



**OPEN A PUBLIC HEARING FOR LAND USE MANAGEMENT ORDINANCE (LUMO) TEXT AMENDMENTS – PROPOSED CHANGES TO ARTICLES 1, 3, 4, 5, 8 and Appendix A TO BRING THE LUMO INTO COMPLIANCE WITH NORTH CAROLINA GENERAL STATUTE 160D**

**INITIAL REVIEW OF AMENDMENTS TO THE TOWN CODE – PROPOSED CHANGES TO CHAPTERS 5, 7, AND 9 TO UPDATE REFERENCES IN THESE CHAPTERS TO ALIGN WITH NORTH CAROLINA GENERAL STATUTE 160D**

**STAFF REPORT**

TOWN OF CHAPEL HILL MANAGER’S OFFICE, PLANNING DEPT., & BUILDING & DEVELOPMENT SERVICES  
 Alisa Duffey Rogers, Land Use Management Ordinance Project Manager  
 Corey Liles, Principal Planner  
 Gene Poveromo, Zoning/Code Enforcement Coordinator

**AMENDMENT REQUEST**

- Amend portions of Articles 1, 3, 4, 5, 8 and Appendix A of the Land Use Management Ordinance (LUMO) to bring the LUMO into compliance with 160D, which is the State legislation modifying the North Carolina statutes for development regulations.
- Amend portions of Chapters 5, 7, and 9 of the Town Code to update references from North Carolina General Statutes (NCGS) 160A to NCGS 160D

**DATE**

April 21, 2021

**STAFF RECOMMENDATION:**

That the Council open the legislative hearing regarding the Land Use Management Ordinance text amendments, receive public comment, close the legislative hearing, and allow written public comment for twenty-four (24) hours following the closing of the legislative hearing as required by Session Law 2020-3.

For the Town Code amendments, that the Council initially review, receive public comment, and enact the Town Code amendments with the LUMO amendments at the next meeting.

**LUMO PROCESS**

The Council must consider the following **three factors** for enactment of the Land Use Management Ordinance Text Amendment:

1. To correct a manifest error in the chapter; or
2. Because of changed or changing conditions in a particular area or in the jurisdiction generally; or
3. To achieve the purposes of the Comprehensive Plan.

**KEY ISSUES FOR PROPOSED LUMO AMENDMENTS**

- ‘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).
- Updates to the LUMO are necessary for the Town’s development regulations and procedures to continue operating in compliance with State law.
- Most updates are technical in nature and will not require the Town to amend its development regulations
- There are two noteworthy amendments proposed:
  1. Elimination of Conditional Use District Zoning; and,
  2. Discontinue advisory boards recommendations on special use permits.
- Other amendments:
  1. Define major & minor modifications to approved plans and the development review process for such changes;
  2. Permit variances under the Federal Fair Housing Act for a person with a disability;
  3. Distinguish between administrative, legislative, & evidentiary hearings;
  4. Update the Master Land Use Plan provisions to permit conditional zoning;
  5. Remove the minimum square footage requirement for affordable dwelling units in the Inclusionary Zoning provisions;
  6. Add & revise definitions as required by 160D; and,
  7. Update references from 160A, the previous North Carolina code section, to 160D

**CONSISTENCY WITH COMPREHENSIVE PLAN**

The proposed LUMO text amendments promote the following *Chapel Hill 2020* Comprehensive Plan goals:

- A community that welcomes and supports change and creativity (GPNS.6)
- A development decision-making process that provides clarity and consistency with the goals of the Chapel Hill 2020 comprehensive plan (GPNS.3)

**ATTACHMENTS**

1. Text Amendment Overview
2. Draft Staff Presentation
3. Planning Commission Recommendation
4. Resolution of Consistency (for proposed Land Use Management Ordinance amendments)
5. Ordinance A (Enactment of Land Use Management Text Amendment Proposal)
6. Resolution B (Deny Land Use Management Text Amendment Proposal)
7. Ordinance B (Proposed Amendments to the Town Code)



## **PROPOSED CHANGES: TEXT AMENDMENTS TO THE LAND USE MANAGEMENT ORDINANCE (LUMO) ARTICLES 1, 3, 4, 5, 8 and Appendix A TO BRING THE LUMO INTO COMPLIANCE WITH NCGS 160D**

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The following is a summary of the proposed text amendments necessary to bring the LUMO into compliance with 160D.

