

160D DAVIDSON COUNTY CHECKLIST OF UPDATES

A. MUST TAKE ACTION

TERMINOLOGY & CITATIONS

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.)

BOARDS

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.)

LAND USE ADMINISTRATION

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.)

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).)

ZONING MAPS & ORDINANCE

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

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converts to conditional district upon adoption of updated local ordinances or July 1, 2021. (G.S. 160D-703; 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.)

OTHER DEVELOPMENT ORDINANCES

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))

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).)

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).)

LEGISLATIVE DECISIONS

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).)

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).)

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*

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one of three particular forms.)

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.)*

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).)

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).)

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.)

QUASI-JUDICIAL DECISIONS

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).)

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).)

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).)

ADMINISTRATIVE DECISIONS

Development Approvals

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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).)

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).)

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.)

VESTED RIGHTS AND PERMIT CHOICE

Vested Rights

Must recognize that building permits are valid for six months, as under prior law. (G.S. 160D-111)

Must recognize the default rule that development approvals/permits are valid for twelve months, unless altered by statute or extended by local rule. (G.S. 160D-108(d).)

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)

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(d)(4); -108(f).) (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)

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).)

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