

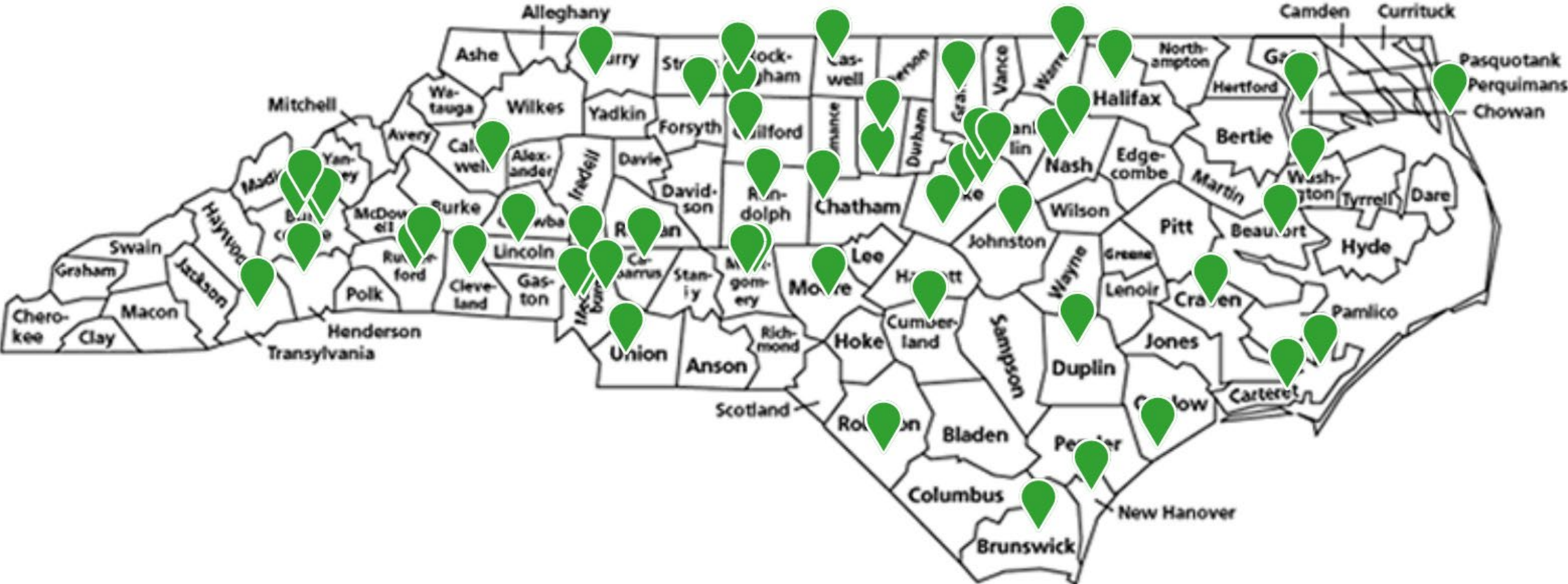
# Legal and Legislative Update

APA-NC Annual Conference

Jim Joyce and Adam Lovelady

October 12, 2023

# Where are you from?



[www.pollev.com/adamlovelady](http://www.pollev.com/adamlovelady)









BOARD STRUCTURE & PROCEDURES

### The Most Common Oaths of Office Question

08/04/22

PUBLIC HEALTH

### NC's COVID State of Emergency to End, National Public Health Emergency to Continue (For Now)

07/29/22

UNIFORM GUIDANCE

Search this site...

MICROSITE

## Planning and Development Regulation

OVERVIEW

### Highlights

This site focuses on local development regulation in North Carolina, including zoning, land subdivision, historic preservation, and other land use law highlights of certain opportunities and resources. Follow the category (the side) for more complete information.

Note the recently released 2021 Legislative Bulletin.

### Courses and Training

The School of Government offers a range of courses and training focused on development regulations, from multi-week professional development workshops. While the structure and format of the courses have evolved, the content and emphasis on practical knowledge continues. Check out this page for more details.

