
Coates' Canons Blog: Chapter 160D Deadlines and Transitions

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Article: <https://canons.sog.unc.edu/chapter-160d-deadlines-and-transitions/>

This entry was posted on October 08, 2020 and is filed under General Local Government (Miscellaneous), Land Use & Code Enforcement

Chapter 160D is the updated statutory authority for development regulations like zoning and subdivision in North Carolina. This new chapter of the North Carolina General Statutes consolidates the city- and county-enabling statutes for development regulations (previously under Chapters 153A and 160A) into a single, unified chapter. Since Chapter 160D was first adopted in 2019 and amended in 2020, there has been confusion about—and changes to—the deadlines for implementation and the transition from the old statutes to the new. This blog seeks to provide a bit of clarity for this confusing topic.

Deadline for Chapter 160D Ordinance Update – July 1, 2021

Chapter 160D is effective now, as David Owens explained in this blog. A local government may adopt necessary ordinance amendments and make those amendments effective immediately (S.L. 2020-25, Section 51(b)). There is no need to wait for January 1, 2021, as was the case under the original legislation. Local governments, though, have until July 1, 2021, to adopt the necessary ordinance amendments to comply with Chapter 160D. At that date, the rules and procedures of Chapter 160D will apply whether or not the local ordinance has been updated (S.L. 2020-25, Section 51(b)).

What happens if a local government does nothing? First off, it is worth noting that the changes necessitated by Chapter 160D are mostly technical and procedural, not substantive. You can see the checklist of changes here. Chapter 160D is the law of the land for planning and development regulations. Failure to adhere to the procedures, standards, and authorities of Chapter 160D will put the local government at risk of practical headaches and legal action. Some changes in Chapter 160D trump local ordinances. The broadened conflict of interest standard, for example, will apply whether or not the local government adopts it. Failure to align the local rules with the state rules will cause confusion and frustration. Additionally, development decisions could be overturned for failure to comply with applicable procedures. This could cause frustration for board members and community members as well as wasted time and money for the applicant and local government. Notably, failure on the part of a local government to recognize clear legal limits could result in legal challenge and, potentially, attorneys' fees for the challenger. Thus, while there is not a state agency looking over the shoulders of local government to check compliance with Chapter 160D, there are applicants and community members who may force the issue in court.

Applicability of 160A/153A in the Interim

Under the old statutes, the authority for local development regulations was set forth in Article 19 of Chapter 160A (for municipalities) and Article 18 of Chapter 153A (for counties). When Chapter 160D was first approved, the legislation made Chapter 160D effective and repealed those prior articles on January 1, 2021. During the 2020 legislative session, revisions made Chapter 160D effective immediately **and** repealed the prior laws immediately. In other words, the pre-160D statutes authorizing local development regulations are no more.

But fear not; your current ordinance can continue for a time. S.L. 2020-25, Section 51(b) provides that existing development regulations adopted pursuant to the prior statutes remain in effect until either the local government amends the ordinance for Chapter 160D or July 1, 2021. As such, a county or town is effectively still operating under development regulation authority from 153A or 160A until that time.

So, for example, under Chapter 160D conditional use district zoning is eliminated, as discussed more below. If a local

government has conditional use district zoning in the current ordinance, the local government may continue with that decision process under the authority in Ch. 160A, Art. 19, or Ch. 153A, Art. 18, until the earlier of the local government updating the ordinance for 160D compliance or July 1, 2021.

Transition for Existing Permits

Permits and approvals made prior to the transition to Chapter 160D will continue without any action by the local government. Certain approvals are converted automatically to a 160D-conforming approval. Some local governments may opt to take action on such approvals simply for clarity and record-keeping purposes. This topic is especially technical, but it may be of little practical concern. This transition of permits is all about the labels and terminology rather than the substance of the particular permits.

First off, let me walk through the specific dates and provisions for these transitions. The permit transition provisions were outlined in the original legislation adopting Chapter 160D (Sections 2.9(a) and 2.9(b) of S.L. 2019-111). That language provided a transition of valid permits on January 1, 2021, in keeping with the original effective date of Chapter 160D. Given the subsequent amendments to make Chapter 160D effective immediately and to allow existing local ordinances to continue until July 1, 2021, it is reasonable now to read the permit transition provisions to apply to permits valid prior to the update of the local ordinance for 160D compliance. It must be noted that the plain language of S.L. 2019-111 still states January 1, 2021, as the date of permit transitions. That was an oversight by the drafters of S.L. 2020-25. The transitional provisions of S.L. 2020-25, though, give some coverage for the permit transition to match the ordinance transition. As noted above, S.L. 2020-25, Section 51(b) allows current ordinances—and the decisions under those ordinances—to continue until July 1, 2021. That more flexible interpretation is reflected with the brackets below.

