



Town of Hilton Head Island
TOWN COUNCIL MEETING
Tuesday, March 16, 2021, 4:00 p.m.
AGENDA

In accordance the Town of Hilton Head Island Municipal Code § 2-5-15, this meeting is being conducted virtually and can be viewed on the [Town of Hilton Head Island Public Meetings Facebook Page](#) or the [Beaufort County Channel](#) as well as Hargray channels 9 and 113 and Spectrum channel 1304.

1. **Call to Order**
2. **FOIA Compliance:** Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
3. **Pledge to the Flag**
4. **Invocation – Pastor June Wilkins – Christ Lutheran Church**
5. **Approval of the Agenda**
6. **Approval of the Minutes**
 - a. Workshop – February 23, 2021
 - b. Regular Meeting – March 2, 2021
7. **Report of the Town Manager**
 - a. Parks and Recreation Commission Update – Ray Kisiah, Chairman
 - b. Gullah-Geechee Land & Culture Preservation Task Force Project Update – Sheryse DuBose, Historic Neighborhoods Preservation Administrator
 - c. Items of Interest
8. **Reports from the Members of Council**
 - a. General Reports from Council
 - b. Report of the Community Services & Public Safety Committee – Councilman Harkins
 - c. Report of the Public Planning Committee – Councilman Ames
 - d. Report of the Finance & Administrative Committee – Councilman Lennox
9. **Proclamations/Commendations - NONE**
10. **Appearance by Citizens**

*Citizens who wish to address Town Council during the meeting by phone must contact the Town Clerk at 843.341.4701 no later than **12:00 p.m. the day of the meeting**. Citizens speaking during the meeting will limit their comments to no longer than three (3) minutes and will conduct themselves in a manner appropriate to the decorum of the meeting, refraining from the use of profane, abusive, threatening, or obscene language.*

11. Consent Agenda

Town Council may approve the Consent Agenda in its entirety, with all noted items; or a member of Council may request to have an item or items removed for further review and discussion.

a. **Second Reading of Proposed Ordinance 2020-23 – Turtle Protection**

Second Reading of Proposed Ordinance 2020-23 to amend Chapter 5 of Title 8 (Beaches, Waterways, Recreational Areas, and Arts), of the Municipal Code of the Town of Hilton Head Island, South Carolina; to amend Section 8-5-111, Definitions; to amend Section 8-5-112, Purpose; to delete Section 8-5-113, New Development; to add Section 8-5-113, Standards for New Development; to delete Section 8-5-114, Exemptions for New Development; to add Section 8-5-114, Exemptions; to delete Section 8-5-115, Existing Development; to add Section 8-5-115, Standards for Existing Development; to delete Section 8-5-116, Publicly Owned Lighting; to amend Section 8-5-117, Enforcement and Penalty; and providing for severability and an effective date.

b. **Second Reading of Proposed Ordinance 2021-01 – Historic Mitchelville Freedom Park MOU Renewal & Lease Amendments**

Second Reading of Proposed Ordinance 2021-01 authorizing the execution of an updated Memorandum of Understanding and Amended Lease with Historic Mitchelville Freedom Park, Inc., related to real property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (Supp. 2012), and Sec. 2-7-20 Municipal Code of the Town of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

c. **Second Reading of Proposed Ordinance 2021-06 – Calculation of Height & Flood Zone Standards LMO Amendments**

Second Reading of Proposed Ordinance 2021-06 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance (LMO), Chapters 5 and 10. These amendments, commonly referred to as *Flood Map LMO Amendments* as noticed in the Island Packet on *January 17, 2021*, include changes that modify the Flood Zone Standards for consistency with the March 23, 2021 Flood Insurance Rate Maps and modify the Rule of Measurement for the calculation of building height, as described in Exhibit A to this ordinance, and providing for severability and an effective date.

d. **Second Reading of Proposed Ordinance 2021-07 – Revisions to Title 15, Chapter 9**

Second Reading of Proposed Ordinance 2021-07 to amend Title 15 Chapter 9 of the Municipal Code of the Town of Hilton Head Island, South Carolina, to update specific provisions related to Flood Damage Controls. This amendment includes revised language and defined terms to be consistent with the National Flood Insurance Program Regulations 44 CFR Parts 59 and 60, and providing for severability and an effective date

12. Unfinished Business - NONE

13. New Business

a. **Consideration of Proposed Emergency Ordinance 2021-08 – Extending the Requiring of Individuals to Wear Face Coverings**

Consideration of Proposed Emergency Ordinance 2021-08 to require individuals to wear face coverings in certain circumstances and locations in the Municipal limits of the Town of Hilton Head Island, South Carolina, and providing for severability and an effective date.

14. Executive Session

a. Contractual Matters

Discussion of negotiations incident to proposed contractual arrangements regarding the Cross Island Parkway Toll Conversion.

15. Possible actions by Town Council concerning matters discussed in Executive Session

16. Adjournment

Public comments concerning agenda items can be submitted electronically via the [Town's Virtual Town Hall Portal](#). The portal will close at **2:00 p.m.** the day of the scheduled meeting. All comments submitted to the portal will be provided to Town Council for review and made part of the official record.



Town of Hilton Head Island
TOWN COUNCIL WORKSHOP
Tuesday, February 23, 2021 at 10:00 a.m.
MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Alex Brown, Tom Lennox, Glenn Stanford, *Council Members*

Present from Town Staff: Marc Orlando, *Town Manager*; Josh Gruber, *Deputy Town Manager*; Shawn Colin, *Interim Deputy Town Manager*; Angie Stone, *Interim Deputy Town Manager*; Jennifer Ray, *Interim Director of Community Development*; Taylor Ladd, *Senior Planner*; Cindaia Ervin, *Finance Assistant*; Teresa Haley, *Senior Administrative Assistant*; Krista Wiedmeyer, *Exec. Assist/Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 10:00 a.m. By way of roll call, attendance of all members of Town Council was affirmed.

2. FOIA Compliance: Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Parks and Recreation Master Plan

Jennifer Ray, Interim Director of Community Development, opened the discussion of the Parks and Recreation Master Plan, by providing an overview of the different steps taken to get the Town to where it currently stands. Ms. Ray continued, by explaining that the Master Plan presents a needs assessment, analyses, and recommendations for the Town to consider to increase the level of service across the community over the next ten years. She discussed the different community engagements that have taken place and discussed what the next intended steps will be. Ms. Ray stated that the purpose of the Parks Program was to (1) provide guidance and a starting point for design and planning, and (2) list to be used by staff and design consultant to develop concept plans. She reviewed various options for Town Council to consider. She spoke to the redevelopment strategy for the mid-island initiative area and conceptual planning for Chaplin Community Park and Crossings park. Closing her presentation to Town Council, Ms. Ray reviewed the steps that would take place over the next several months. Those included the receipt of Council's input from the workshop, refining the RFQ based on the direction from Town Council, posting the RFQ for six to eight weeks, providing notifications to Town Council once the consultant is selected, kick-off the design services to include Town Council and other stakeholders, and preparing the redevelopment strategy and develop park concept plans.

Mayor McCann opened the discussion to the members of Town Council to ask questions and provide feedback to staff.

The overall consensus of the members of Council was that staff has developed a well put together plan, which if executed appropriately will improve the overall quality of life for both Island residents and visitors to the Island. Mr. Ames asked, in what context are we (Council) making decisions? He went on to ask, are we making those decisions that are too small of scale? Mr. Ames said that public involvement is crucial to the ongoing process. Mr. Harkins noted that there is currently an opportunity with the mid-island tract to make the Island a special place, and make the Island more competitive. Mr. Harkins stated that the Town has to remain focused on the revitalization throughout the Island. Mrs. Becker asked that the Town keep things simple and not overstep. Mr. Lennox felt that having an outside consultant come in to review and consult on the three parks discussed is a good starting point.

Discussion Continued

Mr. Stanford said that it is important to look at focused projects, such as the mid-island tract. He said that Lowcountry Celebration Park has encouraged reinvestment and that the same could happen with this particular tract. Mayor McCann felt that the mid-island area was dying and in need of something to revitalize it. He said that the RFQ for the consultant is an important move. Mr. Brown asked about some of the other parks located on the island, such as Patterson and Taylor Park. He felt the some of the smaller parks needed to be looked at prior to looking at the mid-island tract. Mr. Brown said that there are several safety concerns with Chaplin Park. He asked that upgrades in the safety be looked at before upgrades in amenities. He asked about the type of infrastructure planned for the Chaplin area and would it address the current safety concerns. Mrs. Becker echoed Mr. Brown's concerns about safety in that area. Noting that maybe some type of traffic calming needed to be considered.

Upon conclusion of Council's discussion, Mr. Orlando addressed some of the matters discussed. He said based on the Master Plan and Council's feedback, staff has a clear path forward, and that his first priority is to have staff get the RFQ posted right away.

4. Adjournment

By unanimous vote, the meeting adjourned at 11:16 a.m.

Approved: March 16, 2021

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor



Town of Hilton Head Island
TOWN COUNCIL
Tuesday, March 2, 2021 at 4:00 p.m.
MEETING MINUTES

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Alex Brown, Tom Lennox, Glenn Stanford, *Council Members*

Present from Town Staff: Marc Orlando, *Town Manager*; Josh Gruber, *Deputy Town Manager*; Shawn Colin, *Interim Deputy Town Manager*; Angie Stone, *Interim Deputy Town Manager*; John Troyer, *Finance Director*; Jennifer Ray, *Interim Director of Community Development*; Teri Lewis, *Deputy Director of Community Development*; Jeff Buckalew, *Town Engineer*; Tyler Newman, *Senior Planner*; Shari Mendrick, *Floodplain Administrator*; Cindaia Ervin, *Finance Assistant*; Krista Wiedmeyer, *Exec. Assist/Town Clerk*

1. Call to Order

Mayor McCann called the meeting to order at 4:00 p.m.

2. FOIA Compliance: Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Pledge to the Flag

4. Invocation – Brett Myers, Sr. Pastor, First Baptist Church, Hilton Head Island

Pastor Myers delivered the invocation.

5. Approval of Agenda

Mr. Harkins moved to approve the agenda. Mr. Stanford seconded. By way of roll call, the agenda was approved by a vote of 7-0.

6. Approval of Minutes

a. Regular Meeting – February 16, 2021

Mr. Harkins moved to approve the minutes. Mr. Stanford seconded. By way of roll call, the minutes were approved by a vote of 7-0.

7. Report of the Town Manager

a. COVID-19 Update – Dr. Jane Kelly, Assistant State Epidemiologist

Dr. Kelly updated Town Council on the current status of the vaccine roll-out and update on where the State and Lowcountry are with regards to COVID-19. Dr. Kelly answered questions posed to her from the members of Council. Specifically pointing out that we still need to practice social distancing, washing hands, and wearing a face covering. Mayor McCann reported that Town Council would review an extension to the current face covering ordinance at the next meeting on March 16, 2021.

b. Items of Interest

Mr. Gruber reviewed and reported on a number of items of interest from the Town.

8. Reports from Members of Council

a. General Reports from Council

Mayor McCann reported that he and Mr. Orlando had attended the promotion and swearing in event for Fire Rescue. He said that the men and women of Fire Rescue are an extraordinary group, first class all the way. Mrs. Becker echoed the Mayor's sentiments.

Mayor McCann also requested that staff plan to provide an update on where things stand with the Gullah-Geechee Land and Cultural Preservation Task Force project. Mr. Orlando affirmed the Mayor's request.

b. Report of the Community Services & Public Safety Committee – Bill Harkins

Mr. Harkins reported that the Committee recently met where they discussed the fourth quarter crime statistics and continued the discussion concerning the Sandalwood Apartments. He said that members from the Beaufort Housing Authority were in attendance for that discussion. Mr. Harkins reported that the Committee had reviewed the Cross Island Right of Way Transfer, and had recommended it proceed to full Council. Lastly, Mr. Harkins reported that the Committee would be discussing homelessness at the next meeting.

c. Report of the Public Planning Committee – David Ames

Mr. Ames reported that the Committee met on February 25, 2021, where they reviewed and discussed the Beach Parking Plan as well as received an update on the 2021 Trolley Service. He said the Committee also discussed and approved the recommendation on Flood Zone Standards and the recommendation on Family Compound and Family Subdivision amendments.

d. Report of the Finance & Administrative Committee – Tom Lennox

Mr. Lennox reported that the Committee met earlier in the day where the Committee had a general discussion regarding the Fiscal Year 2022 budget schedule.

9. Proclamations/Commendations – NONE

10. Appearance by Citizens

Juliana Smith, Henry Sanders, and Debra Urato addressed Town Council concerning the Sea Turtle Protection code changes.

Skip Hoagland addressed Town Council concerning matters related to the Town and Chamber.

11. Unfinished Business

a. Second Reading of Proposed Ordinance 2021-04 – Zoning Map Amendments – 30 Folly Field Road

Second Reading of Proposed Ordinance 2021-04 to amend Title 16 the "Land Management Ordinance" of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-1-107, the Official Zoning Map with respect to the certain 1.5 acre parcel located at 30 Folly Field Road, identified as PIN R511 009 000 1196 000, to change the existing Zoning from Resort Development (RD) to Parks and Recreation (PR).

Mr. Harkins moved to approve. Mr. Ames seconded. With no discussion and by way of roll call the motion carried by a vote of 7-0.

11. Unfinished Business (cont.)

b. Second Reading of Proposed Ordinance 2021-05 – CIP Budget Amendments

Second Reading of Proposed Ordinance 2021-05 to amend the budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2021; to provide for the expenditures of certain funds; to allocate the sources of revenue for the said funds; and to provide for severability and an effective date.

Mr. Harkins moved to approve. Mr. Stanford seconded. The members of Town Council had a robust discussion concerning this item. Mr. Brown requesting more detailed information about the TIF, specifically as it relates to Chaplin Linear Park. He was asking how the funds had to be spent and could they be used to improve the safety issues. Mr. Gruber said that he would get the information on the TIF and get it out to all of Town Council for review. By way of roll call, the motion carried by a vote of 6-1, Mr. Brown opposing.

12. New Business

a. First Reading of Proposed Ordinance 2020-23 – Turtle Protection

First Reading of Proposed Ordinance 2020-23 to amend Chapter 5 of Title 8 (Beaches, Waterways, Recreational Areas, and Arts), of the Municipal Code of the Town of Hilton Head Island, South Carolina; to amend Section 8-5-111, Definitions; to amend Section 8-5-112, Purpose; to delete Section 8-5-113, New Development; to add Section 8-5-113, Standards for New Development; to delete Section 8-5-114, Exemptions for New Development; to add Section 8-5-114, Exemptions; to delete Section 8-5-115, Existing Development; to add Section 8-5-115, Standards for Existing Development; to delete Section 8-5-116, Publicly Owned Lighting; to amend Section 8-5-117, Enforcement and Penalty; and providing for severability and an effective date.

Mr. Ames moved to amend the proposed ordinance revising Section 8.5.111(o), the Definition of Tinted or Filmed Glass, to be: "Tinted or Filmed Glass: Means glass that has been treated to reduce light transmittance. Tinted or Filmed Glass must have a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45 %) or less. Filmed Glass cannot have an exterior visible light reflectance of more than fifty percent (50%)." Also revising Section 8-5-115(f)(2), under Standards for Existing Development, to be: "Apply Film with a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45%) or less to windows and glass doors that are Visible From The Beach. Any Film used shall not have an exterior visible light reflectance of more than fifty percent (50%)." Mr. Stanford seconded. With no discussion, and by way of roll call, the motion carried by a vote of 7-0.

