



CONSIDER A LAND USE MANAGEMENT ORDINANCE TEXT AMENDMENT - PROPOSED CHANGES TO SECTION 8.5, COMMUNITY DESIGN COMMISSION - AND UPDATES TO THE ADVISORY BOARD MEMBERSHIP POLICY

STAFF REPORT

TOWN OF CHAPEL HILL PLANNING DEPARTMENT
Colleen Willger, Director
Corey Liles, Principal Planner
Adam Nicholson, Senior Planner

<p>AMENDMENT REQUEST</p> <p>Consider reducing the number of member seats on the Community Design Commission, given recent challenges with recruitment and retention. Consider associated reductions to the thresholds for quorum and voting, to maintain simple majorities.</p>	<p>DATE</p> <p>October 13, 2021</p>
<p>UPDATES SINCE LEGISLATIVE HEARING (held on September 1, 2021¹)</p> <ul style="list-style-type: none"> No changes have been made to the proposal for revising rules of the CDC The Planning Commission recommended approval of the text amendment on September 7, 2021 	
<p>TOWN MANAGER’S RECOMMENDATION</p> <p>I have reviewed and discussed key issues with Town staff. Based on the information in the record to date, I believe the Council could make the findings required to approve the proposal, and therefore should:</p> <ol style="list-style-type: none"> close the legislative hearing; adopt Resolution A for Consistency with the Comprehensive Plan; enact Ordinance A to amend Section 8.5 of the Land Use Management Ordinance; and adopt Resolution B updating the Advisory Board Membership Policy 	
<p>ADDITIONAL INFO</p> <ul style="list-style-type: none"> The proposal is in response to the Community Design Commission (CDC) petitioning Council on February 23, 2021. The CDC currently has three vacant seats. The CDC has had at least one vacant seat out of nine total seats since July 2019. With six currently active CDC members, a meeting must be rescheduled or cancelled if there is more than one absence. No decision can be made on an official action if there is more than one ‘Nay’ vote. 	<p>PROCESS</p> <ol style="list-style-type: none"> Receive CDC Petition Initiate Text Amendment Process Call the Legislative Hearing Community Design Commission Review Legislative Hearing Planning Commission Review Consider Action
<p>DECISION POINTS</p> <p>Proposed amendments to the rules of the Community Design Commission include the following:</p> <ul style="list-style-type: none"> Move the rules for membership, quorum, and voting from LUMO to the Council’s Advisory Board Membership Policy, and update LUMO to further reference that Policy; Reduce the number of Commission member seats from 9 to 7; Reduce the number of members needed for quorum from 5 to 4; Reduce the number of concurring votes needed for formal action from 5 to 4. <p>To enact a Land Use Management Ordinance Text Amendment, Council must consider whether it achieves one or more of the following three purposes:</p> <ol style="list-style-type: none"> To correct a manifest error in the chapter Because of changed or changing conditions in a particular area or in the jurisdiction generally To achieve the purposes of the Comprehensive Plan. 	

¹ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=5120300&GUID=6C7BF1EE-D3D9-418D-B083-050B64AEC7EA>

ATTACHMENTS

1. Technical Report
2. Draft Staff Presentation
3. Resolution A, Consistency with the Comprehensive Plan
4. Ordinance A, Enacting the Land Use Management Ordinance Text Amendment
5. Resolution B, Adopting the Advisory Board Policy
6. Resolution C, Denying the Proposal
7. Community Design Commission Recommendation
8. Planning Commission Recommendation



TECHNICAL REPORT RULES OF THE COMMUNITY DESIGN COMMISSION, SECTION 8.5

This report provides various considerations for the proposed LUMO text amendment to revise rules of the Community Design Commission

BACKGROUND AND NEXT STEPS

February 23, 2021	The Community Design Commission (CDC) petitions Council to consider a reduction of Commission member seats
February 25, 2021	Council Committee on Boards and Commissions recommends full Council consideration of the petition
March 24, 2021	Council formally initiates a text amendment process to consider revisions to membership, quorum, and voting rules of the CDC
June 23, 2021	Council calls a legislative hearing to consider the LUMO text amendment
August 24, 2021	Community Design Commission reviews and makes recommendation on proposed LUMO text amendment
September 1, 2021	Council holds legislative hearing to consider LUMO text amendment
September 7, 2021	Planning Commission reviews and makes recommendation
October 13, 2021	Council considers actions on LUMO text amendment and related update to the Advisory Board Membership Policy

CURRENT CDC MEMBERSHIP RULES

- 9 Member Seats on the Community Design Commission
- 5 Members in attendance needed for Quorum
- 5 Concurring Votes needed to take any formal action. This includes approval or denial of a Blue Hill Certificate of Appropriateness. This does not include building elevation reviews and recommendations to Council, which may be approved with a simple majority of members present.

