

STATE OF SOUTH CAROLINA
TOWN COUNCIL FOR THE TOWN OF FORT MILL
ORDINANCE NO. 2022-__

AN ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE TOWN OF FORT MILL; CHAPTER 16, ENVIRONMENT; ARTICLE III, STORMWATER MANAGEMENT AND SEDIMENT CONTROL; DIVISION 6, APPEALS AND VARIANCES; SO AS TO UPDATE REGULATIONS RELATING TO THE STORMWATER ADVISORY COMMITTEE

WHEREAS, Town Council is empowered to enact ordinances for the implementation and enforcement of powers granted by Title 5 of the S.C. Code of Laws, as amended;

WHEREAS, Council finds it necessary to update the Code of Ordinances, Chapter 16, Article III, Division 6 relating to the Stormwater Advisory Committee so as to better define and update the regulations relating to the committee; and

WHEREAS, Council finds that this ordinance is necessary to promote the public health, safety, and general welfare of the Town of Fort Mill;

NOW, THEREFORE, Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE TOWN COUNCIL FOR THE TOWN OF FORT MILL:

SECTION I. The Code of Ordinances for the Town of Fort Mill; Chapter 16, Environment; Article III, Stormwater Management and Sediment Control; Division 6, Appeals and Variances; is hereby amended to read as follows:

Sec. 16-600. Powers and Duties of the Stormwater Advisory Committee

The Stormwater Advisory Committee, hereinafter referred to as SWAC, is hereby established in accordance with the S.C. Code of Laws and shall have the following powers and duties:

- (a) Administrative Review - To hear and decide appeals according to the procedures set forth in this Section, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Town Manager's designee in the enforcement of this Ordinance, including assessments of remedies and/or penalties.
- (b) Variances - To grant variances in specific cases from the terms of this Ordinance according to the standards and procedures herein.
- (c) Remand matters – To remand a matter to an administrative official, upon motion by a party or the SWAC's own motion, if the SWAC determines the record is insufficient for review.
- (d) Annual Work Program and CIP – To recommend an annual work program and CIP that sets priorities and schedules for projects.

(e) Implementation of Stormwater Management Plan (SWMP) – To assist in the planning and execution of activities related to the implementation of the SWMP. The SWMP includes:

1. Public education and outreach on stormwater impacts;
2. Public involvement/participation;
3. Illicit discharge detection and elimination;
4. Construction site stormwater runoff control;
5. Post-construction stormwater management in new development and redevelopment;
and,
6. Pollution prevention/good housekeeping for municipal operations.

(f) Other powers and duties – To carry out any other powers and duties delegated to it by Town Council, consistent with state law.

Sec. 16-601. Membership

(a) Number - The SWAC shall consist of five members.

(b) Qualifications - The qualifications for appointment shall be as follows:

1. Members shall be appointed based on their professional expertise, knowledge of the community, and concern for the future welfare of the town and its citizens.
2. Members shall represent a broad cross section of interests and concerns.
3. Each member shall be a resident of the town or a representative of a local organization
4. Each member shall be at least 18 years of age.
5. No member may hold any public office in the Town of Fort Mill or York County.
6. No voting members may be employed by the Town of Fort Mill.

(c) Appointment - Each member shall be appointed by a majority vote of the town council.

(d) Length of term - Members shall serve for a term of three years. Terms shall be staggered. Upon expiration of a member's term, the member shall continue to serve until reappointed or replaced by a qualified successor.

(e) Term limits - No member shall serve more than three consecutive terms; provided, however, that upon completion of three consecutive terms, a member may be eligible for appointment to a new term after one year of non-service.

1. Special provisions for members appointed to unexpired terms:

- a. Any member who is appointed to fill an unexpired term with less than one year remaining shall be eligible to serve the remainder of the unexpired term, plus three additional consecutive terms.

- b. Any member who is appointed to fill an unexpired term with more than one year remaining shall be eligible to serve the remainder of the unexpired term, plus two additional consecutive terms.
- (f) Resignation - Any member who resigns prior to the expiration of his or her term must do so in writing to the town clerk and the chair of the SWAC.
- (g) Removal - Any member may be removed for cause by a majority vote of the town council. Members shall be notified in writing by the town clerk prior to a vote on the question of removal, and the member shall be provided an opportunity to respond in public at the next town council meeting. For the purpose of this section, the following items shall constitute cause for removal:
 - 1. Failure to meet or maintain the qualifications for membership.
 - 2. Three or more unexcused absences over the course of one calendar year.
 - 3. Failure to comply with the rules of conduct for public officials as outlined in S.C. Code § 8- 13-700 et seq.
 - 4. Failure to carry out the duties of the position to which the member has been appointed.
 - 5. Malfeasance.
 - 6. Any other reason deemed appropriate by the town council, consistent with state law.
- (h) Filling of vacancies - A vacancy in membership for reasons other than term expiration shall be filled by the town council for the unexpired term in the same manner as the original appointment.
- (i) Compensation - Members of the SWAC shall serve without compensation

