

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
TOWN OF ATLANTIC BEACH)

AN ORDINANCE TO ESTABLISH TITLE 1 CHAPTER 9 OF THE TOWN OF ATLANTIC BEACH CODE OF ORDINANCES TO STANDARDIZE THE REQUIREMENTS FOR BOARDS AND COMMISSIONS.

WHEREAS, The Town of Atlantic Beach has established Board and Commissions to serve the Town Government; and

WHEREAS, The Town’s Code of Ordinances shall provide standard procedures and accountability for boards and commissions appointed solely by the Town Council; and,

WHEREAS, the Title 5. Chapter 3. Article II. Review and Decision-Making Bodies and Title 5. Chapter 3. Appendix D. Exhibit D-1 of the Land Management Ordinance need revisions to create consistent requirements throughout the Town’s Code of Ordinances for the Planning Commission and Board of Zoning Appeals.

NOW, THEREFORE, be it enacted and ordained by the Town Council of the Town of Atlantic Beach by the power and authority granted by the State of South Carolina that the Town of Atlantic Beach Code of Ordinances is hereby amended as follows:

- 1) **Amendment to Title 1. Government and Administrations of the Town of Atlantic Beach Code of Ordinances to establish Chapter 9 - Boards and Commissions.** The Town of Atlantic Beach Code of Ordinances is hereby amended with all text shown to be added to Title 1.

CHAPTER 9

Boards and Commissions

Sec. 1-9-1 Intent.

This Chapter is intended to provide for accountability of all boards and commissions, provide for membership and attendance, officers, procedures and other matters of boards and commissions appointed solely by the Town Council.

Sec. 1-9-2 Applicability.

The following boards or commissions are hereby established and shall be governed by all provisions of this chapter:

- (a) Planning Commission
- (b) Board of Zoning Appeals

The Atlantic Beach Planning Commission and Board of Zoning Appeals shall have powers and duties as set forth in Title 5, Chapter 3, Article II of the Town of Atlantic Beach and by S.C. Code of Laws, Title 6, Chapter 29.

Sec. 1-9-3 Accountability of all boards and commissions.

All boards and commissions as specified in section 1-9-2 shall be accountable to the public and the Town through the Town Manager.

(a) Meetings and public hearings.

All meetings shall be held and noticed in accordance with the Freedom of Information Act, S.C. Code of Laws, Title 30, Chapter 4. If more stringent noticing standards are defined in other portions of the Code of Ordinances, including noticing for public hearings, those requirements shall be met.

- (1) All meetings and public hearings shall be held in a place accessible and open to the public, and
- (2) The commission or board must provide written public notice of regular meetings at the beginning of each calendar year, and
- (3) Notice and an agenda for regularly scheduled, special, or rescheduled meetings must be posted at the meeting place and on a public website maintained by the body, if any, at least 24 hours prior to a meeting.

(b) Minutes.

Boards and commissions shall keep minutes of their proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact.

Recordings and minutes shall be preserved and maintained as public records according to the S.C. Code of Laws, Title 30, Chapter 1 and the Town of Atlantic Beach document retention schedule.

Sec. 1-9-4 Membership and attendance, officers, procedures, and other matters.

(a) Membership, attendance, and compensation.

(1) *Composition and terms.* Unless otherwise specified by Town ordinance or otherwise required by state or federal law or regulation, all boards and commissions of the Town government shall consist of five (5) members. Members shall not hold another public office within the Town.

- i. Members shall be appointed by Town Council for terms of three (3) years, staggered so that one-third (1/3) of the members have terms expiring in each

year (except that terms necessary to implement this division may be established by resolution of Town Council). All terms shall commence July first and end June thirtieth of the appropriate year.

- ii. Members shall be nominated by a Town Council member with the consent of and appointment by the majority vote of Town Council.
- iii. Unexpired terms shall be filled for the duration of the term in the manner prescribed for the original appointment.
- iv. Current members of boards and commissions on the effective date of this Chapter shall continue to serve until their respective terms expire or until their successors are appointed.

(2) *Removal for Cause.* Any fact which, at the discretion of the board, commission or Town Council, is deemed to adversely affect the public interest, including lack of attendance at meetings, may constitute cause. The existence of cause shall be discussed in executive session as permitted by the Freedom of Information Act, S.C. Code of Laws Title 30, Chapter 4, Section 70(a)(1). The vote for recommendation or determination of removal shall be by vote in public session without a statement of cause.