Mr. Ames moved to approve the proposed ordinance as amended. Mr. Stanford seconded. With no discussion, and by way of roll call, the motion carried by a vote of 7-0.

b. First Reading of Proposed Ordinance 2021-01 – Historic Mitchelville Freedom Park MOU Renewal & Lease Amendments

First Reading of Proposed Ordinance 2021-01 authorizing the execution of an updated Memorandum of Understanding and Amended Lease with Historic Mitchelville Freedom Park, Inc., related to real property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (Supp. 2012), and Sec. 2-7-20 Municipal Code of the Town of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

Mr. Ames moved to approve. Mr. Harkins seconded. With no discussion, and by way of roll call, the motion carried by a vote of 7-0.

12. New Business (cont.)

c. First Reading of Proposed Ordinance 2021-06 – Calculation of Height & Flood Zone Standards LMO Amendments

First Reading of Proposed Ordinance 2021-06 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance (LMO), Chapters 5 and 10. These amendments, commonly referred to as *Flood Map LMO Amendments* as noticed in the Island Packet on *January 17, 2021*, include changes that modify the Flood Zone Standards for consistency with the March 23, 2021 Flood Insurance Rate Maps and modify the Rule of Measurement for the calculation of building height, as described in Exhibit A to this ordinance, and providing for severability and an effective date.

Mr. Ames moved to approve. Mr. Harkins seconded. With no discussion, and by way of roll call, the motion carried by a vote of 7-0.

d. First Reading of Proposed Ordinance 2021-07 – Revisions to Title 15, Chapter 9

First Reading of Proposed Ordinance 2021-07 to amend Title 15 Chapter 9 of the Municipal Code of the Town of Hilton Head Island, South Carolina, to update specific provisions related to Flood Damage Controls. This amendment includes revised language and defined terms to be consistent with the National Flood Insurance Program Regulations 44 CFR Parts 59 and 60, and providing for severability and an effective date.

Mr. Ames moved to approve. Mr. Harkins seconded. With no discussion, and by way of roll call, the motion carried by a vote of 7-0.

e. Consideration of a Resolution – Encroachment Agreement

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina authorizing the Town Manager to execute an Encroachment Agreement with Santee Cooper in coordination with Central Electric Cooperative and Palmetto Electric Cooperative to encroach onto the Power Line Easement located on Town-owned Parcel R520 012 00C 0002 0000.

Mr. Harkins moved to approve. Mr. Stanford seconded. With no discussion, and by way of roll call, the motion carried by a vote of 7-0.

f. Consideration of a Recommendation – Ford Shell Ring Joint Ownership & Operating Agreement

Consideration of a Recommendation to Town Council from the Community Services and Public Safety Committee, authorizing the Town Manager to execute a Joint Ownership and Operating Agreement related to development and operation of the Ford Shell Ring property.

Mr. Harkins moved to approve. Mr. Stanford seconded. Town Council discussed this item, requesting that prior to the Town Manager enter into or execute the Joint Ownership and Operating Agreement, that he incorporate language that would involve tying the water to the shell ring, describing the history and the significance of the two. By way of roll call, the motion carried by a vote of 7-0.

12. New Business (cont.)

g. Consideration of a Recommendation – Summit Drive Re-Alignment Project

Consideration of a Recommendation to Town Council from Town staff authorizing the Town Manager to negotiate and enter into agreements with Beaufort County regarding the Summit Drive Re-Alignment project and long-term commitment to provide solid waste and recycling service at the Summit Drive Convenience Center.

Mr. Harkins moved to approve. Mr. Stanford seconded. Limited discussion was had, mostly confirming that this project was because of the County's Convenience Center. By way of roll call, the motion carried by a vote of 7-0.

13. Executive Session

Mr. Gruber stated that there was a need for Executive Session for: Legal Matters, receipt of legal advice related to pending, threatened, or potential claim related to ArborNature.

At 5:12 p.m., Mr. Harkins moved to enter into Executive Session for the reasons described by Mr. Gruber. Mr. Stanford seconded. The motion carried unanimously.

14. Possible Actions by Town Council Concerning Matters Discussed in Executive Session

15. Adjournment

Upon returning from Executive Session with no action, the meeting adjourned at 5:32 p.m.

Approved: March 16, 2021

Krista M. Wiedmeyer, Town Clerk

John J. McCann, Mayor



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Town Council
FROM: Ray Kisiah, *Chairman of the Parks and Recreation Commission*
DATE: March 1, 2021
SUBJECT: Parks & Recreation Commission Semi-Annual Report:
July 2020 – February 2021

The August, September, and December 2020, and February 2021 Parks & Recreation Commission meetings were cancelled.

Special Commission Meeting

July 2020 – Items discussed:

- Swearing in ceremony for reappointed and new commissioners.
- Presentation of Town's Crystal Awards to outgoing Parks & Recreation Commissioners – Mike Ray and Caroline Rinehart.
- Election of officers for the July 1, 2020 – June 30, 2020 term.
- Discussion of final version of Parks & Recreation Master Plan Part 1
- Commission unanimously approved recommendation to Town Council to adopt the Parks & Recreation Master Plan Part 1.

Regular Commission Meetings

October 2020 – Items discussed:

- Commission unanimously approved their 2021 meeting schedule.
- Commission discussed resolution for park planning, programming, funding and implementation based on the Parks & Recreation Master Plan recommendations.
- Commission unanimously approved a recommendation the Town Council not accept the changes to Our Plan as they pertain to the position of Parks Director and strongly recommend the Town hire a high level Town staff official to execute the duties identified in the Our Plan.

November 2020 – Items discussed:

- Mr. Frank Babel gave a Bicycle Advisory Committee update.
- Town staff gave an update on the Parks & Recreation Master Plan.
- Mr. Frank Soule gave an Island Recreation Association update.

January 2021 – Items discussed:

- Swearing in ceremony for new commissioner.
- Mr. Frank Soule gave an Island Recreation Association update.
- Town staff gave an update on the Parks & Recreation Master Plan.

- Commission unanimously approved the proposed prioritization of parks and recreation recommendations and action items.
 - Commission unanimously approved the programming for each of the three major parks proposed for near future development, knowing the number of all fields are not necessarily going to be the number reflected in the Proposed Programming recommendations.
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TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Marc Orlando, ICMA~CM, *Town Manager*
VIA: Jennifer Ray, ASLA, *Interim Community Development Director*
FROM: Sheryse DuBose, PhD, *Historic Neighborhoods Preservation Administrator*
CC: Shawn Colin, AICP, *Interim Deputy Town Manager*
SUBJECT: Update on Status of Top Priority Gullah Geechee Cultural Project
Recommendations

In November 2019, Town Council accepted the Framework for the Top Priority Gullah Geechee Cultural Project Recommendations. Staff has focused on the Top Priority Projects to develop and advance the recommendations.

The creation of a Historic Overlay District was identified as the highest priority. Staff drafted the proposed LMO Amendments, which encompasses the overlay district; establishing new regulations for easements and rights-of-way; expediting the development review process within the historic district; and adding Family Compound and Family Subdivision provisions. The proposed LMO Amendments have been reviewed with the Gullah Task Force, the LMO Committee, Planning Commission, and the Public Planning Committee multiple times.

Staff continues to coordinate with the Beaufort County Tax office to provide updates concerning Gullah property owners who are delinquent in paying taxes, as well as working with the Gullah property and business owners to assist them with Town regulations. The initial design and cost analysis for a seasonal and temporary sign program and coordination with the Heritage Library to set up a genealogy clinic to aid in cleaning up property titles have been started. The Cultural Comprehensive Plan, a comprehensive inventory of cultural resources and recognizing Gullah churches to be the source of leadership and communications have been started.

Staff continues to execute against the top priority projects, and has demonstrated accomplishments with the advancement of the Family Compound and Family Subdivision LMO Amendments to Town Council. Staff is confident that working with Town Council going forward, we can continue to advance the priority projects and realize the positive impact in the community.

Attachments:

Report for Gullah Projects

Report for Gullah Geechee Cultural Project Recommendations

Recommendations	Level of Priority	Status
PP-4 Historic Neighborhoods Preservation Overlay (HNP-O) District	Top	<ul style="list-style-type: none"> • Drafted LMO Amendments • Letters sent and signs posted • Q&A website established • Correspondence with public • Reviewed with Gullah Task Force, LMO Committee, Planning Commission including Public Hearing, and Public Planning Committee in multiple meetings • Recommended for approval by Task Force, LMO Committee & Planning Commission
PP-6 Provide greater flexibility for ROWs and drainage easements (Part of PP-4)	Top	<ul style="list-style-type: none"> • Drafted LMO Amendments • Letters sent and signs posted • Q&A website established • Correspondence with public • Reviewed with Gullah Task Force, LMO Committee, Planning Commission including Public Hearing, and Public Planning Committee in multiple meetings • Recommended for approval by Task Force, LMO Committee & Planning Commission
PP-2 “Fast Track” Development Review Process (Part of PP-4)	Top	<ul style="list-style-type: none"> • Drafted LMO Amendments • Letters sent and signs posted • Q&A website established • Correspondence with public • Reviewed with Gullah Task Force, LMO Committee, Planning Commission including Public Hearing, and Public Planning Committee in multiple meetings • Recommended for approval by Task Force, LMO Committee & Planning Commission

PP-5 Add Family Compound (and Family Subdivision) applications to Land Management Ordinance	Top	<ul style="list-style-type: none"> • Drafted LMO Amendments • Letters sent and signs posted • Q&A website established • Correspondence with public • Reviewed with Gullah Task Force, LMO Committee, Planning Commission including Public Hearing, and Public Planning Committee in multiple meetings • Recommended for approval by Task Force, LMO Committee, Planning Commission, and Public Planning Committee
PP-3 Work with Gullah property and business owners to assist with Town regulations	Top	<ul style="list-style-type: none"> • Ongoing • Prepare case studies related to assistance requested
PP-14 Program for temporary and seasonal signs	Top	<ul style="list-style-type: none"> • Initial design and cost estimate
CP-1 Promote Heritage Library to research history and genealogy	Top	<ul style="list-style-type: none"> • Held initial meetings regarding the creation of a genealogy clinic to aid in clearing property titles • Working with community members to identify Heirs Property
HP-1 Utilize Heritage Library as a first step to clear land title	Top	<ul style="list-style-type: none"> • Held initial meetings regarding the creation of a genealogy clinic to aid in clearing property titles
CP-15 Conduct a comprehensive inventory of cultural resources	Top	<ul style="list-style-type: none"> • Started research of existing materials including Comprehensive Plan
CP-16 Prepare comprehensive and detailed cultural preservation plan	Top	<ul style="list-style-type: none"> • Started research of existing materials including Comprehensive Plan
CP-17 Recognize Gullah churches to be the source of leadership and communication	Top	<ul style="list-style-type: none"> • Provide updates via email regarding Gullah Geechee affairs • Prepared introduction letter regarding availability of Historic Neighborhood Preservation Administrator for assistance
PP-11 Fund for Delinquent Taxes	Top	<ul style="list-style-type: none"> • Prepared press release for Penn Center's Land Preservation Assistance Program to aid Beaufort County property owners

Delinquent Tax Reports	Other	<ul style="list-style-type: none">• Updated historic property records• Coordinated with Beaufort County Tax Office• Prepared monthly reports to Task Force• Prepared Report of 2020 Redemption Properties
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Items of Interest

March 16, 2021

Town News

Fire Rescue Captain/Paramedic Jonathan Bills

Captain/Paramedic Jonathan Bills was deployed February 4th-17th as a member of a Federal Health and Human Services Disaster Medical Assistance Team to Phoenix, Arizona. The Team's mission was to support mass-vaccination operations throughout the greater Phoenix area. Thank you Captain Bills for your service!

Special Olympics Tennis Program

Each year, for 20 years, the Van der Meer Tennis Center has hosted the North American Special Olympics Tennis Championship Tournament. Due to COVID-19, the 2020 tournament was cancelled and the program was put on hold. The US Tennis Association has approved a return to tennis under a strict safety guidelines, yet the Special Olympic program has not been able to formally resume. The Town received word, that thanks to years of strong relationships, a small group of athletes, their families, and their volunteer coaches have taken to the court for some informal play. Most recently, a couple of the athletes and their local volunteer coaches practiced their serves and social distancing during a competitive doubles match at Chaplin Community Park. We would like to wish all of the athletes, their coaches, and families all the best and continued success!

Town Meetings

Public meetings are currently being conducted virtually. Please check the [Town's website](#) for all scheduled meetings.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Marc Orlando, *ICMA~CM, Town Manager*
VIA: Jennifer Ray, *ASLA, Interim Community Development Director*
FROM: Anne Cyran, *AICP, Senior Planner*
CC: Shawn Colin, *AICP, Interim Deputy Town Manager*
DATE: March 3, 2021
SUBJECT: Proposed Ordinance 2020-23 – Sea Turtle Protection Ordinance

On March 2, 2021, Town Council held the first reading on Proposed Ordinance 2020-23. Council voted 7-0 to approve the Ordinance with the following amendments:

1. Revise Section 8.5.111(o), the Definition of Tinted or Filmed Glass, to be: “Tinted or Filmed Glass: Means glass that has been treated to reduce light transmittance. Tinted or Filmed Glass must have a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45 %) or less. Filmed Glass cannot have an exterior visible light reflectance of more than fifty percent (50%).”
2. Revise Section 8-5-115(f)(2), under Standards for Existing Development, to be: “Apply Film with a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45%) or less to windows and glass doors that are Visible From The Beach. Any Film used shall not have an exterior visible light reflectance of more than fifty percent (50%).”

