

STAFF MEMORANDUM

Council Work Session – 09/16/2020



CHAPTER 160D: DETERMINING UPDATES TO THE LAND USE MANAGEMENT ORDINANCE, TOWN CODE, AND OTHER POLICIES

In 2020 and 2021, the Town of Chapel Hill Planning Department will be recommending updates to the Land Use Management Ordinance (LUMO) and other sections of the Town Code to align our regulations with new State legislation commonly referred to as '160D'. These updates are necessary for the Town's development regulation functions to continue operating in compliance with State law.

PROJECT PURPOSE

To bring LUMO and other Town regulations into compliance with State law, as revised with the adoption of [Session Law 2019-111](#)¹ and [Session Law 2020-25](#)², and establishment of [Chapter 160D](#)³.

BACKGROUND

'160D' refers to the new section of the NC General Statutes that contains the rules for how local jurisdictions can exercise land use authority in areas such as zoning and subdivisions. Chapter 160D was established under Session Law 2019-111 (with later technical corrections under Session Law 2020-25) and was signed into law in the summer of 2019. Part I of the Session Law went into effect at that time. Part II, which clarifies, consolidates, and reorganizes land-use regulatory laws, will go into effect on or before July 1, 2021 (the effective date varies based on when jurisdictions adopt amendments to implement 160D).

More information on the State's enactment of Session Laws and Chapter 160D is available at the [Town's project webpage](#)⁴.

PART I PROVISIONS

Staff introduced the 160D updates to Council at the [June 17, 2020 Special Meeting](#)⁵. The focus of that item was on Part I topics. Council members met in small groups following the June 17th meeting to further discuss the implications of Part I. This fall, staff plans to move into discussion of Part II topics.

¹ <https://www.ncleg.gov/BillLookup/2019/S355>

² <https://www.ncleg.gov/BillLookUp/2019/S720>

³ https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_160D.html

⁴ <https://www.townofchapelhill.org/government/departments-services/planning/plans-and-ordinances/160d-updates-4113>

⁵ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=4569906&GUID=0CE76AA5-06B3-4421-8884-D0D1FBD81E30>

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PART II PROVISIONS FOR DISCUSSION

The Land Use Management Ordinance and Town Code need updates to maintain compliance with State law, as revised by the adoption of Part II of Session Law 2019-111 and establishment of Chapter 160D.

For this Work Session, staff seeks Council feedback on four topics. Additional topics will be covered at the October Council Work Session.

Topics for September Work Session:

- 1. Conditional Use District Zoning**
- 2. Expanding the Usefulness of Conditional Zoning**
- 3. Advisory Board Review of Special Use Permits**
- 4. Appeal of Historic District Commission Decisions**

1. Conditional Use District Zoning

Chapter 160D eliminates the use of *Conditional Use District Zoning*, which is the practice of combining a quasi-judicial Special Use Permit with a legislative rezoning. This is the option typically used in Chapel Hill for placing conditions on a rezoning approval.

After the effective date of Part II, Council may continue to review and issue Special Use Permits (SUPs) as authorized by LUMO. However, there will no longer be an option to link the conditions of a Special Use Permit to the rezoning of a site.

If a project needs a rezoning, the options available under Chapter 160D are General Use Zoning and Conditional Zoning. When site specific conditions are needed or desirable, staff recommends Council consider the project under *Conditional Zoning* review (discussed further in the next section).

If a project can be developed under current zoning, SUP review will continue to be an appropriate tool for circumstances such as special uses (e.g., a Drive-in window) or when a project trips certain thresholds established in the LUMO.

The discontinuation of *Conditional Use District Zoning* also affects past actions. One provision of S.L. 2019-111 specifies that on January 1, 2021, all existing *Conditional Use* districts will automatically convert to *Conditional Zoning* districts. Note that this date is before the effective date of the rest of Chapter 160D, which means that the Town must comply prior to adopting 160D LUMO amendments. The effect of the zoning district conversion will be more a matter of terminology than substance. Zoning district suffixes on the Zoning Atlas will need to be updated. For example, OI-1-C will become OI-1-CZD. The conditions of the previously adopted Special Use Permits will continue to remain valid and in effect.

