes, NCGS 160D.
- These UDO changes are required and must be codified by June 30, 2021.

UDO-CC10

Background

- The creation of NCGS 160D is the first comprehensive recodification and modernization of the city and county planning and development regulations since 1905.
- This has been a collaborative, multi-year effort which began in 2013.
- Chapter 160D consolidates the previous county enabling statutes (153A) and the previous city enabling statutes (160A) into a single, unified statute (160D).
- The intent behind the consolidation is to have a uniform set of statutes governing planning and development regulations applicable to both cities and counties. This is very similar to our efforts at making the UDO more user-friendly with the creation of UDO ClearCode.
- The text amendments are presented in the order in which they appear in the UDO.

UDO-CC10 - NCGS 160D SYNOPSIS

SECTION NUMBER	UDO SECTION(S)	AMENDMENT SYNOPSIS	PURPOSE	PROJECTED LOCAL IMPACT
Section 1	Various throughout UDO	Change existing GS 153A and GS 160A references to the corresponding GS 160D reference.	Ensure correct references to the new GS 160D section within the UDO.	None
Section 2	Sections 3.2.2 (Certificate of Appropriateness) and 4.9.5 (Historic [H] and Historic Overlay [HO] Districts)	Change existing references to Design Review Guidelines or Guidelines to Design Review Standards or Standards.	Ensure correct references to the required terminology; GS requires the former “guidelines” to now be called “standards”.	None
Section 3	Section 2.7 (Vested Rights)	Change existing Vesting provisions to match what is included in GS 160D; this clarifies some existing provisions and provides additional vesting options for larger projects.	Existing vesting provisions in the GS were spread across several different statutes; GS 160D centralized them, assisting local governments to provide the full menu of options.	Minimal – clarity and additional options for development projects.
Section 4	Section 3.1.1 (Application Submittal)	Clarifies/codifies that we can accept a rezoning request/development application for your consideration while an annexation request is pending, so long as the decision isn’t made until annexed.	Provide better guidance on how/to whom to submit development applications during pending annexations.	None
Section 5	Section 3.2.4 (Exempt Plat)	This section amends the exempt subdivision provisions to match the language in NCGS 160D-802.	Simplify and better explain some of the language pertaining to exempt subdivisions.	None
Section 6	Section 3.2.5 (Final Plat)	This section caps the amount of contingency that can be required on a surety bond for a final plat at 25%. This reduces the amount of contingency locally from 50%.	Ensure consistency for surety bonds across the state.	Minimal – will require careful review of detailed cost estimate for remaining work to ensure that the bond and contingency will cover the City in case of default.
Section 7	Section 3.2.8 (Minor Subdivision)	This section provides another category of minor subdivisions based on size and length of time since last subdivision.	Makes this class of Minor Subdivisions like Exempt Subdivisions by only requiring a Plat for approval.	None
Section 8	Section 3.2.13 (Special Use Permit)	This section removes the verified motion process for Elected Body Special Use Permits for the City.	Since Special Use Permits are quasi-judicial, no “testimony” can be provided outside of the hearing – the Clerk may forward the names and addresses of those persons submitting comments.	Minimal – City Council members will not have specific information from those for or those against Special Use Permit requests until the hearing (except the application materials).
Section 9	Section 3.2.15 (UDO Text Amendment)	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.	Ensure consistency in published notices for zoning text amendments across NC.	None – we already do this (but our language is now correct).
Section 10	Section 3.2.15 (UDO Text Amendment)	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.	Ensure consistency in how comments are handled across NC.	None

