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1 **2022-23 (2<sup>ND</sup> READING): TO AMEND THE CODE OF ORDINANCES, CITY OF**  
2 **MYRTLE BEACH, APPENDIX A ZONING ARTICLE 6 COMMUNITY**  
3 **APPEARANCE BOARD TO STREAMLINE THE APPLICATION AND REVIEW**  
4 **SCHEDULE.**

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5 **Applicant/Purpose:** Myrtle Beach Community Appearance Board / to amend the Code to align  
6 submittal deadlines with the traditional CAB meeting schedule.  
7

8 **Brief:**

- 9 • Current code requires plans be submitted at least 10 *workdays* before CAB review. The  
10 intent of the regulation is to provide adequate lead-time for staff to review the application  
11 prior to its consideration by CAB.
- 12 • Staff and the CAB strive to provide the most effective and efficient service to our  
13 applicants. Ten calendar days is more than sufficient to provide this service.
- 14 • Planning Commission (4.19.22) Voted unanimously (7/0) to recommend approval of the  
15 ordinance as presented, and to strongly recommend City Council form a committee made  
16 up of members of the CAB, the Planning Commission, the Planning Director and other  
17 staff, members of the public, and whomever else City Council deems appropriate, to  
18 review the procedures of the CAB and the Planning Commission to make sure the  
19 procedures provide for adequate public notice and input.
- 20 • No changes since 1<sup>st</sup> reading.  
21

22 **Issues:**

- 23 • This amendment does not materially change the Zoning Code, nor does it affect the  
24 public's notice about items coming before the Board, nor impact the public's right to appeal  
25 a decision of the Board.
- 26 • The Community Appearance Board regularly meets the first and third Thursday of every  
27 month, and a submittal schedule based on calendar days best aligns with the established  
28 CAB schedule.  
29

30 **Public Notification:** Agenda published and posted. Legal ad ran in the Myrtle Beach Herald.  
31 Written input received from 74 people to date.  
32

33 **Alternatives:**

- 34 • Modify or deny the proposed ordinance.  
35

36 **Financial Impact:** N/A  
37  
38

39 **Manager's Recommendations:**

- 40 • I recommend 1<sup>st</sup> reading of the Ordinance (4.26.22).
- 41 • I recommend 2<sup>nd</sup> reading and adoption (5.10.22).
- 42 • Staff is still digesting the Committee recommendation and at this point is not prepared to  
43 make a recommendation.  
44

45 **Attachment(s):** Ordinance, Supporting Materials  
46

CITY OF MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA

TO AMEND THE CODE OF  
ORDINANCES, CITY OF MYRTLE  
BEACH, APPENDIX A ZONING  
ARTICLE 6 COMMUNITY  
APPEARANCE BOARD TO  
STREAMLINE THE APPLICATION AND  
REVIEW SCHEDULE.

IT IS HEREBY ORDAINED that the Myrtle Beach Code of Ordinances, Appendix A Zoning, Article 6 Community Appearance Board, Section 605.A Submission of Documents, Subsections 1 and 3, are amended as follows:

**Section 605. Procedures**

605.A. Submission of Documents.

- 1. *Conceptual Plan Review.* An applicant may receive a conceptual plan review by the Board. Submission of plans for conceptual review must be made at least ten ~~workdays (excluding city holidays)~~ calendar days before a scheduled Board meeting. Conceptual review will be scheduled for the first scheduled Board meeting after submission that meets the ten day requirement...
- 3. *Final Plan Review.* Applicants for structural or site plan permits must receive a final plan review by the Board. The zoning administrator shall arrange and schedule final plan review. Submission of plans for final plan review must be made at least ten ~~workdays (excluding city holidays)~~ calendar days before a scheduled Board meeting...

This ordinance will take effect upon second reading.

\_\_\_\_\_  
BRENDA BETHUNE, MAYOR

ATTEST:

\_\_\_\_\_  
JENNIFER ADKINS, CITY CLERK

1<sup>st</sup> Reading: 4-26-2022  
2<sup>nd</sup> Reading: 5-10-2022

Supporting Materials

1  
2  
3 **STAFF COMMENTS:**

4  
5 **Public Information Office:**

6 The proposed change to the zoning code does not materially affect the public's notice  
7 about items coming before the Community Appearance Board. Nor does it interfere  
8 with, shorten or otherwise abridge the public notice required by the South Carolina  
9 Freedom of Information Act for agenda items considered by a public body.

10  
11 The Freedom of Information Act specifies that agendas for public bodies must be made  
12 available no less than 24 hours before the meeting. Through the weekly Friday Fax  
13 email, which includes agendas for the upcoming week's boards, commissions and  
14 committees here in the City of Myrtle Beach, we easily exceed that 24 hour notice for  
15 the CAB's agenda and every other public body.

16  
17 The proposed zoning code text amendment does not change the timing or delivery of  
18 the CAB agenda as part of our regular outbound communications. We more than meet  
19 the letter and the intent of state law for public notice under the SC FOIA. The  
20 public's input on the CAB agenda is not harmed, abridged or threatened.

