

AN EMERGENCY ORDINANCE

TO AMEND CHAPTER 54 OF THE CODE OF THE CITY OF CHARLESTON (ZONING ORDINANCE) BY ADDING A NEW PART 4 – TEMPORARY PROCEDURES FOR PUBLIC HEARINGS TO ARTICLE 1 – GENERAL PROVISIONS TO IMPLEMENT SECTION 5 OF EXECUTIVE ORDER NO. 2020-10, AS EXTENDED BY EXECUTIVE ORDER 2020-15, BY PERMITTING PUBLIC HEARINGS ON DEVELOPMENT APPROVALS BEFORE CERTAIN PUBLIC BODIES OF THE CITY TO BE HELD VIRTUALLY OR BY REMOTE OR OTHER ALTERNATE MEANS, THROUGH MAY 16, 2020.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That Article 1 (General Provisions) of Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) is amended to include a new Part 4 (Temporary Procedures for Public Hearings), as follows:

PART 4 – TEMPORARY PROCEDURES FOR PUBLIC HEARINGS

Sec. 54-130 – Findings.

City Council finds as follows:

WHEREAS, to meet public emergencies affecting life, health, safety or the property of the people, City Council may adopt emergency ordinances by the affirmative vote of at least two-thirds of the members of City Council;

WHEREAS, an emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements;

WHEREAS, emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;

WHEREAS, on March 13, 2020, the Governor issued Executive Order 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an actual or imminent public health emergency for the State of South Carolina;

WHEREAS, the COVID-19 pandemic has created a state of emergency in the City of Charleston, the State of South Carolina, the nation, and the world, which has drastically impacted the life, health, safety, and property of the people;

WHEREAS, while the impact to the life, health, and safety of the people is of paramount concern, City Council finds it necessary to blunt, as much as reasonably feasible, the economic impact to the property of the people;

WHEREAS, on March 17, 2020, the Governor of South Carolina issued Executive Order No. 2020-10 (“EO-10”), which, among other things, prohibits and directs the postponement, rescheduling or cancellation of any organized event or public gathering scheduled to be hosted or held at any location or facility owned and operated by the City, if any such event or gathering could or would involve or require simultaneously convening fifty (50) or more persons in a single room, area, or other confined or indoor space;

WHEREAS, EO-10 also provides that the prohibition does not apply to meetings of local government bodies or gatherings of government officials or employees or other personnel that may be required in connection with the performance of essential government functions, but that, to the greatest extent possible, local government bodies should utilize any available technology or other reasonable procedures to conduct meetings and accommodate public participation via virtual or other remote or alternate means;

WHEREAS, on March 28, 2020, the Governor issued Executive Order 2020-15, declaring an additional State of Emergency based on the increased threat of COVID-19 to the public health, safety, and welfare, and extending the efficacy of his previous Orders, including EO-10;

WHEREAS, on April 3, 2020, the South Carolina Department of Commerce (the “Department”) held that the City’s Planning Commission, Boards of Zoning Appeals, Boards or Architectural Review, and Design Review Board could “continue operating during this time of COVID-19 pandemic”;

WHEREAS, on April 3, 2020, the Department confirmed that “under section 2.B. of Executive Order 2020-17, this means that the Department has determined the it is in ‘the best interest of the State for’ the City’s Planning Commission, BZAs, BARs, and DRB ‘to continue operations or proceed, in whole or in part, on a normal or modified basis.’”;

WHEREAS, on April 6, 2020, the Department, after consultation with the Attorney General, determined that the guidelines issued by the Supreme Court about how court proceedings are to be handled during this time are what we are pointing organizations to and that “[e]ssentially, all hearings are to be held using remote communication technology unless the judge finds that there is an emergency or other circumstances warranting an immediate determination and the hearing cannot be conducted adequately using remote communication.”;

WHEREAS, due to the state of emergency caused by the COVID-19 pandemic, City Council finds that the City has a compelling interest in ensuring the continued predictability and stability of the local economy by continuing to process applications for development approvals in as orderly a manner as practical, while balancing such interest against the importance of ensuring that the general public and interested parties have a full and fair opportunity to voice their support or opposition to applications for development permits;

WHEREAS, the COVID-19 pandemic has had and will continue to have a substantial financial and economic impact on City residents, property owners, business owners, and others, and the Department has concluded that the City’s various boards and commissions charged with considering development applications, including but not limited to City Council, the Planning

Commission, the Board of Zoning Appeals-Zoning, the Board of Zoning Appeals-Site Design, the Design Review Board, the Board of Architectural Review-Large, and the Board of Architectural Review-Small, should continue operations to serve the best interest of the State; and

WHEREAS, the economic consequences arising from the suspension of the consideration of applications for such development approvals for an indefinite period of time will substantially and adversely impact the development community, persons employed by the development community, and, by extension, the local economy.