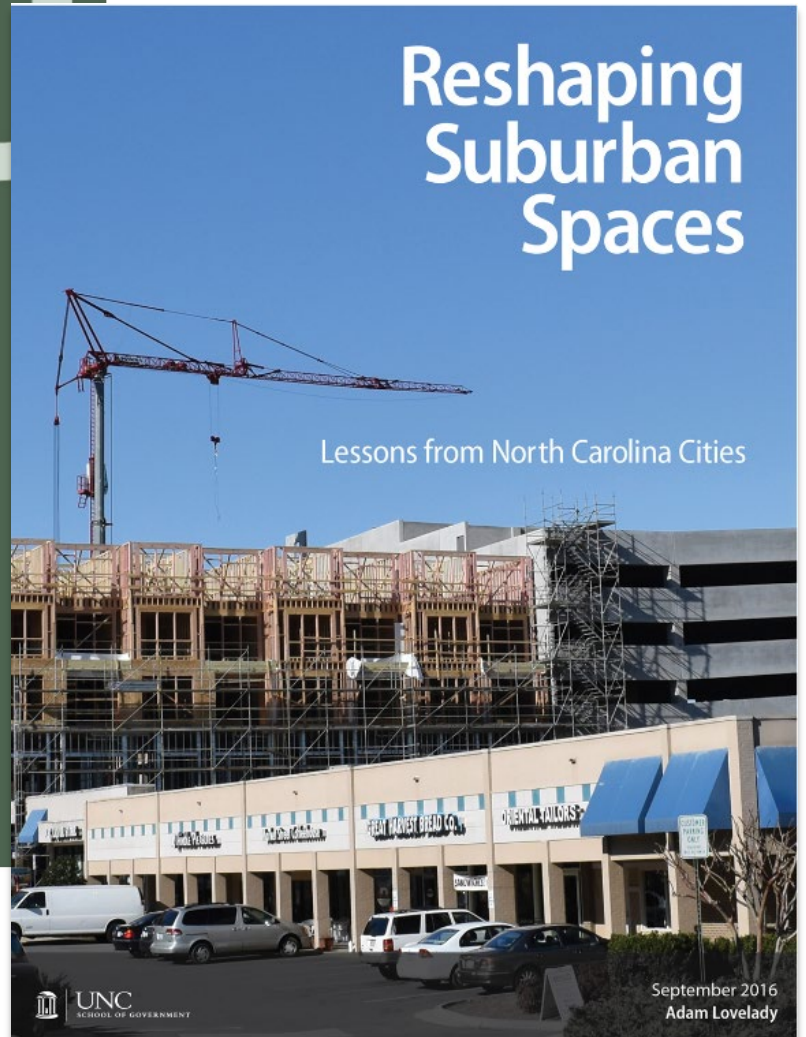
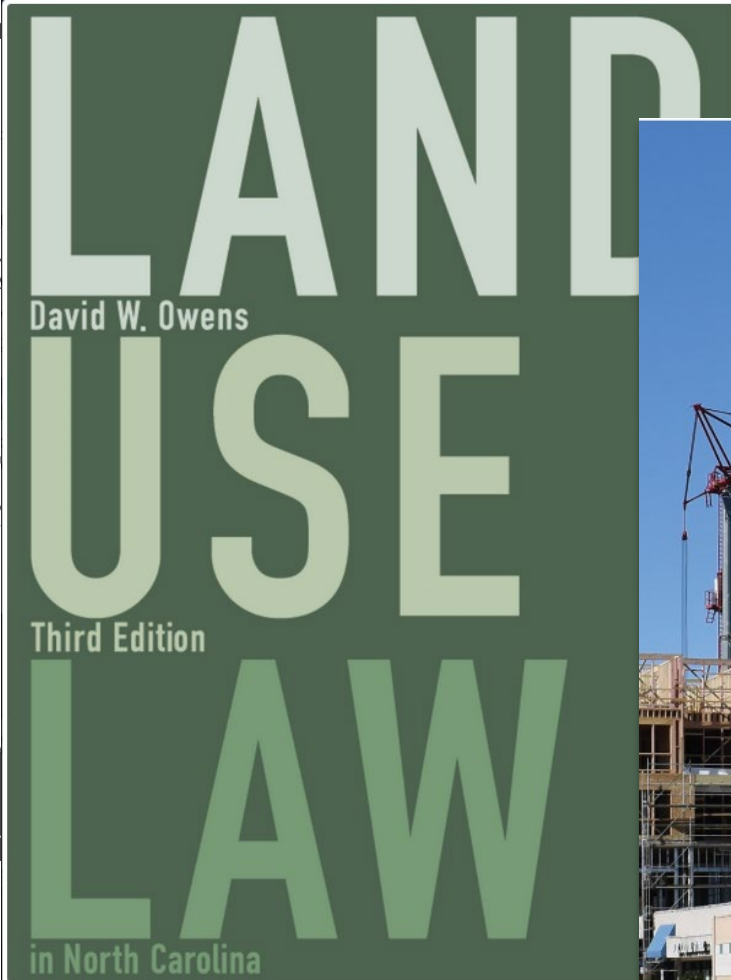
### Publications and Resources