21  
22 The South Carolina Freedom of Information Act actually spells out the process by  
23 which a member of the public can request access to documents, as well as the process  
24 by which a public body responds to that request. The FOIA does NOT specify that  
25 documents must be made available within 10 working days.

26  
27 Instead, as you'll see in the paragraphs below, it states that for documents which are  
28 less than 24 months old, the public body must provide an initial reply and  
29 determination within 10 working days as to whether it considers the documents  
30 requested to be public under the FOIA. The public body then has an additional 30 days  
31 to search for, retrieve, redact (if necessary) and provide those documents. See the  
32 **highlighted sections**, please.

33  
34 The window of initial response and ultimate document production is longer when the  
35 request is for access to public documents that are more than 24 months old. The full  
36 SC FOIA is available on the city's website at  
37 <https://www.cityofmyrtlebeach.com/government/foia.php>. It includes our fee  
38 schedule.

39  
40 **Section 30-4-30**

41  
42 (B) The public body may establish and collect fees as provided for in this  
43 section. The public body may establish and collect reasonable fees not to  
44 exceed the actual cost of the search, retrieval, and redaction of records. The  
45 public body shall develop a fee schedule to be posted online. The fee for the  
46 search, retrieval, or redaction of records shall not exceed the prorated hourly  
47 salary of the lowest paid employee who, in the reasonable discretion of the  
48 custodian of the records, has the necessary skill and training to perform the  
49 request. Fees charged by a public body must be uniform for copies of the same  
50 record or document and may not exceed the prevailing commercial rate for the

1 producing of copies. Copy charges may not apply to records that are  
2 transmitted in an electronic format. If records are not in electronic format and  
3 the public body agrees to produce them in electronic format, the public body  
4 may charge for the staff time required to transfer the documents to electronic  
5 format. However, members of the General Assembly may receive copies of  
6 records or documents at no charge from public bodies when their request  
7 relates to their legislative duties. The records must be furnished at the lowest  
8 possible cost to the person requesting the records. Records must be provided in  
9 a form that is both convenient and practical for use by the person requesting  
10 copies of the records concerned, if it is equally convenient for the public body  
11 to provide the records in this form. Documents may be furnished when  
12 appropriate without charge or at a reduced charge where the agency  
13 determines that waiver or reduction of the fee is in the public interest because  
14 furnishing the information can be considered as primarily benefiting the  
15 general public. Fees may not be charged for examination and review to  
16 determine if the documents are subject to disclosure. A deposit not to exceed  
17 twenty-five percent of the total reasonably anticipated cost for reproduction of  
18 the records may be required prior to the public body searching for or making  
19 copies of records.

20  
21 (C) Each public body, upon written request for records made under this chapter, shall  
22 within ten days (excepting Saturdays, Sundays, and legal public holidays) of the  
23 receipt of the request, notify the person making the request of its determination and  
24 the reasons for it; provided, however, that if the record is more than twenty-four  
25 months old at the date the request is made, the public body has twenty days  
26 (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this  
27 notification. This determination must constitute the final opinion of the public body as  
28 to the public availability of the requested public record, however, the determination  
29 is not required to include a final decision or express an opinion as to whether specific  
30 portions of the documents or information may be subject to redaction according to  
31 exemptions provided for by Section 30-4-40 or other state or federal laws. If the  
32 request is granted, the record must be furnished or made available for inspection or  
33 copying no later than thirty calendar days from the date on which the final  
34 determination was provided, unless the records are more than twenty-four months  
35 old, in which case the public body has no later than thirty-five calendar days from the  
36 date on which the final determination was provided. If a deposit as provided in  
37 subsection (B) is required by the public body, the record must be furnished or made  
38 available for inspection or copying no later than thirty calendar days from the date on  
39 which the deposit is received, unless the records are more than twenty-four months  
40 old, in which case the public body has no later than thirty-five calendar days from the  
41 date on which the deposit was received to fulfill the request. The full amount of the  
42 total cost must be paid at the time of the production of the request. If written  
43 notification of the determination of the public body as to the availability of the  
44 requested public record is neither mailed, electronically transmitted, nor personally  
45 delivered to the person requesting the document within the time set forth by this  
46 section, the request must be considered approved as to nonexempt records or  
47 information. Exemptions from disclosure as set forth in Section 30-4-40 or by other  
48 state or federal laws are not waived by the public body's failure to respond as set forth  
49 in this subsection. The various response, determination, and production deadlines  
50 provided by this subsection are subject to extension by written mutual agreement of

1 the public body and the requesting party at issue, and this agreement shall not be  
2 unreasonably withheld.

