

ORDINANCE 21-195

**AN ORDINANCE TO AMEND SECTIONS OF THE CODE OF ORDINANCES
RELATED TO ZONING AND SUBDIVISIONS TO COMPLY WITH THE
REQUIREMENTS OF N.C.G.S. CHAPTER 160 D**

**BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF FAIRMONT AS
FOLLOWS:**

Section 1. That Title XV Land Usage, Chapter 154- Zoning, Sections 154.001 through 154.219 of the Town of Fairmont Code of Ordinances is hereby amended as shown immediately below with new sections being shown on the Chart entitled, "Amendments to Zoning Ordinance and Subdivision Ordinance to Reflect Requirements of NCGS Chapter 160D";

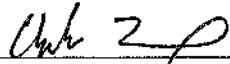
Section 2. That Title XV Land Usage, Chapter 153 - Subdivisions, Sections 153.73 through 153.75 of the Town of Fairmont Code of Ordinances are hereby added as shown immediately below with amended sections being shown on the Chart entitled, "Amendments to Zoning Ordinance and Subdivision Ordinance to Reflect Requirements of NCGS Chapter 160D";

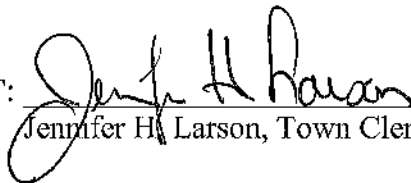
Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed and should any remain the restrictions of NCGS Chapter 160D shall govern.

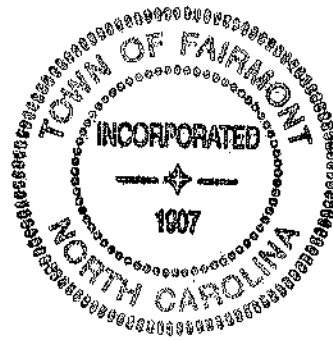
Section 4. Effective Date. This ordinance shall be effective on July 1, 2021.

PASSED AND ADOPTED after first and only reading this 15th day of June, 2021.

TOWN OF FAIRMONT

BY: 
Charles Townsend, Mayor

ATTEST: 
Jennifer H. Larson, Town Clerk



TOWN OF FAIRMONT

Amendments to Zoning Ordinance and Subdivision Ordinance to Reflect Requirements of NCGS Chapter 160D

G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
Terminology and Citations				
1	Update any references to provisions in G.S. Chapter 160A to indicate relevant provisions in Chapter 160D.	Required		Entire Document
2	Update Zoning Code definitions to comply with Chapter 160D.	Required		Entire Document
3	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.	Required		Section 154.045 - 154.054
4	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.	Required		Entire Document
Geographic Jurisdiction				
5	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.	Required	Nothing Existing to Amend	Section 154.016
6	For a parcel in two jurisdictions, the owner and the jurisdictions may agree for development regulations from one jurisdiction to apply to the entire parcel.	Recommended	Nothing Existing to Amend	Section 154.016
7	Cities with zoning must apply zoning jurisdiction-wide.	Recommended	Nothing Existing to Amend	Section 154.016
Boards				
8	Must adopt broadened conflict-of-interest standards for governing and advisory boards.	Required	Nothing Existing to Amend	Section 154.080(a); Section 32.01(C)
9	Must keep minutes of proceedings of each board.	Required	Nothing Existing to Amend	Section 154.081(a); Section 32.03(C)