Valid permits remain valid. S.L. 2019-111, Sec. 2.9(a), states that “Any otherwise valid permit or development approval made prior to [adoption of Ch. 160D ordinance updates], shall not be invalid based on inconsistency with the provisions of this act.”

Site-specific quasi-judicial decisions that were approved as *conditional use permits* are deemed to be *special use permits*. This aligns with the terminology of Chapter 160D. Many communities have used the term *conditional use permit* to refer to site-specific quasi-judicial decisions. In order to distinguish from *conditional zoning*, a site-specific legislative decision, Chapter 160D opts for the term *special use permit* for site-specific quasi-judicial decisions. To be sure, a community may still follow the same standards and procedures as they have for *conditional use permits*. It is just now called *special use permit*. The permit transition provisions recognize and address this. S.L. 2019-111, Sec. 2.9(b), states that “Any valid ‘conditional use permit’ issued prior to [adoption of Ch. 160D ordinance updates], shall be deemed a ‘special use permit’ consistent with the provisions of this act.” It is worth emphasizing that this is a change of terminology, not a change to the substance of the permit or conditions.

Given that legislative *conditional zoning* is now authorized in North Carolina, Chapter 160D ends the practice of combined legislative and quasi-judicial decision-making, commonly called *conditional use district zoning* (Conditional use district zoning requires an applicant to seek a rezoning and a quasi-judicial conditional use permit concurrently). Existing permits under that old combined procedure are converted automatically. S.L. 2019-111, Sec. 2.9(b), states that “Any special use district or conditional use district zoning district that is valid and in effect [prior to adoption of Ch. 160D ordinance updates], shall be deemed a conditional zoning district consistent with the terms of this act, and the special or conditional use permits issued concurrently with establishment of those districts shall be valid as specified in Section 2.9(a) of this act.” Note that this provision has two elements: the conditional use district is converted to a conditional zoning district and the conditional use permit is converted to a special use permit. This is all about terminology—the applicable standards and conditions for the project remain.

So, what do local governments do for the transition of existing permits? The transitions of permits occurs automatically. There is no need to rezone property or re-do any decision-making process, but some local action to memorialize the transition of existing permits may be helpful for clarity and recordkeeping. A local government could provide a blanket transition provision in the ordinance to mirror the transition language of S.L. 2019-111. And, to the extent that approvals are noted on the zoning map, a notation of transition may be helpful for future owners and future zoning administration.

Deadline for Comprehensive Plan or Land Use Plan – July 1, 2022

A local government wishing to enforce zoning must have adopted a reasonably up-to-date comprehensive plan or land use plan by July 1, 2022. S.L. 2019-111, Section 2.9(c), states that “Any local government that has adopted zoning regulations but that has not adopted a comprehensive plan shall adopt such plan no later than July 1, 2022, in order to retain the authority to adopt and apply zoning regulations.” Chapter 160D-501 was amended to allow a land use plan or comprehensive plan to suffice. Specific content suggestions and procedural requirements are included in the statute.

Chapter 160D requires that the requisite plan must be “reasonably maintained.” There is no specific timeline, but five-to-ten years is a good rule of thumb for plan updates. If a plan is more than ten or fifteen years old, it is probably time to update it. Notably, the requirement is for reasonable maintenance; there is no mandate for a complete rewrite of the comprehensive plan.

If a community already has an up-to-date comprehensive plan, there is no need to re-adopt the plan. S.L. 2019-111, Section 2.9(a) states that “[t]he validity of any plan adopted prior to January 1, 2021, is not affected by a failure to comply with the procedural requirements of G.S.160D-[501(b)].”

Additional 160D Resources

The School of Government has an array of Chapter 160D resources, including explainer videos, a book, and a checklist for ordinance updates available on the 160D website. <https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation/ch-160d-2019>

Links

- www.sog.unc.edu/sites/www.sog.unc.edu/files/160D%20Checklist%20Aug%2020%20update.pdf
- www.sog.unc.edu/resources/microsites/planning-and-development-regulation/ch-160d-2019