



CONSIDER A 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 NCGS STATE 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.

DATE

April 6, 2021

STAFF RECOMMENDATION:

Review the proposed Ordinance and Resolutions and forward a favorable recommendation to the Council for the Council's review at the April 21, 2021 Public Hearing.

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

- '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 in the Inclusionary Zoning provisions;
 6. Add definitions for clarity & as required by 160D; and,
 7. Update references from 160A, the previous North Carolina code section, to 160D

CONSISTENCY WITH COMPREHENSIVE PLAN

The proposed text amendment promotes 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. Resolution of Consistency (for proposed Land Use Management Ordinance amendments)
3. Ordinance A (Enactment of Land Use Management Text Amendment Proposal)
4. Resolution B (Deny Land Use Management Text Amendment Proposal)



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 on December 31, 2020, which you can see on the Town's [Interactive Map](#). 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, Section 4.5.3 (e) of the LUMO is being amended to remove the reference to a recommendation and permits 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 1.4

- Defines a process for reviewing parcels located in two jurisdictions

2. Sections 4 through 6 – LUMO Article 3 Introduction, Section 3.1.2, & Section 3.4.1

- Eliminates Conditional Use District Zoning & retains Conditional Zoning

3. Sections 9 through 21 - LUMO Section 3.5

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

4. Section 22 – 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 24 – LUMO Section 3.10.2 (h)

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

6. Sections 27 through 30 – 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 38 – New LUMO Section 4.4.1 (d)

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

8. Sections 40 through 42 – LUMO Sections 4.4.2 (e) & 4.4.3 (d)

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

9. Sections 44 through 47 – LUMO Sections 4.4.4 & 4.4.5

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

10. Section 49 – 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
- Hearings for Special Use Permits are evidentiary hearings

11. Section 50 – LUMO Section 4.5.4

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

12. Section 55 – LUMO Section 4.7.5

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

13. Sections 56 through 61 – 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

14. Sections 66 – 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

15. Section 79 – LUMO 8.2.4 (m)

- Planning Commission will provide recommendations on proposed conditional zoning districts

16. Section 82 – LUMO 8.5.5 (r)

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

17. Section 83 Appendix A - Definitions

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