UDO-CC10 - NCGS 160D SYNOPSIS

SECTION NUMBER	UDO SECTION(S)	AMENDMENT SYNOPSIS	PURPOSE	PROJECTED LOCAL IMPACT
Section 11	Section 3.2.19 (Zoning Map Amendment)	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.	Ensure consistency in published notices for zoning map amendments across NC.	None – we already do this (but our language is now correct).
Section 12	Section 3.2.19 (Zoning Map Amendment)	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.	Provide better guidance on how potential conflicts of interest should be handled/what constitutes a conflict.	None - this has historically been the practice of our local governing boards, but the amendment provides further clarity.
Section 13	Section 3.2.19 (Zoning Map Amendment)	This section provides that written statements may be submitted for zoning map 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.	Ensure consistency in how comments are handled across NC.	None
Section 14	Section 3.2.19 (Zoning Map Amendment)	This section provides for what can and cannot be approved through the staff change process. The new standards for the City are derived directly from the resolution/memo authorizing staff changes, which we have used to process staff changes for the previous 42 years (adopted in 1979).	GS 160D authorizes the staff change process but requires the parameters by which staff is authorized to make changes to be codified in the UDO.	None – we directly incorporated the existing staff change provisions into the UDO.
Section 15	Section 4.1.4 (Dimensional Requirements)	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.	Ensure consistency in how amateur radio antennas are handled across NC, consistent with FCC policies.	None
Section 16	Section 4.3.2 (Interpretation)	This section provides guidance to applicants and local governments regarding how properties with split jurisdiction can be treated for development approvals. Local governments <u>may</u> , by mutual agreement <u>AND</u> with permission of the landowner, assign exclusive planning and development regulation jurisdiction for the entire parcel to any of those local government entities.	Provide for a possible simpler method to approve development projects that straddle jurisdiction lines.	Minimal – is an option but is subject to agreement by ALL parties.
Section 17	Section 4.9.2 (Overlay and Special Purpose Districts)	This section clarifies what can be regulated as it pertains to single-family and duplexes. “Building design elements,” such as exterior cladding type, color/style; style/materials of exterior roofing/porches; and the location/architectural stylings or locations of exterior doors and windows, including garage doors, can only be regulated if <u>ALL</u> property owners agree.	Ensure consistency across the state for SF and duplex projects – included in our UDO due to the NCO provisions.	Minimal – we only have two (2) existing NCO districts; these provisions are not retroactive.

UDO-CC10 - NCGS 160D SYNOPSIS

SECTION NUMBER	UDO SECTION(S)	AMENDMENT SYNOPSIS	PURPOSE	PROJECTED LOCAL IMPACT
Section 18	Section 5.2.92 (Transmission Tower [W])	This section provides for and authorizes 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	Ensure consistency in how this utility is treated across NC, consistent with FCC policies.	Minimal – we already allow for small wireless facility colocations within the ROW.
Section 19	COUNTY ONLY	COUNTY ONLY	COUNTY ONLY	COUNTY ONLY
Section 20	Section 5.4.2 (Temporary Uses Permitted)	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.	Ensure consistency across NC for the allowance of health care arrangements for sick/aging individuals.	Minimal – this was a common reason for accessory dwellings. Under this arrangement, the temporary health care structures are permitted only while the need exists.
Section 21	Section 6.5.1 (WS Sign Regulations)	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.	Ensure consistency across NC for this type of exempt signage for construction projects	None – we already allow this
Section 22	COUNTY ONLY	COUNTY ONLY	COUNTY ONLY	COUNTY ONLY
Section 23	Section 7.1.6 (Penalties for Transferring Lots in Unapproved Subdivisions)	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.	Provide clarity that building permits can be withheld.	None
Section 24	Section 7.2 (Subdivisions Exempted by State Law or Court Judgments)	This section amends the exempt subdivision provisions to match the language in NCGS 160D-802 to ensure consistent language for what constitutes an exempt subdivision.	Simplify and better explain some of the language pertaining to exempt subdivisions.	None
Section 25	Section 10.1.2 (City-County Joint Planning Board)	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.	Provide better guidance on how potential conflicts of interest should be handled/what constitutes a conflict.	None - this has historically been the practice of our planning board, but the amendment provides further clarity.
Section 26	Section 10.1.3 (Board of Adjustment)	This section clearly lists the types of actions subject to review on appeal to the Zoning Boards of Adjustment (ZBOA). Further, it provides that any items appealed to the Zoning Boards of Adjustment are subject to the requisite fees and submittal requirements.	Provide clarity on items that can be appealed to the ZBOA.	None
Section 27	Section 10.2 (Enforcement)	This section provides that the revocation of a Special Use District permit is authorized if the revocation is approved through the public hearing process.	Provides an additional enforcement mechanism for Special Use District.	None

UDO-CC10 - NCGS 160D SYNOPSIS

SECTION NUMBER	UDO SECTION(S)	AMENDMENT SYNOPSIS	PURPOSE	PROJECTED LOCAL IMPACT
Section 28	COUNTY ONLY	COUNTY ONLY	COUNTY ONLY	COUNTY ONLY
Section 29	Section 11.2 (Definitions, Table 11.2.2 Definitions)	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.	Provides clarity for what constitutes an exempt and/or minor subdivision.	None

UDO-CC10

Recommendation

- This item was considered by the Planning Board at their March 11, 2021 Public Hearing and was unanimously recommended for approval.
- UDO-CC10: Approval

UDO-CC10

Summary/Analysis by Section

- **Section 1:** This section changes all of the current NCGS section references (153A/160A) to its appropriate/equivalent 160D reference.
- **Section 2:** Similar to Section 1, this section changes any and all references in the Historic Preservation sections of Design Review Guideline(s) or Guideline(s) to Design Review Standard(s) or Standard(s).
- **Section 3:** This section aligns our ordinance with the statutes related to vesting – our ordinance now provides the expanded vesting options required by statute.