Attachment:
Proposed Ordinance 2020-23

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2021-__

PROPOSED ORDINANCE NO. 2020-23

AN ORDINANCE TO AMEND CHAPTER 5 OF TITLE 8, (BEACHES, WATERWAYS, RECREATIONAL AREAS, AND ARTS), OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; TO AMEND SECTION 8-5-111, DEFINITIONS; TO AMEND SECTION 8-5-112, PURPOSE; TO DELETE SECTION 8-5-113, NEW DEVELOPMENT; TO ADD SECTION 8-5-113, STANDARDS FOR NEW DEVELOPMENT; TO DELETE SECTION 8-5-114, EXEMPTIONS FOR NEW DEVELOPMENT; TO ADD SECTION 8-5-114, EXEMPTIONS; TO DELETE SECTION 8-5-115, EXISTING DEVELOPMENT; TO ADD SECTION 8-5-115, STANDARDS FOR EXISTING DEVELOPMENT; TO DELETE SECTION 8-5-116, PUBLICLY OWNED LIGHTING; TO AMEND SECTION 8-5-117, ENFORCEMENT AND PENALTY; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina finds that the Loggerhead sea turtle (*Caretta caretta*); the Leatherback sea turtle (*Dermochelys coriacea*); and Kemp's Ridley sea turtle (*Lepidochelys kempii*) are documented to nest or to have nested on the beaches of Hilton Head Island; and,

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina finds that the Loggerhead sea turtle, the Leatherback sea turtle and Kemp's Ridley sea turtle are designated as endangered by the State of South Carolina in S. C. Code of Regulations 123-150, 123-150.1 and 123-150.2; and,

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina finds that the Loggerhead sea turtle, the Leatherback sea turtle and Kemp's Ridley sea turtle are listed as threatened or endangered by the United States of America in 50 C. F. R. § 17.11; and,

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina finds that the stated policy of the United States of America is to protect threatened and endangered species, including the Loggerhead sea turtle, the Leatherback sea turtle and the Kemp's Ridley sea turtle, as set out in the Endangered Species Act, 16 U. S. C. § 1531, et seq.; and,

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina finds that the stated policy of the State of South Carolina is to protect threatened and endangered species, including the Loggerhead sea turtle, the Leatherback sea turtle and the Kemp's Ridley sea turtle, as set out in the South Carolina Non-Game and Endangered Species Conservation Act, S. C. Code Ann. § 50-15-10, et seq. (Supp. 2020); and,

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina finds that artificial lighting at or near the beach where sea turtles nest can disorient nesting female sea turtles and also hatchling sea turtles, which is confirmed by the South Carolina Department of Natural Resources in published material available to the general public at “<https://www.dnr.sc.gov/seaturtle/lights.htm>” which reads in part:

When loggerhead hatchlings emerge from the shell, they are attracted to the blue and green wavelengths of light which are naturally reflected off the ocean through celestial light. They use this natural light cue to navigate from the nest towards the ocean. This same mechanism is used by adult females when nesting. If an artificial light source on the beach is brighter than the natural light, the hatchlings will head towards this artificial source. These artificial lights can be a direct source such as a beach front home’s exterior flood light or a street light; the artificial light can also be indirect, light pollution that creates a sky glow effect.

When a hatchling sea turtle is attracted away from the ocean towards a direct or indirect source of light, biologists describe this as a disorientation event. The hatchlings become disoriented and crawl away from the ocean towards the brightest light. During this disorientation event, hatchlings are more susceptible to nocturnal predators and desiccation. While crawling the wrong way on the beach, hatchlings exhaust valuable, limited energy stores needed to swim offshore. Hatchlings need energy once they reach the ocean to swim towards floating Sargassum seaweed found as far as 60 miles offshore. They use the seaweed as camouflage to protect them from predators. The seaweed is also home to small crustaceans that loggerhead hatchlings eat to replenish their energy.

WHEREAS, The Town Council for The Town of Hilton Head Island, South Carolina finds that there has been evidence of misorientation of adult nesting female sea turtles, and sea turtle hatchling on Hilton Head Island caused by artificial lighting at or near the beaches on Hilton Head Island; and,

WHEREAS, the Town Council of the Town of Hilton Head Island did previously adopt Chapter Five (5) of Title 8 of the Municipal Code of the Town of Hilton Head Island to regulate sea turtle protection; and,

WHEREAS, research on sea turtle nesting and hatchling habits has advanced considerably since the regulations were adopted in 1990; and

WHEREAS, Town Council desires to amend Chapter Five (5) Title 8 of the Municipal Code of the Town of Hilton Head Island to update and clarify sea turtle protection regulations.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

NOTE: Underlined and bold-face typed portions indicate additions to the Ordinance. ~~Stricken~~ portions indicate deletions to the Ordinance.

Section 1. Deletion. That Section 8-5-111 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-111. Definitions.~~

~~For the purpose of this chapter, the following terms shall have the meanings set forth in this section:~~

- ~~(a) *Artificial light*: Any source of light emanating from a manmade device, including but not limited to, incandescent mercury vapor, metal halide, or sodium lamps, flashlights, spotlights, street lights, vehicular lights, construction or security lights.~~
- ~~(b) *Beach*: That area of unconsolidated material that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves).~~
- ~~(c) *Floodlight*: Reflector type light fixture which is attached directly to a building and which is unshielded.~~
- ~~(d) *Low profile luminaire*: Light fixture set on a base which raises the source of the light no higher than forty eight (48) inches off the ground, and designed in such a way that light is directed downward from a hooded light source.~~
- ~~(e) *New development*: Shall include new construction and remodeling of existing structures when such remodeling includes alteration of exterior lighting.~~
- ~~(f) *Person*: Any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county or municipal government.~~
- ~~(g) *Pole lighting*: Light fixture set on a base or pole which raises the source of the light higher than forty eight (48) inches off the ground.~~
- ~~(h) *Solar screen*: Screens which are fixed installations and permanently project shade over the entire glass area of the window. The screens must be installed outside of the glass and must:
 - ~~(1) Have a shading coefficient of .45 or less; and~~
 - ~~(2) Carry a minimum five year warranty; and~~
 - ~~(3) Must have performance claims supported by approved testing procedures and documentation.~~~~
- ~~(i) *Tinted or filmed glass*: Window glass which has been covered with window tint or film such that the material has:
 - ~~(1) A shading coefficient of .45 or less; and~~
 - ~~(2) A minimum five year warranty; and~~
 - ~~(3) Adhesive as an integral part; and~~~~

~~(4) Performance claims which are supported by approved testing procedures and documentation.~~

~~(j) *Shading coefficient*: A coefficient expressing that percentage of the incident radiation which passes through the window as heat.~~

(Ord. No. 90-13, § 1, 5-7-9)

Section 2. Addition. That Section 8-5-111 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby added as follows:

Sec. 8-5-111. – Definitions.

In this chapter, the following terms when capitalized shall have the meanings set forth in this section:

- (a) Ambient Light: Means Artificial Light that is Visible From The Beach emanating from Light Fixtures with a Shield that are Visible From The Beach and from unshielded Light Fixtures and sources that are not Visible From The Beach.**
- (b) Artificial Light: Means the light originating from any human-made device or human activity.**
- (c) Beach: Means that area of unconsolidated material that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves).**
- (d) Downward Directed: Means positioning of any Light Fixture so that the light from it is directed perpendicular to the ground.**
- (e) Existing Development: Means any construction authorized by building permit for which application was made on or before April 30, 2021, and any other related installation on the lot or parcel on which the structure is built.**
- (f) Floodlight: Means any reflector-type exterior Light Fixture that is attached directly to a building or pole and that does not have a Shield.**
- (g) Light Fixture: Means any housing for any Artificial Light source.**
- (h) Low Profile Luminaire: Means any Light Fixture set on a base which raises the bulb or other source of the light no higher than forty-eight (48) inches off the ground, and designed in such a way that light is Downward Directed from a light source that has a Shield.**
- (i) New Development: Means any construction authorized by building permit for which application was made on or after May 1, 2021, and any other related installation on the lot or parcel on which the structure is built.**
- (j) Opaque: Means any thing or material that blocks the passage of light through it.**
- (k) Sea Turtle Nesting Season: Means the period from May 1 through October 31 of each year.**

- (l) Security Light: Means an exterior Light Fixture that illuminates a portion of a structure or property that is intended to deter or detect intrusions or other criminal activity and for the safety of property owners and guests.**
- (m)Shield: Means an Opaque material covering the bulb, lamp, glowing lens, reflector or reflective surface of a Light Fixture so that the bulb, lamp, glowing lens, reflector or reflective surface is not visible except when viewed from directly underneath the Shield. For interior Light Fixtures, lampshades that cover the bulb, lamp, glowing lens, reflector or reflective surface of the lamp, whether or not made of Opaque material, qualify under this subsection as a Shield.**
- (n) Solar Screen: Means a type of screen intended to reduce the amount of Artificial Light passing through a glass window or door. A Solar Screen must have a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45%) or less.**
- (o) Tinted or Filmed Glass: Means glass that has been treated to reduce light transmittance. Tinted or Filmed Glass must have a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45 %) or less. Filmed Glass cannot have an exterior visible light reflectance of more than fifty percent (50%).**
- (p) Transmittance Value: A measurement of the percentage of visible light that leaves the interior of a structure through glass windows or doors. This measurement is related to the absorbance of the applied material, rated by the manufacturer.**
- (q) Visible From The Beach: Means capable of being observed by or within the line of sight of a pedestrian walking or standing on the Beach.**

(Ord. No. 90-13, § 1, 5-7-90)

Section 3. Amendment. That Section 8-5-112 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby amended as follows:

Sec. 8-5-112. – Purpose.

The purpose of this chapter is to protect ~~the~~ threatened and endangered sea turtles known to nest along on the ~~b~~**B**eaches of Hilton Head Island, ~~by safeguarding hatchlings from sources of artificial light which causes misorientation and subsequent death.~~ **including Loggerhead, Leatherback and Kemp’s Ridley sea turtles, by limiting Artificial Light that is Visible From the Beach. Artificial Light is documented to cause misorientation and disorientation of nesting females and sea turtle hatchlings, which is documented to lead to injury and death of adult sea turtles and hatchlings.**

(Ord. No. 90-13, § 1, 5-7-90)

Section 4. Deletion. That Section 8-5-113 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-113. – New development.~~

Attachment A

It is the policy of the Town of Hilton Head Island that no artificial light shall illuminate any area of the beaches of Hilton Head Island. To meet this intent, building and electrical plans for construction of single family or multifamily dwellings, commercial or other structures, including electrical plans associated with parking lots, dune walkovers or other outdoor lighting if such lighting can be seen from the beach, shall be in compliance with the following:

- ~~(a) Floodlights shall be prohibited. Wallmounted light fixtures shall be fitted with hoods so that no light illuminates the beach.~~
 - ~~(b) Pole lighting shall be shielded in such a way that light will be contained within an arc of three (3) to seventy three (73) degrees on the seaward side of the pole. Outdoor lighting shall be held to the minimum necessary for security and convenience.~~
 - ~~(c) Low profile luminaires shall be used in parking lights and such lighting shall be positioned so that no light illuminates the beach.~~
 - ~~(d) Dune walkovers shall utilize low profile shielded luminaires.~~
 - ~~(e) Lights on balconies shall be fitted with hoods so that lights will not illuminate the beach.~~
 - ~~(f) Tinted or filmed glass shall be used in windows above the first floor of on multistory structures. Shade screens can be substituted for this requirement.~~
 - ~~(g) Temporary security lights at construction sites shall not be mounted more than fifteen (15) feet above the ground. Illumination from the lights shall not spread beyond the boundary of the property being developed and in no case shall those lights illuminate the beach.~~
- ~~(Ord. No. 90-13, § 1, 5-7-90)~~

Section 5. Addition. That Section 8-5-113 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby added as follows:

Sec. 8-5-113. – Standards for New Development.

It is the intent of the Town of Hilton Head Island to reduce the number of nesting adult females and sea turtle hatchlings misoriented and disoriented by Artificial Light that is Visible From The Beaches of Hilton Head Island. To meet this intent, all New Development shall comply with the standards below. Exterior Light Fixtures, windows, and glass doors that are Visible From the Beach, or that would be Visible From The Beach if they were not obscured from view of the Beach by vegetation when they are installed, shall meet the standards below. Ambient Light is permitted.

- (a) Exterior Light Fixtures that are Visible From The Beach shall be Downward Directed, and shall also have a Shield.**
- (b) Floodlights that are Visible From The Beach serving as temporary Security Lighting at construction sites shall not be mounted more than fifteen (15) feet above the ground. Such Light Fixtures shall be activated by a motion detector or shall use bulbs that produce long wavelength light (560 nanometers or greater),**

which is amber, orange, or red light. The light from any such Floodlight shall not spread beyond the boundary of the property being developed.

- (c) Permanent Security Lighting Visible From The Beach shall be permitted throughout the night as long as Low Profile Luminaires are used.**
- (d) Light Fixtures illuminating areas of dune walkovers shall be turned off between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season. Light Fixtures illuminating areas of dune walkovers that produce long wavelength light (560 nanometers (NM) or greater), which is amber, orange, or red light, are exempt from this requirement.**
- (e) Windows and glass doors that are Visible From The Beach shall have Tinted or Filmed Glass, or shall be installed with an interior or exterior Solar Screen. If a Solar Screen is used, the Solar Screen must completely cover the glass between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season.**

Section 6. Deletion. That Section 8-5-114 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-114. Exemptions for new development.~~

~~The provisions of Section 8-5-113 of this chapter shall not apply to any structure for which a building permit has been issued by the Town of Hilton Head Island prior to the effective date of this chapter.~~

~~(Ord. No. 90-13, § 1, 5-7-90)~~

Section 7. Addition. That Section 8-5-114 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby added as follows:

Sec. 8-5-114. - Exemptions.

The provisions of Section 8-5-113 shall not apply to any structure for which a building permit has been issued or applied for by the Town of Hilton Head Island prior to April 30, 2021.

(Ord. No. 90-13, § 1, 5-7-90)

Section 8. Deletion. That Section 8-5-115 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-115. Existing development.~~

~~It is the policy of the Town of Hilton Head Island that no artificial light shall illuminate any area of the beaches of Hilton Head Island, South Carolina. To meet this intent, lighting of~~

Attachment A

existing structures which can be seen from the beach shall be in compliance with the following within six (6) months of the effective date of this chapter.

- (a) ~~Lights illuminating buildings or associated structures and grounds for decorative or recreational purposes shall be shielded or screened such that they are not visible from the beach, or turned off after 10:00 p.m. during the period of May 1 to October 31 of each year.~~
- (b) ~~Lights illuminating dune walkovers of any areas oceanward of the dune line shall be turned off after 10:00 p.m. during the period of May 1 to October 31 of each year.~~
- (c) ~~Security lighting shall be permitted throughout the night so long as low profile luminaires are used and screened in such a way that those lights do not illuminate the beach.~~
- (d) ~~Window treatments in windows facing the ocean above the first floor of multistory structures are required so that interior lights do not illuminate the beach. The use of black-out draperies or shade screens are preferred. The addition of tint or film to windows or awnings is also encouraged, as is turning off unnecessary lights if the light illuminates the beach.~~

~~(Ord. No. 90-13, § 1, 5-7-90)~~

Section 9. Addition. That Section 8-5-115 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby added as follows:

Sec. 8-5-115. – Standards for Existing Development.

It is the intent of the Town of Hilton Head Island to reduce the number of nesting adult females and sea turtle hatchlings misoriented and disoriented by Artificial Light that is Visible From The Beaches of Hilton Head Island. To meet this intent, all Existing Development shall comply with the standards below. Ambient Light is permitted.

- (a) All exterior Light Fixtures Visible From The Beach shall be Downward Directed and have a Shield on or after May 1, 2021 or they shall be turned off between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season.**
- (b) On or after May 1, 2021, Floodlights Visible From The Beach serving as temporary Security Lighting at construction sites shall not be mounted more than fifteen (15) feet above the ground. Such Floodlights shall be activated by a motion detector or shall use bulbs that produce long wavelength light (560 nanometers (NM) or greater), which is amber, orange, or red light. The light shall not spread beyond the boundary of the property being developed.**
- (c) On or after May 1, 2021, permanent Security Lighting Visible From The Beach shall be permitted throughout the night as long as Low Profile Luminaires are used or any such permanent Security Lighting shall be turned off between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season.**
- (d) On or after May 1, 2021, Light Fixtures illuminating areas of dune walkovers on the Beach shall be turned off between 10:00 p.m. and 6:00 a.m. during Sea Turtle**

Nesting Season. Light Fixtures that are Downward Directed, have a Shield, and use bulbs that produce long wavelength light (560 nanometers (NM) or greater), which is amber, orange or red light, are exempt from this requirement.

