



CONSIDER 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

CONSIDER 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
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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

May 19, 2021

TOWN MANAGER’S REPORT AND RECOMMENDATION

I have reviewed and discussed the key issues with Town staff. Based on the information in the record to date, I believe the Council can consider the factors required to approve the Ordinance amending the text of the Land Use Management Ordinance. Of the three factors for consideration listed below in the Process section, changing conditions and achieving the purposes of the Comprehensive Plan are most applicable as the proposed text amendments provide for bringing the Land Use Management Ordinance (LUMO) into compliance with 160D.

Because the proposed text amendments are consistent with the Comprehensive Plan, I recommend that the Council adopt the Resolution of Consistency and enact Ordinance A.

UPDATES FROM THE LEGISLATIVE HEARING

- At the legislative hearing, the Council received a petition requesting that the LUMO subdivision provisions in Section 4.6.1 be amended to comply with 160D-802. While there are no substantive changes in the enabling statutes from 160A to 160D, staff does think careful consideration should be given to this petition, which is not possible prior to the state’s June 30th deadline for 160D compliance. Therefore, staff requests that action on the petition be delayed until the fall, which would also permit any proposed LUMO amendments to be evaluated by the Planning Commission.
- Since the development review process for Special Use Permits is changing due to the proposed 160D amendments, Council requested that staff provide additional guidance to advisory boards and commissions since their review will be limited to a preliminary forum after enactment of the 160D amendments. Staff recommends that this guidance be provided to boards and commissions after the 160D amendments have taken effect on June 30, 2021.

<p>LUMO PROCESS</p> <p>The Council must consider the following three factors for enactment of the Land Use Management Ordinance Text Amendment:</p> <ol style="list-style-type: none"> 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. 	<p>KEY ISSUES FOR PROPOSED LUMO AMENDMENTS</p> <ul style="list-style-type: none"> • '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: <ol style="list-style-type: none"> 1. Elimination of Conditional Use District Zoning; and, 2. Discontinue advisory boards recommendations on special use permits. • Other amendments: <ol style="list-style-type: none"> 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.
<p>CONSISTENCY WITH COMPREHENSIVE PLAN</p> <p>The proposed LUMO text amendments promote the following <i>Chapel Hill 2020</i> Comprehensive Plan goals:</p> <ul style="list-style-type: none"> • 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) 	
<p>ATTACHMENTS</p>	<ol style="list-style-type: none"> 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) 8. 160D Petition



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

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 Map¹](#). 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 2 – LUMO Section 1.2

- Clarifies references to the North Carolina General Statutes

2. Sections 5 through 6 & 9 – LUMO Article 3 Introduction, Section 3.1.2, Section 3.4.1 (a)

- Eliminates Conditional Use District Zoning & retains Conditional Zoning

3. Sections 13 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 35 – 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 43 – Adds new LUMO Sections 4.1.3; 4.1.4; and 4.1.5

- Adds vested rights provisions
- Defines a development review process for parcels located in two jurisdictions

8. Section 44 – LUMO Section 4.2

- Clarifies the process for adopting or amending the comprehensive plan

9. Section 47 – 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 48 – LUMO Section 4.4.2

- Clarifies the process for general use/conventional rezoning requests
- Clarifies that legislative hearings, not public hearings, are required for proposed general use/conventional zoning atlas amendments

11. Sections 48, 49, & 51– 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 53 & 56 through 57 - 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 60 – 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 61 – LUMO Section 4.5.4

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

15. Section 65 – 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 72 – LUMO Section 4.7.5

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

17. Sections 73 through 80 – 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 86 – LUMO 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 91 through 96 - LUMO Section 5.16

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

20. Section 105 – LUMO 8.2.4 (m)

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

21. Section 110 – LUMO 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 111 & 112 Appendix A - Definitions

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