Sec. 54-131 – Definitions.

Words and terms used in this Part shall be defined as follows:

1. “Development Approval” means an approval issued by the City of Charleston or any of its Boards, regardless of the form of the approval, that is for the development of land, including but not limited to an approval of concept plans, development plans, land development plans, final plats, special exceptions, variances, demolition permits, or a site specific development plan.
2. “Boards” refers to all City boards, commissions, committees, or other City bodies, however named, charged with hearing applications for Development Approvals, including but not limited to City Council, the Planning Commission, the Board of Zoning Appeals-Zoning, the Board of Zoning Appeals-Site Design, the Board of Architectural Review-Large, the Board of Architectural Review-Small, and the Design Review Board.
3. “Board Member” or “Board Members” means all persons serving on Boards.
4. “Alternate Attendance” means attendance by alternate means (e.g., conference call, Zoom, GoToMeeting, or Skype), as set forth in the guidelines described in Sec. 54-134 (the “Guidelines”); provided, however, at a minimum, all Board Members must be able to hear and be heard by all other Board Members, the member of City staff keeping minutes, the applicant, all interested parties, and members of the general public, subject to Sec. 54-133. The City shall set up a physical public input station or stations at a location or locations advertised in any notice of the public hearing, with proper social distancing precautions in place, to include a computer with a camera and a link to the virtual meeting, which may be utilized to accept public input during the hearing for those individuals without access to electronic means. The specific details for compliance with Alternate Attendance, including the remote location requirement, shall be set forth in the Guidelines.

Sec. 54-132 - Procedures

Notwithstanding any other provisions of this Chapter to the contrary, and subject to Sec. 54-133, the following minimum procedures shall apply to meetings and public hearings before Boards through May 16, 2020:

- A. Alternate Attendance (Board Members). For purposes of calculating a quorum, voting, and in all other respects, only Alternate Attendance is permitted as to all Board Members.

B. Alternate Attendance (City Staff): For purposes of taking minutes and complying with other procedural requirements, only Alternate Attendance is permitted as to all members of City staff.

C. Alternate Attendance (Others): For purposes of public participation and the submission of evidence or testimony during a public hearing, only Alternate Attendance is permitted as to the applicant, other interested parties, and members of the general public.

D. Notice. Any required notice of a public hearing shall be provided in the same manner and according to the same time periods currently set forth in this Chapter; provided, however, the date, time, and the appropriate information for permitting Alternate Attendance shall be provided in any such notice.

E. Testimony. Any testimony offered by City staff, the applicant, other interested parties, and members of the general public shall be taken only after the person testifying identifies him or herself by name and address and after the person is individually sworn in by the Board chairperson by oath or affirmation in accordance with the general rules applicable to taking such testimony under oath or affirmation. Such oath or affirmation shall not apply when neither state law nor this Chapter require testimony under oath or affirmation (e.g., when persons provide comments on zoning text or zoning map amendments before City Council). Testimony may be taken by virtual or other alternate means, provided all the requirements for Alternate Attendance are met. Interested parties and members of the general public may also submit written comments addressing an application, which must be received by email or United States mail in accordance with current City policies and practices.

F. Exhibits.

1. Submission Requirements. Submissions, together with any exhibits to be utilized by City staff and/or the applicant at the public hearing, shall be posted to the City's website at least seven (7) calendar days in advance of the hearing. Nothing herein shall require the posting of exhibits or slideshows by other interested parties or the general public prior to the hearing. Nothing herein shall prohibit the applicant from providing testimony or exhibits in response to exhibits or slideshows provided by other interested parties or the general public at any time prior to or during the public hearing.