- (f) On or after May 1, 2021, one or more of the following options shall be used so that interior Artificial Light is less Visible From The Beach between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season. Ambient Light is permitted.**
- 1. Use Opaque material (curtains, blinds, drapes, etc.) or Solar Screens to cover windows and glass doors that are Visible From The Beach between 10:00 pm. and 6:00 a.m. during Sea Turtle Nesting Season.**
 - 2. Apply Film with a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45%) or less to windows and glass doors that are Visible From The Beach. Any Film used shall not have an exterior visible light reflectance of more than fifty percent (50%).**
 - 3. Use Shields on Light Fixtures that are Visible From The Beach.**
 - 4. Use long wavelength (560 nanometers (NM) or greater) lightbulbs in Light Fixtures that are Visible From The Beach.**
 - 5. Turn off interior lights that are Visible From The Beach between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season.**
- (g) On or after May 1, 2021, new windows and glass doors installed in Existing Development that are Visible From The Beach shall be of Tinted or Filmed Glass, or shall be installed with an interior or exterior Solar Screen. Existing Development shall be exempt from the requirement of this Sec. 8-5-115(g) if the total area of all new windows and glass doors to be installed constitutes less than half of the total area of windows and glass doors on the structure that are Visible From The Beach.**

Section 10. Deletion. That Section 8-5-116 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-116. — Publicly owned lighting.~~

~~Streetlights and lighting at parks and other publicly owned beach access areas shall be subject to, as well as the following:~~

- ~~(a) Whenever possible, streetlights shall be located so that the bulk of their illumination will travel away from the beach. These lights shall be equipped with shades or shields that will prevent backlighting and render them not visible from the beach.~~
- ~~(b) Lights at parks or other public beach access points shall be shielded or shaded or shall not be utilized during the period May 1 to October 31 of each year.~~

~~(Ord. No. 90-13, § 1, 5-7-90)~~

Section 11. Amendment. That Section 8-5-117 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby amended as follows:

Attachment A

Sec. 8-5-1176. - Enforcement and penalty.

This chapter shall be enforced in accordance with the provisions of this chapter, with penalties set forth in section 1-5-10 of this Code.

(Ord. No. 90-13, § 1, 5-7-90)

Section 12. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 13. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2021.

THE TOWN OF HILTON HEAD ISLAND
SOUTH CAROLINA

John J. McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

First Reading: March 2, 2021

Second Reading:

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Marc Orlando, ICMA~CM, *Town Manager*
FROM: Jennifer Ray, ASLA, *Interim Community Development Director*
CC: Shawn Colin, AICP, *Interim Deputy Town Manager*
CC: Jayme Lopko, AICP, *Senior Planner*
DATE: March 3, 2021
SUBJECT: Proposed Ordinance 2021-01 - Historic Mitchelville Freedom Park MOU
Renewal & Lease Amendments

Town Council reviewed Proposed Ordinance 2021-01 regarding the Memorandum of Understanding and Lease Amendments for the Historic Mitchelville Freedom Park at their March 2, 2021 meeting. At that meeting Town Council made no changes to the proposed ordinance.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

PROPOSED ORDINANCE NO. 2021-01

ORDINANCE NO. 2021-_____

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF AN UPDATED MEMORANDUM OF UNDERSTANDING AND AMENDED LEASE WITH HISTORIC MITCHELVILLE FREEDOM PARK, INC., RELATED TO REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2012), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town of Hilton Head Island, South Carolina (“Town”), owns one or more parcels of real property known generally as “Historic Mitchelville Freedom Park”; and

WHEREAS, the Town has determined that it is in the best interests of the Town to provide for the preservation of Historic Mitchelville Freedom Park, and for the utilization of the Park as a cultural and historical museum; and

WHEREAS, on April 18, 2017 the Town adopted an ordinance, which entered into a Memorandum of Understanding and Lease with Historic Mitchelville Freedom Park, Inc. (“Mitchelville”, formerly known as: Mitchelville Preservation Project, Inc.) for the operation of a cultural and historical museum in the Town of Hilton Head Island; and

WHEREAS, on March 19, 2019 the Town adopted an ordinance, which renewed a Memorandum of Understanding and amended a Lease with Mitchelville for the operation of a cultural and historical museum in the Town of Hilton Head Island; and

WHEREAS, the Town Council of the Town is authorized to enter into leases of Town-owned land under the authority of S.C. Code Ann. Section 5-7-40 (Supp. 2010) and Section 2-3-30 and Section 2-7-20, *Code of The Town of Hilton Head Island*, South Carolina (1983, as amended); and

WHEREAS, the Town Council for the Town has determined that it is in the best interests of the Town to authorize the execution and delivery of an updated Memorandum of Understanding and amended Lease for Historic Mitchelville Freedom Park, which is described and attached hereto as Exhibits “A” and “B”.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID TOWN COUNCIL:

Section 1 - Execution, Delivery and Performance of Lease.

(a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the updated Memorandum of Understanding and amended Lease in substantial conformance with the attached Exhibits “A” and “B”; and

(b) The Town Manager is hereby authorized to take such other and further actions as may be necessary to complete the performance of the Town's obligations under the terms and conditions of the updated Memorandum of Understanding and amended Lease.

Section 2 - Severability.

If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3 - Effective Date.

This Ordinance shall be effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

(SIGNATURE PAGE FOLLOWS)

Exhibit A

- b. Mitchelville may schedule programs or have facility rentals that occur outside normal operating hours.

5. Operations.

- a. The Town shall pay to Mitchelville a management fee of One Hundred Five Thousand dollars (\$105,000.00) per annum. Mitchelville shall raise the balance of its operating budget as shown on its operating account profit and loss statement from sources other than the Town for the annual operating budget of the Mitchelville.
- b. Other entities, public or private, may contribute to the annual operating budget of Mitchelville.
- c. It is understood by the Town and Mitchelville that the Town will contract for and pay all expenses related to janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park. Any new capital projects would be at the sole cost and expense of Mitchelville.
- d. Mitchelville shall be entitled to charge User Fees for the use of the Park and its facilities to defray the cost of event set up, event cleanup, and supervision of the Park and facilities during events. Prior to charging any User Fees for the use of the Park and facilities, Mitchelville shall prepare a schedule of such fees and present the same to the Town for approval by the Town Council. Any changes to the approved schedule of fees shall be submitted to the Town Council for its approval.

6. Miscellaneous.

- a. Mitchelville shall provide the Town with current copies of all insurance policies of Mitchelville relating to their operations within thirty (30) days of signing of the Memorandum and copy the Town upon each renewal of said insurance policies.
- b. Mitchelville shall remain a not-for-profit independent entity whose policies and procedures shall be determined by its Executive Director and Board of Directors.
- c. Financial Statements:
 - i. Mitchelville shall cause a financial statement to be prepared each year at the conclusion of Mitchelville's fiscal year by an entity independent of, and unconnected to, Mitchelville. Mitchelville's fiscal year ends on December 31 of each calendar year. Mitchelville shall deliver a copy of

Exhibit A

its financial statement to the Town within thirty (30) days of the completion of the financial statement each calendar year.

- ii. Mitchelville shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager shall inform Mitchelville of the procedures to be followed in regard to the budgeting process.
- iii. Mitchelville shall provide the Town with an annual independent audit report or review report prepared by a Certified Public Accountant (CPA) acceptable to the Town. An annual report shall be submitted no less than every third year.
- iv. Upon request of the Town, Mitchelville shall make its financial books and records available to the Town for Review. The Town shall give Mitchelville written notice of its intention to review Mitchelville's financial books and records. Mitchelville shall make its financial books and records available for review by the Town within twenty (20) days of the Town's written notice.

7. **Notices.** All notices required under this Memorandum shall be deemed to have been given if in writing and
- a. delivered personally; or
 - b. mailed first class, postage prepaid, to the address of record set forth below, in which case delivery shall be deemed to have occurred two calendar days after the date of postmark.

HISTORIC MITCHELVILLE FREEDOM PARK, Inc.
Executive Director
539 William Hilton Parkway, Suite 134
Hilton Head Island, SC 29928

TOWN OF HILTON HEAD ISLAND
Town Manager
One Town Center Court
Hilton Head Island, SC 29928

The address of record may be changed by written notice to the other party.

8. **Term.** The term of this Memorandum of Understanding shall be for a period of two (2) years from the date of execution, March 16, 2021 ~~19, 2019~~. Prior to March 16, 2021 ~~19, 2019~~, this Memorandum will be reviewed by the Town and Mitchelville. Changes may be made only with and by the mutual consent of both parties.

Exhibit A

9. **Termination.** In addition to any other rights of termination set forth in this Memorandum, each party shall have the right to terminate this Memorandum, by written notice to the other party, if the other party is in default of any term or provision of this Memorandum, and the defaulting party fails to cure or correct such default within fourteen (14) days of notice thereof from the non-defaulting party. A party may elect to disregard a default for the period of time without waiving its right to declare a default at a subsequent time or upon reoccurrence of the default.

(SIGNATURE PAGES FOLLOW)

Exhibit A

IN WITNESS WHEREOF, the Town has caused this Agreement to be signed and sealed this _____ day of _____, 20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By: _____
John McCann, Mayor

Attest: _____
~~Stephen G. Riley, ICMA~CM~~
Marc Orlando, ICMA~CM
Town Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that John McCann and Marc Orlando ~~Stephen G. Riley~~ personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 20_____.

Notary Public for South Carolina
My Commission Expires: _____

Exhibit B

A LONG TERM LEASE

BY AND BETWEEN

**THE TOWN OF HILTON HEAD ISLAND, SOUTH
CAROLINA,**

AND

HISTORIC MITCHELVILLE FREEDOM PARK, INC.

(FORMERLY KNOWN AS: MITCHELVILLE PRESERVATION PROJECT, INC.)

DATED THIS _____ DAY OF _____, ~~2021~~ 19

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

LONG TERM LEASE

This Long Term Lease, dated this ____ day of _____, ~~2021~~¹⁹ (together with any amendments made in accordance herewith, hereinafter, the “Lease”), is amended and entered into by and between The Town of Hilton Head Island, South Carolina (hereinafter, the “Town”), and the Historic Mitchelville Freedom Park, Inc., (hereinafter, the “Mitchelville”).

WITNESSETH

WHEREAS, the Town is a body politic and a political subdivision of the State of South Carolina, existing as such under and by virtue of the Constitution, statutes, and laws of the State of South Carolina; and,

WHEREAS, Mitchelville is a nonprofit corporation, existing as such under and by virtue of the Constitution, statutes and laws of the State of South Carolina; and,

WHEREAS, under the authority of S. C. Code Ann. § 5-7-40 (Supp. 2010), and Section 2-3-30, *Code of the Town of Hilton Head Island* (1983), the Town is authorized to lease land belonging to the Town; and,

WHEREAS, on September 7, 2010, the Town authorized the negotiation of a long term lease of Town owned land known as Historic Mitchelville Freedom Park to Mitchelville; and

WHEREAS, on April 18, 2017, the Town Council of the Town adopted Ordinance No. 2017-04 authorizing the execution and delivery of this Lease; and

WHEREAS, on January 12, 2017, the Board of Directors of Mitchelville, by resolution duly adopted, authorized the execution and delivery of this Lease;

WHEREAS, on March 19, 2019, the Town Council of the Town adopted Ordinance No. 2019-05 authorizing the execution and delivery of ~~this~~ an amended Lease; and

Exhibit B

WHEREAS, on _____, the Town Council of the Town adopted Ordinance No. _____ authorizing the execution and delivery of this amended Lease; and

NOW THEREFORE, for and in consideration of the sum of One and no/100 (\$1.00) Dollar paid by Mitchelville to the Town, and the full and faithful performance of the mutual promises, conditions, and covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Town and Mitchelville, the Parties hereto agree as follows:

ARTICLE 1

1.1. **The Property:** The improved real property leased by Mitchelville pursuant hereto is known and described as follows:

PARCEL 1

All that certain piece, parcel or lot of land lying above the mean high water line of Port Royal Sound and the marshes of Fish Haul Creek, containing 16.481 acres, more or less, and which is more particularly shown and described on the Plat thereof entitled "16.481 AC. PARCEL, FISH HAUL PLANTATION FISH HAUL CREEK AND PORT ROYAL SOUND HILTON HEAD ISLAND BEAUFORT COUNTY SOUTH CAROLINA", prepared by Millard A. Dunham, P. L. S., and which is recorded in the Office of the Register Of Deeds for Beaufort County, South Carolina, in Plat Book 63 at Page 93.

PARCEL 2

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 3.008 acres, more or less, shown and described as "3.00 ACRES" on that certain plat entitled "A Plat of the Property of Dr. J. H. Brewton" prepared by Richardson & Associates, Jerry L. Richardson, S.C.R.L.S. 4784, dated September 5, 1973, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 22 at Page 100.

PARCEL 3

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 8.458 acres, more or less, shown and described as "PARCEL 'B'" on that certain plat entitled "Plat --Parcels A, B & C", prepared by Freiesleben-Yerkes, Inc., E. H. Freiesleben, S.C.R.L.S. 4624, dated July 20, 1979, as revised,

Exhibit B

and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 29 at Page 117.

AND ALSO, ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 0.119 acres more or less, shown and described as "35' ACCESS EASEMENT" on the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 117.

SAVE AND EXCEPT, ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 0.100 acre, more or less, being a portion of that property shown and described as "PROPOSE EASEMENT TRADE" on the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 117.

PARCEL 4

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 5.00 acres, more or less, shown and described as "PARCEL 'C'" on that certain plat entitled "Plat --Parcels A, B & C" prepared by Freiesleben-Yerkes, Inc., E. H. Freiesleben, S.C.R.L.S. 4624, dated July 20, 1979, as revised, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 29 at Page 117.

Parcels 1, 2, 3, and 4 described above, previously referred to as Fish Haul Creek Park, are known generally as "Historic Mitchelville Freedom Park", Beaufort County PIN R510-005-000-0208-0000, and are collectively referred to herein as the "Property".

1.2. **Mitchelville Accepts the Property "As Is":** Mitchelville represents and warrants that it has performed, or has had the opportunity to perform, an examination of (1) the Property, (2) title to the Property, and (3) the existing use restrictions on the Property, and accepts the Property "as is", and without recourse to or against the Town as to the title thereto, availability of water, sewer, electricity, or telecommunication services, the nature, condition, or usability thereof, or the uses to which Property may be put. In no event shall the Town have any liability to Mitchelville for any defect in the Property, or the title to the Property, or conditions existing in, on, under, over, or about the Property or any limitation on the uses that may be made of the Property. Mitchelville accepts this limitation on the Town's liability and acknowledges that this limitation of the Town's liability is a material term of this Lease without which the Town would not have entered into this Lease.

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1.3. **The Property to Continue as a Public Park:** Mitchelville acknowledges that the Property is, as of the date of the commencement of this Lease, a public park. Mitchelville acknowledges and accepts that the Property shall at all times of normal daily operations ~~during the term of this Lease~~ remain open as a public park, with the public's right to enter the Property for parking and use of the amenities of the public park and access to the marshes of Fish Haul Creek and Port Royal Sound being preserved until such time that the public park and its amenities including water access are relocated.

