MEMORANDUM

TO: Mayor and Members of City Council

FROM: Montre' Freeman, City Manager
Kellen Long, Planner II, Community Development
Deborah Malenfant, Interim Director, Community Development

DATE: April 9, 2021

RE: Consideration- Call for a Public Hearing: **CASE NO: TA 02-20** filed by the Community Development Department to update and modify the City's Unified Development Ordinance to reflect the new Chapter 160D of the North Carolina General Statutes (G.S.). The new Chapter 160D of the North Carolina General Statutes consolidates current city- and county-enabling statutes for development regulations (now in Chapters 153A and 160A) into a single, unified chapter.

BACKGROUND:

During the Council work session on August 24, 2020, staff proposed a text amendment to address the required updates of the new North Carolina State Statute, Chapter 160D. The new North Carolina State Statute, Chapter 160D, consolidates both current City and County enabling State Statutes of Chapters 153A and 160A into a single unified chapter, 160D. Statute 160D also places these statutes into a more logical, coherent organization with articles for planning, zoning, subdivision, building and housing codes, environmental regulation, historic preservation, and community development. Chapter 160D is effective now, but all local governments have until July 1, 2021 for the development, consideration, and adoption of necessary amendments to conform local ordinances to this new law. All City and County zoning, subdivision, and other development regulations, including unified-development ordinances, will need to be updated by this date to conform to the new law.

Chapter 160D also requires Cities and Counties with zoning ordinances, to have an up-to-date comprehensive plan or land use plan by July 1, 2022. The City of Elizabeth City is still operating under the Elizabeth City, Pasquotank County CAMA Land Use Plan that was adopted by City Council in 2012. This plan has both short term (5-10 year) and long-term (20-year) evaluations of land use and land development. The plan is still a viable and valued guiding document at its mid-term point of 9 years.

Throughout 2020 and 2021 the Community Development Department staff has participated in numerous workshops and webinars hosted by the UNC School of Government to understand all requirements and changes that will need to be made to the City's local ordinances to now be in compliance with the new state statute.

One requirement with Chapter 160D, is to terminate the wording "conditional use permits" to address the similarity to other terms such as conditional use zoning and conditional zoning, which has been a major source of confusion. One item that Cities and Counties have had some discretion on when it comes to required changes in 160D, is how to handle the renaming and process of conditional use permits. Currently, like majority of the municipalities in North Carolina, the City has a special use permit process and a conditional use permit process. The determination of what process a use goes through is already determined through the City's permitted use table, found in Article nine of the Unified Development Ordinance. Both processes are quasi-judicial in nature and include an evidence based hearing to determine if a proposed use would meet the required development standards for such use in the City's Unified Development Ordinance. The only differences with these processes is that special use permits are heard by the City's Board of Adjustment, while conditional use permits are heard by City Council. Often times reasonable conditions are added to these permits and the permit (once issued) is recorded with the register of deeds. During the text amendment proposal in August, staff presented the idea that all conditional use permits would now be considered special use permits, and all special use permits would go to the City's Board of Adjustment for review and consideration. After staff's presentation, Council showed concern that all the conditional use permits would now be considered special use permits and would be reviewed and considered by the City's Board of Adjustment instead of them. Council asked staff to revise the text amendment to include Council in the review and consideration of these permits and tabled the text amendment proposal until the necessary changes could be complete.

ANALYSIS:

Over the past nine months, staff has taken the time to consult with the UNC School of Government, other municipalities, and the consultation of a current intern in the department that is a Masters of Public Administration student at the University of North Carolina, Chapel Hill. Based on these resources and research completed in the past nine months, staff has revised the proposed text amendment to reflect the proposed changes requested by Council and to address all concerns. The proposed text amendment provided below doesn't not change any processes with the current special and conditional use permits, only the name of the conditional use permits, as required in Chapter 160D.

Conditional Use Permits will now be referred to as 'Council Use Permits'. This proposed amendment is now reflected below throughout attachment A. Council use permits will continue to be reviewed and considered by the Council, just as conditional use permits were, and special use permits will continue to be reviewed and considered by the City's Board of Adjustment, just as they were previously. Property owners and/or applicants that hold a current conditional use permit will remain in effect until there is a change in use or approved conditions. If the property owner or applicant has a change in the approved conditions or use, the property owner and/or applicant would be required to go through the permit approval process for a council use permit.

Other changes that are required to be made in our local zoning ordinances that are reflected in attachment A and also the check list that is provided as addendum to this report, are vested rights and permit choice for developers, updates of terminology, and the order in which some of our ordinances read. Overall, most of the required changes in Chapter 160D were already incorporated in our local zoning ordinances.

PLANNING COMMISSION RECOMMENDATION:

Due to the proposed changes from the original draft, the proposed amendment was heard at the last planning commission meeting on April 6, 2021. During the planning commission meeting, the commission reviewed the proposed text amendment and a summary of Council's concern with the original draft. The Community Development Department's intern, Mr. Michael Barclift also gave the Commission an overview of the research that had been conducted in the past nine months to reflect the changes made in the document. After brief discussion, the planning commission unanimously voted to recommended approval of TA 02-20.

STAFF RECOMMENDATION:

By motion, call for a Public Hearing to be held on Monday, April 26, 2021 during the 7:00 p.m. regular session of the City Council, directly following the public comment period, for the purpose of gathering citizen input regarding TA 02-20 at amend the City's Unified Development Ordinance to reflect the new Chapter 160D of the North Carolina General Statutes (G.S.).

STAFF ANALYSIS

Meeting Date:

April 12, 2021

Case No:

TA 02-20

Applicant:

City of Elizabeth City Community Development Department, Planning Division

Request:

CASE NO: TA 02-20 filed by the Community Development Department to update and modify the City's Unified Development Ordinance to reflect the new Chapter 160D of the North Carolina General Statutes (G.S.). The new Chapter 160D of the North Carolina General Statutes consolidates current city- and county-enabling statutes for development regulations (now in Chapters 153A and 160A) into a single, unified chapter.

Background:

In August of 2020, staff's proposed a text amendment to Planning Commission to address the required updates of the new North Carolina State Statue, Chapter 160D. During that meeting, the Commission voted unanimously to recommend approval of the proposed text amendment to City Council.

The new North Carolina State Statute, Chapter 160D, consolidates both current City and County enabling State Statues of Chapters 153A and 160A into a single unified chapter, 160D. Statute 160D also places these statutes into a more logical, coherent organization with articles for planning, zoning, subdivision, building and housing codes, environmental regulation, historic preservation, and community development. Chapter 160D is effective now, but local governments have until July 1, 2021 for the development, consideration, and adoption of necessary amendments to conform local ordinances to this new law. All City and County zoning, subdivision, and other development regulations, including unified-development ordinances, will need to be updated by that date to conform to the new law. Chapter 160D also requires Cities and Counties with zoning ordinances, to have an up-to-date comprehensive plan or land use plan by July 1, 2022. The City of Elizabeth City is still operating under the Elizabeth City, Pasquotank County CAMA Land Use Plan that was adopted by City Council in 2012. This plan has both short term (5-10 year) and

long-term (20-year) evaluations of land use and land development. The plan is still a viable and valued guiding document at its mid-term point of 9 years.

One item that Cities and Counties have had some discretion on when it comes to required changes in 160D, is how to handle the renaming and process of conditional use permits. Currently, like majority of the municipalities in North Carolina, the City's has a special use permit process and a conditional use permit process. The determination of what process a use goes through is already determined through the City's permitted use table, found in Article nine of the Unified Development Ordinance. Both processes are quasi-judicial in nature and include an evidence based hearing to determine if a proposed use would meet the required development standards for such use in the City's Unified Development Ordinance. The only differences with these processes is that special use permits are heard by the City's Board of Adjustment, while conditional use permits are heard by City Council. Often times reasonable conditions are added to these permits and the permit (once issued) is recorded with the register of deeds. One requirement with Chapter 160D, is to terminate the wording "conditional use permits" to address the similarity to other terms such as conditional use zoning and conditional zoning, which has been a major source of confusion.

During the text amendment proposal in August, staff presented the idea that all conditional use permits would now be considered special use permits, and all special use permits would go to the City's Board of Adjustment for review and consideration. This recommendation by staff was unanimously recommended for approval by the Commission on August 4, 2020. The proposed text amendment was presented to Council during their August 24th work session. After staff's presentation, Council showed concern that all the conditional use permits would now be considered special use permits and would be reviewed and considered by the City's Board of Adjustment instead of them. Council asked staff to revise the text amendment to include Council in the review and consideration of these permits and tabled the text amendment proposal.

Analysis:

In the past nine months staff has taken the time to consult with the UNC School of Government, other municipalities, and the consultation of a current intern in the department that is a Masters of Public Administration student at the University of North Carolina, Chapel Hill. Based on these resources and research completed in the past nine months, staff has revised the proposed text amendment to reflect the proposed changes made by Council and to address all concerns. The proposed text amendment provided below does not change any processes with the current special and conditional use permits, only the name of the conditional use permits, as required in Chapter 160D. Conditional Use Permits will now be referred to as Council Use Permits. This proposed amendment is now reflected below throughout attachment A. Council use permits will continue to be reviewed and considered by Council, just as conditional use permits were,

and special use permits will be continued to be reviewed and considered by Board of Adjustment, just as they were previously. Property owners and/or applicants that hold a current conditional use permit will remain in effect until there is a change in use or approved conditions. If the property owner or applicant has a change in the approved conditions or use, the property owner and/or applicant would be required to go through the permit approval process for a council use permit.