3  
4 **Zoning:**

5  
6 The effect of the proposed change on the CAB Schedule:

7  
8 With a typical 10-work day deadline (current regulations), the deadline for the second  
9 meeting is the same as the date of the first meeting. If there's a holiday, the deadline  
10 for the second meeting actually falls before the first meeting. In the example below,  
11 an applicant receiving **Conceptual Review** at the first meeting of the month (May 5<sup>th</sup>)  
12 has to submit **revisions** for the 10-workday deadline (May 19<sup>th</sup>) and can't receive **Final**  
13 **Approval** until the first meeting in June.

The table is a calendar for May 2022. The title 'MAY 2022' is centered at the top. The days of the week are listed in the first row: Sun, Mon, Tue, Wed, Thu, Fri, Sat. The dates 1 through 31 are arranged in a grid. Three specific dates are highlighted with arrows: a blue arrow points to May 5 (Thu), a purple arrow points to May 19 (Thu), and a yellow arrow points to May 2 (Thu). Each of these dates is labeled 'CAB Meeting/Deadline'.

MAY 2022						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5 CAB Meeting/ Deadline	6	7
8	9	10	11	12	13	14
15	16	17	18	19 CAB Meeting/ Deadline	20	21
22	23	24	25	26	27	28
29	30	31	1	2 CAB Meeting/ Deadline	3	4

15  
16  
17 Note that 10 days is a minimum. In adopting their annual calendar, CAB typically  
18 schedules deadlines longer than 10-days out to account for holidays and staff process.  
19 For example, in the calendar above, staff cannot practically process application intake  
20 on the same day as a CAB meeting. Therefore the deadline is typically the day before,  
21 resulting in an actual 11-day deadline.  
22

1 With a 10-calendar day deadline (proposed), an applicant can have **Conceptual**  
 2 **Review** at the first meeting of the month (May 5<sup>th</sup>). Then the applicant can submit  
 3 **revisions** (by May 9<sup>th</sup>) for **Final Approval** at the second meeting of the month (May  
 4 19<sup>th</sup>)

MAY 2022						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5 CAB Meeting	6	7
8	9 CAB Deadline	10	11	12	13	14
15	16	17	18	19 CAB Meeting	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4

5  
6

7 The effect of the proposed change on the CAB appeals process:

8

9 The proposed change does not materially affect the process of appealing a decision of  
 10 the Community Appearance Board:

11

12 **Section 606. Appeals from Decisions of the Community Appearance Board**

13 606.A. **Litigation.** Any person who may have a substantial interest in any decision of  
 14 the Board may appeal to the Circuit Court by filing with the clerk of the court.  
 15 The appeal shall be filed within 30 days after the decision of the Board is  
 16 postmarked. Within thirty days from the time of notice from the clerk of the  
 17 appeal, the Board shall file with the clerk a certified copy of the proceedings  
 18 held before the Community Appearance Board, including a transcript of the  
 19 evidence heard before it, if any, and the decision of the Board including its  
 20 findings of fact and conclusions of law.

21 606.B. **Mediation.** As an alternative to litigation, a property owner whose land is  
 22 subject to a Community Appearance Board decision may file a notice of  
 23 appeal accompanied by a request for pre-litigation mediation. A notice of  
 24 appeal and request for pre-litigation mediation shall be filed within 30 days  
 25 after the decision of the Board is postmarked. The mediation shall be  
 26 conducted in accord with the South Carolina Circuit Court Alternative Dispute  
 27 Resolution Rules and section 6-29-825. A person who is not the owner of the  
 28 property at issue may petition to intervene as a party in the mediation, and

1 this motion shall be granted if the person has a substantial interest in the  
2 Board's decision. All property owners or representatives and interveners  
3 shall be notified and have opportunity to attend the mediation. The mediation  
4 may result in either an impasse or a mediation settlement agreement. No  
5 settlement agreement shall be effective until approved by City Council in  
6 public session and by the circuit court judge. If the mediation results in an  
7 impasse or if a settlement is not approved, the property owner has the option  
8 to pursue an appeal as described in 606.A - *Litigation*. Such petition for  
9 appeal must be filed with the Circuit Court within 30 days of either the report  
10 of impasse filed by the mediator or the council or judges failure to approve.  
11

### 12 **Section 403. Findings of Fact Required**

13  
14  
15  
16 In reviewing any petition for a zoning amendment, the Planning Commission shall  
17 identify and evaluate all factors relevant to the petition, and shall report its findings in full,  
18 along with its recommendations for disposition of the petition, to the City Council.  
19 Factors shall include, but shall not be limited to, the following:  
20

- 21 403.A. Whether or not the requested zoning change is consistent with the  
22 Comprehensive Plan or is justified by an error in the original ordinance.
- 23  
24 403.B. The precedents and the possible effects of such precedents, which might  
25 result from approval or denial of the petition.
- 26  
27 403.C. The capability of the City or other government agencies to provide any  
28 services, facilities, or programs that might be required if the petition were  
29 approved.
- 30  
31 403.D. Effect of approval of the petition on the condition or value of property in the  
32 City.
- 33  
34 403.E. Effect of approval of the petition on adopted development plans and policies  
35 of the City.