Books and Reports on Planning and Zoning

Check out the Publications page for more details about books, reports,

 Report an issue

All website support requests are submitted via the School of Government





<https://hrp.sog.unc.edu>



# HISTORIC RESILIENCE PRIMER

*Resilient Adaptation Strategies for North Carolina's Historic Properties*



## A HANDBOOK FOR HISTORIC RESILIENCE COMMUNITY PLANNING

*Protecting North Carolina's History, Culture, and Economy from Natural Hazards*



## RESILIENCE DESIGN STANDARDS

*Model Standards for North Carolina's Historic Properties*



# HISTORIC RESILIENCE WORKSHOPS

**NOVEMBER 8, 2023 - BILTMORE VILLAGE, ASHEVILLE**

**NOVEMBER 14, 2023 - REVOLUTION MILLS, GREENSBORO**

**NOVEMBER 30, 2023 - ROCKY MOUNT MILLS, ROCKY MOUNT**

**DECEMBER 7, 2023 - DOWNTOWN, NEW BERN**

**DECEMBER 14, 2023 - ONLINE**

**[HTTPS://WWW.SOG.UNC.EDU/COURSES/HISTORIC-RESILIENCE-WORKSHOPS](https://www.sog.unc.edu/courses/historic-resilience-workshops)**

Nobody has responded yet.

Hang tight! Responses are coming in.



**Building Code**  
**Zoning and Infrastructure**  
**Renewable Energy**  
**Agricultural Uses**  
**Local Environmental Regulation**  
**Local Legislation**  
**Related Topics**

# Residential Building Code

S.L. 2023-108, H.B. 488

- Residential Code Council
  - 13 members, appointed by General Assembly and Governor
  - Review and consider revisions and updates to Residential Code (including trades)
  - Hear appeals from the Residential Code (including trades)
- Expanded Scope of Residential Building Code
  - Now includes three-family (triplex) and four-family (quadplex) dwellings
- Review and repeal Energy Conservation Standards

# Commercial and Multifamily Building Permits

S.L. \_\_\_ (S.B. 677)

- Pre-submittal meeting must be scheduled within five days
- 45-day shot clock for plan review (60 days for project with at-risk permits)
- Third-party Plan Review (independent licensed architect or engineer)
- At-Risk Permits (prior to plan approval)
  - at-risk building foundation permit
  - at-risk building structure permit
- Erosion and sedimentation control plans (can't wait on other permits)
  
- Effective July 1, 2024



# Other Building Code Changes

- Threshold Amount for Building Permits and General Contractors (move up to \$40,000) (S.L. 2023-108, H.B. 488)
- No Routine Sheathing Inspections (except where ultimate wind speed is greater than 140 mph) (S.L. 2023-108, H.B. 488)
- Single residential permit (no more than one building permit for simultaneous projects at the time) (S.L. 2023-108, H.B. 488)
- Piers and docks standards back to 2009 standards (S.L. \_\_\_\_ (H.B. 600))
- Technical changes to the specifications for elevators in residential rental accommodations (S.L. 2023-68 (H.B. 608))



**Building Code**  
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# Design Standards and Residential Code

(S.L. 2023-108, H.B. 488)

- Limit on regulating “building design elements”
- Scope broadened to three- and four-family dwellings



# Private Driveway Standards

(S.L. 2023-108, H.B. 488)

- Driveway construction standards no more stringent than NCDOT
- Must accept designs signed and sealed by engineer to meet vehicular and fire apparatus requirements (developer disclosure to buyers)
- Applies to “new privately owned driveways, parking lots, and driving areas associated with parking lots within a new development or subdivision that the developer designates as private and that are intended to remain privately owned after construction.”
- Does not limit local government or NCDOT authority “to regulate private roads, driveways, or street connections to a public system, or to regulate transportation and utilities.”

# Limit Fire Access Roads

S.L. 2023-137 (H.B. 600)

- local development regulations may not “[r]equire additional fire apparatus access roads into developments of one- or two-family dwellings that are not in compliance with the required number of fire apparatus access roads into developments of one- or two-family dwellings set forth in the Fire Code of the North Carolina Residential Code for One- and Two-Family Dwellings.”