Planning Commission Recommendation:

Due to the proposed changes from the original draft, the proposed amendment was heard at the last planning commission meeting on April 6, 2021. During the planning commission meeting, the commission reviewed the proposed text amendment and a summary of Council's concern with the original draft. The Community Development Department's intern, Mr. Michael Barclift also gave the Commission an overview of the research that had been conducted in the past nine months to reflect the changes made in the document. After brief discussion, the planning commission unanimously voted to recommended approval of TA 02-20.

Text amendments:

A document has been attached (Attachment A) to your staff analysis to reflect all proposed text amendments. In order to read this document properly, please note that the text underlined in red is new language that staff is proposing to be added to the Halstead Overlay ordinance, while, text ~~stricken in red~~ is language that staff is proposing to be deleted.

Underlined in red – new language to be added

~~Strikethrough in red~~ – language to be deleted

Attachment A amends the City's Unified Development Ordinance to reflect the new Chapter 160D of the North Carolina General Statues (G.S.). The new Chapter 160D of the North Carolina General Statutes consolidates current city- and county-enabling statutes for development regulations (now in Chapters 153A and 160A) into a single, unified chapter.

Staff Recommendation:

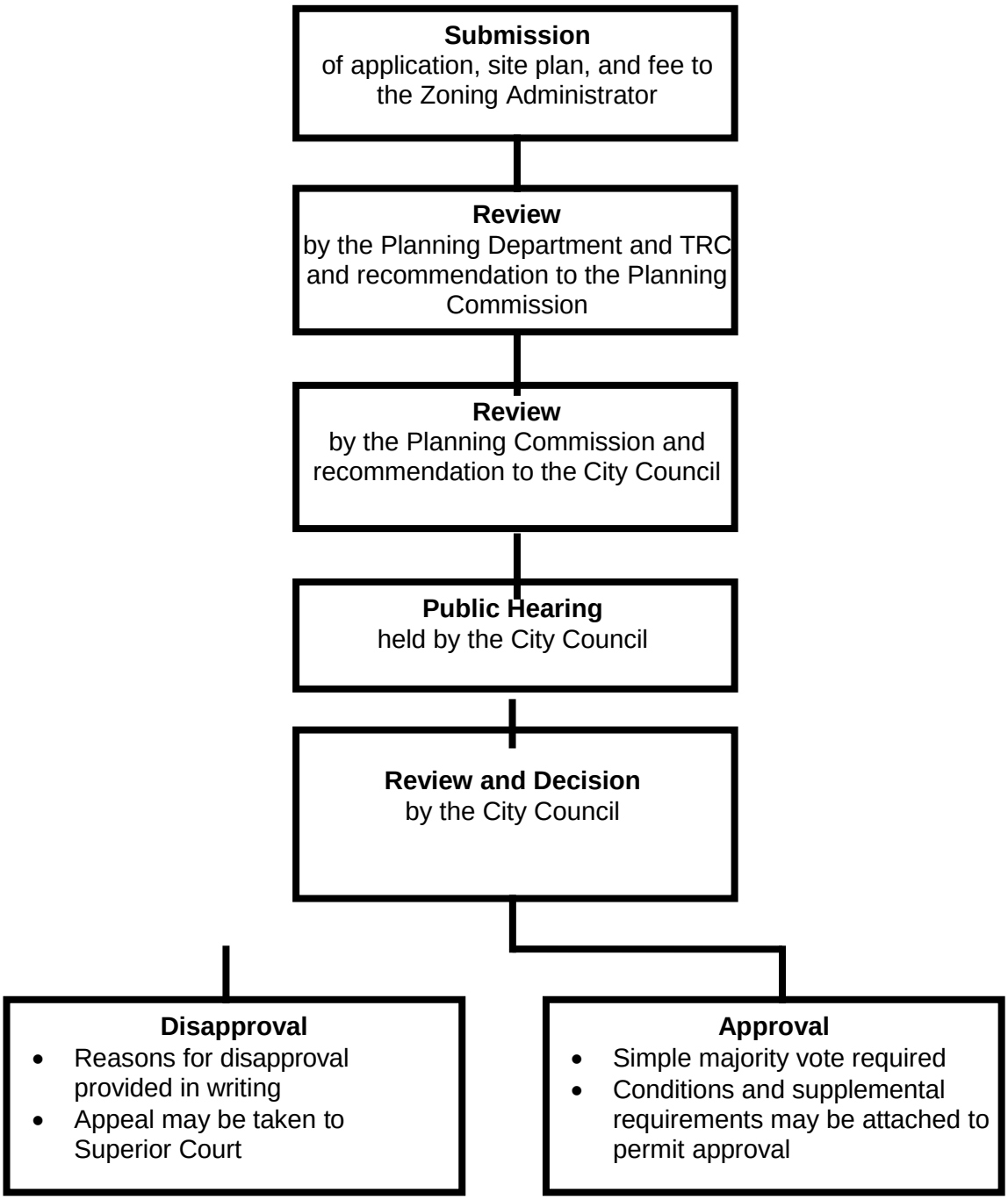
Based on the research and aforementioned elements mentioned in the staff analysis, and the mandate from the North Carolina State Statue, Chapter 160D, staff recommends

APPROVAL of the proposed text amendment TA 02-20 and for City Council to adopt the following consistency statement:

> *The City Council of the City of Elizabeth City finds the action to amend the text in the Unified Development Ordinance to reflect all the required changes with North Carolina State Statute, Chapter 160D to be consistent with the Pasquotank County, Elizabeth City Advanced Core Land Use Plan.*

Attachment A

A-4-6
~~Conditional~~ Council Use Permits



References:
Section 4-7, Special Use Permits and Conditional Use Permits
Section 4-3, Permit Applications and Plans
Appendix 1
Appendix 3

APPENDIX 3: REQUIRED INFORMATION FOR OBTAINING A ZONING, SIGN, SPECIAL USE AND ~~CONDITIONAL~~ COUNCIL USE PERMIT

Information	Zoning	Sign	Special Use ~~Conditional~~ Council Use
Plot Plan or Site Plan	X	X	X
Address of Job	X	X	X
Name, Address and Telephone of...			
Property Owner	X	X	X
Building Contractor	X	X	X
Name of Subdivision or Development	X		X
Plat Book and Page Number	X		X
Tax Map Number	X		X
Township	X	X	X
Type of Sewage Disposal(i.e. public sewer, septic tank, etc.)	X		X
Type of Water Supply(i.e. public water, private well, etc.)	X		X
Proposed Use (i.e. single-family, church, garage, etc.)	X		X
Application Type (new construction, addition, alternation or installation)	X	X	X
Documentation of Submission of an Erosion Control Plan, if disturbing greater than one acre	X		X
Stormwater Management Plan, if located within a Watershed Protection Overlay District	X		X
Evidence of Notification to US Army Corps of Engineers of Earth-disturbing Activities in Wetlands, if applicable	X		X
Number of Stories of Proposed Buildings	X		X
Electrical Power Company	X	X	X
Type of Sign		X	
Dimensions of Sign		X	
Sign Illumination (electrical contractor)		X	
Master Sign Plan, if required		X	

APPENDIX 4
PROCEDURAL FLOW CHARTS

* Note: Except watershed protection variances

ARTICLE I

PURPOSE AND AUTHORITY

0-1 PURPOSE

0-1.1 Zoning Regulation Purpose

The zoning regulations, adopted and prescribed in this Ordinance, are found by the City Council to be necessary and appropriate to:

(A) Establish a zoning vested right upon the approval of a site specific development plan pursuant to NCGS ~~160A-385.1~~ 160D-108.1.

0-2 AUTHORITY

The provisions of this Ordinance are adopted under authority granted by the General Assembly to North Carolina municipalities (NCGS Chapter ~~160A~~, 160D Article 19) and House Bill 454, Chapter 317. This Ordinance may be amended from time to time as required or allowed by subsequent legislature enactments.

0-3 FEES

(A) Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, ~~conditional~~ council use permits, special use permits, certificates of appropriateness, subdivision plat approval, zoning amendments, variances and other administrative relief. The amount of the fees charged shall be set forth in the City's budget or as established by resolution of the City Council and filed in the offices of the Planning Department.

0-4 SEVERABILITY

1-11 CONFLICT OF INTEREST

(A) Governing board. A governing board member shall not vote on legislative decisions regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(B) Appointed boards. Members of appointed bpards shall not vote on advisory or legislative decisions regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(C) Administrative staff. No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship.