- i. Any member of a board or commission of Town government may be recommended for removal for cause by a vote of a two-thirds ($\frac{2}{3}$) majority of the entire membership of the board or commission for which they serve; and
- ii. Written notice of the recommendation shall be given to the Town Manager within five (5) days of the meeting in which the recommendation is officially made; and
- iii. Removal will be by a majority vote of the Town Council after written notice to the members concerned.
- iv. Members may also be removed for cause at any time by a majority vote of the Town Council.

(3) *Attendance.* Members are expected to attend meetings of their respective board or commission to which they have been appointed. An attendance roster, including the names of members who attended and who did not attend, shall be included in the minutes of each meeting. Absence by any member from three (3) consecutive meetings without a valid reason, such as illness or pressing personal commitments, shall be considered a voluntary resignation by the member.

The Town Clerk shall prepare and provide a monthly attendance report of all board and commissions for the Town Council.

(4) *Absences.* The secretary of the board or commission shall notify the Town Manager of resignations due to absence from meetings and other resignations and vacancies caused by death, disability, transfer of residence outside of Town or other causes, within seven (7) days of the effective date thereof (such as the third consecutive absented meeting or the receipt of a letter of resignation).

(5) *Compensation.* Members of the commissions and boards shall serve without compensation.

(b) Officers.

(1) *Election.* At the first meeting subsequent to July first of each year, all boards and commissions shall elect from their membership to the following officers for terms of one (1) year:

- i. Chairperson
- ii. Vice-chairperson
- iii. Secretary. Boards and commissions shall designate the Town Clerk or their designee to serve as secretary of the board or commission.

(2) *Duties.* The officers of each board or commission shall, as a minimum, perform the following duties:

- i. Chairperson: Preside over all the meetings and represent the board or commission when the board or commission is not in session.
- ii. Vice-chairperson: Perform the duties of the Chairperson in their absence.
- iii. Secretary: Maintain accurate records of each meeting, applications and files, and correspondence directed by the board or commission.

(c) Procedures.

Boards and commission of Town government shall adopt rules of procedures not inconsistent with this chapter, the Town of Atlantic Beach Code, or any state or federal laws or regulations. Rules of procedure or amendments thereto shall be submitted to the Town Manager within thirty (30) days of the enactment of this ordinance, or the adoption of the rules of procedures or amendments.

(d) Other Matters.

(1) *Quorum*. All meetings must have a majority of the membership present to conduct business.

- 2) **Amendment to Title 5. Chapter 3: Land Management Ordinance. Article II. Review and Decision-Making Bodies. Division 2. Planning Commission and Division 3. Board of Zoning Appeals.** The Land Management Ordinance is hereby amended with all text shown in strikethrough deleted and all text shown underlined and bolded shall be added within these Divisions.

DIVISION 2. PLANNING COMMISSION

SECTION 5.3.220 Powers and Duties ~~under this LMO~~

The Planning Commission as established by Ordinance shall have powers and duties as set forth by this Chapter and Section 6-29-340 of the South Carolina Code of Laws. Pursuant to this Chapter, the Planning Commission's responsibilities shall include:

- A. **Review Capacity.** The Planning Commission shall act in a review and recommending capacity on the following matters:
1. Zoning and Land Development Regulation Text Amendments;
 2. Zoning Map Amendments; and
 3. All other matters required by state law or referred by the Town Council for review pursuant to Sections 6-29-340 and 6-29-370 of the Code of Laws of South Carolina.
- B. **Decision-Making Authority.** The Planning Commission shall have final local decision-making authority on the following matters:
1. Major subdivision plat approvals;
 2. Public project review;
 3. Street naming;
 4. Appeals of administrative decisions arising from the Land Development Regulation provisions (Article X) of this Chapter;
 5. Design modifications arising from the Land Development Regulation provisions (Article X) of this Chapter; and
 6. Any other matter pursuant to Sections 6-29-340 and 6-29-370 of the Code of Laws of South Carolina, as amended.

SECTION 5.3.221 Staff

The Administrator shall serve as or provide staff to the Planning Commission as provided in Section 5.3.201 of this Chapter.