Sec. 16-602. Chair and Vice-Chair

- (a) General - The SWAC shall elect a chair and vice-chair from among its appointed members.
- (b) Term of Office - The chair and vice-chair and shall be elected annually during the first meeting of each calendar year. The chair and vice-chair shall serve for a term of one year or until a new chair and vice-chair is elected by the membership.
- (c) Duties of the chair and vice-chair.
 - 1. The chair shall preside at all meetings of the SWAC, decide all points of order on procedure, administer oaths, compel the attendance of witnesses, certify to the circuit court of York County that a party or person is in contempt, and take such action as shall be necessary to preserve the order and integrity of all proceedings before the SWAC. The chair shall have the authority to call a special called meeting of the SWAC. From time to time, the chair may also be called upon by the town council to provide an update of the SWAC's activities.

2. In the absence of the chair, the vice-chair shall act as chair and shall have all the same powers and responsibilities of the chair.
3. In the absence of both the chair and vice-chair, the senior ranking member of the SWAC shall act as chair and shall have all the same powers and responsibilities of the chair.

Sec. 16-603. Meetings

- (a) Regular meetings - The SWAC shall hold at least one regular meeting each quarter. Regular meetings shall be held on a regularly scheduled date and time each quarter, unless rescheduled due to a town holiday, or when canceled by the chair due to a lack of agenda items for consideration. All meetings shall be held at Town of Fort Mill Council Chambers, unless otherwise advertised.
- (b) Public annual meeting - One meeting every calendar year shall be designated as the public annual meeting.
- (c) Special called meetings - When warranted, a special called meeting of the SWAC may be called by the chair.
- (d) Quorum - At least three members of the SWAC must be present to constitute a quorum. No official business of the SWAC may be conducted without a quorum present.
- (e) Rules of Order - Except as otherwise required by state law or town ordinance, all proceedings of the SWAC shall be governed by Robert's Rules of Order. The board may, by a majority vote of the entire membership, draft and approve such additional by-laws governing its procedure as it deems necessary or advisable, copies of which shall be made available for public inspection in the town clerk's office.
- (f) Voting - Official decisions or actions by the SWAC shall require a majority vote of those members present and voting. Proxy votes shall not be permitted.
- (g) Conflicts of interest - Any member of the SWAC who has a direct or indirect interest in any property which is the subject matter of, or affected by, a decision of the board shall be disqualified from participating in the decision of the board in connection therewith.
- (h) Open to the public - All meetings of the SWAC shall be open to the public. All or any part of a meeting of the SWAC may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed pursuant to S.C. Code § 30-4-70, provided that in so recording there is no active interference with the conduct of the meeting.

Sec. 16-604. Public notice and public records

- (a) Agenda -Public notice shall be given for each meeting pursuant to S.C. Code § 30-4-80 and § 6- 29-790. The SWAC chair or its designated representative shall prepare an agenda containing the date, time and location of each meeting, as well as a list of items for action and/or discussion. An electronic copy of the agenda shall be posted on the town website, and a paper copy shall be posted on the message board at Town Hall at least 24 hours prior to the meeting.

(b) Minutes - The SWAC vice-chair or its designated representative shall prepare and keep written minutes of all SWAC meetings and provide minutes to the town clerk. Such minutes shall include, at a minimum:

1. The date, time and place of the meeting.
2. The members of the SWAC recorded as either present or absent.
3. The vote of each member upon each question, or if failing to vote, indicating that fact.
4. Records of examinations and other official actions.
5. A transcript of evidence heard before the SWAC.
6. Any other information that any member of the SWAC requests be included or reflected in the minutes.

The minutes and decisions of the SWAC shall be public records and shall be available within a reasonable time after the meeting, except where such disclosures would be inconsistent with S.C. Code § 30-4-70.

(c) Records - Unless exempt by state law, all records of the SWAC are deemed public records and shall be made available for inspection upon request. Paper copies of any public record may be obtained for a nominal fee.

Sec. 16-605. Assistance to the SWAC

- (a) Staff - The stormwater management coordinator shall serve as the professional staff to the SWAC and provide it with administrative support.
- (b) Public officials - All public officials shall, upon request, furnish to the SWAC, within a reasonable time, such available information as it may require for its work.