- (a) **Certain Restrictions Permitted:** The foregoing language of Article 1.3 notwithstanding, Mitchelville shall be permitted to restrict the public's access to any portion of the Property during times when and where construction activity or any other similar hazardous work is being undertaken by Mitchelville.
- (b) **Events Permitted:** The foregoing language of Article 1.3 shall not be interpreted to prevent Mitchelville from holding events from time to time at the Property for which a charge or admission fee must be paid by any person attending the event. Access to the Property may be restricted by Mitchelville to those persons paying the applicable charge or admission fee with approval by the Town Manager or his designee.

1.4. **Application of Laws and Other Matters:** This Lease is made by the Town and accepted by Mitchelville subject to all existing ordinances, regulations, and statutes, including zoning regulations and restrictive covenants affecting the Property that are now in force and which may be enacted in the future.

1.5. **No Other Interest in Real Property Created:** Other than the leasehold interest established by this Lease, Mitchelville shall have no interest in the Property.

1.6. **Rent:** Mitchelville shall pay to the Town Rent in the sum of One Dollar per year for the term of this Lease. Rent shall be due on January 1 of each year during any term of this Lease.

1.7. **National Park Service Designation:** The Town and Mitchelville acknowledge and agree that the Town and/or Mitchelville may seek and apply for the Property and/or Mitchelville's use thereon to become part of the National Park Service Reconstruction Era Monument (or similar designation). The Parties agree to cooperate and work in

Exhibit B

good faith to achieve this designation, including but not limited to executing any necessary easements, agreements or the like.

ARTICLE 2

2.1. **Effective Date:** The “Effective Date” of this Lease shall be the date upon which the duly authorized officials of the Town execute and deliver this Lease to Mitchelville.

ARTICLE 3

3.1. **Limited Obligation of the Town:** The Town shall not be required to furnish, and has no obligation to furnish, to Mitchelville any facilities or services of any kind, including, but not limited to, water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, or telecommunication services.

3.2. **Utilities and Other Services:** Mitchelville shall at its sole cost and expense arrange for the provision of utilities and other services to the Property, including, but not limited to, water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, and telecommunication services. Any fees for reservation of water or sewage or electrical capacity, or any other arrangements that must be made with the provider of any utility or any other service shall be the sole responsibility of Mitchelville.

3.3. **Mitchelville is Responsible for the Payment of all Expenses:** Mitchelville shall be solely responsible for the payment of any and all costs, expenses, and charges for any utility or other service, including water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, and telecommunication services that are used, rendered, or supplied to or upon the Property or in connection with Mitchelville’s use of the Property, and *ad valorem* real property taxes (including but not limited to stormwater utility (SWU) fees), if any.

3.4. **Indemnification and Hold Harmless:** Mitchelville shall indemnify and hold the Town harmless from any claims for loss, damage, or liability, including reasonable attorney’s fees and costs incurred by the Town in responding to or defending any claim, arising out of or on account of any injury, death, or damage to any person, or to the property of any person, resulting from the use of the Property by Mitchelville and Mitchelville’s operation thereon, or arising from any act or omission of Mitchelville with respect to the exercise of Mitchelville’s rights hereunder; provided, however, in no event

Exhibit B

will Mitchelville indemnify or hold harmless the Town for acts or omissions of the Town or its employees or agents.

ARTICLE 4

4.1. ~~Construction of Improvements or Facilities on the Property Prior to Approval of Master Plan and Business Plan by Town Council:~~

- (a) ~~—Prior to approval by the Town Council of the Town (the “Town Council”) of the Master Plan (as defined in Article 4.2) and the Business Plan (as defined in Article 4.3), and before undertaking construction of any improvements or facilities on the Property, Mitchelville shall submit to the Town Council for review and approval the plans and specifications of the proposed improvements or facilities, as well as information describing how Mitchelville will fund such construction and related operations. The Town Council may approve or disapprove all or any part of the proposed improvements or facilities as the Town Council, in its sole discretion, may deem advisable.~~
- (b) ~~—Any proposed improvements or facilities on the Property must be substantially in furtherance of the operation of a cultural and historical museum on the Property.~~
- (c) ~~—Any proposed improvements or facilities on the Property shall, in addition to approval by the Town Council, be subject to all applicable provisions of the Land Management Ordinance of the Town (the “LMO”), any applicable restrictive covenants, and any other applicable State, Federal or local statutes, ordinances, or regulations. Approval of any proposed improvements or facilities on the Property by the Town Council, in and of itself, shall not constitute an authorization to commence any work at the Property for which any other approval or permit of any nature is required.~~
- (d) ~~—The provisions of this Article 4.1 shall be inapplicable after the Master Plan is approved by Town Council as described below in Article 4.2.~~

4.2. ~~**The Master Plan:** Prior to undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed~~

Exhibit B

~~(containing heating, ventilation, and air conditioning) and intended for public occupancy, Mitchelville shall prepare a Master Plan providing the details of the development, use, and operation of the Property as a cultural and historical museum and the development of the amenities on the Property substantially in furtherance of the operation of a cultural and historical museum (the “Master Plan”), and shall submit the Master Plan to the Town Council for review and approval. The Town Council may approve or disapprove all or any part of the Master Plan, as the Town Council, in its sole discretion, may deem advisable. Town Council approval of the Master Plan is a pre-condition to Mitchelville undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy. Mitchelville shall submit its Master Plan as required herein and obtain the approval of the Town Council of the Master Plan within four (4) years after the Effective Date of this Lease.~~

4.1 Amendments to the Master Plan: Any proposed Material Amendments to the Master Plan shall be submitted to the Town Council for review and approval, which the Town Council may, in its reasonable discretion, approve or disapprove all of any part of. As used in this Article ~~4.1 2(a)~~, a “Material Amendment to the Master Plan” shall mean any departure from the proposed uses and densities shown on the Master Plan as previously approved by the Town Council. Any amendments to the Master Plan that are not Material Amendments shall be subject to review and approval of the Town Manager of the Town or his or her designee, which approval shall not be unreasonably withheld. The Town Manager may, but is not obligated to, submit any amendments to the Master Plan that are not Material Amendments to the Town Council for review and approval. Matters related to site planning shall be handled through the Development Review process as established in the LMO and shall not be considered Material Amendments to the Master Plan. All amendments to the Master Plan (whether Material Amendments or not) shall be subject to all applicable provisions of the LMO, any applicable restrictive covenants, and any other applicable State, Federal or local statutes, ordinances or regulations.

4.2 Other Approvals Required: The Master Plan and any Material Amendments to the Master Plan shall, in addition to approval by the Town Council, be subject to all applicable provisions of the Land Management Ordinance of the Town, any applicable State, Federal or local statutes, ordinances or regulations. Approval of the Master Plan by Town Council, in and of itself, shall not constitute any authorization to commence

Exhibit B

any work at the Property for which any other approval or permit of any nature is required.

~~4.3. **The Business Plan:** Prior to undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy, Mitchelville shall develop a long-range Business Plan for the operation of a cultural and historical museum and for the funding of the capital improvements and other amenities to be built at the Property (the "Business Plan"), and shall submit the same to Town Council for its review and approval. The Town Council may approve or disapprove all or any part of the Business Plan, as the Town Council, in its sole discretion, may deem advisable. Town Council approval of the Business Plan is a pre-condition to Mitchelville undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy. Mitchelville shall submit its Business Plan as required herein and obtain the approval of the Town Council of the Business Plan within four (4) years after the Effective Date of this Lease.~~

4.3. **Permitted Use:** Mitchelville may use the Property for the following purposes (hereinafter, each a "Permitted Use"): establishing, building, and operating a cultural and historical museum and ancillary and related uses, and any manner consistent with the Master Plan approved by the Town Council.

4.4. **General Management:** Mitchelville shall have, and hereby agrees to undertake and assume, full and complete control and discretion in the management and operation of the Property during the term of this Lease. Without limiting the generality of the foregoing, Mitchelville shall have the following rights and duties with respect to the use, management, and operation of the Property:

- (a) **Determination of Policies:** To determine and carry out policies relating to primary and ancillary activities and services offered by Mitchelville, including those in accordance with the Permitted Use and those allowed as accessory uses under the applicable zoning for the Property.

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- (b) **Financing:** To have, in its sole discretion, the right to obtain financing utilizing as collateral any fixtures or personal property that Mitchelville has or may acquire;
- (c) **Improvement of Property:** To erect, establish, maintain, modify, build, construct, or remove trails, paths, private use antennae, walkways, roadways, fences, docks, boardwalks, observation centers, decks, parking areas, drainage structures, and other such things in furtherance of the use and operation of the Property by Mitchelville;
- (d) **Compliance with Permitted Use:** In general, to act in accordance with the Permitted Use.

4.5. **Financial Statements:**

- (a) Mitchelville shall cause a financial statement to be prepared each year at the conclusion of Mitchelville's fiscal year by an entity independent of, and unconnected to, Mitchelville. Mitchelville's fiscal year ends on December 31 of each calendar year. Mitchelville shall deliver a copy of its financial statement to the Town within thirty (30) days of the completion of the financial statement each calendar year.
- (b) Mitchelville shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager shall inform Mitchelville of the procedures to be followed in regard to the budgeting process.
- (c) Mitchelville shall provide the Town with an annual independent audit report or review report prepared by a Certified Public Accountant (CPA) acceptable to the Town. An annual report shall be submitted no less than every third year.
- (a) Upon request of the Town, Mitchelville shall make its financial books and records available to the Town for Review. The Town shall give Mitchelville written notice of its intention to review Mitchelville's financial books and records. Mitchelville shall make its financial books and records available for review by the Town within twenty (20) days of the Town's written notice.

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4.6. Other Improvements to the Property Permitted: Subject to the restrictions imposed by existing restrictive covenants, ordinances, and State or Federal statutes, including zoning regulations affecting the property, that are now in force or which may be enacted in the future, Mitchelville shall have the right to make such improvements as are approved by the Town Council or included in the Master Plan approved by the Town Council, at the sole cost and expense of Mitchelville.

4.7. Building Permits: Prior to submitting an application for any building permit in an amount greater than Fifty Thousand and no/100 (\$50,000.00) Dollars for construction on the Property, Mitchelville shall provide the Town Manager with an executed Irrevocable Bank Letter of Credit in favor of the Town, in an amount equal to the cost of construction as shown in the application for the building permit, or other document deemed satisfactory by the Town Manager, confirming that funds in such amount are available and reserved for the purpose of such construction, which Irrevocable Bank Letter of Credit or other documents shall permit the Town to utilize such funds in such amount, less funds expended for the purpose of construction described in the application for building permit and for which Mitchelville has produced executed lien waivers from the contractors, sub-contractors, and material-men involved, to complete the construction described in the application for the building permit and to pay any claims made by contractors, laborers, or materialmen, but only in the event of any failure by Mitchelville to complete the structure described in the application for the building permit or to pay contractors, laborers, or material men.

- (a) **Contract Splitting Prohibited:** Mitchelville may not split or incrementalize construction contracts or building permit applications in order to keep projects below the Fifty Thousand and no/100 (\$50,000.00) Dollar threshold set forth above.
- (b) **Increases in Cost of Project:** If the cost of any project undertaken by Mitchelville is increased by more than ten (10%) percent of the original contract price as shown on the original application for the building permit through changes, overruns, or otherwise, Mitchelville shall increase the amount of the Irrevocable Bank Letter of Credit or other document so as to be in an amount sufficient to cover the increased cost.

4.8. Permits: It shall be the sole responsibility of Mitchelville to procure and pay for any required municipal, state, federal, or other governmental permits and

Exhibit B

authorizations of the various municipal departments and governmental subdivisions having jurisdiction over the Property with respect to Mitchelville's occupation and use of the Property. The Town will provide "owner's authorizations" indicating the Town's consent to any permit being sought by Mitchelville where such "owner's consent" is required under any applicable permitting regulations. The delivery of such "owner's consent" by the Town shall not be deemed a waiver of any applicable development standard or zoning or other requirements.

4.9. Mechanic's or Other Liens Prohibited: Mitchelville shall not suffer or permit any mechanic's lien or other lien to be placed against the Property arising out of any construction upon or use of the Property by Mitchelville. If any such lien is filed, Mitchelville shall promptly cause the same to be released of record or bonded off, and shall further indemnify and hold the Town harmless from any costs or expenses, damages, suits, or reasonable attorney's fees arising from the filing or enforcement of any mechanic's lien or any other lien affecting the Property.

4.10. Maintenance of the Property and Compliance with Laws: During the term of this Lease, Mitchelville shall, at its sole cost and expense, provide for the maintenance and upkeep of the Property, and shall at all times comply with any and all applicable fire, building, health, and sanitation codes as the same may from time to time be in effect.

4.11. Rules, Regulations, and Restrictions: Mitchelville shall at all times during the term of this Lease:

- (a) **Maintenance of the Property and Improvements:** In keeping with the Permitted Use on the Property, maintain the Property and any structures and buildings on the Property, in a clean, neat, safe, sanitary, and orderly condition, it being understood that no use shall be made or permitted of the Property or any part thereof, nor any acts done, which will violate any statutes, ordinance, or regulation, or violate or make inoperative or otherwise impair any insurance policy at any time held by or in any way for the benefit of the Town pursuant to any provision of this Lease;
- (b) **Storage of Hazardous Substances Prohibited:** Other than materials and equipment used, or to be used, in the improvements, maintenance, and use of the Property, the improvements, and the

Exhibit B

personal property thereon, Mitchelville shall not sell, or suffer or permit to be stored, kept, used, or sold in, upon, or about the Property, or in any structure or building located on the Property, any gasoline, distillate, any substances defined as a “Hazardous Substance” under any Federal, State or local law, ordinance, or regulation, or any other substance or material of an explosive, inflammable, or radiological nature which may contaminate or endanger any part of the Property, any structure or building on the Property, or any person on or about the Property, or present any unusual fire, explosion, or other damaging or dangerous hazard; and, Mitchelville shall, at its sole cost and expense, cause the removal and cleanup of any hazardous substances allowed to contaminate the Property by Mitchelville;

- (c) **Compliance with Laws:** Comply with all governmental rules, regulations, ordinances, statutes, and laws now or hereafter in effect pertaining to the Property or Mitchelville’s use thereof;
- (d) **Waste Dumping or Disposal Prohibited:** Refrain from dumping, disposal, reduction, incineration or other burning of any trash, hazardous material or substance, papers, refuse, or garbage or any kind in, on, or about the Property, in violation of any applicable statute, regulation, or ordinance;
- (e) **Waste Storage Prohibited:** Refrain from storing any trash, garbage, or hazardous material or substance on the Property or in any structure or building located on the Property, nor create or permit the creation of any health or fire hazard, in violation of any applicable statute, regulation, or ordinance;
- (f) **Waste and Nuisances:** Refrain from committing or suffering to commit any waste upon, or making any unlawful, improper or offensive use of, the Property or any structure or building on the Property, or creating any public or private nuisance or act or thing upon the Property or in any structure or building on the Property;
- (g) **Compliance with Restrictive Covenants and Local Ordinances:** Maintain the Property so as to comply with and remain in compliance with any restrictive covenants encumbering the Property

Exhibit B

and all local ordinances promulgated by the Town, or any other applicable law, rule, regulation, or agreement concerning the Property.

- (h) **Sustainability:** Develop strategies that are consistent with the Town's published and defined goals on sustainability. In so doing, consideration shall be given to balancing environmental, economic and social impacts.

