



REQUEST FOR COUNCIL ACTION

City of Greenville, South Carolina

Agenda Item No.

15a

TO: Honorable Mayor and Members of City Council
FROM: John F. McDonough, City Manager

Ordinance/First Reading Ordinance/Second & Final Reading Resolution/First & Final Reading Information Only

AGENDA DATE REQUESTED: April 27, 2020

ORDINANCE/RESOLUTION CAPTION:

Ordinance to provide for alternative procedures for public hearings during a state of emergency; and matters related thereto.

SUMMARY BACKGROUND:

This ordinance adopts procedures for conducting public hearings remotely during times of emergency.

IMPACT IF DENIED:

The procedures will not be adopted.

FINANCIAL IMPACT:

N/A

REQUIRED SIGNATURES

Department Director _____

OMB Director _____

City Attorney _____

City Manager _____

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Michael Pitts

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John McDonough

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A N O R D I N A N C E

TO PROVIDE FOR ALTERNATIVE PROCEDURES FOR PUBLIC HEARINGS
DURING A STATE OF EMERGENCY; AND MATTERS RELATED THERETO

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; and

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

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; and

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; and

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; and

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; and

WHEREAS, on April 12, 2020, the Governor issued Executive Order 2020-23 further extended the efficacy of certain previous Executive Orders, including EO-10; and

WHEREAS, the South Carolina Department of Commerce (the “Department”) has recognized that public bodies responsible for land use determinations in at least one other jurisdiction were not deemed non-essential and that such bodies continue operating during this time of COVID-19 pandemic; and

WHEREAS, the Department has confirmed that in a least one jurisdiction, that it is in “the best interest of the State” for that jurisdiction’s public bodies responsible for land use determinations to “continue operations or proceed, in whole or in part, on a normal or modified basis”; and

WHEREAS, in response to an inquiry from the city of Charleston, the Department on April 6, 2020, 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.”; and

WHEREAS, City Council finds that the aforementioned determinations of the Department should apply with equal force to those boards and commissions established by the city of Greenville (the “City”) for the purpose of making land use determinations as well as to City Council itself for the purpose of conducting public hearings where required by State law; and

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; and

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, and the Design Review Board should continue operations to serve the best interest of the State and the City; 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 of the City; and

WHEREAS, City Council hereby establishes the following the procedures for meetings of the Planning Commission, the Board of Zoning Appeals, and the Design Review Board as well as the City Council in those circumstances where public hearings are required to be conducted by City Council pursuant to State Law, to be utilized during states of emergency including, but not limited to, pandemics;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA:

Section 1. Definitions

“Development Approval” means an approval issued by the City 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.

“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, and the Design Review Board.

“Board Member” or “Board Members” means all persons serving on Boards.

“Alternate Attendance” means attendance by alternate means (e.g., conference call, Webex, Zoom, GoToMeeting, or Skype), as set forth in the guidelines described below in Section 4; 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 Section 3. 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.

Section 2. Procedures

Notwithstanding any other provisions of this Ordinance to the contrary, and subject to Section 3, the following minimum procedures shall apply to public hearings before Boards during a state of emergency declared by the Governor of the State of South Carolina:

A. Alternate Attendance (Board Members). For purposes of calculating a quorum, voting, and in all other respects, 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 information, comment, 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 the City Code; provided, however, the date, time, and the appropriate information for permitting Alternate Attendance shall be provided in any such notice.

E. Information; Public Comment; Sworn Testimony. Any information or comment offered by the applicant, other interested parties, and members of the general public shall be taken only after the person providing any such information or comment identifies him or herself by name and address. Where an oath or affirmation is required by State or City Code, each person providing sworn testimony shall be 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. Sworn 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 no later than twenty-four (24) hours prior to any meeting conducted under this Ordinance.

F. Exhibits.

1. Posting Requirements. Application submissions, together with any exhibits (excluding official Staff Reports) to be utilized by City staff and/or the applicant at the public hearing, shall be posted to the City's website at least fifteen (15) 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. Documents and Exhibits. Any and all documents and exhibits submitted in connection with an application shall be submitted to City staff by electronic or other means on or before the application deadline set forth in the application schedule published by City staff on the City's website. All such submissions and exhibits shall 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 document offered 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 documents. Nothing in this Section 2.F.2 shall supersede or amend the submission deadlines for applicants otherwise in effect under the City Code or the submission requirements in Section 2.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.

Section 3 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.

Section 4 Guidelines

The guidelines for Alternate Attendance (the “Guidelines”) attached hereto and incorporated herein by reference as Exhibit A, 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 City Manager is hereby authorized to approve changes to the Guidelines upon the recommendation of the City’s Planning Director, and upon the approval of the City Attorney, but any such changes shall comply with the minimum requirements for Alternate Attendance set forth in this Ordinance.

Section 5 Severability

Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation or Executive Order of the Governor of South Carolina, the remaining provisions, sections, paragraphs, sentences, or words of this ordinance as hereby adopted shall remain in full force and effect.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF _____, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

EXHIBIT A

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 Greenville 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: Webex

Meetings would be conducted using Webex, a standard platform for online hearings used around the world by private and public agencies. Webex follows 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 Greenville Convention Center (1 Exposition Dr, Greenville, SC 29607), or such 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 Webex 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 Webex meeting, hearings may also be broadcast live on other platforms, in the City's discretion.

6. Trial hearings

City staff will run a series of simulated "trial" meetings to test all procedures, including public input.