Sec. 16-606. Petition to SWAC for Appeal or Variance

An appeal may be initiated by any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this Ordinance. A petition for variance from the requirements of this Ordinance may be initiated by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having written contractual interest in the affected property.

(a) Filing of Notice of Appeal

A notice of appeal shall be filed with the Town Manager's designee contesting any order, decision, determination or interpretation within 30 calendar days of the day of the order, decision, determination or interpretation made or rendered by the Town Manager's designee in the enforcement of this Ordinance, including assessments of remedies and penalties. WSAC may waive or extend the 30 day deadline only upon determining that the person filing the notice of appeal received no actual or constructive form of notice of the order, decision, determination or interpretation being appealed. The notice filed with the Town Manager's designee shall be accompanied by a nonrefundable filing fee as established by SWAC as well as a list of adjoining properties including tax parcel numbers and the name and address of each

owner. Failure to timely file such notice and fee shall constitute a waiver of any rights to appeal under this Ordinance.

Upon receipt of a notice of appeal, the Town Manager's designee shall transmit to SWAC copies of all administrative papers, records, and other information regarding the subject matter of the appeal.

The filing of such notice shall stay any proceedings in furtherance of the contested action, except the Town Manager's designee may certify in writing to SWAC that because of facts stated in the certificate, a stay imposes an imminent peril to life or property or would seriously interfere with the enforcement of this Ordinance. SWAC shall then review such certificate and may override the stay of further proceedings.

(b) Filing a Variance Petition

A petition for variance, in the form prescribed by SWAC, shall be filed with the Town Manager's designee accompanied by a nonrefundable filing fee as established by SWAC as well as a list of adjoining properties including tax parcel numbers and the name and address of each owner. Upon receipt of a variance petition, the Town Manager's designee shall transmit to SWAC copies of all information regarding the variance.

(c) Notice and Hearing

SWAC shall, in accordance with the rules adopted by it for such purposes, hold public hearings on any appeal or variance petition which comes before it. SWAC shall, prior to the hearing, mail written notice of the time, place and subject of the hearing to the person or persons filing the notice of appeal or variance petition, to the owners of the subject property and to the owners of the property adjacent to the subject property. The hearing shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

(d) Standards for Granting an Appeal

SWAC shall reverse or modify the order, decision, determination or interpretation under appeal only upon finding an error in the application of this Ordinance on the part of the Town Manager's designee. In modifying the order, decision, determination or interpretation, SWAC shall have all the powers of the Town Manager's designee from whom the appeal is taken.

If SWAC finds that a violation of this Ordinance has occurred, but that in setting the amount of the penalty the Town Manager's designee has not considered or given appropriate weight to either mitigating or aggravating factors, SWAC shall either decrease or increase the per day civil penalty within the range allowed by this Ordinance. Any decision of SWAC that modifies the amount of a civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the Town Manager's designee in setting the amount of the civil penalty levied against the Petitioner.

(e) Standards for Granting a Variance

Before granting a variance, SWAC shall have made all the following findings:

- (1) Unnecessary hardships would result from the strict application of this Ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this Ordinance; will secure public safety and welfare; and will preserve substantial justice.

(f) Variance Conditions

SWAC may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(g) Technical Assistance

The SWAC may secure outside technical assistance regarding issue relating to an appeal or petition that are technical in nature. The Town will procure these services at the request of the SWAC.

(h) Action by SWAC

SWAC bylaws will determine the number of concurring votes needed to grant an appeal or request for variance. SWAC shall grant or deny the variance or shall reverse, affirm or modify the order, decision, determination or interpretation under appeal by recording in the minutes of the meeting the reasons that SWAC used and the findings of fact and conclusions of law made by SWAC to reach its decision.

(i) Rehearing

SWAC shall refuse to hear an appeal or variance petition which has been previously denied unless it finds there have been substantial changes in the conditions or circumstances relating to the matter.

Sec. 16-607. Review by Circuit Court

Every decision of SWAC shall be subject to Circuit Court review by proceedings in the nature of certiorari. Petition for review by the Circuit Court shall be filed with the Clerk of Circuit Court within thirty (30) days after the later occurring of the following:

- (a) The decision of SWAC is filed; or

(b) A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with SWAC at the time of its hearing of the case.

SECTION II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. This ordinance shall be effective from and after the date of adoption.

SIGNED AND SEALED this ____ day of _____, 2022, having been duly adopted by the Town Council for the Town of Fort Mill on the ____ day of _____, 2022.

First Reading:
Second Reading:

TOWN OF FORT MILL

Gynn H. Savage, Mayor

LEGAL REVIEW

ATTEST

Barron B. Mack, Jr, Town Attorney

Virginia Burgess, Town Clerk