SECTION 5.3.222 Forms and Other Explanatory Documents

~~The Planning Commission~~ **Staff** shall prepare and approve all application forms to be required of an applicant prior to a hearing. The Commission ~~may~~, in conformance with **Title 1, Chapter 9** ~~this Chapter and the State Code~~, shall devise and promulgate rules of procedure and other explanatory documents to advise the public and to govern the conduct of meetings and hearings.

SECTION 5.3.223 Appeals

Appeal from any final decision of the Planning Commission, as provided in Section 5.3.220B, must be taken to the Circuit Court within thirty (30) days after actual notice of the decision. A property owner whose land is the subject of a decision of the Planning Commission may appeal by filing notice of appeal with the Circuit Court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155 of the Code of Laws of South Carolina. Appeals shall proceed in accordance with Sections 6-29-1150 through 6-29-1155 of the Code of Laws of South Carolina.

SECTIONS 5.3.224 through 5.3.229 Reserved

DIVISION 3. BOARD OF ZONING APPEALS (BZA)

SECTION 5.3.230 Powers and Duties Board of Zoning Appeals Established

The Board of Zoning Appeals as established, pursuant to the authority of Section 6-29-780, et seq. of the Code of Laws of South Carolina, and may hereafter be referred to as “the BZA”. The Board of Zoning Appeals shall have the following powers:

- A. To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by the Administrator in the enforcement of the zoning provisions of this Chapter;
- B. To hear and decide requests for variance from the zoning standards of this Chapter, subject to the limitation imposed by Article III;
- C. Review and take action on applications for uses by special exception; and
- D. To remand a matter to the Administrator, subject to the requirements imposed by Section 6-29-800 of the State Code, if the BZA determines that the record is insufficient for review.

SECTION 5.3.231 Membership, Term, and Compensation

- ~~A. **Number, Appointment.** The BZA shall consist of three (3) members, appointed by the Town Council. None of the members shall hold any other public office or position in the Town.~~
- ~~B. **Terms.** All members shall be appointed for a term of three (3) years.. All terms shall end on June 30 of the applicable year or after that time until their successors are appointed.~~
- ~~C. **Current Members.** Members of the Board of Zoning Appeals on the effective date of this Chapter shall continue to serve until their respective terms expire or until their successors are appointed.~~
- ~~D. **Term Limits.** No member may serve for more than two (2) successive terms, except for extraordinary circumstances where Council believes it to be in the best interest of the Town to have a continuation for a specific period of a particular member of the BZA. This limitation shall not prevent any person from being appointed to the BZA after an absence of one (1) year. Service for a partial term of less than one and one half (1 ½) years shall not constitute a term of service for purposes of this paragraph.~~
- ~~E. **Vacancies.** Vacancies shall be filled appointed by the Town Council for the balance of~~

the unexpired term.

~~F. **Removal.** Members may be removed at any time by Town Council for cause. The existence of cause shall be discussed by the Council in executive session as permitted by the Freedom of Information Act, S.C. Code 30-4-70(a)(1), and the determination of removal shall be by the vote in public session declaring a vacancy in the position without a statement of cause. Any fact which, in the discretion of Council, is deemed to adversely affect the public interest, including lack of attendance at meetings, may constitute cause.~~

~~G. **Compensation.** The Town Council shall determine the compensation of members, if any.~~

SECTION 5.3.231 Staff

The Administrator shall serve as or provide staff to the Board of Zoning Appeals as provided in Section 5.3.201 of this Chapter.

SECTION 5.3.232 Officers, Meetings, and Quorum

~~A. **Officers.** The BZA shall elect one (1) of its members chair and another vice chair, each of whom shall serve a term of one (1) year, beginning on July 1 and ending the following June 30. The BZA shall appoint a secretary, who may be an officer or employee of the Town and need not be a member of the board.~~

~~B. **Meetings.** The BZA shall meet at the call of the chair and at such regular times as the BZA may determine.~~

~~C. **Quorum.** A majority of the BZA shall constitute a quorum for the conduct of business.~~

~~D. **Notice of Meetings.** Public notice of all meetings of the BZA shall be provided by publication in a newspaper of general circulation in the municipality, in accordance with South Carolina Freedom of Information Act requirements. In cases involving variances or special exceptions, conspicuous notice shall be posted on or adjacent to the property affected, with at least one (1) such notice being visible from each public thoroughfare that abuts the property.~~

~~E. **Witnesses.** The chair, or in his or her absence, the vice chair, may administer oaths and compel the attendance of witnesses by subpoena.~~

