

RESOLUTION C

(Amending the Advisory Board Membership Policy)

A RESOLUTION AMENDING THE ADVISORY BOARD MEMBERSHIP POLICY TO COMPLY WITH NORTH CAROLINA GENERAL STATUTE 160D (2021-10-13/R-5)

WHEREAS, in July 2019 the North Carolina General Assembly enacted Session Law 2019-111, an act to clarify, consolidate, and reorganize the land-use regulatory laws of the State; and

WHEREAS, in June 2020 the North Carolina General Assembly enacted Session Law 2020-25, an act to complete the consolidation of land-use provisions into one chapter of the General Statutes as directed by S.L. 2019-111; and

WHEREAS, Session Laws 2019-111 and 2020-25 together establish a new section of the North Carolina General Statutes titled Chapter 160D: Local Planning and Development Regulation, intended to supersede Article 18 of Chapter 153A and Article 19 of Chapter 160A and to serve as the enabling legislation applicable to local government development regulation decisions; and

WHEREAS, the Town Council amended the Land Use Management Ordinance and other sections of the Town Code of Ordinances on May 19, 2021 to bring development regulations of the Town into compliance with Chapter 160D; and

WHEREAS, the Town Manager hereby requests that the Town Council amend Council and Advisory Board policies and procedures to comply with Chapter 160D.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council amends the Advisory Board Membership Policy as follows:

SECTION 1

The **Board Specific Policies** for the **Community Design Commission** are hereby revised to read as follows:

[In the table below, one row is removed and a new one added.]

[Note that Council will consider a separate resolution on the October 13, 2021 agenda proposing additional revisions to this table, in response to the Community Design Commission petition for a reduction of member seats.]

Seat Category	Seat Requirements
Chapel Hill Resident	Must live within the municipal limits of the Town of Chapel Hill and have demonstrated special training or experience in a design field such as architecture, landscape design, horticulture, city planning, green design, place making or a closely related field.
Chapel Hill Resident	Must live within the municipal limits of the Town of Chapel Hill and have demonstrated special training or experience in a design field such as architecture, landscape design, horticulture, city planning, green design, place making or a closely related field.

Chapel Hill Resident	Must live within the municipal limits of the Town of Chapel Hill and have demonstrated special training or experience in a design field such as architecture, landscape design, horticulture, city planning, green design, place making or a closely related field.
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Chapel Hill Resident	Must live within the municipal limits of the Town of Chapel Hill and have demonstrated special training or experience in a design field such as architecture, landscape design, horticulture, city planning, green design, place making or a closely related field.
Extra Territorial Jurisdiction (ETJ) Resident	<u>Must live within the Town of Chapel Hill’s Extraterritorial Jurisdiction.</u>

SECTION 2

The **Board Specific Policies** for the **Community Design Commission, Enabling Legislation that Impacts Membership** are hereby amended to read as follows:

“North Carolina General Statute **160D-304** ~~160A-451~~.

Composition of Appearance Commission; Joint Commission

(a) Composition. - Each local government may create a special commission, to be known as the appearance commission. The commission shall consist of not less than seven nor more than 15 members, to be appointed by the governing board for terms not to exceed four years, as the governing board may by ordinance provide. All members shall be residents of the local government's area of planning and development regulation jurisdiction at the time of appointment. Where possible, appointments shall be made in such a manner as to maintain on the commission at all times a majority of members who have had special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a related field. Members of the commission may be reimbursed for actual expenses incidental to the performance of their duties within the limits of any funds available to the commission but shall serve without pay unless otherwise provided in the ordinance establishing the commission. Membership of the commission is an office that may be held concurrently with any other elective or appointive office pursuant to Section 9 of Article VI of the North Carolina Constitution.

(b) Joint Commissions. - Local governments may establish a joint appearance commission. If a joint commission is established, it shall have the same composition as specified by this section, and the local governments involved shall determine the residence requirements for members of the joint commission.