The CDC has had 9 member seats since 2014, when the number of seats was reduced from 10 to 9. Quorum has been set to equal a majority of seats.

Staff compared the sizes of other appearance commissions in the region and noted that Carrboro, Graham, and Chatham County all currently have 9-member commissions. A greater number of member seats was typical among larger communities such as Raleigh and Durham.

Council applied the 5-member concurring vote threshold through a LUMO text amendment on June 27, 2018. The text amendment required that the Planning Commission, Historic District Commission, and Community Design Commission all take formal actions through a majority vote of total member seats, rather than a majority vote of members present. The purpose of the change was to prevent instances of significant decisions being made by only a few people.

CHALLENGES FOR THE COMMISSION AND STAFF

There are currently six active CDC members and three vacant seats. Since July 2019, at least one seat has been vacant out of the nine total. Challenges created by this situation include:

- **Time and effort spent on recruiting and interviewing candidates.**
The Commission has held interviews outside of the typical spring cycle to try to fill vacant seats. This does not always result in new appointments.
- **Meetings must be rescheduled or cancelled if there is more than one absence.**
Staff notes that in the past year, absences have resulted in one meeting (December 2020) needing to be rescheduled. In recent years there have been high levels of attendance, with most Commission members only being absent once per year (on average) or less. However, there is always the risk that attendance patterns could change over time.
- **No decision can be made when there is more than one 'Nay' vote.**
This applies to formal actions only. The result of two 'Nay' votes is not denial of an application, but rather lack of decision and lack of clear path forward. While no formal application review in recent years has resulted in lack of decision, the risk remains.

PROPOSED CHANGES

Council reviewed the following changes at the Legislative Hearing on September 1, 2021.

Existing Rule	Proposed Change	Staff Evaluation
Membership		
9 seats	7 seats	<ul style="list-style-type: none"> • Less time and effort addressing vacancies • More efficient discussion at meetings • May slightly reduce the range of member perspectives • A seat for extraterritorial jurisdiction (ETJ) representation, required by Chapter 160D, is being addressed in a separate resolution.
Quorum		
5 attending	4 attending	<ul style="list-style-type: none"> • Reduces risk of meetings being rescheduled/cancelled • Maintains simple majority threshold, IF membership is also reduced • Constitutes a majority of current active members
Voting		
5 concurring votes	4 concurring votes	<ul style="list-style-type: none"> • Reduces risk of applications getting 'stuck' without formal approval OR denial • Maintains simple majority threshold as established in 2018, IF membership is also reduced • Constitutes a majority of current active members

ADVISORY BOARD MEMBERSHIP POLICY vs. LAND USE MANAGEMENT ORDINANCE

Rules for the Town’s Development Review Commissions are found in two places – the LUMO and the Council’s standing Advisory Board Membership Policy. The information is sometimes duplicative. Referencing the Membership Policy in LUMO is a common practice.

Staff recommends that rules for membership, quorum, and voting be contained in the Advisory Board Membership Policy, with appropriate references in LUMO to the Policy. The rules contained in LUMO would then primarily focus on powers and duties of the Commission. Advantages of this approach include:

- Removing the risk of inconsistencies by not duplicating information.
- A simplified procedure to make any future updates. If Council wished to pilot some changes in response to the CDC’s petition, then a later update following the pilot could be made without requiring a Text Amendment process.

LAND USE MANAGEMENT ORDINANCE FINDINGS OF FACT

Staff provides the following evaluation of the amendment under the three Findings of Fact identified in LUMO Section 4.4. At least one of the Findings must be made to amend the LUMO.

FINDING #1: The proposed zoning amendment is necessary to correct a manifest error.	
Arguments	To date, no arguments in support or in opposition have been submitted or identified by staff.
Staff Evaluation	There appears to be no manifest error in the Ordinance.

FINDING #2: The proposed zoning amendment is necessary because of changed or changing conditions in a particular area or in the jurisdiction generally.	
Arguments	Challenges noted in this report represent changing conditions that may impact the ability of the Community Design Commission to successfully fulfill its charge and exercise its powers as stated in the Land Use Management Ordinance. To date, no arguments in opposition have been submitted or identified.
Staff Evaluation	The Council could make the finding that the proposed zoning amendment is necessary because of changing conditions in the jurisdiction generally.

FINDING #3: The proposed zoning amendment is necessary to achieve the purposes of the comprehensive plan.	
Arguments	Staff finds that the proposed amendment relates to the following goal of Chapel Hill 2020, under the Theme of ‘Good Places New Spaces’: <ul style="list-style-type: none"> • A development decision-making process that provides clarity and consistency with the goals of the Chapel Hill 2020 Comprehensive Plan. To date, no arguments in opposition have been submitted or identified.
Staff Evaluation	The Council could make the finding that the proposed zoning amendment is necessary to achieve the purposes of the Comprehensive Plan.