4.12. **Additional Rules:** In addition to the foregoing, Mitchelville shall at all times during the term hereof comply with all other reasonable rules and regulations which the Town may at any time or from time to time establish concerning the use of the Property; provided however, that any such rule or regulation so made shall not be inconsistent with any part of this Lease, and shall not unreasonably interfere with Mitchelville's use and enjoyment of the Property.

4.13. **Town's Waiver of Interest in Personal Property:** The Town waives any right, title, or interest in any and all equipment, displays, furniture, fixtures, moveable non-permanent items and structures, and personal property owned by, loaned to, or leased to Mitchelville; and, said property shall, at all times, remain the property of Mitchelville, such entity that has loaned the property to Mitchelville, or such entity that has leased the property the Mitchelville. The Town further waives any right that it may have to retain or distrain any of the property owned by, leased to, or leased by Mitchelville.

ARTICLE 5

5.1. **Initial Term of This Lease:** Subject to Articles 5.2, 5.4, and 10.1 below, the term of this lease shall be for a period of Forty Five (45) years, with such term commencing on April 18, 2017, and ending on April 18, 2062 (the "Initial Lease Term"), provided that all terms and conditions of this Lease shall have been complied with by Mitchelville, or unless sooner terminated pursuant to the terms hereof.

5.2. **Renewal of Terms of Lease:** Unless this Lease is sooner terminated pursuant to the terms hereof, at the end of the Initial Lease Term, this Lease shall automatically renew for successive periods of Twenty Five (25) years (hereinafter, each a "Renewal Lease Term"), provided that all terms and conditions of this Lease shall have been complied with by the Parties hereto, unless either Party hereto shall give the other a Notice of Termination as set forth in Article 5.3 below.

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5.3. **Termination of this Lease:** The initial term of this lease shall expire on April 18, 2062 (hereinafter, the “Initial Termination Date”). The first Renewal Lease Term shall expire Twenty Five (25) years from the date of the Initial Termination Date, and subsequent Renewal Lease Terms shall expire each following twenty-five (25) year period. If either Party hereto gives the other Party written notice of its intention not to renew this Lease not less than twelve (12) months prior to the Initial Termination Date or the end of any Renewal Lease Term, then this Lease shall expire on the Initial Termination Date or at the end of the applicable Renewal Lease Term, as the case may be.

5.4. **Ordinance Required:** This Lease is contingent upon the adoption of an Ordinance by the Town authorizing the execution and delivery of the Lease.

~~5.5. — **Termination on Failure of Conditions:** If the condition stated in Article 5.4 does not occur before December 21, 2017, then this Lease shall automatically terminate, and neither Party hereto shall have any further rights or obligations hereunder.~~

~~5.6. — **Termination on Failure of Approval of Master Plan or Business Plan:** Notwithstanding any provision in this Lease to the contrary, this Lease shall automatically terminate in the event that either the Master Plan (described above in Article 4.2) is not approved by Town Council for the Town within four (4) years after the Effective Date of this Lease or Business Plan (described above in Article 4.3) is not approved by Town Council for the Town within four (4) years after the Effective Date of this Lease. Upon such termination, Mitchelville shall restore, within sixty (60) days after such termination, any part of the Property which has been altered by Mitchelville and which (1) has not been maintained in a reasonably safe, neat, clean, and ordinary manner, or (2) is in a state of disrepair or in an unkempt state, or (3) consists of trash, rubbish, debris, or related items, to its state which existed immediately prior to the Effective Date of this Lease. Town Council, in its sole discretion, may choose to extend, modify, waive or extinguish this 4 year deadline by adoption of an Ordinance prior to the 4 year deadline.~~

ARTICLE 6

6.1. **Quiet Enjoyment:** The Town hereby covenants that Mitchelville shall, during the Lease terms, enjoy peaceable and quiet possession of the Property, and shall have, hold, and enjoy the Property without suit, trouble, or hindrance from the Town, except as expressly required or permitted by this Lease. The Town shall not interfere with the

Exhibit B

quiet use and enjoyment of the Property by Mitchelville during the Lease Term, so long as the Initial Lease Term or any Renewal Lease Term shall be in effect and all obligations of Mitchelville hereunder, have been fulfilled.

ARTICLE 7

7.1. **Required Property Insurance:** During the Initial Lease Term and any Renewal Lease Term, Mitchelville shall keep buildings and structures located on the Property insured against loss or damage by fire, wind, flood (to the extent of any available federal flood insurance program), and all other perils as are typically insured against by commercial establishments operating in Beaufort County, South Carolina, to the extent of the value thereof. The Town shall be named as an additional insured on this policy or these policies.

7.2. **Required Liability Insurance:** During the Initial Lease Term and any Renewal Lease Term, Mitchelville shall maintain in full force and effect comprehensive general public liability insurance with minimum bodily injury, death, and property damage, per occurrence, of FIVE MILLION (\$5,000,000.00) DOLLARS insuring against any and all liability of Mitchelville with respect to its occupants and use of the Property and all of the improvements, structures, and buildings on the Property, or arising out of the maintenance, use, or occupancy thereof by Mitchelville. In addition to all other coverages, and if available, such insurance policy or policies shall specifically insure the performance by Mitchelville of the hold harmless and indemnity provisions set forth in Article 3.4 of this Lease.

7.3. **Policy Form:** All policies of insurance provided for herein shall be issued by insurance companies with a general policyholders' rating not less than A, and a financial rating of AAA as rated in the most current available "Best's Insurance Reports", and qualified to do business in the State of South Carolina, and shall be issued in the names of the Town, Mitchelville, and such other persons or firms as the Town reasonably specifies from time to time. Such policies shall be for the mutual and joint benefit and protection of the Town, Mitchelville, and others hereinabove mentioned, and executed copies of such policies of insurance or certifications thereof shall be delivered to the Town within ten (10) days after delivery of possession of the Property to Mitchelville and thereafter within thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage policies shall contain a provision that the Town, although name as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, and employees by reason

Exhibit B

of the negligence of Mitchelville. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Mitchelville in like manner and to like extent. All policies of insurance delivered to the Town must contain a provision that the company writing said policy will give the Town twenty (20) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All public liability, property damage and other casualty shall be written as primary policies, not contributing with and not in excess of coverage that the Town may carry.

7.4. **Town May Obtain Insurance:** In lieu of Mitchelville procuring and maintaining insurance required by this Article 7, the Town may, in its sole discretion at any time and from time to time with reasonable notice to Mitchelville, choose to procure and maintain all or any part of the insurance required by this Article 7, and pay any premiums therefor, in which even Mitchelville shall repay the Town all sums so paid by the Town within ten (10) days following the Town's written demand to Mitchelville for such payment.

7.5. **Failure of Mitchelville to Obtain Insurance:** If Mitchelville fails to procure or maintain any insurance required by this Article 7, or fails to carry insurance required by law or governmental regulations, then the Town may, but without obligation to do so, at any time and from time to time without notice, procure such insurance and pay the premiums therefor, in which event Mitchelville shall repay the Town all sums so paid by the Town, together with interest thereon as provided in Article 11 hereof, and any incidental costs or expenses incurred by the Town in connection therewith, within ten (10) days following the Town's written demand to Mitchelville for such payment.

7.6. **Additional Insurance:** Mitchelville may, but is not required to, obtain additional insurance beyond what is required by Article 7, including but not limited to contents, business interruption, and abuse/molestation insurance.

ARTICLE 8

8.1. **Assignment Prohibited:** This Lease shall not be assigned by Mitchelville.

8.2. **Sublease of the Property:** Mitchelville shall not sublet any part of the Property, without the prior written approval of the Town Manager acknowledging that the sublease complies with the Permitted Use, which approval by the Town Manager shall not be unreasonably withheld. For the purpose of this Lease, a sublease of the Property is any lease by Mitchelville of any part of the Property to a third party for a

Exhibit B

period that exceeds six (6) months. Any sublease must be in keeping with the Permitted Use. Nothing herein prohibits Mitchelville from contracting with subcontractors, licensees, vendors, or others in furtherance of the Permitted Use.

8.3. Other Encumbrances Prohibited: Mitchelville shall not grant any easements, licenses, or rights-of-way encumbering, or enter into any agreement which would in any way affect or encumber, the title to the Property; provided, however, that the Town, as the Property owner, agrees to grant to Mitchelville or others, as the case may be, any easements, licenses, or rights-of-way that are necessary for Mitchelville to use the Property in accordance with, and in furtherance of, the Permitted Use, such as any easements, licenses, or rights-of-way for utility lines, on terms that are reasonably acceptable to the Town. If any request of Mitchelville contemplated in this Article 8 requires the adoption of an ordinance or other legislation, the failure of the Town to adopt any such ordinance or legislation shall not be deemed a breach of this Lease.

ARTICLE 9

9.1. Notices: All notices, certificates, or other communications required hereunder shall be deemed delivered when delivered in person, or mailed by regular first class mail, postage prepaid, addressed as follows, or to such other addresses as may be designated, in writing, by the Parties:

To the Town:	TOWN OF HILTON HEAD ISLAND Town Manager One Town Center Court Hilton Head Island, SC 29928
With copy to:	TOWN OF HILTON HEAD ISLAND Legal Department One Town Center Court Hilton Head Island, SC 29928
To Mitchelville:	Historic Mitchelville Freedom Park, Inc. Ms. Shirley Peterson P.O. Box 21758 Hilton Head Island, SC 29925
With copy to:	Chester C. Williams, Esq. Law Office of Chester C. Williams, LLC 17 Executive Park Road, Suite 2 PO Box 6028 Hilton Head Island, SC 29938-6028

Exhibit B

ARTICLE 10

10.1. **Events of Default Defined:** The following shall be Events of Default under this Lease:

- (a) **Failure to Observe Requirements:** The failure of Mitchelville or the Town to observe or perform any covenant, condition, obligation or agreement contained in this Lease, required to be observed or performed, for a period of one hundred twenty (120) days after delivery of written notice specifying such failure and demand that it be remedied.
- (b) **Dissolution of Mitchelville:** The dissolution, termination, or liquidation of Mitchelville, or the voluntary or involuntary commencement of any proceeding under any State or Federal law relating to bankruptcy, insolvency, assignment for the benefit of creditors, reorganization, readjustment of debtor any other form of creditor action or debtor relief, either by Mitchelville or against Mitchelville, or any change in the tax-exempt, not-for-profit status of Mitchelville.
- (c) **Abandonment of the Property:** The abandonment of the Property by Mitchelville, or the discontinuance of operations at the Property by Mitchelville.
- (d) **Use Inconsistent with this Lease or the Permitted Use:** Any use of all or any part of the Property or the structures and improvements thereon, other than in compliance with the Permitted Use, the Master Plan, or this Lease without the approval of the Town Council.
- (e) **Failure to Pay Amounts Due:** The failure to pay any sum due to the Town by Mitchelville under any provision of this Lease.
- ~~(f) **Failure to Submit the Master Plan:** The failure of Mitchelville to submit the Master Plan to the Town Council for review and approval within four (4) years of the Effective Date hereof, as required in Article 4.2 of this Lease.~~

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~~(g) **Failure to Submit the Business Plan:** The failure of Mitchelville to submit the Business Plan to the Town for review and approval within four (4) years of the Effective Date hereof as required in Article 4.3 of this Lease.~~

10.2. **Remedies on Default:** Whenever any Event of Default described in Article 10.1 of this Lease shall have happened and continue for a period of one hundred twenty (120) days after delivery of written Notice of Default, the non-defaulting Party shall have the right to terminate this Lease. If the Town is the non-defaulting party, it may give notice to Mitchelville to vacate the Property, and may thereafter evict Mitchelville from the Property, take possession thereof, and exercise all the rights and remedies provided herein. At any time within sixty (60) days after such Notice of Default and demand, either Party may initiate a mandatory, non-binding mediation proceeding, which shall be completed within one hundred twenty (120) days of the date of the Notice of Default. In no event shall enforcement by the Town of its rights under this Article 10 cause Mitchelville to be relieved of any of its obligations set forth in this Lease.

10.3. **No Remedy Exclusive:** No remedy conferred upon or reserved to the Parties is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power and such right and power may be exercised from time to time and as often as may be deemed expedient in the sole discretion of the Parties.

10.4. **Waivers:** If any agreement contained herein is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

10.5. **Agreement to Pay Attorney's Fees and Expenses:** If either Party hereto defaults under any of the provisions hereof, and the non-defaulting Party employs attorneys, or incurs other expenses for the enforcement of the performance or observance of any obligation or agreement on the part of the defaulting Party, the defaulting Party agrees that it shall pay, on demand, the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting Party in the enforcement of its rights hereunder.

10.6. **Discontinuance of Proceedings:** In case either Party hereto has proceeded to enforce any right under this Lease, and such proceedings shall have been

Exhibit B

discontinued or abandoned for any reason, then and in every such case the Town and Mitchelville shall be restored respectively to their several positions and rights hereunder, and all rights, obligations, remedies, and powers of the Town and Mitchelville shall continue as though no such proceeding had been taken.

ARTICLE 11

11.1. **Interest on Past Due Obligations:** Whenever under any provisions of this Lease Mitchelville shall be obligated to make any payment or expenditure to the Town, or to do any act or thing, or to incur any liability whatsoever, and Mitchelville fails, refuses, or neglects to perform as herein required, the Town shall be entitled, but shall not be obligated, to make any such payment or expenditure, or do any such act or thing, or to incur any such liability, all on behalf and at the cost and for the account of Mitchelville, and in such event the amount thereof with interest thereon as hereinafter provided shall be deemed due upon demand for payment thereof by the Town. Any amount due from Mitchelville to the Town under this Lease which is not paid when due shall bear interest at the Applicable Federal Rate as established by the Internal Revenue Service from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Mitchelville under this Lease.

ARTICLE 12

12.1. **Binding Effect:** This Lease shall inure to the benefit of and shall be binding upon Mitchelville and the Town.

12.2. **Amendment, Changes, and Modifications:** Except as otherwise provided herein, this Lease may not be amended, changed, modified, or altered without written consent of both Parties hereto.

12.3. **Severability:** If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12.4. **Execution in Counterparts:** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Exhibit B

12.5. **Applicable Law:** This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

12.6. **Captions:** The captions or headings herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Lease.

12.7. **Recording:** Either Party may record a short form memorandum of this Lease in the Office of the Register of Deeds for Beaufort County, South Carolina.

12.8. **No Agency:** The Parties hereto intend only to provide for a Lease of real property as provided herein, and affirmatively state that no master/servant, principal/agent, or employer/employee relationship is created by this Lease. Nothing herein creates any relationship between the Town and Mitchelville other than that which is expressly stated herein. No employee, volunteer, or agent of Mitchelville shall be considered an employee or agent of the Town for any purpose whatsoever and none shall have any status, right or benefit of employment with Town.

12.9. **Plural/Singular:** Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

12.10. **No Third Party Beneficiaries:** The Parties hereto affirmatively represent that this Lease is made solely for the benefit of the Parties hereto and not for the benefit of any third party who is not a signature Party hereto. No person or entity other than the Town and Mitchelville shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

(SIGNATURE PAGES FOLLOW)

Exhibit B

In Witness whereof, the Parties hereto, by and through their duly authorized officers, have set their hands and seals as of this _____ Day of _____, 2021 ~~19~~.