~~F. **Rules of Proceeding.** The BZA shall adopt rules for the conduct of business.~~

~~G. **Contempt, Penalty.** In case of contempt by a party, witness, or other person before the BZA, the board may certify this fact to the Circuit Court of the County in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.~~

~~H. **Minutes.** The BZA shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact. The BZA shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the BZA and must be a public record.~~

SECTION 5.3.232 Forms and Other Explanatory Documents

Staff shall prepare and approve all application forms to be required of an applicant prior to a hearing. The BZA, in conformance with Title 1, Chapter 9 shall devise and promulgate rules of procedure and other explanatory documents to advise the public and to govern the conduct of meetings and hearings.

SECTION 5.3.233 Territorial Jurisdiction

The Board of Zoning Appeals shall have jurisdiction over all lands within the Town.

SECTION 5.3.234 Powers and Duties

The Board of Zoning Appeals shall have the following powers:

- ~~E. To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by the Administrator in the enforcement of the zoning provisions of this Chapter;~~
- ~~F. To hear and decide requests for variance from the zoning standards of this Chapter, subject to the limitation imposed by Article III;~~
- ~~G. Review and take action on applications for uses by special exception; and~~
- ~~H. To remand a matter to the Administrator, subject to the requirements imposed by Section 6-29-800 of the State Code, if the BZA determines that the record is insufficient for review.~~

SECTION 5.3.234 Witnesses and Contempt

- A. Witnesses. The chair, or in his or her absence, the vice-chair, may administer oaths and compel the attendance of witnesses by subpoena.**
- B. Contempt, Penalty. In case of contempt by a party, witness, or other person before the BZA, the board may certify this fact to the Circuit Court of the County in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.**

SECTION 5.3.235 Forms and Other Explanatory Documents

~~The BZA shall prepare and approve all application forms to be required of an applicant prior to a hearing. The BZA may, in conformance with this Chapter and the State Code, devise and promulgate rules of procedure and other explanatory documents to advise the public and to govern the conduct of meetings and hearings.~~

SECTION 5.3.236 Staff

~~The Administrator shall provide staff to the Board of Zoning Appeals as provided in Section 5.3.201 of this Chapter.~~

SECTION 5.3.237~~5~~ Appeals from the Board of Zoning Appeals

- A. A person who may have a substantial interest in any decision of the BZA, or an officer or agent of the governing authority, may appeal from a decision of the BZA to the Circuit Court in and for the County by filing with the Clerk of the Court a petition in writing, setting forth plainly, fully and distinctly why the decision is contrary to law.

The appeal must be filed within thirty (30) days after the decision of the BZA is mailed.

- B. A property owner whose land is the subject of a decision of the BZA may appeal either:
1. as provided in Subsection A; or
 2. by filing a notice of appeal with the Circuit Court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825 of the Code of Laws of South Carolina.

Any notice of appeal and request for pre-litigation mediation must be filed within thirty (30) days after the decision of the BZA is postmarked.

- C. The appeal shall proceed in accordance with Sections 6-29-820 through 6-29-850 of the Code of Laws of South Carolina.

SECTIONS 5.3.238~~6~~ through 5.3.239 Reserved

- 3) Amendment to Title 5. Chapter 3: Land Management Ordinance. Appendix D. Exhibit D1.**
The Land Management Ordinance is hereby amended with all text in this exhibit deleted and this exhibit removed.

Ordinance No. _____
First Reading: _____
Second Reading: _____

SEVERABILITY. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this ordinance, which can be given effect without the invalid provision or application, and any such provisions are declared to be severable. All ordinances or parts thereof inconsistent with this ordinance are repealed to the extent of such inconsistency.

EFFECTIVE DATE. The Town Council hereby invokes the pending ordinance doctrine recognized under South Carolina law. This ordinance shall be effective immediately upon first reading approval.

BE IT ORDERED AND ORDAINED by the Mayor and Town Council of the Town of Atlantic Beach, South Carolina, in assembly and by the authority thereof, this _____ day _____ of _____, 2024.

Atlantic Beach Town Council

Jake Evans, Mayor

Josephine Isom, Mayor Protem

Edward Campbell, Councilmember

John David, Jr. Councilmember

Jacqueline Gore, Councilmember

Attest:

Town Clerk

Town Manager

First Reading: _____

Second Reading: _____