2. Exhibits. Any and all exhibits should be submitted to City staff by electronic or other means as early as possible before the hearing so as to be included on the City's website for review by Board Members, City staff, the applicant, other interested parties, and members of the general public. Any exhibits to be submitted at the public hearing must be provided electronically to a designated member of City staff and be available for viewing by all Board Members and other persons attending by Alternate Attendance simultaneously with the electronic submission of such exhibits. Nothing in this Sec. 54-132.F.2 shall supersede or amend the submission deadlines for applicants otherwise in effect under this Chapter or the submission requirements in Sec. 54-132.F.1.

G. Other Procedures. Unless expressly amended or supplemented herein, all other procedures set forth in this Chapter for notice, meetings, public hearings, or otherwise on development approvals shall continue to apply.

Sec. 54-133 – Disruption.

To the extent reasonably necessary to avoid disruption of any public hearing, the chairperson of a Board may order that all persons attending by Alternate Attendance, except Board Members and members of City staff, be placed on mute; provided, however, the City must provide alternate means for individual participants to be recognized by the Board chairperson and taken off mute during the meeting; and, further provided, that all those participating shall at all times have the ability to hear what is being said by Board Members, City staff, the applicant, interested parties, and other persons who have been properly recognized during the meeting.

Sec. 54-134. – Guidelines.

The guidelines for Alternate Attendance (the “Guidelines”) attached hereto and incorporated herein by reference as Exhibit 1, shall apply. In order to provide some administrative flexibility and to reasonably maximize the ability of the applicant, other interested parties, and the general public to participate, the Mayor is hereby authorized to approve changes to the Guidelines upon the recommendation of the City’s Director of Planning, Preservation, and Sustainability, and upon the approval of the City’s Corporation Counsel, but any such changes shall comply with the minimum requirements for Alternate Attendance set forth in this Part.

Sec. 54-135 – Early Termination.

Without waiving or limiting City Council’s ability to sooner rescind this Part by emergency ordinance, City Council reserves the authority to rescind the ability to permit Alternate Attendance under this Part for public hearings noticed on or after May 1, 2020, by majority vote, to the extent warranted by conditions occurring after the effective date of this Part.

Section 2. Pursuant to section 5-7-250(d) of the South Carolina Code and Sec. 2-23(d) of the City Code, this Ordinance shall become effective immediately upon its enactment and shall expire on May 16, 2020, unless terminated, rescinded, or extended under Sec. 54-135 or by separate emergency ordinance.

Ratified in City Council this ___ day of _____ in the year of Our Lord, 2020, in the ___ Year of the Independence of the United States of America.

By: _____
John J. Tecklenburg, Mayor

ATTEST:

By: _____
Vanessa Turner Maybank
Clerk of Council

EXHIBIT 1: GUIDELINES

1. Introduction

As City planning staff conducts research and propose methods for continuing essential government meetings during the global coronavirus pandemic, the City of Charleston is committed to full transparency in all public hearings. This draft outlines the general proposal for holding fully participatory public hearings under social distancing guidelines.

2. Proposed Meeting Method: Zoom Webinars

Meetings would be conducted using Zoom Webinars, a standard platform for online hearings used around the world by private and public agencies. The Webinar function allows meetings to be conducted by the same process and rules as in-person meetings, with board members on camera and able to speak freely or as allowed by normal board operating rules. Members of the public may attend by logging into any computer with an internet connection, by any mobile device, or by audio with any telephone.

3. Public Comment

Public comments will be taken in writing and during the public input period of hearings, during the times allocated under normal procedures. During the hearing, administrators may open public input to individuals who will have their microphone enabled by the administrator, and participants will state their name and give input just as a regular in-person hearing. All public input would be recorded live.

4. Physical Location(s) for Public Input

A physical public input station may be setup at the Gaillard Center, or other location(s) set forth in the notice, with proper social distancing precautions in place. This station would be a computer with a camera and microphone, which will be linked to the Zoom webinar and which can accept public input during the meeting, accessible to anyone without an internet connected device at home.

5. Live Broadcast

In addition to viewing for those logged into the Zoom meeting, hearings will also be broadcast live on other platforms, potentially to include Youtube or other broadcast media.

6. Trial hearings

City staff will run a series of simulated “trial” meetings to test all procedures, including public input and broadcasting.