(1) If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance

(2) No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved

(3) No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(D) Quasi-judicial decisions. A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(E) Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(F) Familial relationship. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships

ARTICLE II

INTERPRETATIONS AND DEFINITIONS

2-1 INTERPRETATION OF DISTRICT BOUNDARIES

2-1.1 Annexation

If any portion of the territory subject to county jurisdiction under this Ordinance shall be annexed by a municipality, or taken into a municipality's jurisdiction by act of the General Assembly, or in accordance with NCGS ~~160A, Article 4A or 160A-360~~ 160D-201; -202, county regulations and powers or enforcement shall remain in effect until:

(A) The municipality has adopted regulations for said annexed or extraterritorial area; or

(B) A period of sixty days has elapsed following the effective date of annexation or extension of extraterritorial jurisdiction.

2-2 DEFINITIONS

2-2.2 Address. The official house, building, or structure number assigned by the City for a specific lot, building or portion thereof.

2-2.3 Administrative Decision. Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Ordinance. These are sometimes referred to as ministerial decisions or administrative determinations.

2-2.7 Administrative Hearing. A proceeding to gather facts needed to make an administrative decision.

(~~Section 2-4.39~~ Amended by City Council 11/26/2012)

2-2.~~51~~ 53 Day Care Center. A child day care facility as defined in NCGS 110-86(3) as well as a center providing day care on a regular basis for more than two hours per day for more than five adults. See Section 11-4.~~30~~ 33 for specific provisions related to day care centers.

2-2.~~52~~ 54 Developer. A person ~~engaging in development~~, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

2-2.55 Development. Any of the following:

(A) The construction, erection, alteration, enlargement, renovation, substantial repair,

movement to another site, or demolition of any structure.

(B) The excavation, grading, filling, clearing, or alteration of land.

(C) The subdivision of land as defined in G.S. 160D-802.

(D) The initiation or substantial change in the use of land or the intensity of use of land.

This definition does not alter the scope of regulatory authority granted by this Ordinance.

2-2.56 Development approval. An administrative or quasi-judicial approval made pursuant to this Ordinance that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special and council use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Ordinance, including plat approvals, permits issued, development agreements entered into, and building permits issued.

2-2.~~44~~ 68 Existing Development. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:

(A) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or

(B) having an outstanding valid building permit as authorized by NCGS ~~160A-385.1~~ 160D-108, or

(C) Having an approved site specific ~~or phased development~~ vesting plan or phased development plan or development agreement as authorized by NCGS ~~160A-385.1~~ 160D-108.

2-2.55 89 Home Occupation. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Specific regulations concerning home occupations are delineated in Section 11-4.~~42~~ 45.

2-2.~~133~~ 137 Overlay Zoning District. A zoning district which overlaps one or more general and/or conditional ~~use~~ zoning districts. Overlay zoning districts impose additional regulations on property located within general and/or conditional use districts.

2-2.~~136~~ 140 Permit-issuing Authority/Board. The person or board authorized by this Ordinance to issue a permit in accordance with the requirements of this Ordinance. The term applies to the Zoning Administrator when issuing a zoning or sign permit, to the Board of Adjustment when issuing a special use permit, and to the City Council when issuing a ~~conditional~~ council use permit.

2-2.~~163~~ 167 Residential District or Residential Zoning District. The following general and conditional zoning ~~use~~ districts: R-6, Residential; R-8, Residential; R-10, Residential; R-15, Residential; AD, Apartment; RMH; Residential Manufactured Home; and PUD-PDR, Planned Unit Development-Residential.

2-4.184 Site-Specific Vesting Plan. A site-specific vesting plan consists of a plan describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary plat, a site plan, a council use permit, special use permit, or a conditional zoning master plan. The plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways.

A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

2-2.~~180~~ 184 Single-Family Detached Dwelling. A separate, detached building or mobile home designed for and occupied exclusively by one family

2-2.~~192~~ 196 ~~Sub-divider~~ Subdivider. Any person who subdivides land.

2-2.~~193~~ 197 Subdivision. A division of land creating two or more lots.
The following divisions are exempt from subdivision regulations.

Plats deemed to be exempt from the subdivision regulations shall contain a Certificate of Exception signed by the property owner and the Zoning Administrator, See Appendix 2.

(A) Shifting or recombination of lot lines where no new lots are created; or

(B) Public acquisition of land for right-of-way;

(C) Creation of gravesites;

(D) Division of land in accordance with a probated will or intestate succession per NC General Statutes;

(E) Creation of lots that are ten acres or more in size with no street right-of-way dedication;

(F) A single parcel of two acres or smaller into three or fewer lots with no street right-of-way dedication and the lots meet or exceed the standards of this Ordinance;

(G) A single parcel of greater than two acres into three or fewer lots no street right-of-way dedication and no utility extensions. This provision may only be used one time.

~~*(Section 2-4.193 (G) added by City Council 02/13/2018; Section 2-4.193*~~ *Amended by City Council 02/13/2018.)*

2-2.~~194~~ 198 Subdivision, Major. A subdivision that creates more than four lots, or requires a street dedication, and/or an extension of public utilities.

(~~Section 2-194~~ *Amended* by City Council 02/13/2018)

2-2.~~195~~ 199 Subdivision, Minor.

(A) The division of a tract five acres or less into four or fewer lots with frontage on an existing public street and no extensions of public utilities.

(B) The division of a tract five acres or larger into a maximum of three lots with each lot having a recorded, permanent means of ingress and egress.

(~~Section 2-4.195~~ *Amended* by City Council 02/13/18)

2-2.~~239~~ 243 Zoning Vested Right. A right established pursuant to NCGS ~~160A-385.1~~ 160D-108(c), -108.1 to undertake and complete the development and use of property under the terms and conditions of an approved site development plan. (See Section 4-15.)

ARTICLE III

ADMINISTRATIVE MECHANISMS

3-1 Planning Commission

3-1.1 Authority

There is hereby created a planning agency, pursuant to NCGS ~~160A-361 and 160A-362~~ 160D-301 and 160D-307, to be known as the Elizabeth City Planning Commission and referred to herein as the Planning Commission.

3-1.2 Appointment and Terms of Planning Commission Members

(A) There shall be a Planning Commission consisting of any size or composition considered appropriate (but not less than three members), appointed by the Elizabeth City Council, all members shall reside within Elizabeth City or the City's extraterritorial planning jurisdiction area. If a larger number of extraterritorial members is needed to comply with the proportional representation requirements of NCGS ~~160A-362~~ 160D-307, the City Council shall submit to the Board of County Commissioners a resolution requesting that an additional member or members, as appropriate, be appointed. Proportional representation shall be determined by calculating the proportional relationship of the extraterritorial area population to the municipal population and applying that proportional relationship to the total membership of the Planning Commission. The population estimates for this calculation shall be updated no less frequently than after each decennial census. An additional member must be appointed to the Planning Commission to achieve proportional representation only when the population of the entire extraterritorial area constitutes a full fraction of the town's population divided by the total membership of the Planning Commission. Once the City of Elizabeth City provides proportional representation, no power available to it under NCGS 160A-~~360~~ 160D-202, -307 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If the Board of County Commissioners fails to make appointments within 90 days after receiving a resolution from the City Council requesting that they be made, the City Council may make the appointments.

3-1.6 Powers and Duties of Planning Commission

(A) The Planning Commission may:

1) Make studies and recommend to the City Council plans, goals and objectives relating to the growth, development and redevelopment of the City planning jurisdiction.

2) Develop and recommend to the City Council policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.

3) Make recommendations to the City Council concerning proposed ~~conditional~~ council use permits, proposed special use permits, and proposed zoning text and map changes, as provided by Sections 4-7.3, 4-7.4, and 8-3.

4) Make recommendations to the City Council concerning preliminary subdivision plats in accordance with Section 10-3.3 (D).

5) Perform any other duties assigned by the City Council.

(B) The Planning Commission may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Ordinance.

3-2 BOARD OF ADJUSTMENT

3-2.1 Authority

There is hereby created a Board of Adjustment pursuant to NCGS ~~160A-388~~ 160D-302, to be known as the Elizabeth City Board of Adjustment and referred to herein as the Board of Adjustment.

3-2.7 Powers and Duties of Board of Adjustment

(C) The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Ordinance.

[Section 3-2 amended January 27, 2014~~, Text Amendment Case 02-13~~]

3-5 CITY COUNCIL

3-5.1 Duties of the City Council

(A) The City Council, in considering ~~conditional~~ council use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Section 4-7 of this Ordinance. In considering amendments to this Ordinance or the zoning map, the City Council shall follow the regular, voting, and other requirements as set forth in other provisions of general law.

(B) In considering proposed changes in the text of this Ordinance or in the zoning map, the City Council acts in its legislative capacity and must proceed in accordance with the requirements of Article VIII.

(C) The City Council, in considering the approval of a site specific development plan (as defined in Section 4.15, Vested Rights), shall follow the procedural requirements set forth in Section 4-7 of this Ordinance for the issuance of a ~~conditional~~ council use permit.

(D) As provided in Section 10-3.3, the City Council shall review and approve preliminary subdivision plats.

3-7 HISTORIC PRESERVATION COMMISSION

3-7.4 Powers and Duties of the Historic Preservation Commission

(A) The Historic Preservation Commission shall seek to promote, enhance and preserve the character of the Districts, provided the Commission shall not require the reconstruction of individual or original buildings or structures or portions thereof. The Commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this Ordinance and ~~Part 3A, Article 19 of Chapter 160A~~ Part 4, Article 9 of Chapter 160D of the General Statutes of the State of North Carolina, including but not limited to the following:…

(C) The Commission may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Ordinance and NCGS ~~160A-400.1 through 160A-400.14~~ 160D-303; and -940 through 950.