	G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
10	160D-309	Must have each board member take an oath of office before starting his or her duties	Required	Nothing Existing to Amend	Section 154.080(b); Section 32.01(D)
11	160D-307	Must update ETJ population estimate, at least with each decennial census (also calculation for proportional representation is simplified and process for appointment is clarified).	Required	Nothing Existing to Amend	Section 154.080 (c); Section 32.01(B)(1)(b)
12	160D-307	Must provide proportional representation for ETJ on preservation commission if any districts or landmarks are designated in the ETJ.	Required	Nothing Existing to Amend	Section 154.080(d)
Land Use Administration					
13	160D-109	Must incorporate new staff conflict-of-interest standards into ordinance or policy.	Required	Nothing Existing to Amend	Section 154.069
14	160D-105	Must maintain in paper or digital format current and prior zoning maps for public inspection.	Required	Nothing Existing to Amend	Section 154.170
15	160D-105	Must maintain in paper or digital format any state or federal agency maps incorporated by reference into the zoning map.	Required	Nothing Existing to Amend	Section 154.171
16	160D-402(b)	May enact ordinances, procedures, and fee schedules relating to administration and enforcement of development regulations.	Recommended	Nothing Existing to Amend	Section 154.072
17	160D-402(d)	May charge reasonable fees for support, administration, and implementation of development regulation; must use any such fees for that purpose, not for other purposes.	Recommended	Nothing Existing to Amend	Section 154.073
Enforcement					
18	160D-404(a)	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.	Required	Nothing Existing to Amend	Section 154.065(b)
19	160D-403(e)	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.	Required	Nothing Existing to Amend	Section 154.069
20	160D-403(f)	For revocation of development approval, must follow the same process as was used for the approval.	Required	Nothing Existing to Amend	Section 154.070

	G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
21	160D-404(c)	May continue to use general enforcement methods, including civil penalties, fines, court ordered actions, and criminal prosecution.	Recommended	Nothing Existing to Amend	Section 154.071
Substance of Zoning Ordinance					
22	160D-105	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.	Required	Nothing Existing to Amend	Section 154.116
23	160D-703; S.L. 2020-25; S.L. 2019-111, Section 2.9(b)	Must eliminate conditional-use-district zoning; existing conditional-use-district zoning converts to conditional district upon adoption of updated local ordinances or July 1, 2021.	Required	Nothing Existing to Amend	Section 154.047
24	160D-703; S.L. 2019-174	Must not set a minimum square footage for structures subject to the One- and Two-Family Residential Building Code.	Required	Nothing Existing to Amend	Section 154.017
25	160D-105	May incorporate maps officially adopted by state or federal agencies (such as flood-insurance rate maps (FIRMs)) into the zoning map; may incorporate the most recent officially adopted version of such maps so that there is no need for ordinance amendment for subsequent map updates; must maintain current effective map for public inspection; may maintain in paper or digital format.	Recommended	Nothing Existing to Amend	Section 154.118
26	160D-403(d); 160D-703(b); 160D-705(c)	May allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, must define "minor modification" by ordinance, must not include modification of use or density, and major modifications must follow standard approval process.	Recommended	Nothing Existing to Amend	Section 154.069
Substance of Other Development Ordinances					
27	160D-804.1; S.L.2020-25; S.L. 2019-79(S.B.313)	Must conform subdivision performance guarantee requirements with statutory standards.	Required	Nothing Existing to Amend	Section 153.73
28	160D-802	Must conform subdivision procedures for expedited review of certain minor subdivisions.	Required	Nothing Existing to Amend	Section 153.74
29	160D-804; S.L. 2019-174	Must not require a developer, as a condition to subdivision approval, to bury a powerline existing above ground and outside of property to be subdivided.	Required	Nothing Existing to Amend	Section 153.75
30	160D-903(c)	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.	Required	Section 154.014	Section 154.014(a)