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EFFECTS OF NEW STATE LAW
<ul style="list-style-type: none">A. <i>On or before July 1, 2021</i>, linking an SUP approval to a rezoning approval will no longer be possible (Conditional Use District Zoning)B. Standalone review of SUPs may continue for projects where no rezoning is neededC. Conditional Zoning is available as a tool to link conditions to a rezoning through a legislative decisionD. <i>On January 1, 2021</i>, existing –C districts must be denoted as –CZD districts
IMPLEMENTATION ACTIONS
<ul style="list-style-type: none">A. Eliminate Conditional Use District zoning as an option for development reviewB. Remove references to Conditional Use District zoning throughout LUMOC. Create R-3-CZD and R-4-CZD districts in LUMO to support the conversion of all existing –C districts
POLICY CHOICES
<p>Council may choose to pursue A. or B. below as well as C to allow Conditional Zoning as a substitute for Conditional Use District Zoning:</p> <ul style="list-style-type: none">A. Create R-3-CZD and R-4-CZD only, supporting current practice plus the conversion of –C zoningB. Create additional –CZD parallel districts to match all of the –C parallel districts that are currently in LUMO (e.g. R-1-CZD and R-2-CZD)C. Adapt the districts that currently require an SUP (R-SS-C and MU-V) to be available to implement through Conditional Zoning

2. Expanding the Usefulness of Conditional Zoning

Conditional Zoning is a process that can accomplish many of the same objectives as *Conditional Use District Zoning*, specifically the ability to place conditions on a rezoning. It could become more common in Chapel Hill. A key difference is that *Conditional Zoning* is solely a legislative process and not combined with a Special Use Permit or other quasi-judicial review.

The table below provides more information on the hearings required for each type of zoning review. Notably, *Conditional Zoning* public hearings offer the opportunity for broad public participation and more leeway for Council decision-making.

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Review Type:	Conditional Zoning	Conditional Use District Zoning
Hearings Required:	Legislative only	<u>Rezoning</u> : Legislative
		<u>SUP</u> : Quasi-judicial
Ex Parte Communication:	Allowed outside of the hearing, with anyone	<u>Rezoning</u> : Allowed outside of the hearing, with anyone
		<u>SUP</u> : Not allowed outside the hearing, must be only witnesses and parties with standing
Findings for Decision:	Discretion of Council	<u>Rezoning</u> : Discretion of Council
		<u>SUP</u> : Findings of Fact (LUMO 4.5.2)
Evidence for Decision:	Information based on facts or opinions	<u>Rezoning</u> : Information based on facts or opinions
		<u>SUP</u> : Fact-based evidence only

Prior to the Town’s adoption of *Conditional Zoning*, many development options required a *Special Use Permit*. Specifically, Planned Developments, which permit additional uses when a project is appropriately designed, are currently allowed with an SUP, and Master Land Use Plans, which permit greater flexibility for design and use can be granted to larger sites, with an SUP.

EFFECTS OF NEW STATE LAW
Because Chapter 160D eliminates Conditional Use District Zoning, we expect to see Conditional Zoning review become a more common practice. Conditional Zoning applicants may benefit from having some options that LUMO currently only offers for Special Use Permits.
IMPLEMENTATION ACTIONS
No policy change is required, but choices are available.
POLICY CHOICES
Council may choose to pursue either of the following options to expand the functionality of Conditional Zoning, or may choose to do neither. <ul style="list-style-type: none"> A. Adapting the <i>Planned Development</i> overlay provisions to be implemented through Conditional Zoning. This would give Council more flexibility to consider appropriate uses for a proposed rezoning. B. Adapting the <i>Master Land Use Plan</i> process to be implemented through Conditional Zoning. This would allow Council to consider rezonings tied to a master plan. A procedure for subsequent review of more detailed site plans would then need to be defined. Site plans for individual phases could be reviewed administratively, by Planning Commission, or by Council.

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3. Advisory Board Review of Special Use Permits

Chapter 160D clarifies the options for including Development Review Advisory Boards and Commissions in a quasi-judicial process. Advisory Boards, including the Planning Commission, do have the ability to review Special Use Permits. However, their recommendations **may NOT** be used as the basis for a Council decision on the Special Use Permit. The Council decision must be made based on evidence presented at the public hearing.

The procedures in LUMO for Special Use Permit review currently include a review by the Planning Commission and a recommendation from the Commission to Council. Policy outside of LUMO allows additional Advisory Boards to review and make recommendations on SUP applications. By conducting public hearings in accordance with the provisions of Chapter 160D, it is unclear what value the Advisory Board review of Special Use permits would serve.