ARTICLE IV

PERMITS AND PROCEDURES

4-1 PERMIT REQUIRED

(A) No person shall undertake any development activity subject to this Ordinance except in accordance with and pursuant to one of the following permits:

(1) A zoning permit or sign permit issued by the Zoning Administrator;

(2) A special use permit issued by the Board of Adjustment;

(3) A ~~conditional~~ council use permit issued by the City Council;

(4) A Coastal Area Management (CAMA) permit issued by the NC Division of Coastal Management, if applicable; or

(5) An erosion control permit issued by the NC Department of Environment, Health, and Natural Resources.

(B) Zoning permits, sign permits~~,~~ special use permits, and ~~conditional~~ council use permits are issued under this Ordinance only when a review of the application submitted, including the site plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided herein, all development shall occur strictly in accordance with such approved plans and applications.

(C) Physical improvements to land to be subdivided may not be commenced except in accordance with a major subdivision plat approved pursuant to Section 10-3 or a minor subdivision plat approved pursuant to Section 10-2.

4-3.2 Site Plan and Plot Plan Procedures

(A) Applicability.

(1) Plot Plan Required: No zoning permit for a single-family or two-family dwelling on a single lot shall be issued until a plot plan, prepared in accordance with Appendix 1, has been approved.

(2) Site Plan Required: No other zoning, special use, or ~~conditional~~ council use permit shall be issued on a lot until a site plan, prepared in accordance with Appendix 1, has been approved for the development. No new nor amended site plan shall be required if an adequate site plan is already on file, there is no change in the parking requirements, or there is no increase in impervious surface area.

(B) The Zoning Administrator may waive the requirement for a site plan if, in their ~~his~~ judgement, it is determined that it is not necessary to complete the review of the permit application.

(1) Timing: Site plans shall be submitted to the Zoning Administrator in conjunction with a permit application.

(2) Site Plan Compliance: Site plans shall contain all applicable information listed in Appendix 1. A site layout meeting the requirements of Article 10-3.3 of this Ordinance may also serve as the preliminary subdivision plat.

(C) Coordination With Other Procedures. To lessen the time required to obtain all necessary approvals, the site plan approval process may run concurrently with building plan review or other applications for approvals required for the particular project.

(D) Site Plan and Plot Plan Approval.

(1) Approval of Site/Plot Plan: The site plan or plot plan shall be approved when it meets all requirements of this Ordinance or proper waivers and/or variances are obtained.

(2) Approval Authority:

(a) Site plans or plot plans submitted with zoning permit applications shall be approved by the Zoning Administrator. Site plans may be referred to the TRC for review and recommendations.

(b) Site plans submitted with special use permit applications shall be approved by the Board of Adjustment.

(c) Site plans submitted with ~~conditional~~ council use permit applications shall be approved by the City Council.

(d) Final approved site plans shall be submitted to the Planning Director within 180 days of approval by the appropriate approval authority or such plans shall be null and void.

(e) Additions to existing buildings that exceed 10% of the gross floor area of the building or require an additional five (5) or more parking spaces shall be approved by the Zoning Administrator upon recommendation of the Technical Review Committee.

4-4 PERMIT ISSUANCE

The issuance of a zoning, sign, special use, or ~~conditional~~ council use permit authorizes the recipient to commence the activity resulting in a change in use of the land or, (subject to obtaining a building permit), to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures. However, except as provided in Sections 4-8 and 4-9, the intended use may not be commenced and no building may be occupied until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a ~~conditional~~ council use or special use permit have been complied with.

4-5 INSPECTIONS AND INVESTIGATIONS

4-5.1 Periodic Inspections

The Zoning Administrator shall have the right, upon presentation of proper credentials, or inspection warrant, if necessary, to enter on any premises within the planning jurisdiction of Elizabeth City at any reasonable hour for the purposes of inspection, determination of plan compliance or other enforcement action; provided that the appropriate consent has been given for inspection of areas not open to the public, or that an appropriate inspection warrant has been secured.

4-7 SPECIAL USE PERMITS AND ~~CONDITIONAL~~ COUNCIL USE PERMITS

4-7.1 Special Use Permit Review Process

An application for a special use permit shall be submitted to the Board of Adjustment by filing a copy of the application with the Zoning Administrator in the planning department 25 working days prior to the Board of Adjustment meeting at which the request will be reviewed. The review process for a special use permit shall include:

(A) Planning Department and Technical Review Committee review and recommendation in accordance with Section 4-7.3 2;

(B) Planning Commission review and recommendation in accordance with Section 4-7.3;

(C) Public hearing held by the Board of Adjustment; and

(D) Board of Adjustment review and action.

4-7.2 ~~Conditional~~ Council Use Permit Review Process

An application for a ~~conditional~~ council use permit shall be submitted to the City Council by filing a copy of the application with the Zoning Administrator 25 days prior to the City Council meeting at which the request will be reviewed. The review process for a ~~conditional~~ council use permit shall include:

(A) Planning Department and Technical Review Committee review and recommendation pursuant to Section 4-7.4;

(B) Planning Commission review and recommendation in accordance with Section 4.7.4;

(C) Public hearing held by the City Council; and

(D) City Council review and action.

If the City Council refuses to schedule a public hearing, the application is summarily denied. If the City Council agrees to schedule a public hearing, the public notice required for the hearing shall be in accordance with Section 4-7.5.

4-7.4 Recommendations on ~~Conditional~~ Council Use Permit Applications

(A) Before being presented to the City Council, an application for a ~~conditional~~ council use permit shall be referred to the Technical Review Committee for a recommendation and to the Planning Commission for a recommendation in accordance with this Section. The City Council may not hold a public hearing on a ~~conditional~~ council use permit application until the Planning Commission has had an opportunity to consider the application pursuant to standard agenda procedures. The City Council shall, however, upon the failure of the Planning Commission to act on an application as outlined in subsection (C), proceed with holding a public hearing.

(B) When presented to the Planning Commission, the application for a ~~conditional~~ council use permit shall be accompanied by a report setting forth the Planning Department's and the TRC's proposed findings concerning the application's compliance with Section 4-3 and the other requirements of this Ordinance, as well as any staff or TRC recommendations for additional requirements to be imposed by the City Council. If the staff or TRC report proposes a finding or conclusion that the application fails to comply with any requirement of the Ordinance, the report shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

4-7.5 Public Hearing Requirements and Procedures

(A) No special use nor ~~conditional~~ council use permit shall be approved until a public hearing has been held by the permit-issuing board.

(G) At the conclusion of the public hearing, the permit-issuing board may proceed to vote on the permit request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure. Section 4-7.6 delineates specific actions that the Board of Adjustment must take on requests for special use permits and Section 4-7.7, which the City Council must take on requests for ~~conditional~~ council use permits.

4-7.6 Board of Adjustment Action on Special Use Permit Applications

In considering whether to approve an application for a special use permit, the Board of Adjustment shall proceed in the same manner as the City Council when considering ~~conditional~~ council use permit applications (Section 4-7.7).

4-7.7 City Council Action on ~~Conditional~~ Council Use Permits

(A) Upon receipt of a recommendation from the Planning Commission, the City Council shall review the application for a ~~conditional~~ council use permit and shall hold a public hearing on the application. Public notice of the public hearing shall be in accordance with the provisions of Section 4-7.5. The City Council, in considering ~~conditional~~ council use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements of the Board of Adjustment including that no vote greater than a majority vote shall be required for the City Council to issue a ~~conditional~~ council use permit.

(B) Following the public hearing, the City Council may proceed to vote on the permit request, refer it to committee for further study, or take any other action consistent with its usual rules of procedure.

(C) In considering whether to approve an application for a ~~conditional~~ council use permit, the City Council shall proceed according to the following format:

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4-7.8 Additional Requirements on Special Use and ~~Conditional~~ Council Use Permits

(A) Subject to subsection (B), in granting a special or ~~conditional~~ council use permit, the Board of Adjustment or City Council, respectively, may attach to the permit such reasonable and appropriate requirements in addition to those specified in this Ordinance as will ensure that the development in its proposed location:

(H) Existing Conditional Use Permits shall remain in effect until there is a change in the approved conditions, or use, at which time the property owner or permittee will be required to go through the permit approval process for a Council Use Permit.

[Section amended January 27, 2014~~, Text Amendment Case 02-13~~]

4-8 AUTHORIZING USE OR OCCUPANCY BEFORE COMPLETION OF DEVELOPMENT UNDER ZONING, SPECIAL USE OR ~~CONDITIONAL~~ COUNCIL USE PERMITS

(A) In cases when, because of weather conditions or other factors beyond the control of the zoning, special use, or ~~conditional~~ council use permit recipient (exclusive of financial hardship) it would be unreasonable to require the permit recipient to comply with all of the requirements of this Ordinance before commencing the intended use of the property or occupying any buildings, the permit-issuing authority may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this Ordinance are concerned) if the permit recipient provides an adequately secured performance bond or other security satisfactory to the permit-issuing authority to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed twelve months). The proposed performance bond and security shall be reviewed and approved by the City Attorney, however, prior to the permit-issuing authority authorizing the intended use or occupancy.