	G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
31	160D-910	Must not exclude manufactured homes based on the age of the home.	Required	Section 154.009 and Section 154.010	Section 154.009 and Section 154.010
32	160D-1203(6)	Must follow standardized process for housing-code enforcement to determine owner's abandonment of intent to repair and need for demolition.	Required	Nothing Existing to Amend	Section 151.15(a)
34	160D-1130	May petition the court to appoint a receiver for vacant structures.	Recommended	Nothing Existing to Amend	Section 153.78
Development Agreements					
37	160D-105	Must process a development agreement as a legislative decision.	Required	Nothing Existing to Amend	Section 155.001
38	160D-1001(b)	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).	Required	Nothing Existing to Amend	Section 155.002
39	160D-1001(d)	May consider a development agreement concurrently with a rezoning, subdivision, or site plan; may consider a development agreement in conjunction with a conditional zoning that incorporates the development agreement.	Recommended	Nothing Existing to Amend	Section 155.003
40	160D-1006(d)	May mutually agree with a developer for the developer to provide public improvements beyond what could have been required, provided such conditions are included in the development agreement.	Recommended	Nothing Existing to Amend	Section 155.004
41	160D-1008	May include penalties for breach of a development agreement in the agreement or in the ordinance setting the procedures for development agreements; either party may bring legal action seeking an injunction to enforce a development agreement.	Recommended	Nothing Existing to Amend	Section 155.005
Comprehensive Plan					
42	160D-501(a)	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)	Required	Nothing Existing to Amend	Section 154.018
43	160D-501(c)	Must adopt a plan or a plan update following the procedures used for a legislative decision.	Required	Nothing Existing to Amend	Section 154.019
44	160D-501(a)	Must reasonably maintain a plan.	Required	Nothing Existing to Amend	Section 154.020

	G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
Legislative Decisions - Notice					
45	160D-601; S.L. 2020-25	Must follow applicable procedures for notice of legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; must adopt any development regulation by ordinance, not by resolution.	Required	Nothing Existing to Amend	Section 154.103
46	160D-602; S.L. 2020-25	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.	Required	Nothing Existing to Amend	Section 154.104
47	160D-602(c); S.L. 2020-25	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.	Required	Nothing Existing to Amend	Section 154.105
48	160D-202	For extension of ETJ, may use single mailed notice for ETJ and zoning-map amendment pursuant to statutory procedures.	Recommended	Nothing Existing to Amend	Section 154.106
49	160D-602(e)	For zoning-map amendments, may require applicant to notify neighbors and hold a community meeting and may require report on the neighborhood communication as part of the application materials.	Recommended	Nothing Existing to Amend	Section 154.107
Legislative Decisions - Planning Board Comment					
50	160D-604(c), 160D-604(e)	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.	Required	Nothing Existing to Amend	Section 154.108
51	160D-604(d)	Must have planning board consider any plan adopted according to G.S. 160D-501 when making a comment on plan consistency.	Required	Nothing Existing to Amend	Section 154.109
52	160D-604(c)	May refer development regulation amendments (other than zoning) to the planning board for review and comment.	Recommended	Nothing Existing to Amend	Section 154.110
Legislative Decisions - Plan Consistency					
53	160D-605(a)	When adopting an amendment to the zoning ordinance, must adopt a brief statement describing whether the action is consistent or inconsistent with approved plans.	Required	Nothing Existing to Amend	Section 154.111
54	160D-605(a)	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. (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.)	Required	Nothing Existing to Amend	Section 154.112

	G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
55	160D-501	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.	Required	Nothing Existing to Amend	Section 154.113
56	160D-605(b)	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.	Required	Nothing Existing to Amend	Section 154.114
57	160D-605 (c)	May consider and approve a statement of reasonableness and a plan consistency statement as a single, combined statement.	Recommended	Nothing Existing to Amend	Section 154.114(A)
Legislative Decisions - Voting					
58	160A-75 S.L.2019-111 Sec 2.5(n)	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.	Required	Nothing Existing to Amend	Section 154.114(B)
Certain Legislative Decisions					
59	160D-601; S.L. 2019-111, Pt.1.	Must prohibit third-party down-zonings; may process local government-initiated downzonings or down-zonings initiated by the landowner.	Required	Nothing Existing to Amend	Section 154.11(C)
60	160D-703(b); S.L. 2019-111, Pt.1.	Must obtain applicant's/landowner's written consent to conditions related to a conditional zoning approval to ensure enforceability.	Required	Nothing Existing to Amend	Section 154.114(D)
Quasi-Judicial Decisions - Procedures					
61	160D-102(28)	Must follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations.	Required	Nothing Existing to Amend	Section 154.050(C)
62	160D-406	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.	Required	Nothing Existing to Amend	Section 154.050(D)
63	160D-406(d)	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.	Required	Nothing Existing to Amend	Section 154.050(E)
64	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.	Required	Nothing Existing to Amend	Section 154.050(F)