# Required Water and Sewer Connections

- local government “may only require connection of an owner's premises to a sewer line, however, if the [local government] has adequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection.”  
(S.L. 2023-108 (H.B. 488))
- Exemptions from required water and sewer connections in certain circumstances  
(S.L. 2023-90 (H.B. 628))



# S.L. 2023-90 / H628, Amend Onsite Wastewater and Environmental Statutes

## NEW EXEMPTIONS FROM REQUIRED WATER AND SEWER CONNECTIONS [SEC. 10]

- From city-mandated sewer connection
  - If city sewer system does not have capacity
  - If cost to connect is greater than cost of on-site wastewater
- From city-mandated water connection
  - If system will not generate “adequate” water pressure (avg of customers within ¼-mile)
- From county-mandated sewer connection
  - Can only require connection to county sewer if the county has adequate capacity

# S.L. 2023-55 / S673 Wastewater Regulatory Relief Act

## CAPACITY LIMITS

- Adopts 15A NCAC 02T .0118 rules regarding sewer line extensions for public wastewater treatment systems nearing 80% capacity
- Submit evaluation of future demand will be met before exceeding 80%
- Obtain all permits for expansion before exceeding 90%

# S.L. 2023-55 / S673 Wastewater Regulatory Relief Act

- Can exceed permitted capacity if:
  - Have signed contract for expansion of system
  - County has growth rate over 2%/yr or in top 20% fastest growing in State
  - System still meets permitted flow and pollutant discharge limits
- By how much?
  - 110% of existing system capacity
  - IF expansion is within 24 months of completion, can allocate 115%
  - BUT no going over capacity after expansion without DEQ approval



**Building Code**  
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# Solar Decommissioning

## S.L. 2023-58 (H.B. 130)

- Applies to utility-scale solar projects (over 2 megawatts)
- Decommissioning requirement: disconnect, remove and dispose of equipment, restore site
- Decommissioning plan
- Financial assurance (amount acceptable to DEQ)
- Registration with DEQ (every five years)
- Local government decommissioning requirement may be more stringent
- S.L. 2023-137 (H.B. 600): PVs not salvaged/recycled must be disposed in industrial or municipal landfills



# ~~Renewable~~ Clean Energy Portfolio Standards

S.L. 2023-138 (S.B. 678)

- Changes REPS to CEPS
- Adds nuclear as energy resource counting toward the standard



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# S.L. 2023-63 / S582 Farm Bill

- Expanding / clarifying **agriculture definitions**
  - Income from honey sales can be used to meet the income requirement to be “agricultural” for purposes of present use tax valuation.
  - Recycling turkey brooder litter is a bona fide farm use for purposes of the zoning exemption in G.S. 160D-903
  - Harvesting pine needles and producing biofuel for commercial sale are agriculture

# S.L. 2023-63 / S582 Farm Bill

- **Farm-related signs** can be placed along state highway rights-of-way under similar conditions to commercial and political signs (G.S. 136-32) IF
  - (i) they relate to a bona fide farm and
  - (ii) the sign either advertises the farm or its products or services or provides directions to the farm
- Civil penalties for **removing timber** from riparian buffers cannot exceed the value of the timber removed from the buffer [Sec. 11.1(a)]



## S.L. 2023-63 / S582 Farm Bill

- Many other tidbits – what counts as a “farm digester system,” promoting muscadine grape juice and replacing scuppernong with muscadine as official state fruit, modifying timber larceny and prescribed burning laws, establishing a state equine trail in south-central North Carolina, identifying the longleaf pine to represent the pine tree for purposes of North Carolina’s state tree ...





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# Stormwater

- Developer can opt for erosion and sedimentation review fee to be no more than \$100/lot for single-family lots less than 1 acre [S.L. 2023-108 (H.B. 488), s. 13]
- Local govs transfer stormwater permits when management system transfers from developer to owners association same as DEQ [S.L. 2023-108 (H.B. 488), s. 13.1]
- Local gov cannot charge for maintenance of private stormwater (but may require owner to hold funds for maintenance up to 10% of construction cost) [S.L. 2023-108 (H.B. 488), s. 13]
- In joint stormwater program, applicant may choose jurisdiction to which to apply [S.L. 2023-137 (H600) s. 2]

# Erosion and Sedimentation Control

- Budget Bill s.12.10(c)
  - No *denying* erosion and sedimentation control plan approvals based *only* on the applicant obtaining other environmental permits, other than NCG01 general stormwater permit for construction activities
  - Instead, condition approval of an erosion and sedimentation control plan on obtaining other environmental permits or authorizations.

# Water Supply Watershed protection

- Redevelopment may exceed allowable density under WSW rules if net increase in built-upon area above pre-existing development is treated [S.L. 2023-137 (H600) s. 1]
- Portions of development within state or municipal right-of-way do not count toward impervious surface coverage [S.L. 2023-137 (H600) s. 2]

# Nutrient offsets

- Local governments can only sell nutrient offset credit to other government entities to private entities
  - **EXCEPT** if the nutrient offset banking instrument was approved by the Department of Environmental Quality prior to October 10, 2023.