WITNESSES:

**THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA**

By: _____ (L.S.)
John McCann, Mayor

Attest: _____ (L.S.)
~~Stephen G. Riley, ICMA~CM~~
Marc Orlando, ICMA~CM
Town Manager

WITNESSES:

**HISTORIC MITCHELVILLE FREEDOM
PARK, INC.**

By: _____ (L.S.)
Shirley Peterson, President

Attest: _____ (L.S.)
_____, Secretary



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Marc Orlando, ICMA~CM, *Town Manager*
VIA: Jennifer Ray, ASLA, *Interim Community Development Director*
VIA: Teri B. Lewis, AICP, *Deputy Community Development Director*
FROM: Shari Mendrick, P.G., CFM, *Floodplain Administrator*
CC: Shawn Colin, AICP, *Interim Deputy Town Manager*
DATE: March 3, 2021
SUBJECT: Proposed Ordinance 2021-06 - Calculation of Height and Flood Zone Standards LMO Amendments

Town Council reviewed Proposed Ordinance 2021-06 regarding Calculation of Height and Flood Zone Standards LMO Amendments at their March 2, 2021 meeting. At that meeting, Town Council voted to approve the amendments related to the calculation of height and flood zone standards based on staff's recommendation that the maximum residential building height be calculated from 13' above mean sea level and maximum nonresidential building height be calculated from 11' above mean sea level using NAVD88.

Per State Code Section 6-29-760, if Town Council recommends a change to a proposed text amendment after the public hearing, then that text amendment must be reviewed again by the Planning Commission before the change can be adopted by Town Council. The changes proposed by Town Council to measure maximum residential building height from 13' above mean sea level using NAVD88 were required to go back to the Planning Commission for their review and comment.

Planning Commission met on March 3, 2021 and recommended 6-2 that Town Council adopt the amendments related to the Calculation of Height and Flood Zone Standards LMO Amendments as drafted by staff.

Attachments:
Proposed Ordinance 2021-06
Exhibit A

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2021-

PROPOSED ORDINANCE NO. 2021-06

AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE (LMO), CHAPTERS 5 AND 10. THESE AMENDMENTS, COMMONLY REFERRED TO AS *FLOOD MAP LMO AMENDMENTS* AS NOTICED IN THE ISLAND PACKET ON *JANUARY 17, 2021*, INCLUDE CHANGES THAT MODIFY THE FLOOD ZONE STANDARDS FOR CONSISTENCY WITH THE MARCH 23, 2021 FLOOD INSURANCE RATE MAPS AND MODIFY THE RULE OF MEASUREMENT FOR THE CALCULATION OF BUILDING HEIGHT, AS DESCRIBED IN EXHIBIT “A” TO THIS ORDINANCE, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on October 7, 2014, the Town Council did adopt a new Land Management Ordinance (LMO); and

WHEREAS, from time to time it is necessary to amend the LMO; and

WHEREAS, the Town of Hilton Head Island Flood Insurance Rate Maps (FIRMs) have been updated by the Federal Emergency Management Agency (FEMA); and

WHEREAS, the Town will adopt these new Flood Insurance Rate Maps effective March 23, 2021; and

WHEREAS, to maintain consistency between the proposed changes to the lowest floor elevation requirements of the Flood Damage Controls Ordinance and the maximum building height measurement in the LMO, staff is proposing changes to the Town’s building height requirements; and

WHEREAS, in conjunction with the adoption of the updated Flood Insurance Rate Maps, the flood zone designations in the LMO must be updated for consistency with the new flood zones on the updated FIRMs; and

WHEREAS, the LMO Committee held a public meeting on December 14, 2020 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

WHEREAS, the LMO Committee recommended that the proposed LMO amendments be forwarded to the Planning Commission with a recommendation of approval; and

WHEREAS, the Planning Commission held a public hearing on February 17, 2021 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed *Flood Map LMO Amendments*; and

WHEREAS, after consideration of the Staff presentation the Planning Commission voted 9-0 to forward the proposed LMO amendments to the Public Planning Committee with a recommendation of approval with the following change: residential building height shall be measured from 14' above mean sea level; and

WHEREAS, the Public Planning Committee held a public meeting on February 25, 2021 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

WHEREAS, after consideration of the Staff presentation and public comments, the Public Planning Committee voted unanimously to recommend approval of the proposed LMO amendments as originally drafted by staff; and

WHEREAS, the Town Council held a public meeting on March 2, 2021 at which time opportunity was given for the public to comment on the proposed *Flood Map LMO Amendments*; and

WHEREAS, State Code Section 6-29-760 states if Town Council recommends a change to a proposed text amendment after the public hearing, then that text amendment must be reviewed again by the Planning Commission before the change can be adopted by Town Council; and

WHEREAS, the Planning Commission held a public meeting on March 3, 2021 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed amendments related to the Calculation of Building Height; and

WHEREAS, after consideration of the Staff presentation and public comments the Planning Commission voted 6-2 to recommend that Town Council adopt the amendments related to the Calculation of Building Height; and

WHEREAS, after due consideration of said LMO amendments, the Town Council, upon further review, finds it is in the public interest to approve the proposed *Flood Map LMO Amendments*.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

Section 1. Amendment. That the *Flood Map LMO Amendments* are adopted and the Land Management Ordinance is amended as shown on Exhibit "A" to this Ordinance. Newly added language is illustrated with double underline and deleted language is illustrated with ~~strikethrough~~.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2021.

THE TOWN OF HILTON HEAD ISLAND
SOUTH CAROLINA

John J. McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

Public Hearing: February 17, 2021

First Reading: March 2, 2021

Second Reading:

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____

EXHIBIT A

Chapter 16-5: Development and Design Standards

Sec.16-5-112. - Flood Zone Standards

A. Applicability

2. The location of the *flood* zones on Hilton Head Island ~~is are identified by the shown on the FEMA Flood Hazard Zones Map of the Comprehensive Plan, which is adopted as part of this Ordinance, or any more recent Town-adopted flood zones map.~~ Flood Insurance Rate Maps (FIRMs).
3. The Island is covered by the following ~~four~~ *flood* zones that range from most vulnerable to flooding and *flood* damage to least vulnerable:
 - a. VE- Zone, or coastal high hazard area, subject to 100-year coastal flooding and storm surge;
 - b. Coastal A Zone, or the area landward of a V-zone and seaward of the Limit of Moderate Wave Action as shown on the FIRMs.
 - bc. AE- Zone, or 100-year flood plain area;
 - d. AO Zone, or areas of shallow flooding;
 - ee. B-X(shaded) Zone, or 100 to 500-year flood plain area; and
 - df. C-X Zone, or areas of minimal flooding.

B. Flood Zone Standards

On all plats within "VE" or "AE" zones for which *lots, sites, or structures* are to be sold, the following statement shall be clearly affixed to the plat and shall be recorded:

Some or all areas on this plat are *flood* hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes. Local regulations require that certain *flood* hazard protective measures be incorporated in the design and *construction* of *structures* in these designated areas. Reference shall be made to the *development* covenants and restrictions of this *development* and requirements of the Town Building Official. In addition, federal law requires mandatory purchase of *flood* insurance as a prerequisite to federally insured mortgage financing in these designated *flood* hazard areas.

Chapter 16-10: - Definitions, Interpretation, and Measurement

Sec.16-10-102. - Rules of Measurement

C. Height

1. Calculation of Height

- a. Maximum *structure height* for *development* in each zoning district shall be calculated as follows: from the ~~base flood elevation~~. If the ~~site~~ does not lie within a ~~flood~~ zone with a designated ~~base flood elevation~~, the maximum *structure height* shall be calculated from ~~pre-development grade~~.
 - i. Residential maximum building height shall be measured from thirteen feet (13') above mean sea level using the NAVD 88 vertical datum; and
 - ii. Nonresidential maximum building height shall be measured from eleven feet (11') above mean sea level using the NAVD 88 vertical datum.
- b. The measurement of the *height* of a *structure* shall be determined by the distance from the *height* as measured by 16-10-102.C.a ~~preconstruction grade or base flood elevation~~ immediately *adjacent* to the *structure* to a point level with the highest point of the *structure*.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Marc Orlando, ICMA~CM, *Town Manager*
VIA: Jennifer Ray, ASLA, *Interim Community Development Director*
VIA: Teri B. Lewis, AICP, *Deputy Community Development Director*
FROM: Shari Mendrick, P.G., CFM, *Floodplain Administrator*
CC: Shawn Colin, AICP, *Interim Deputy Town Manager*
DATE: March 2, 2021
SUBJECT: Proposed Ordinance 2021-07; Revisions to Title 15, Chapter 9

Town Council reviewed Proposed Ordinance 2021-07 regarding Revisions to Title 15, Chapter 9 at their March 2, 2021 meeting. At that meeting, Town Council made no changes to the proposed ordinance.

Attachments:

Proposed Ordinance 2021-07
Municipal Code Amendments

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2021-

PROPOSED ORDINANCE NO. 2021-07

AN ORDINANCE TO AMEND TITLE 15 CHAPTER 9 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TO UPDATE SPECIFIC PROVISIONS RELATED TO FLOOD DAMAGE CONTROLS. THIS AMENDMENT INCLUDES REVISED LANGUAGE AND DEFINED TERMS TO BE CONSISTENT WITH THE NATIONAL FLOOD INSURANCE PROGRAM REGULATIONS 44 CFR PARTS 59 AND 60 AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in 1983, the Town Council of the Town of Hilton Head Island, South Carolina adopted the Municipal Code of the Town of Hilton Head Island; and

WHEREAS, the Town of Hilton Head Island Flood Insurance Rate Maps (FIRMs) have been updated by the Federal Emergency Management Agency (FEMA); and

WHEREAS, flood hazard areas and other areas of the Town are subject to periodic inundation resulting in property loss, economic disruption and health and safety hazards; and;

WHEREAS, this Ordinance takes strides to reduce flooding risk in adaptive and innovative ways to protect citizens and build resilience; and

WHEREAS, the Public Planning Committee met on February 25, 2021 and voted to recommend that Town Council approve the proposed amendments; and

WHEREAS, the Town Council now finds that, upon further review, it is in the public interest to approve Title 15; Chapter 9 of the Municipal Code.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

Section 1. Amendment. That the Municipal Code of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended to read as indicated on the attached pages. Newly added language is illustrated with double underline and deleted language is illustrated with ~~strikethrough~~.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective on March 23, 2021.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2021.

THE TOWN OF HILTON HEAD ISLAND
SOUTH CAROLINA

John J. McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

First Reading: March 2, 2021
Second Reading:

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____

Chapter 9 - FLOOD DAMAGE CONTROLS^[6]

Footnotes:

--- (6) ---

Editor's note— [Ord. No. 2019-03](#), § 1(Att. 1), adopted Feb. 19, 2019, amended ch. 9 in its entirety to read as herein set out. Former ch. 9, §§ 15-9-111, 15-9-112, 15-9-211—15-9-214, 15-9-311—15-9-317, 15-9-411, 15-9-511, 15-9-512, 15-9-611—15-9-614, pertained to similar subject matter, and derived from Ord. No. 01-07, § 1, adopted June 5, 2001; and Ord. No. 2011-09, § 1, adopted June 21, 2011.

Staff Explanation: This change removes conflicting heading.

ARTICLE 1. - ~~FINDINGS OF FACT AND PURPOSE~~ GENERAL STANDARDS

Sec. 15-9-110. - Statutory authorization.

The Legislature of the State of South Carolina ~~has~~ in SC Code of Laws, Title 5 and Title 6, and amendments thereto, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Town of Hilton Head Island, South Carolina does ordain as follows:

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-111. - Findings of fact.

The special flood hazard areas of the Town of Hilton Head Island are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruptions of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of tax base, all of which adversely affect ~~the~~ public health, safety and welfare.

These flood losses are ~~the result of the caused by the~~ cumulative effect of obstructions of floodplains, ~~which cause~~ing increases in flood heights and velocities, and by the ~~existence of structures located in occupancy of~~ flood hazard areas, ~~by structures which are~~ vulnerable to floods ~~and/or~~ hazardous to other lands which are inadequately elevated, floodproofed, or otherwise ~~un~~protected from flood damages.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-112. - Statement of purpose.

It is the purpose of this chapter to promote ~~the~~ public health, safety and general welfare and to minimize public and private losses due to flood conditions in flood hazard areas by provisions designed to:

- (a) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
- (b) Require that buildings vulnerable to floods, including facilities which serve such buildings, be protected against flood damages at the time of initial construction.
- (c) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- (d) Control filling, grading, and other development which may increase erosion or flood damage or erosion.

- (e) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Staff Explanation: This section has been modified for consistency with the state model ordinance as requested by State Coordinator's office and to include the regulation of all lands within the Town's jurisdiction.

Sec. 15-9-113. - ~~Basis for area of special flood hazard.~~ Lands to which this ordinance applies.

This chapter shall apply to:

~~(a) All areas of special flood hazard within the jurisdiction of the Town of Hilton Head Island, SC, as identified by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study, dated March 23, 2021 with accompanying maps and other supporting data that are hereby adopted by reference and declared to be part of this ordinance; and~~

~~(b) All other areas under the jurisdiction of the Town of Hilton Head Island.~~

Upon annexation, any special flood hazard areas identified by the Federal Emergency Management Agency in its Flood Insurance Study for the unincorporated areas of Beaufort County, with accompanying maps and other data are adopted by reference and declared part of this ordinance.

~~The flood hazard areas of the town have been identified by the Federal Insurance Administration through a scientific and engineering report entitled "The Flood Insurance Study for the County of Beaufort," dated September 30, 1977, Federal Register Vol. 41, No. 207, pages 46,962—46,992, dated Tuesday, October 26, 1976, and subsequent supplement titled "Wave Height Analysis," dated June 4, 1984; with accompanying flood insurance rate maps and flood boundary maps, dated September 30, 1977, and subsequent maps adding wave heights dated December 4, 1984, as reevaluated and effective September 29, 1986, are hereby adopted by reference and declared to be part of this chapter.~~

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-114. - Establishment of land development application and building permit.

The approval of a land development application shall be required in conformance with Municipal Code ~~†~~ Title 16 and the provisions of this chapter prior to the commencement of any development activities. A building permit shall be required in conformance with Municipal Code ~~†~~ Title 15, ~~†~~ Title 16, and the provisions of this chapter prior to the commencement of any construction activities.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-115. - Interpretation.

In the interpretation and application of this chapter, all provisions shall be considered as minimum requirements and deemed neither to limit nor repeal any other powers granted under state law. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions, shall prevail.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-116. - Partial invalidity and severability.

If any part of this article is declared invalid, the remainder of the article shall not be affected and shall remain in force.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-117. - Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the ~~£~~Town or on the part of any officer or employee of the ~~£~~Town for any flood damages that result from reliance on this chapter or that are attributable to any administrative decision lawfully made under this chapter.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-118. - Penalties for violation.

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variances or special exceptions, shall constitute an offense. Any person who violates any provision of this chapter or who fails to comply with any of its requirements shall, upon conviction thereof, be subject to fine or imprisonment, or both, as provided in section 1-5-10. Each day any violation continues shall be considered a separate offense. Nothing contained in this section shall prevent the town from taking such other ~~lawful~~legal action available as is necessary to prevent or remedy any violation.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Staff Explanation: Definitions have been added or modified for consistency with the state model ordinance as suggested by the State Coordinator's Ordinance comments.

Sec. 15-9-119. - Definitions.