	G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
65	160D-406(b)	May continue an evidentiary hearing without additional notice if the time, date, and place of the continued hearing is announced at a duly noticed hearing that has been convened; if quorum is not present at a meeting, the evidentiary hearing is automatically continued to the next regular meeting of the board with no notice.	Recommended	Nothing Existing to Amend	Section 154.050(G)
66	160D-406(c)	May distribute meeting packet to board members in advance of the evidentiary hearing; if this is done, then must distribute the same materials to the applicant and landowner at the same time; must present such administrative materials at the hearing and make them part of the hearing record.	Recommended	Nothing Existing to Amend	Section 154.050(H)
Certain Quasi-Judicial Decisions					
67	160D-705(c); S.L.2019-111 Pt.1; S.L.2020-25.	Must not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose.	Required	Nothing Existing to Amend	Section 154.050(I)
68	160D-1402(k); 160D-1403.2; S.L.2019-111 Pt.2	Must obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability.	Required	Nothing Existing to Amend	Section 154.050(J)
69	160D-405(c)	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.	Required	Nothing Existing to Amend	Section 154.050(K)
Administrative Decisions - Development Approvals					
70	160D-403(a)	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.	Required	Nothing Existing to Amend	Section 154.069
71	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.	Required	Nothing Existing to Amend	Section 154.070
72	160D-104	Must provide that development approvals run with the land.	Required	Nothing Existing to Amend	Section 154.071
73	160D-403(f)	For revocation of development approval, must follow the same process as was used for the approval.	Required	Nothing Existing to Amend	Section 154.072

	G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
74	160D-403(c); 160D-1111; S.L. 2020-25	May set expiration of development approvals if work is not substantially commenced; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c)). Be aware that legislation will clarify the provisions on duration of development approvals.	Recommended	Nothing Existing to Amend	Section 154.073
75	160D-403(d) 160D-703(b) 160D-705(c)	May authorize administrative staff to approve minor modifications of development approvals and conditional-zoning approvals; if this is done, then must define "minor modifications" by ordinance and must not include modification of permitted use or density of development; major modifications must go through full applicable approval process.	Recommended	Nothing Existing to Amend	Section 154.074
Administrative Decisions - Development Determinations					
76	160D-403(b)	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.	Required	Nothing Existing to Amend	Section 154.069(A)
Administrative Decisions - Appeals of Administrative Decisions					
77	160D-405	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.)	Required	Nothing Existing to Amend	Section 154.070
78	160D-405(c)	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.	Required	Nothing Existing to Amend	Section 154.071
79	160D-406	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.	Required	Nothing Existing to Amend	Section 154.072
80	160D-405	Must pause enforcement actions, including fines, during the appeal.	Required	Nothing Existing to Amend	Section 154.073
Vested Rights					
81	160D-1111	Must recognize that building permits are valid for six months, as under prior law.	Required	Nothing Existing to Amend	Section 154.301
82	160D-180(d)	Must recognize the default rule that development approvals/permits are valid for twelve months, unless altered by statute or extended by local rule.	Required	Nothing Existing to Amend	Section 154.302

	G.S. 160D Section(s)	Description	Required or Recommended	Updated Ordinance Sections	New Ordinance Sections
83	160D-108.1	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.	Required	Nothing Existing to Amend	Section 154.303
84	160D-108(c); 160D-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. (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)	Required	Nothing Existing to Amend	Section 154.304
Permit Choice					
85	143-755; 160D-108(b)	Must not make an applicant wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules.	Required	Nothing Existing to Amend	Section 154.305
Judicial Review - Appeals of Quasi-Judicial Decisions					
86	160D-947	Must update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts; default rules 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.	Required	Nothing Existing to Amend	Section 154.087(A)
87	160D-947 160D-1405	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.	Required	Nothing Existing to Amend	Section 154.087(B)