



# HOUSE BILL 854: Land Use Clarifications.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	February 7, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Erika Churchill
<b>Analysis of:</b>	S.L. 2021-168		Staff Attorney

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**OVERVIEW:** *S.L. 2021-168 clarifies several provisions in the new Chapter 160D of the General Statutes, Local Planning and Development Regulation, effective October 15, 2021.*

## CURRENT LAW & BILL ANALYSIS:

**Vested Rights.** Unless a longer period is provided by statute or local land use ordinance, statutory vesting of rights expires for an uncompleted development project if the development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The same time period of 24 months applies vesting of rights with respect to nonconforming uses. G.S. 160D-108(d).

Where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land use ordinances applicable to the development project upon submission of the initial development permit. This is applicable only for the subsequent development permit applications filed within 18 months of the approval of an initial permit. G.S. 160D-108(e).

**Section 1** resolves the discrepancy between the two subsections of G.S. 160D-108 by stating that the 18 month time period applicable to multiple permits does not limit or affect the 24 month statutory vesting of rights time period.

**Ordinance Authority.** Counties and cities are granted general ordinance making power to define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances. G.S. 153A-121 and G.S. 160A-174. For cities, the statute requires that a city ordinance be consistent with the Constitution and laws of this State and of the United States, and sets out instances of inconsistency. G.S. 160A-174(b).

With respect to zoning ordinances, G.S. 160D-706 provides that when local land use ordinances adopted under that Chapter require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the local land use ordinances govern.

**Section 2** clarifies that the statement in the statutes governing cities regarding consistency with the Constitution and laws of this State and of the United States would apply to city zoning ordinances.

Jeffrey Hudson  
Director



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**Settlement of Quasi-Judicial Litigation.** Section 3 clarifies that the governing board of the local government making a quasi-judicial decision would have the authority to settle any litigation arising out of judicial review of that quasi-judicial decision subject to the open meetings law.

**Impermissible Conflicts.** G.S. 160D-109 provides that a governing board member, or an appointed board member, shall not vote in either of the following instances:

- On any legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the governing board member.
- 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.

Administrative staff also have impermissible conflicts identified. With respect to quasi-judicial proceedings, a member of any board exercising quasi-judicial functions is not to participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker.

In filing the petition for an appeal of a quasi-judicial decision, the petition is to set forth with particularity allegations and facts, if any, with respect to an impermissible conflict.

**Section 4** specifies that a failure to object by a party with standing, in accordance with G.S. 160D-1402(c), at a hearing does not constitute a waiver of a right to assert an impermissible conflict of interest involving a member of the decision-making board.

**EFFECTIVE DATE:** Effective October 15, 2021.