(B) When the permit-issuing board imposes additional requirements upon the special use or ~~conditional~~ council use permit recipient in accordance with Section 4-7.8 or

when the developer proposes in the plans submitted to install amenities beyond those required by this Ordinance, the permit-issuing board may authorize the permittee to commence the intended use of the property or to occupy any building before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

4-9 COMPLETING DEVELOPMENTS IN PHASES

(A) If a development is constructed in phases or stages in accordance with this Section, then, subject to subsection (C), the provisions of Section 4-4 and Section 4-8 shall apply to each phase as if it were the entire development.

(B) As a prerequisite to taking advantage of the provisions of subsection (A), the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this Ordinance that will be satisfied with respect to each phase or stage.

(C) If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit-issuing authority, no land may be used, no buildings may be occupied except in accordance with the schedule approved as part of the permit, provided that:

(1) If the improvement is one required by this Ordinance then the developer may utilize the provisions of Section 4-8(A); or

(2) If the improvement is an amenity not required by this Ordinance or is provided in response to a condition imposed by the permit-issuing board, then the developer may utilize the provisions of Section 4-8(B).

4-10 EXPIRATION OF PERMITS AND SITE PLANS

(A) Except as provided in subsection (F), ~~zoning, special use, conditional use, and sign permits (including approved site or plot plans) shall be obtained within one year of approval of the final site plan if applicable and shall expire automatically if, within six months after the issuance of such permits~~ the following permits shall expire in the following timeframe after the issuance of such permits if:

(1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or

(2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 4-9), this requirement shall apply only to the first phase.

Permit	Expiration
Zoning Permit (excluding special or council use permits	1 Year
Sign Permits	6 Months
General Development Plans/Site Plans	2 Years
Site Specific Vesting Plans (Special or Council Use Permits, Preliminary Plats, Conditional Zoning Master Plan, Planned Unit Development Plan)	2 Years

(B) If, after some physical alteration to land or structures begins to take place, and such work is discontinued for a period of one year after commencement, then the zoning, special use, ~~conditional~~ council use, or sign permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 4-11.

(C) The permit-issuing authority may extend for a period up to six months the date when a zoning, special use, ~~conditional~~ council use, or sign permit would otherwise expire pursuant to subsections (A) or (B) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

(F) Special and ~~conditional~~ council use permits with a vested right established in accordance with Section 4-15, Zoning Vested Rights, shall expire at the end of the two-year vesting period established pursuant to Section 4-15.

4-11 EFFECT OF PERMIT ON SUCCESSORS AND ASSIGNS

(A) Zoning, special use, ~~conditional~~ council use, and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

(1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and

(2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued.

(B) Whenever the recording of a special use or ~~conditional~~ council use permit is required by the Board of Adjustment or City Council as a condition of approval, nothing authorized by the permit may be done until the record owner of the property provides documentation that indicates that the permit has been recorded in the County Registry and indexed under the record owner's name as grantor.

4-12 AMENDMENTS TO AND MODIFICATIONS OF PERMITS

(F) A vested right established in accordance with Section 4-15 shall not be extended by any amendments or modifications to an approved site specific ~~development~~ vesting plan unless expressly provided for by the City Council.

4-13 RECONSIDERATION OF BOARD ACTION ON SPECIAL USE AND ~~CONDITIONAL~~ COUNCIL USE PERMITS

(A) Whenever (i) the Board of Adjustment disapproves a special use permit application, (ii) the City Council disapproves an application for a ~~conditional~~ council use permit, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board until two years have elapsed unless the applicant clearly demonstrates that:

(1) Circumstances affecting the property that is the subject of the application have substantially changed; or

(2) New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the Zoning Administrator within the time period for an appeal to superior court (see Section 5-7). However, such a request does not extend the 30-day period within which an appeal must be taken.

4-14 MAINTENANCE OF COMMON AREAS, IMPROVEMENTS, AND FACILITIES

The recipient of any zoning, special use, ~~conditional~~ council use, or sign permit, or his successor, shall be responsible for maintaining all common areas, improvements or facilities required by this Ordinance or any permit issued in accordance with its provisions, except those areas, improvements or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private streets and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and that required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

4-15 ZONING VESTED RIGHTS

A vested right may be established in accordance with NCGS 160D-108,-108.1 and this section.

(A) ~~A vested right shall be established, upon petition by the owner of the property, after the approval or conditional approval of a site specific development plan by the City Council in accordance with the provisions outlined in this section. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two years and shall attach to and run with the land~~.

A vested right shall be deemed established upon the effective date of the approval, or conditional approval, by the City Council of a site specific vesting plan, including preliminary plats, or the approval by the Board of Adjustment of a site specific vesting plan. Following the approval of a site specific vesting plan, the Zoning Administrator shall issue an approval letter to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed on the approval of the site specific vesting plan, and any other information determined by the Zoning Administrator to be necessary to administer the vested right. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two years and shall attach to and run with the land.

(B) Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this subsection shall have the meaning indicated when used in this section.

(1) **Landowner.** Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific ~~development~~ vesting plan.

(2) **Property**. All real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.

(3) **Site specific ~~development~~ vesting plan.** A plan which has been submitted to Elizabeth City by a landowner describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of ~~a site plan required to obtain a conditional use permit or in the form of a preliminary plat~~ but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary, a site plan, a council use permit, special use permit, or a conditional zoning master plan. The information required by Section 4-3, Section 10-3.3, and Appendix 1, as applicable, shall be included. All site specific ~~development~~ vesting plans shall be approved by the City Council or Board of Adjustment. General site plans shall be approved by the Zoning Administrator based on recommendation from the Technical Review Committee.

(4) **Vested right.** The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific ~~development~~ vesting plan.

(C) ~~A vested right shall be deemed established, following the receipt of a petition from the property owner, upon the effective date of approval by the City Council of a site specific development plan. Following the approval of a site specific development plan, the Zoning Administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed on the approval of the site specific development plan, and any other information determined by the Zoning Administrator to be necessary to administer the vested right~~.

(D) C A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site specific ~~development~~ vesting plan. The City Council or Board of Adjustment may approve a site specific ~~development~~ vesting plan upon such terms and conditions as may be determined necessary to protect the public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.

(E) D Approval by the City Council or the Board of Adjustment of a site specific ~~development~~ vesting plan shall follow the procedural requirements for the issuance of a special or ~~conditional~~ council use permit as outlined in Section 4-7. Changes in or modifications to an approved site specific ~~development~~ vesting plan shall be made only with the concurrence of the City Council or the Board of Adjustment accordance with the provisions of Section 4-12.

(F) E A vested right obtained under this section runs with the land and is valid for two years from the effective date of approval by the City Council or Board of Adjustment. of a site specific ~~development~~ vesting plan. A vested right shall not be extended by any amendments or modifications to an approved site specific ~~development~~ vesting plan unless expressly provided for by the City Council or the Board of Adjustment. A vested right shall expire at the end of two years if no building permit applications have been filed with the City to construct the use or uses proposed in the approved site specific ~~development~~ vesting plan. If building permits are issued, the provisions of NCGS ~~160A-418~~ 160D-403(c) and NCGS ~~160A-422~~ 160D-409(f) shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the two-year vesting period.

(F) A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi- phased development.

(G) A vested right, once established or provided for in this section, precludes any zoning action by the City which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the approved site specific ~~development~~ vesting plan, except:

(1) With the written consent of the affected landowner,

(2) Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific ~~development~~ vesting plan;

(3) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the City, together with interest thereon, a provided under NCGS 160D-106, at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

(4) Upon findings, by ordinance after notice and a public hearing, and an evidentiary hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the City of the site specific ~~development~~ vesting plan or the phased development plan; or

(5) Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site specific ~~development~~ vesting plan or the phased development plan, in which case the City may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.

(H) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the City, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations become effective with respect to property which is subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this Section.

(I) Not withstanding any provisions of this Section, the establishment of a vested right shall not preclude, change, or impair the authority of the City to enforce provisions of this Ordinance governing nonconforming situations or uses.

(J) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific ~~development~~ vesting plan, all successors to the original landowner shall be entitled to exercise such vested rights.

(K) The City shall not require a landowner to waive his vested rights as a condition of developmental approval.

(L) Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

~~(L)~~ M A petition for annexation filed with the City of Elizabeth City under NCGS 160A-31 or NCGS 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under NCGS 160D-102; -108 ~~160A-385.1 or NCGS 153-344.1~~. A statement that declares that no zoning vested right has been established under NCGS 160D-102; -108 ~~160A-385.1 or NCGS 153-344.1~~, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

4-17 PERMIT CHOICE

If a land development regulation is amended between the time a permit application was submitted for any development approval and a permit decision is made, or if a land development regulation is amended after a permit decision has been challenged and found to be wrongfully denied or illegal, NCGS 143-755 applies.