### **TEXT AMENDMENT OVERVIEW**

- **Elimination of Conditional Use District Zoning.** 160D does not permit conditional use district zoning, which is the process of combining a rezoning with a special use permit. It does allow conditional zoning. Existing conditional use districts were converted to conditional zoning districts in October of 2020, which you can see on the Town's [Interactive Map](#)<sup>1</sup>. Applicants may continue to request conditional zoning districts.
- **Discontinue advisory board recommendations on special use permits.** Instead, development review boards will hold preliminary forums where applicants present their applications and hear concerns from the board members and any public in attendance. A formal recommendation will not be transmitted to the Town Council. Currently, the LUMO only requires the Planning Commission to provide a recommendation on Special Use Permits, and other advisory boards provide a recommendation because of Town policy. As a result of 160D, LUMO text amendments are proposed that remove the requirement for a Planning Commission recommendation on special use permits and allows the Planning Commission to hold a preliminary forum. Other development review boards may also hold preliminary forums.
- **Clarifying the types of Public Hearings.** In order to distinguish between the various public hearings required by statute, 160D creates three separate types of hearings based on the required approval process. These are legislative, evidentiary, and administrative hearings. 160D requires legislative hearings when a legislative decision is being considered such as a proposed conditional zoning district. When a special use permit is requested, 160D requires an evidentiary hearing due to the required quasi-judicial process. For decisions that do not involve discretion, such as site plan review, an administrative hearing may be held.

### **SUMMARY OF PROPOSED ORDINANCE**

#### **1. Section 1 – LUMO Section 1.2**

- Clarifies references to the North Carolina General Statutes

#### **2. Sections 6 through 7 & 10 – LUMO Article 3 Introduction, Section 3.1.2, Section 3.4.1 (a)**

- Eliminates Conditional Use District Zoning & retains Conditional Zoning

#### **3. Sections 14 through 29 - LUMO Section 3.5**

- Defines and outlines the process for minor and major modifications in OI-4 and for approved development agreements
- Specifies a legislative hearing, rather than a public hearing

#### **4. Section 32 – LUMO Section 3.6.2 (d)**

- Clarifies that decisions on Certificates of Appropriateness are quasi-

judicial and must follow quasi-judicial procedures

- Clarifies that hearings regarding Certificates of Appropriateness are evidentiary hearings

**5. Section 33 – LUMO Section 3.10.2 (f)**

- Eliminates the minimum net livable square footage requirement for affordable dwelling units under the Inclusionary Zoning provisions
- Replaces this provision with a requirement that market rate and affordable units be substantially similar in livable square footage

**6. Sections 37 through 40 – LUMO Section 3.11.4.7**

- Defines major modifications to a Form District Permit in the Blue Hill Form District
- Clarifies that the Community Design Commission is holding administrative hearings and making administrative decisions

**7. Section 45 – New LUMO Section 4.1.5**

- Defines a development review process for parcels located in two jurisdictions

**8. Section 45 – LUMO Section 4.2**

- Clarifies the process for adopting or amending the comprehensive plan

**9. Section 48 – New LUMO Section 4.4.1 (d)**

- Permits down-zoning only when initiated by the Town or when agreed to by the property owner

**10. Section 50 – LUMO Sections 4.4.2 (a)**

- Clarifies that legislative hearings, not public hearings, are required for proposed general use and conditional zoning atlas amendments

**11. Sections 51, 54, 56 & 58 – LUMO Sections 4.4.2 (d) & (g); 4.4.3 (c) (1) & 4.4.3 (f)**

- Includes requirement for Planning Commission and Town Council consideration of Plan Consistency statements & Statements of Reasonableness for LUMO amendments

**12. Section 60 & 63 through 64– LUMO Sections 4.4.4 & 4.4.5 (g) & (h)**

- Defines and outlines the process for minor and major modifications for previously approved Light Industrial Conditional Zoning Districts and other Conditional Zoning Districts

**13. Section 67 – LUMO Section 4.5.3**

- Removes the requirement for Planning Commission to provide a recommendation to the Town Council for Special Use Permits
- Planning Commission holds a preliminary forum for Special Use Permits
- Specifies hearings for Special Use Permits are evidentiary hearings

**14. Section 68 – LUMO Section 4.5.4**

- Defines and outlines the process for minor and major modifications to previously approved Special Use Permits

**15. Section 71 – New LUMO Section 4.6.1 (e)**

- Exempts divisions of tracts into parcels as the result of a probated will from LUMO Subdivision Regulations

**16. Section 79 – LUMO Section 4.7.5**

- Defines and outlines the process for minor and major modifications for previously approved Site Plans

**17. Sections 80 through 87 – LUMO Section 4.8**

- Inserts conditional zoning into Master Land Use Plans
- Defines and outlines the process for minor and major modifications for previously approved Master Land Use Plans

**18. Sections 93 – LUMO Section 4.12.2 (a)(2)**

- Permits the granting of a variance to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability

**19. Sections 98 through 103 - LUMO Section 5.16**

- Inserts Conditional Zoning into the Adequate Public School Facilities provisions
- Clarifies the exception provisions
- Clarifies that associated hearings are evidentiary hearings

**20. Section 112 – LUMO Section 8.2.4 (m)**

- Planning Commission will provide recommendations on proposed conditional zoning districts, but not Special Use Permits

**21. Section 117 – LUMO Section 8.5.5 (r)**

- Community Design Commission will provide comments and recommendations to applicants, rather than the Town Council for Special Use Permits

**22. Section 118 Appendix A - Definitions**

- Includes new definitions and revises existing definitions as required by 160D