# Wetland regulation

## PART 1 – THE SACKETT CASE

- Clean Water Act protects “waters of the United States,” including nearby wetlands
- Long-standing question: but how far?
  - “adjacent” means on the other side of some feature OR
  - “adjacent” means connected by some “nexus”
- SCOTUS: NEW RULE – must have “continuous surface connection” such that border is “indistinguishable”



Image from [National Resources Defense Council](#), crediting *Pacific Legal Foundation* via flickr



## Farm Bill (S.L. 2023-63 / S582) Section 15

“Wetlands classified as waters of the State are restricted to waters of the United States...”





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# Local Legislation for Local Disputes

- Maggie Valley (S.L. 2023-99 / H184)
  - strip ETJ authority, prohibit moratoria, limit down zonings (expires 1/1/2028)
- Leland (S.L. 2023-100 / H267)
  - suspends all annexation authority for Town of Leland for petitions executed after 3/1/2023
- Dare County (appropriations bill s. 24.8)
  - affordable housing projects related to S.L. 2022-74 grant exempt from zoning

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# Economic development

## OPPORTUNITIES IN BUDGET BILL (S.L. 2023-134 / H259) AND BEYOND

- Megasites: Allows for two additional megasites in the state, adds the semiconductor industry, allows Megasite Fund grants to be used for due diligence and infrastructure planning, and allows certain public records to be withheld. [s.11]
- Grants for parks and trails: Section 14.4 provides 5:1 matching grants for improving accessibility at parks and recreational facilities, and Section 14.6 also starts a “Great Trails Fund” that can be accessed by local governments, regional councils of government, and other entities.
- Major Events, Games, and Attractions Fund: Sports wagering bill (S.L. 2023-42 / H347) includes new fund supplied by sports wagering tax to retain or attract “major events” (not necessarily sporting events) that (i) occur less than annually (ii) at a site chosen through a competitive process that is a sports facility OR is sponsored by NASCAR, the LPGA, the PGA, the PGA Tour, or the USGA.



# S.L. 2023-42 / H347, Sports Wagering / Horse Race Wagering

- Legal effective January 8, 2024
- New Article 9 (“Sports Wagering”) of Chapter 18C
- Licensing and regulatory requirements





# S.L. 2023-42 / H347, Sports Wagering / Horse Race Wagering

- What
  - sporting events, portions of sports events, and participant statistics
  - parlays, over-unders, in-game bets, moneyline bets, and several others (but no pari-mutuel)
  - NO: youth sports, injuries or penalties, disciplinary proceedings, replay reviews
- Where
  - “sporting facilities” – NASCAR tracks that host more than one race per year, Golf tournament hosts where more than 50,000 live spectators are expected, and home arenas for major pro sports teams
  - Other venues that hold 22,000 or more people
  - Up to one “place of public accommodation” nearby

# S.L. 2023-42 / H347, Sports Wagering / Horse Race Wagering

- Horse racing
  - New Article 10 to General Statutes Chapter 18C
  - Allows pari-mutuel wagers on live or simulcast horse races
  - Lottery Commission to adopt rules governing horse racing, including rules regarding bets on simulcast horse races
  - Establishments must be licensed
  - Location restrictions?
- ALSO gambling-related: Budget Bill s. 4.3A bans in-person and online “casino-style table games”

# Online Marketplace

S.L. 2023-137 (H600), S.27

- No local government may regulate operation of an online marketplace or require an online marketplace to provide personally identifiable information of user, except by court order.
- “online marketplace” = a person or entity that does both of the following:
  - (1) provides a web-based platform through which a service is advertised or offered, and
  - (2) provides a payment system between users, communicates offers and acceptance between users, or provides the electronic infrastructure to bring users together.



# Plastic Bags

## ANOTHER BUDGET BILL PROVISION

- Appropriations act s. 5.9 (d) and (e)
  - Prohibits cities and counties from regulating the use, disposition, or sale of “auxiliary containers” and the use of shopping carts or fines for failing to get shopping carts back
    - Auxiliary containers include most food, beverage, and merchandise containers.
  - Allows cities and counties to operate recycling programs as already allowed and to regulate use of auxiliary containers on property owned or maintained by the local gov’t

# Other Bills of Note

## CONSIDERED BUT HAVE NOT PASSED (YET)

- S.B. 692: schools permitted by right or by special use in commercial zones
- S.B. 675: no new ETJ (and keep ETJ only in larger pop counties), cap minimum lot size, allow public schools in commercial zoning districts, other land use changes
- H.B. 562/S.B 317: Define and permit “workforce housing”