~~Membership and appointment of commission; joint commission.~~

~~Each municipality and county in the State may create a special commission, to be known as the official appearance commission for the city or county. The commission shall consist of not less than seven nor more than 15 members, to be appointed by the governing body of the municipality or county for such terms, not to exceed four years, as the governing body may by ordinance provide. All members shall be residents of the municipality's or county's area of planning and zoning jurisdiction at the time of appointment. Where possible, appointments shall be made in such a manner as to maintain on the commission at all times a majority of members who have had special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a closely related field. Members of the commission may be reimbursed for actual expenses incidental to the performance of their duties within the limits of any funds available to the commission, but shall serve without pay unless otherwise provided in the ordinance establishing the commission. Membership of the commission is declared to be an office that may be held concurrently with any other elective or appointive office pursuant to Article VI, Sec. 9, of the Constitution.~~

~~A county and one or more cities in the county may establish a joint appearance commission. If a joint commission is established, the county and the city or cities involved shall determine the residence requirements for members of the joint commission. (1971, c. 896, s. 6; c. 1058; 1973, c. 426, s. 63.)~~

~~Town of Chapel Hill Land Use Management Ordinance Appendix A Article 8"~~

SECTION 3

The **Board Specific Policies** for the **Planning Commission, Enabling Legislation that Impacts Membership** are hereby amended to read as follows:

Composition of Planning Board

(a) Composition. - A local government may by ordinance provide for the appointment and compensation of a planning board or may designate one or more boards or commissions to perform the duties of a planning board. A planning board established pursuant to this section may include, but shall not be limited to, one or more of the following:

(1) A planning board of any size or composition deemed appropriate, organized in any manner deemed appropriate; provided, however, the board shall have at least three members.

(2) A joint planning board created by two or more local governments pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.

~~A board or commission created or designated pursuant to this section may include, but shall not be limited to, one or more of the following:~~

~~(1) — A planning board or commission of any size (with not fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;~~

~~(2) — A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1973, c. 426, s. 57; 1979, 2nd Sess., c. 1247, s. 35; 1997-309, s. 7; 1997-456, s. 27; 2004-199, s. 41(a).)~~

Town of Chapel Hill Land Use Management Ordinance Appendix A Article 8"

SECTION 4

The section on **Ethics Guidelines** is hereby amended to read as follows:

"All advisory board and commission members and applicants shall agree to comply with the following ethics guidelines adopted by the Council on March 1, 1999 and updated January 31, 2018 **and October 13, 2021**:

Ethics Guidelines for Town Advisory Boards and Commissions

Members of advisory boards and commissions shall not discuss, advocate, or vote on any matter in which they have a conflict of interest or an interest which reasonably might appear to be in conflict with the concept of fairness in dealing with public business. A conflict of interest or a potential conflict occurs if **the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.** ~~a member has a separate, private, or monetary interest, either direct or indirect, in any issue or transaction under consideration.~~

Members of advisory boards and commissions shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the

applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. See General Statute 160D-109(b).

In addition, members of the Historic District Commission and Board of Adjustment, when these boards are hearing cases, serve as quasi-judicial bodies. Pursuant to State **General Statute 160D-109(d)** ~~160A-388(e)(2)~~, members of these boards

“shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.”

The meaning of “familial relationship” shall be as defined under General Statute 160D-109(f).

Any member who violates these Ethics Guidelines may be subject to removal from the board or commission.

If the advisory board or commission member believes he/she has a conflict of interest then that member **shall recuse himself/herself from voting on the matter.** ~~should ask the advisory board or commission to be recused from voting. The advisory board or commission should then vote on the question on whether or not to excuse the member making the request.~~

In the event a member does not recuse himself/herself, any fellow member may raise an objection to that member’s participation at or prior to the hearing or vote on that matter. The remaining members of the advisory board or commission shall then by majority vote rule on the objection in accordance with General Statute 160D-109(e).

In cases where the individual member or the advisory board or commission establishes a conflict of interest, then the advisory board or commission member shall remove themselves from the voting area.

Any advisory board or commission member may seek the counsel of the Town Attorney on questions regarding the interpretation of these ethics guidelines or other conflict of interest matters. The interpretation may include a recommendation on whether or not the advisory board or commission member should excuse himself/herself from voting. The advisory board or commission member may request the Town Attorney respond in writing.”

SECTION 5

This resolution shall be effective upon adoption.

This the 13th day of October, 2021.