EFFECTS OF NEW STATE LAW
<ul style="list-style-type: none">A. <i>On or before July 1, 2021</i>, the Council may no longer make decisions on SUP applications that are based, in any part, on recommendations of the Planning Commission or other Advisory Boards.B. Council may continue to consider such recommendations when making decisions on Conditional Zonings, Concept Plans, and other non-quasi-judicial applications
IMPLEMENTATION ACTIONS
<ul style="list-style-type: none">A. Council members must ensure that they are applying proper decision-making criteria.B. Update SUP procedures in LUMO so that the Planning Commission is not making a recommendation on SUP applications.
POLICY CHOICES
<p>Council may choose to pursue one of the following options:</p> <ul style="list-style-type: none">A. Discontinue review by Planning Commission and other Advisory Boards during the Special Use Permit review processB. Advisory Boards and the Planning Commission continue to review SUP applications, with the understanding that this review is an informal, preliminary discussion of the application that will NOT be used by the Council when making a decision. Stipulate that Advisory Boards will not provide recommendations to Council during SUP review

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4. Appeal of Historic District Commission Decisions

Chapter 160D provides the Town with two different options for how decisions of the Historic District Commission (HDC) are appealed.

The LUMO currently allows anyone with standing who disagrees with an HDC decision to appeal to the Board of Adjustment (BOA). A decision of the BOA can then be appealed to NC Superior Court. For example, if the HDC issues a Certificate of Appropriateness and a neighboring property owner with standing wishes to contest this decision, they would file a BOA Appeal application.

Since 2007, the BOA has heard 14 appeals of HDC decisions. In five of these cases, the HDC decision was overturned. In two of the 14 cases, the proceedings continued to Superior Court. Appealed decisions represent just a small percentage of all BOA decisions made in the same period.

EFFECTS OF NEW STATE LAW
Appeals of HDC decisions may continue going to the BOA (current practice), or bypass the BOA and go directly to Superior Court (new option offered by State law). A change to the process can be made now or in the future.
IMPLEMENTATION ACTIONS
No policy change is required, but choices are available.
POLICY CHOICES
Staff has considered the advantages of each option for HDC appeals, and provides the following assessment: <u>Appeals to BOA</u> <ul style="list-style-type: none">- Avoids Court costs for Town- Shorter process for applicant – no long wait for a court date- Less workload for Town Attorney's Office- Opportunity for Town to look critically at decisions that result in Appeals <u>Appeals to Superior Court</u> <ul style="list-style-type: none">- Less workload for BOA members- Avoids tension between HDC and BOA if a decision is overturned

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PROPOSED PROCESS

The steps below outline the process currently underway for executing 160D Updates.

1.	Staff assesses necessary changes to Town Code	March-July 2020
2.	Council introduction	June 2020
3.	Public Engagement – Building Familiarity	July-September 2020
4.	Council discussion of necessary changes and policy options	September-October 2020
5.	Public Engagement – Policy Choices	October 2020 - January 2021
6.	Draft Text Amendments	February 2021
7.	Planning Commission Review	February-March 2021
8.	Council Review and Adoption	April-May 2021
9.	Chapter 160D Effective Date	July 1, 2021 <i>Or upon Council adoption, whichever occurs first</i>

Opportunities for Council consideration are highlighted **in blue**.

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PROPOSED PUBLIC ENGAGEMENT STRATEGY

The public engagement strategy for this project includes four phases. The current phase is '**Building Familiarity**', which involves sharing information about Chapter 160D with stakeholders and the public. Following the September and October Council Work Sessions, public engagement will shift into the **Policy Choices** phase, which will involve stakeholder input on the guidance provided by Council for 160D updates.

I. Building Familiarity	
Introduce the public to the key elements of Chapter 160D and how it compares with current Chapel Hill approaches to land use regulation. Educate the public on planning and zoning concepts that relate to the provisions of Chapter 160D.	
July - September 2020	Web page and Stakeholder outreach
II. Policy Choices	
Seek stakeholder feedback on implementing the provisions of Chapter 160D, once Council identifies alternatives to discuss with the community. Gather concerns about proposed changes.	
October 2020 - January 2021	Public meetings, Online survey
III. Draft Text Amendments	
Share draft Code language with the public. Determine support and ongoing concerns.	
February - May 2021	Public meetings, Online comment form
IV. Implementation Resources	
Educate the development community and others who interact with our development regulations about the adopted changes.	
Following Council adoption	Materials and methods to be determined