4-~~17~~18 COMPLIANCE WITH CAMA GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

(A) Prior to the issuance of any zoning, special use, or ~~conditional~~ council use permit, the Zoning Administrator and local CAMA Permit Officer shall determine whether the proposed use or structure is located within an Area of Environmental Concern. This determination shall result from both an on-site inspection and a review of the official AEC overlay map. If the proposed use or structure is located within an Area of Environmental, the Zoning Administrator and local CAMA Permit Officer shall certify that the proposed use or structure complies with development standards of the *State Guidelines for Areas of Environmental Concern* (15 NCAC 7H) and the CAMA permit shall be issued to the applicant prior to the issuance of any zoning, special use, or ~~conditional~~ council use permit.

ARTICLE V

ENFORCEMENT

5-3 ENFORCEMENT PROCEDURES

When the Zoning Administrator or ~~his~~ their agent finds a violation of this Ordinance or receives a complaint alleging a violation of this Ordinance, it shall be his duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation. The owner or occupant shall immediately remedy the violation.

5-3.1 Notice of Violation

If the owner or ~~occupant~~ permittee of the land, building, sign, structure, or use in violation fails to take prompt corrective action, the Zoning Administrator shall ~~give the owner or occupant~~ deliver to the landowner and permittee written notice by first class mail, ~~by certified or registered mail~~, to his last known address, or by personal ~~service~~ delivery, electronic delivery, or by posting notice of the violation conspicuously on the property:

(A) that the land, building, sign, structure, or use is in violation of this Ordinance;

(B) the nature of the violation, and citation of the Section of this Ordinance violated; and

(C) the measures necessary to remedy the violation.

5-3.2 Appeal

Any ~~owner or occupant~~ landowner or permittee who has received a Notice of Violation may appeal in writing the decision of the Zoning Administrator to the Board of Adjustment, in accordance with the provisions of Section 7-1, within thirty days following the date of the Notice of Violation. When first-class mail is used to deliver notice, three days shall be added to the time to file the appeal. The Board of Adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the remedies and penalties sought by the Zoning Administrator in the Notice of Violation shall be final.

5-3.3 Order of Corrective Action

If upon a hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall find that the ~~owner or occupant~~ landowner or permittee is in violation of this Ordinance, the Board of Adjustment shall make an order in writing to the ~~owner or occupant~~ landowner or permittee affirming the violation and ordering compliance.

5-3.4 Failure to Comply with an Order

If the ~~owner or occupant~~ landowner and permittee of a property fails to comply with a Notice of Violation from which no appeal has been taken, or an Order of Corrective Action following an appeal, the owner or occupant shall be subject to such remedies and

penalties as may be provided for by state law and Section 5-4. If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

5-6 PERMIT REVOCATION

5-6.1 General

A zoning, sign, special use, or ~~conditional use permit~~ council use permit may be revoked by the permit-issuing authority (in accordance with the provisions of this Section) if the permit recipient fails to develop or maintain the property in accordance with the approved plans, the requirements of the Ordinance, or any additional requirements lawfully imposed by the permit-issuing board.

No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, special use, or ~~conditional use permit~~ council use permit after such permit has been revoked in accordance with this Section.

5-6.2 Special Use or ~~Conditional~~ Council Use Permit Revocation

Before a special use or ~~conditional~~ council use permit may be revoked, all of the notice and hearing requirements of Section 4-7.5 shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

5-7 JUDICIAL REVIEW

5-7.1 Appeal to Superior Court

Every decision of the City Council granting or denying a ~~conditional~~ council use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Pasquotank County by proceedings in the nature of certiorari.

5-7.2 Timing of Appeal

The petition for the writ of certiorari must be filed with the Pasquotank County Clerk of Court within 30 days after the later of the following occurrences:

(A) A written copy of the City Council's or Board of Adjustment's decision has been filed in the office of the Zoning Administrator.

(B) A written copy of the City Council's or Board of Adjustment's decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

When first-class mail is used to deliver notice, three days shall be added to the time to file the appeal.

A copy of the writ of certiorari shall be served upon the City of Elizabeth City.

ARTICLE VI

NONCONFORMING SITUATIONS

6-3 NONCONFORMING USE OF LAND

6-3.1 Continuance of Nonconforming Use of Land

Any nonconforming use legally existing at the time of adoption or amendment of this Ordinance may be continued so long as it remains otherwise lawful subject to conditions provided in this Section.

6-3.2 Conditions for Continuance

Such nonconforming use of land shall be subject to the following conditions:

(A) No nonconforming use shall be changed to another nonconforming use unless such use is determined to be of equal or less intensity. In determining whether a nonconforming use is of equal or less intensity, the Board of Adjustment shall consider:

(1) probable traffic of each use;
(2) parking requirements of each use;
(3) probable number of persons on the premises of each use at a time of peak demand;
(4) off-site impacts of each use, such as noise, glare, dust, vibration or smoke and other impacts on surrounding properties or the public health or safety.
(5) compliance with applicable development standards and other zoning regulations in this Ordinance. (amended 3/11/2014~~- TA-01-14~~)

(B) The number of dwelling units in a nonconforming residential use shall not be increased.

(C) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.

(D) If any nonconforming use of land ceases for any reason for a continuous period of more than 180 days, any subsequent use of such land shall be a permitted use in the district in which such land is located.

For the purposes of this subsection, when calculating the 180-day cessation period so as to declare a nonconforming situation ceased, the Zoning Administrator shall find evidence of one or more of the following for substantiating the cessation: Inactive public utility service, specifically electricity; inactive or expired building permit(s); expired Certificate of Appropriateness; and/or expired site specific plan with vested rights, ~~conditional~~ council use, special use, zoning or sign permit. Expiration of permits and site plans shall be in accordance with Section 4-10(D) of

the Ordinance. (amended 3/11/14 ~~TA-01-14~~)

(E) The resumption of a nonconforming use of land shall not be permitted if such nonconforming use is superseded by a permitted use for any period of time.

(F) No additional structure(s) not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

6-6 NONCONFORMING PROJECTS

All nonconforming projects on which construction was begun at least 180 days before the effective date of this Ordinance as well as all nonconforming projects that are at least ten percent completed in terms of the total expected cost of the project on the effective date of this Ordinance may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this Section shall apply only to the particular phase under construction. In addition, as provided in NCGS ~~106A-385 (b)~~ 160D-108,-603, neither this Ordinance nor any amendment to it shall, without the consent of the property owner, affect any lot with respect to which a building permit has been issued pursuant to NCGS ~~160A-417~~ 160D-403,-1108 prior to the enactment of the Ordinance making the change so long as the building permit remains valid, unexpired, and unrevoked.

ARTICLE VII

APPEALS, VARIANCES, INTERPRETATIONS

7-1 APPEALS

(A) An appeal from any final order or decision of the Zoning Administrator, or an appeal arising from other ordinances regulating land use and development, may be taken to the Board of Adjustment by the city or any person who has standing under ~~G.S. 160A-393(d)~~ NCGS 160D-405(b), 1402(c). An appeal is taken by filing with the Zoning Administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the Zoning Administrator and the Board of Adjustment when delivered to the Department of Planning and Community Development, the required filing fee paid, and the date and time of filing entered on the notice by the planning staff.

(B) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(C) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. When first-class mail is used to deliver notice, three days shall be added to the time to file the appeal.

(I) When hearing an appeal pursuant to under ~~G.S. 160A-400.9(e)~~ NCGS 160D-947 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in under ~~G.S. 160A-393(k)~~ NCGS 160D-1402.

(J) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

[Section amended January 27, 2014, Text Amendment Case 02-13]

7-9 EVIDENCE AND SUBPOENAS

(D) The Board of Adjustment through the chairman, or in the chairman's absence anyone acting as chairman, may subpoena witnesses and compels the production of evidence. To request issuance of a subpoena, persons with standing under ~~G.S. 160A-393(d)~~ NCGS 160D-405(b), -1402(c) may make a written request to the chairman explaining why it is necessary for certain witnesses or evidence to be compelled. The chairman shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chairman shall

rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chairman may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

[Section amended January 27, 2014, Text Amendment Case 02-13]

7-12 WRITTEN DECISION

(E) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to ~~G.S. 160A-393~~ NCGS 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (C) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

[Section amended January 27, 2014, Text Amendment Case 02-13)

ARTICLE VIII

AMENDMENTS

8-1 AMENDMENTS IN GENERAL

(C) As provided in ~~160A-385 (b)~~ 160D-108(d), -603, amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) a building permit has been issued pursuant to ~~160A-417~~ 160D-1108 prior to the enactment of the ordinance making the change or changes as long as the permit remains valid and unexpired pursuant to NCGS ~~160A-418~~ 160D-403(c), -1111 and unrevoked pursuant to NCGS ~~160A-422~~ 160D-403(f), -1115 or (ii) a vested right has been established pursuant to NCGS ~~160A-385.1~~ 160D-108(d), -108.1, -1007 and the provisions of Section 4-15 of this Ordinance and such vested right remains valid and unexpired.

8-3 PLANNING COMMISSION REVIEW AND RECOMMENDATION

(B) The Planning Commission shall review the proposed amendment and submit its recommendation to the City Council. The Planning Commission shall have 45 days within which to submit its recommendation. The Planning Commission shall provide a written recommendation that addresses plan consistency with adopted plans and other matters deemed appropriate buy the Commission. Failure of the Planning Commission to submit its recommendation within this time period shall constitute a favorable recommendation.