UDO-CC10

Summary/Analysis by Section

- **Section 4:** This section authorizes the future governing body to accept development applications pending jurisdiction transfer via voluntary annexation.
- **Section 5:** This section amends the exempt subdivision provisions to match the language in NCGS 160D-802, simplifying and better explaining the provision.
- **Section 6:** This section caps the maximum contingency that can be required for incomplete infrastructure on a surety bond for a final plat at 25% (this is a reduction from 50% locally).

UDO-CC10

Summary/Analysis by Section

- **Section 7:** This section provides an additional category for minor subdivisions and further specifies that if the conditions are met, only a plat shall be required.
- **Section 8:** This section eliminates the Verified Motion provisions for SUPs in the City – state statute specifically prohibits sending anything other than the names/addresses of folks submitting comments to the Elected Body. The revised language applies to both the City and County.
- **Section 9:** This section clarifies existing practices for published notices for UDO text amendments – published notices must be published twice, the first notice being published not less than ten (10) days prior to the hearing.

UDO-CC10

Summary/Analysis by Section

- **Section 10:** This section makes it clear that written statements may be submitted for UDO text amendments and such comments will be forwarded to the Elected Body prior to or at their public hearing if received two (2) days prior to the hearing.
- **Section 11:** This section clarifies existing practices for published notices for zoning map amendments – published notices must be published twice, the first notice being published not less than ten (10) days prior to the hearing.
- **Section 12:** This section updates/expands the conflict of interest provisions for the Elected Body to provide that a member should not participate when they have a closer familial, business or associational relationship with the petitioner.

UDO-CC10

Summary/Analysis by Section

- **Section 13:** This section makes it clear that written statements may be submitted for zoning map amendments and such comments will be forwarded to the Elected Body prior to or at their public hearing if received two (2) days prior to the hearing.
- **Section 14:** This section codifies the staff change authorizations and resolutions for both the City and County that have been in use since 1979. NCGS 160D-403 requires that the process for minor changes by staff be incorporated into the ordinance. The City and County specifics come straight from their respective 1979 resolutions.
- **Section 15:** This section adds amateur radio towers up to 90' in height as permitted height exemptions, consistent with NCGS 160D-905 and FCC regulations.

UDO-CC10

Summary/Analysis by Section

- **Section 16:** This section provides OPTIONS on how development applications on properties with split jurisdiction MAY be handled – such options are by agreement of all parties (applicant/owner and all jurisdictions) involved.
- **Section 17:** This section provides clarity and guidance for future NCO rezoning requests to ensure that certain “building design elements” (statutorily defined) can only be approved if ALL property owners agree.
- **Sec. 18/19:** These sections authorize small-scale wireless facility colocations within the ROW so long as the pole height doesn’t exceed forty (40) feet in residential zoning and fifty (50) in other zoning jurisdictions (separate City/County).

UDO-CC10

Summary/Analysis by Section

- **Section 20:** This section mandates that temporary health care structures **MUST** be allowed provided the structures comply with the requirements.
- **Sec. 21/22:** These sections clarify that fence-wrap signage on construction sites are exempt from regulation. The County version is further amended to reflect the existing provisions for Builder Signage in the City version (separate City/County).
- **Section 23:** This section provides an additional penalty for transferring a lot in an unapproved subdivision – denial of a building permit.

UDO-CC10

Summary/Analysis by Section

- **Section 24:** This section simplifies and better explains some of the language pertaining to exempt subdivisions.
- **Section 25:** This section updates/expands the conflict of interest provisions for the Planning Board to provide that a member should not participate when they have a closer familial, business or associational relationship with the petitioner.
- **Section 26:** This section clearly lists the type of actions that are subject to review on appeal to the Zoning Board of Adjustment and makes it clear that all appeals are subject to the applicable submittal requirements and fees.

UDO-CC10

Summary/Analysis by Section

- **Section 27:** This section provides an additional enforcement mechanism for special use district zoning; specifically, that the permit can be revoked so long as the process for revocation follows the same approval process as the initial permit (public hearing).
- **Section 28:** This section amends the current definition for ‘bona fide farms’ to match the definition in the statute.
- **Section 29:** This section amends the current definition of ‘subdivision’ to include a new category of minor subdivision. Further it deletes the redundant County-only definition for ‘minor subdivision’ and ‘major subdivision’ since both are covered in the definition of ‘subdivision’.

UDO-CC10

Summary

- UDO-CC10 provides the required changes mandated with the creation of the unified NCGS 160D.
- Staff has been monitoring the progress of this legislation for years and had input into its creation.
- Staff worked closely with the City and County Attorney offices leading up to the drafting of the language and both offices have reviewed the draft changes.
- Staff finds that there is no impact on a majority of the amendments and minimal impact on the balance; regardless of impact, these changes are state-mandated.