(C) The Planning Commission may, at its discretion, hold a separate public hearing from that held by the City Council. Public hearings held by the Planning Commission need not adhere to the hearing requirements outlined in Section 8-5 for public hearings held by the City Council. The Zoning Administrator shall provide first class mail notice of the Planning Commission meeting to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties within 100 feet of the property, excluding street and railroad right-of-ways, proposed to be rezoned by the amendment.

8-4 CITY COUNCIL REVIEW AND ADOPTION

(E) Voting on amendments to this Ordinance shall proceed in the same manner as other ordinances with the exception that for zoning amendments the City Council shall adopt a plan consistency statement. If Council approves a zoning amendment which is inconsistent with any adopted plan, the zoning amendment is deemed as to also amend that plan. The plan consistency statement must take one of these three forms:

1. A statement approving the proposed zoning amendment and describing its consistency with the plan;

2. A statement rejecting the proposed zoning amendment and describing its Inconsistency with the plan; or

3. A statement approving the proposed amendment and declaring that this also amends the plan, along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.

(~~Section 8-4(E)(1)(2) and (3)~~ Amended by City Council 02/13/2018)

(F) When adopting or rejecting any petition for a zoning map amendment, Council shall adopt a statement analyzing the reasonableness of the proposed rezoning. This statement of reasonableness may consider, among other factors:

1. The size, physical conditions, and other attributes of the area proposed to be rezoned;

2. The benefits and detriments to the landowners, the neighbors, and the surrounding community;

3. The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; or

4. Why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.

If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

8-5 PUBLIC HEARING REQUIREMENTS

(A) No ordinance that amends any of the provisions of this Ordinance may be adopted until a public hearing has been held on such ordinance.

(B) The City Clerk shall publish a notice of the public hearing on any ordinance that amends the provisions of this Ordinance once a week for two successive weeks in a newspaper having general circulation in the City. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the public hearing. In computing this period, the date of publication shall not be counted but the date of the public hearing shall be.

(C) With respect to map amendments, the City Clerk shall provide first class mail notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties within 100 feet of the property, excluding street and railroad right-of-

ways, rezoned by the amendment. The Zoning Administrator may also post notices of the public hearing in the vicinity of the property rezoned by the proposed amendment and take any other action deemed by the Zoning Administrator to be useful or appropriate to give notice of the public hearing.

(F) The person or persons mailing notices to adjoining property owners, as defined in NCGS ~~160A-384 (a)~~ 106D-404, -602, shall certify to the City Council that fact.

8-6 ULTIMATE ISSUE BEFORE CITY COUNCIL ON AMENDMENTS

In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the City Council is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Chairman and excluded. When considering proposed map amendments:

(A) Except for rezoning requests submitted in accordance with Section 8-7, the City Council shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the City Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.

(B) The City Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

8-7 CONDITIONAL ZONING DISTRICT REZONINGS

(B) General Application Requirements

(1) Application

A Conditional zoning (CZ) district petition shall be signed by all of the owners, or their duly-authorized agents, of all property included in the petition. The owners shall specify the use(s) of the property and shall propose conditions to ensure compatibility between the development and the surrounding neighborhood. A pre-application meeting with the Historic Preservation Committee is required when the application includes any properties located within the local historic districts.

The application shall include a master plan, drawn to scale, along with the supporting information and a detailed narrative that specifies the actual use or uses intended for the property. The application shall also contain any rules, regulations, and conditions that, in addition to all ordinance

requirements, will govern the development and use of the property. The only permitted uses within the CZ districts shall be those uses permitted by right, or ~~conditional~~ ~~and~~ special ~~use~~ or council use permits, allowed within the underlying zoning district. The Planning Director has the authority to waive any application requirement where the type of use or scale of the development makes providing that information unnecessary or impractical.

In the course of evaluating the proposed zoning petition, the Planning Director, Planning Commission, or City Council may request additional information from the petitioner. The application shall include verification of a community meeting.

8-10 CITIZEN COMMENTS

(A) If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the City Clerk at least two business days prior to the proposed vote on such change, the City Clerk shall deliver such written statement to the City Council. If the proposed change is the subject of a quasi-judicial proceeding under NCGS ~~G.S. 160A-388~~ 160D-603, -705 the City Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the City Council shall not disqualify any member of the board from voting.

(B) No member of City Council shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under NCGS ~~G.S.~~ 14-234, ~~160A-381(d), or 160A-388(e)(2)~~ 160A-75, 160D-109. A failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance or take any action having the effect of an ordinance.

[Section amended January 26, 2016~~, Text Amendment Case 02-15~~]

ARTICLE IX

ZONING

(Amended 4/24/2006)

9-3 PERMITTED USES

9-3.1 Permitted Use Table

(A) Table of Permitted Uses: Within each zoning district indicated on the Official Zoning Map and subject to all requirements and conditions specified in this Ordinance, land, buildings, and structures shall only be used and buildings and structures shall only be erected which are intended or designed to be used for uses listed in the Table of Permitted Uses, Table 9-3-1. In the appropriate columns of Table 9-3-1 uses permitted by right in the various districts are indicated by a 'Z', uses permitted by right subject to meeting additional development standards a set forth in Article XI (Development Standards) are indicated with a 'D', uses requiring a Special Use Permit from the Board of Adjustment are indicated by an 'S'., and uses requiring a ~~Conditional~~ Council Use Permit from the City Council are indicated by a 'C'.

9-3-1 Elizabeth City UDO Table of Permitted Uses (September 13, 1999)

	Ref.	Zoning Districts															
Use Type	SIC	R-6	R-8	R-10	R-15	AD	RMH	CB	GB	O&I	HB	NB	CMU	I-1	I-2	PDR	PDM
AGRICULTURAL USES																	
Agricultural Production (crops)	0100				Z												
Agricultural Production (livestock), except Animal Feeder/Breeder Operations	0200				Z												
Animal Aquaculture	0273				Z										Z		
Animal Feeder/Breeder Operation	0000														C		
Fish Hatchery	0920				Z										Z		
Forestry	0810														Z		
MINING USES																	
Mining, Quarrying, Sand Pits, and Mineral Extraction	1000														C		
RESIDENTIAL USES																	
Bed and Breakfast	7011	S	S	S	S	D		D		D		D	D			D	D
Boarding and Rooming House	7021	S	S	S	S	S		S		S			S				
Congregate Care Facility	0000									S	S						
Family Care Home	0000	Z	Z	Z	Z	Z	Z									Z	Z
Group Care Facility	0000					S	S			S							
Homeless Shelter	0000	S	S	S	S					C							
Manufactured Home Park	0000						S										
Manufactured Home, Class A	0000						Z										
Manufactured Home, Class B	0000						D										
Manufactured Home, Class C	0000						D										
Modular Home	0000	Z	Z	Z	Z	Z	Z			Z			Z			Z	Z
Multifamily Dwelling (including condominium	0000	D				D		C*	D	C*	D	D	C*			D	D
Planned Unit Development	0000															S	S
Single-Family Detached Dwelling	0000	Z	Z	Z	Z	Z	Z	Z		Z			Z			Z	Z
Temporary Shelter	0000	C				C		C	C S	C	C	C	C		C		
Townhouse Dwelling	0000	D				D		C		C*			C*			D	D
Two-Family Conversion	0000	D	D			D	D	D		D			D			D	D
Two-Family Dwelling (duplex)	0000	Z	Z			Z	Z			Z		C*	Z			Z	Z
ACCESSORY USES AND STRUCTURES																	
Accessory Dwelling Unit	0000	D	D	D	D	D				D			D			D	D
Accessory Uses and Structures (customary)	0000	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
Caretaker Dwelling	0000	D	D	D	D	D	D	D		D			D			D	D

Z =Use permitted by right
D = Use permitted by right with development standards
S = Requires Special Use Permit from the Board of Adjustment
C = ~~Conditional~~ Council Use Permit required by City Council *Amended May 2002

9-3.2 Permissible Uses Not Requiring Permits

Notwithstanding any other provisions of this Ordinance, no zoning, special use, or ~~conditional~~ council use permit is necessary for the following uses:

(A) Streets.

(B) Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right of way.

9-3.4 Combination Uses

(A) When a combination use comprises two or more principal uses that require different types of permits (zoning, special use, or ~~conditional~~ council use), then the permit authorizing the combination use shall be:

(1) A special use permit if any of the principal uses combined requires a special use permit.

(2) A ~~conditional~~ council use permit if any of the principal uses combined requires a conditional use permit.

(3) A zoning permit in all other cases.

(B) When a combination use consists of a single-family detached residential subdivision that is not a planned unit development and two-family or multi-family uses, the total density permissible on the entire tract shall be determined by having the developer indicate on the plans the portion of the total lot that will be developed for each purpose and calculating the density for each portion as if it were a separate lot.

ARTICLE X

SUBDIVISIONS: PROCEDURES AND STANDARDS

10-1 REGULATION OF SUBDIVISIONS IN GENERAL

10-1.2 Approval Required

(A) Date of Compliance

After the effective date of this Ordinance and in accordance with NCGS § ~~153A-332~~ 160D-803, no plat for the subdivision of land within the Elizabeth City Planning Jurisdiction shall be filed, accepted for recording, or recorded, nor shall the Clerk of the Superior Court order the recording of a plat until it has been submitted to and approved by the City.

10-7 SUBDIVISION STANDARDS

10-7.1 Sites for Public Uses

In subdividing property, due consideration shall be given by the developer to the reservation of suitable sites for school and other public uses in accordance with NCGS § ~~153 A-331~~ 160D-804.

10-7.11 Townhouse Developments

Subdivisions designed to accommodate townhouse developments shall comply with the additional applicable provisions of Section 11-~~4.79~~ 4.89.

10-7.12 Planned Unit Developments

Planned Unit Developments shall comply with the additional applicable provisions of Section 9-10.

10-7.13 Campground Subdivisions

Subdivisions designed to specifically accommodate recreational vehicles, campers, tents, or travel trailers shall comply with the additional applicable provisions of Section 11-~~4.58~~ 4.66.

10-7.14 Manufactured Home Subdivisions

Subdivisions designed to specifically manufactured homes shall comply with the additional applicable provisions of Section 11-~~4.49~~ 4.52.

ARTICLE XI
DEVELOPMENT STANDARDS

ARTICLE XI

DEVELOPMENT STANDARDS

11-1 SIGNS

The purpose and intent of this Section is to recognize that signs serve a legitimate public service and that they complement and support trade, tourism and investment within Elizabeth City. These regulations are intended to establish standards which maximize the effectiveness of permitted signs while limiting visual distraction to motorists and preserving the land values and natural attractiveness of the area.

All signs except those specifically listed in Section 11-1.3 shall be erected, installed, or modified only in accordance with a duly-issued and valid sign permit issued by the Zoning Administrator. Sign permits shall be issued in accordance with the requirements and procedures of Article IV, Permits and Procedures, and the submission requirements of Appendix 1. If plans submitted for a zoning, or special use, or ~~conditional~~ council use permit include sign plans in sufficient detail, as determined by the Planning Director, that the permit issuing authority can determine whether the proposed sign(s) comply with the provisions of this Section, then issuance of the requested zoning, special use, or ~~conditional~~ council use permit shall constitute approval of the proposed sign(s).

11-4 DEVELOPMENT STANDARDS FOR INDIVIDUAL USES

11-4.1 Application of Development Standards

The development standards listed herein are additional to other requirements in this Ordinance. These development standards are use-specific and apply to those uses designated with a 'D' in Table 9-3-1 Table of Permitted Uses. Uses requiring approval of a Special Use or ~~Conditional~~ Council Use Permit (designated with a 'S' ~~or 'C'~~ in Table 9-3-1) shall also be subject to these standards and any additional standards or conditions required by the Special Use Permit or ~~Conditional~~ Council Use Permit.

11-4.46 Homeless Shelter

(A) Where Required

R-6, R-8, R-10, R-15, and O&I districts.

(B) Property Separation

No such facility shall be located within a 200-foot radius (measured by a straight line and not street distance) of another homeless shelter.

(C) Operation

(1) The use must be operated by a resident owner or manager.

(2) The use shall be owned and managed by a charitable or benevolent operation qualifying for tax exemption under Section 501 of the Internal Revenue Code as amended.

(3) There shall be no compensation required for occupancy in the shelter.

(4) There shall be a minimum of fifty square feet of sleeping space per person.

(D) Permit Renewal

The special or ~~conditional~~ council use permit authorizing such use shall be renewed annually (every 12 months) by the permit issuing authority. Failure to apply for renewal within the specified time period shall render the special use permit null and void. The special use permit may be revoked by the permit issuing authority at any time upon a finding that the use has caused a habitual nuisance to adjacent properties.

(E) Signs

There may be one unlighted sign erected, not to exceed three feet in height and three feet in sign area.

11-4.57 Motor Vehicles Sales

(A) Where Required

CB

(B) Use Separation

No Motor Vehicles Sales Business shall be located within 5—feet of any other Motor Vehicles Sales Business.

(C) Landscaping

Landscaping within vehicular surface areas shall comply with the requirements of Section 11-2.1(E) et. Seq.

(D) Operation

The property was previously used for Motor Vehicles Sales.

(E) Permit Renewal

The ~~conditional~~ council use permit authorizing such use shall be renewed annually (every 12 months) by the City Council. Failure to apply for renewal within the specified time period shall render the conditional use permit null and voic. The conditional use permit may be revoked by the City Council at any time for just cause.

(F) General Requirements

The use will not be detrimental to adjoining properties.

(Section 11-4.~~52~~ 57 amended by Council to "Motor Vehicles Sales" September 3, 2002.)

11-4.68 Private Tourist Guide Services

(A) Where Required

Private Tourist Guide Services shall be permitted in Residential R-8 Residential Zoning Districts with Local Historic Designation, with an approved ~~Conditional~~ Special Use Permit with conditions, as a secondary use to a single- family residence.

(I) Permit Renewal

The conditional use permit authorizing such use shall be renewed annually (every 12 months) by the permit issuing authority. Failure to apply for renewal within the specified time period shall render the conditional use permit null and void. The ~~conditional~~ council use permit may be revoked by the permit issuing authority at any time upon a finding that the use is in noncompliance and/or has caused a habitual nuisance to adjacent properties or neighborhood.

(Section 11-4.~~60.2~~ 68 added by Council 2008)

ARTICLE XII

ENVIRONMENTAL AND SPECIAL PURPOSE REGULATIONS

12-1 WATERSHED PROTECTION OVERLAY DISTRICT REGULATIONS

The watershed protection overlay districts, as described in Section 9-1.7(C), are designed to protect designated public water supply watershed from activities which could degrade water quality. These separate watershed protection overlay districts have been established: WCA, Watershed Critical Area Overlay District and WPA, Watershed Protected Area Overlay District. Both of these watershed overlay districts are within a public water supply watershed that has been classified by the State of North Carolina as a WS-IV watershed.

12-1.13 Financial Security for Storm-water Control Structures

(A) All new storm-water control structures authorized in Section 12-1.12(A) shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs or reconstruction necessary for adequate performance of the storm-water control structures.

(B) Financial assurance shall be in the form of the following:

(1) Surety Performance Bond or Other Security. The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the City of Elizabeth City or placed in escrow with a financial institution designated as an official depository of Elizabeth City. The bond or other instrument shall be in an amount equal to ~~1.5~~ **1.25** times the total cost of the storm-water control structure, as estimated by Elizabeth City and approved by the City Council. The total cost of the storm-water control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and, grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.

12-2 FLOOD HAZARD DISTRICT OVERLAY REQUIREMENTS

The Flood Hazard Overlay District (FHO), as established in Section 9-1.7(A), is designed for the purpose of protecting people and property from the hazards of flooding in accordance with the authority provided in NCGS ~~153A-121~~ 160D-923.

12-2.7 Permit Requirements, Certifications, and Duties and Responsibilities of the Zoning Administrator

(A) Application for a zoning, special use, or ~~conditional~~ council use permit shall be made to the Zoning Administrator on forms furnished by the Administrator prior to any development activities. The application permit may include, but not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas, and drainage facilities. Specifically, the following information is required:

(B) The Zoning Administrator shall review all zoning, special use, or ~~conditional~~ council use permits to assure that any development within an area of special flood hazard is reasonably safe from the hazards of flooding and shall:

(1) Where base flood elevation data or floodway data are available:

12-4 SOIL EROSION AND SEDIMENTATION CONTROL

(A) No zoning, special use, or ~~conditional~~ council use permit may be issued and preliminary plat approval for subdivisions may not be given with respect to any development that would cause land disturbing activity requiring prior approval of an erosion and sedimentation control plan by the NC Sedimentation Control Commission under NCGS 113A-57(4) unless the Commission has certified to the City , either that:

12-7 HIGHWAY CORRIDOR OVERLAY DISTRICT REQUIREMENTS

12-7.9 Spacing Standards

The spacing standards of this subsection are intended to improve the compatibility of streetside uses with adjacent highways by ensuring the separation and proper location of ingress and egress.

(A) The spacing requirements for lots with direct points of ingress and egress to highways shall be as follows:

(1) for lots with general uses, a minimum of 150 feet.

(2) for lots with ~~conditional or~~ special ~~uses~~ or council use permits, a minimum of 200 feet.

12-8 HISTORIC DISTRICT OVERLAY REQUIREMENTS

12-8.3 Procedures for Approval of Certificates of Appropriateness

(D) The *Local Historic District and Landmark Design* ~~*Guidelines*~~ *Standards* shall be used to guide the Historic Preservation Commission in deliberations.

UNC | SCHOOL OF GOVERNMENT

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.

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.

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.)

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).)

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.)

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.)

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).)

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.)-

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).)

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).).

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).)

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).)

VIII. Legislative Decisions [Chapter 4, Section II]

☐ **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).)

A. 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).)

B. 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.*)

☐ **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).)

C. 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).)

D. 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.)

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).)

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).)

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.)

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).)

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.)

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.)

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).)

C. 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.)