For the purposes of this chapter, the following definitions shall apply:

Accessory structure means a ~~building or~~ structure subordinate and incidental to, and located on the same lot with ~~, a~~ principal ~~structure building and use~~, the use of which is customarily found in association with and is clearly incidental to that of the main ~~building structure or to the use of the land~~, and which is not attached by any part of a common wall or roof to the principal ~~structure building~~. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a roof or common load-bearing wall other than a firewall. Any walled and roofed addition which is connected by a fire wall is considered "new construction."

Appeal is a request for a review of the local floodplain administrator's interpretation of any provision of this ordinance.

Area of Shallow Flooding means a designated AO or VO zone on a community's Flood Insurance Rate Map (FIRM) with base flood depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard ~~see Special Flood Hazard Area.~~ means the land in the floodplain within a community subject to a one-percent or greater chance of being equaled or exceeded in any given year.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the computed elevation to which floodwater is anticipated to rise during the base flood. The BFE is the regulatory requirement for the elevation or floodproofing of structures. The relationship between the BFE and a structure's elevation determines the flood insurance premium.

Building ~~see Structure.~~ means ~~any structure having two (2) or more exterior rigid walls and a roof supported by columns or walls and intended for the shelter, housing or enclosure of any person, commercial or business activity, process, equipment or goods. Each portion of a building separated from other portions by a firewall shall be considered as a separate building.~~

Coastal A zone means the area landward of a V Zone where the principal source of flooding will be astronomical tides, storm surges or tsunamis, not riverine flooding. During base flood conditions, the potential for breaking wave heights between 1.5 feet and 3.0 feet will exist. Areas considered to be within the Coastal A Zones are landward of the V Zone and seaward of the line denoted as the Limit of Moderate Wave Action (LiMWA) on the FIRM.

Coastal High Hazard Area means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to velocity wave action from storms or seismic sources. This area is designated as Zone V, VE or V1-30.

~~Construction~~ means ~~the erection of any building or structure or any preparations (including land disturbing activities) for the same.~~

Development, for floodplain management purposes, means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, and storage of materials or equipment. ~~the use of a structure or land; or the construction, reconstruction or alteration of a structure; or an increase in land use intensity; or filling or excavating a parcel; or a change in effects or conditions of a site; or the alteration of a shore, bank or floodplain; or the construction or extension of a utility; or the subdivision of land.~~

Enclosure means partially or fully walled areas below the lowest floor of an elevated building.

Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 30, 1977.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or from rain.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Emergency Management Agency which contains flood profiles and the water surface elevation of the base flood.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic structure means any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior (DOI)) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places; (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified (1) by an approved state program as determined by the Secretary of Interior, or (2) directly by the Secretary of Interior in states without approved programs. Some structures or districts listed on the state or local inventories MAY NOT be "Historic" as cited above, but have been included on the inventories because it was believed that the structures or districts have the potential for meeting the "historic" structure criteria of the DOI. In order for these structures to meet NFIP historic structure criteria, it must be demonstrated and evidenced that the South Carolina Department of Archives and History has individually determined that the structure or district meets DOI historic structure criteria.

Increased cost of compliance (ICC) means applies to all new and renewed flood insurance policies effective on and after June 1, 1997. The NFIP shall enable the purchase of insurance to cover the cost of compliance with land use and control measures established under Section 1361. It provides coverage for the payment of a claim to help pay for the cost to comply with state or community floodplain management laws or ordinances after a flood event in which a building has been declared substantially or repetitively damaged.

Land development application means application for development and use of property as required by title 16 "Land Management Ordinance of the Town of Hilton Head Island," including, but not limited to, subdivision review (major and minor), development plan review (major or minor), small residential development review and utility project permit.

Limit of Moderate Wave Action means the boundary line given by FEMA on coastal map studies marking the extent of Coastal A Zones.

Lowest floor means the lowest floor of the lowest enclosed area. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

Manufactured home means a factory-built, single-family structure that is manufactured under the authority of 42 USC Section 5401 and that is transportable in one (1) or more sections, is built on a permanent chassis, but is not constructed with a permanent hitch or other device allowing transport of the unit other than for the purpose of delivery to a permanent site, and does not have wheels or axles permanently attached to its body or frame.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

New construction means structure, for which, the start of construction commenced on or after September 30, 1977. The term also includes any subsequent improvements to such structure.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after September 30, 1977.

Staff Explanation: This definition has been added to provide flexibility with the construction of nonresidential support structures, such as pool restrooms and guard stations, as not all nonresidential accessory structures are functionally equal.

Nonresidential Auxiliary Structure means a nonresidential structure subordinate and incidental nonresidential property, less than 300 square feet in size, which may not be used for human habitation, be constructed entirely out of flood damage resistant materials and be designed to have minimal flood damage potential. Examples of nonresidential auxiliary support structures are pool restrooms, changing rooms and security guard stations.

Recreational vehicle means any of the following vehicles designed for travel, recreation, and vacation uses: motorhome or van (a portable, temporary dwelling constructed as an integral part of a self-propelled vehicle); pickup camper (a structure designed to be mounted on a truck chassis); recreational trailer (a portable structure built on a single chassis, four hundred (400) square feet or less when measured at the largest exterior horizontal projections); park trailer (a semi-portable structure built on a single chassis, which does not exceed four hundred (400) square feet when constructed to ANSI A-119.5 standards, and five hundred (500) square feet when constructed to USDHUD standards); or tent trailer (a canvas or synthetic fiber folding structure mounted on a hard body base and towed by a vehicle). Use of a recreational vehicle for residential or accommodation purposes is prohibited except in a recreational vehicle (RV) park.

Repetitive loss means a building covered by a contract for flood insurance that has incurred flood-related damages on two (2) occasions during a ten-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded twenty-five (25) percent of the market value of the building at the time of each such flood event.

Special flood hazard area (SFHA) means the area that will be inundated by the flood event having a one (1) percent chance of being equaled or exceeded in any given year. The one (1) percent annual chance flood is also referred to as the base flood or 100-year flood. SFHAs are zone A, zone AE, zone AO, zones A1—A30, zone V, zone VE, zones V1—V30 and Coastal A.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure, for floodplain management purposes, means a walled and roofed building, as well as modular and manufactured homes and including gas or liquid storage tanks that are principally above ground, anything constructed, installed, or portable, the use of which requires a location on a parcel of land. Structure includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, swimming pools, cisterns, sewage treatment plants, sheds, and similar accessory construction.

Staff Explanation: Additional CRS credit is available for lowering the substantial damage/substantial improvement threshold below 50%. Typically, contractors will keep improvements under 40% to avoid additional paperwork, so this change will have minimal impact on the building community.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to ~~its~~ before damaged condition would equal or exceed ~~forty-nine (49) fifty (50)~~ percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds ~~forty-nine (49) fifty (50)~~ percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred repetitive loss or substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project of improvement to a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or,
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Substantially improved existing manufactured home park or subdivision means where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds ~~forty-nine (49) fifty (50)~~ percent of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

Violation means the failure of a structure or other development to be fully compliant with these regulations.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

ARTICLE 2. - ADMINISTRATION

Sec. 15-9-211. - Designation of local floodplain administrator.

The town manager or designee is hereby appointed to administer and implement the provisions of this chapter.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-212. - Land development application or building permit and certification requirements.

~~(a)~~ Application for land development or building permit shall be made to the town prior to any development or construction activities. The town manager or designee shall require the following specific information to be included as part of an application for land development or building permit.

- ~~(a)~~ A plan, drawn to scale, which details the nature, location, dimensions, and elevations of the area in question; size of existing and/or proposed structures; finished ground elevation; location of fill materials, storage areas and drainage facilities, water supply, sanitary facilities and, if appropriate, floodproofing measures; and all other applicable requirements in ~~t~~itles 15 and 16 of the ~~t~~own's Municipal Code.
- ~~(b)~~ If the building structure incorporates floodproofing measures or breakaway walls, then certification is required by a registered professional engineer or architect stating that adequate precautions against flood damage have been taken with respect to the design of said building or

structure, and that the plans for the development of the site adhere to the restrictions cited in this chapter.

(~~ce~~) –A lowest floor elevation or floodproofing certification is required after the lowest floor is completed. As soon as possible after completion of the lowest floor and before any further vertical construction commences, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the local floodplain administrator a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by it. Any work done prior to submission of the certification shall be at the permit holder's risk. The local floodplain administrator shall review the floor elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct deficiencies detected by such review. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

Staff Explanation: Coastal A Zones have been added to the FIRMs. These areas will be regulated the same as Zone V as required by the 2018 International Residential Code (IRC) and International Building Code (IBC).

(~~de~~) When a structure is located in zones V, VE, ~~or~~ V1-30, or Coastal A Zone, certification shall be provided from a registered professional engineer or architect, separate from submitted plans, that new construction and substantial improvement meets the criteria for the coastal high hazard areas outlined in section 15-9-313.

(~~ef~~) -Where alterations or repairs or additions are involved, the original date of construction and the current market value of the property, as defined by FEMA policy, shall be furnished by the owner of the property or his agent.

([Ord. No. 2019-03](#) , § 1(Att. 1), 2-19-19)

Sec. 15-9-213. - Duties and responsibilities of town manager or designee.

The town manager or designee shall:

- (a) Review all land development and building permit applications to assure that the requirements of this chapter have been satisfied.
- (b) Review proposed developments to assure-ensure that all necessary permits have been received from those governmental agencies from which approval is required by federal, state or local law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C 1334.
- (c) Notify adjacent communities and the South Carolina Department of Natural Resources, Land, Water, and Conservation Division, State Coordinator for the National Flood Insurance Program, prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Emergency Management Agency.
- (d) Obtain necessary engineering analysis to assure-ensure that the flood-carrying capacity within the altered or relocated portion of said watercourse is maintained.
- (e) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision or other development is in a special flood hazard area, assure that:
 - (1) Such proposals minimize flood damage and are subject to all applicable standards in these regulations;

- (2) Public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage; and
 - (3) Adequate drainage is provided to reduce exposure to flood damage.
- (f) Require base flood elevation data for all land development applications and building permits.

Staff Explanation: As staff is proposing to reduce the substantial damage/substantial improvement threshold, modification of this section gives more flexible options for market value determination, as allowed by the FEMA guidance document (P-758) for Substantial Improvement/Substantial Damage.

~~(g) Perform an assessment of damage from any origin to the structure using FEMA's Substantial Damage Estimator (SDE) software to determine if the damage equals or exceeds fifty (50) percent of the market value of the structure before the damage occurred.~~

(hg) Perform an assessment of permit applications for substantial improvements or substantial damage repairs to be made to a building or structure that equals or exceeds forty-nine (49) fifty (50) percent of the market value of the structure before the start of construction.

The market values shall be determined by one (1) of the following methods:

(1) The current assessed building value as determined by the county's assessor's office, ~~or the value of an appraisal performed by a licensed appraiser at the expense of the owner within the past six (6) months.~~

(2) ~~One (1) or more A~~ certified appraisals from a registered professional licensed appraiser in accordance with the laws of South Carolina. The appraisal shall indicate actual replacement value of the building or structure in its pre-improvement condition, less the cost of site improvements and depreciation, ~~or for functionality and obsolescence.~~

(3) ~~Real estate purchase contract within six (6) months prior to the date of the application for a permit. The computed actual cash value as determined by FEMA's Substantial Damage Estimator (SDE) software.~~

(ih) Maintain all records pertaining to the administration of this chapter and make these records available for public inspection.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

ARTICLE 3. - FLOOD HAZARD REDUCTION STANDARDS

Sec. 15-9-311. - General standards.

In all areas of special flood hazard within the jurisdiction of the Town, the following provisions are required:

- (a) All new construction, additions and/or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (b) All structures shall be firmly anchored to prevent flotation, collapse, or lateral movement. All ducts, pipes, and storage tanks shall be firmly anchored to prevent flotation, collapse or lateral movement.
- (c) All new construction and substantial improvements shall be constructed with flood resistant materials and utility equipment resistant to flood damage in accordance with Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, dated 8/08, and available from the Federal Emergency Management Agency.

Staff Explanation: Modified for clarification of current requirements and consistency with proposed lowest floor regulations in Section 15-9-312 and 15-9-313. See staff explanations below.

(d) Electrical, heating, ventilation, plumbing, ~~and~~ air-conditioning equipment (including ductwork) and other service facilities shall be elevated as follows:

(1) For residential construction, equipment shall be elevated no lower than three feet above the base flood elevation or thirteen (13) feet above mean sea level using NAVD88, whichever is higher.

(2) For nonresidential construction, equipment shall be elevated no lower than two feet above the base flood elevation or eleven (11) feet above mean sea level using NAVD88, whichever is higher.

EXCEPTION: For nonresidential auxiliary structures:

a. In the special flood hazard area, equipment servicing the structure shall be elevated to the base flood elevation plus one foot; or

b. Outside of the special flood hazard area, equipment servicing the structure shall be located no lower than the highest adjacent grade.

If ductwork is located below the aforementioned height requirement, it must be designed ~~and/or located~~ so as to prevent water from entering or accumulating within the components during conditions of flooding— and such design shall be certified by a South Carolina licensed engineer.

(e) Water supply systems and/or sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters.

(f) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(Ord. No. 2019-03, § 1(Att. 1), 2-19-19)

Sec. 15-9-312. - Specific standards.

In all areas ~~of special flood hazard within (zones A, AE, and A1-30, AO, Shaded X and X) where base flood elevation data has been provided~~, the following provisions are required:

Staff Explanation: The FEMA flood maps provide the basis for minimum regulatory standards. The updated flood maps show base flood elevations are being reduced 5-7 feet within the Town's jurisdiction and a significant reduction in the footprint of the currently regulated special flood hazard area.

Staff is proposing to raise the required lowest floor requirement to the higher of three feet above the base flood elevation or 13' above mean sea level for residential construction and two feet above the base flood elevation or 11' above mean sea level for nonresidential construction.

(a) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) must be constructed so that the lowest floor, is elevated no lower than three (3) feet one (1) foot above the ~~level of the~~ base flood elevation or thirteen (13) feet above mean sea level using NAVD88, whichever is higher. i.e., the one-hundred-year flood elevation. No environmentally conditioned space shall be allowed below the lowest floor. No basements are permitted. Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces, shall be provided in accordance with the elevated buildings requirements in section 15-9-312(f). Residential structures may not be floodproofed in lieu of elevation.

- (b) *Nonresidential construction.* New construction and substantial improvement of any nonresidential structure must be constructed so that the lowest floor is elevated no lower than ~~two (2) feet one (1) foot~~ above the ~~level of the~~ base flood elevation ~~or eleven (11) feet above mean sea level using NAVD88, whichever is higher, i.e., the one hundred-year flood elevation.~~ Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces, shall be provided in accordance with the elevated buildings requirements in section 15-9-312(f). Nonresidential structures may be floodproofed in lieu of elevation provided that all areas of the structure below the required elevation are designed to preclude the inundation of floodwater and withstand the hydrostatic loads associated with the base flood.

A South Carolina licensed engineer or architect shall certify that the design and method of construction meet the provisions of this section. Record of certification of floodproofing shall be maintained as a public record.

EXCEPTION: Nonresidential auxiliary structures shall be elevated as follows:

- (1) In the special flood hazard area, nonresidential auxiliary structures shall be elevated to the base flood elevation plus one foot, or
- (2) Outside of the special flood hazard area, nonresidential auxiliary structures shall be elevated to no lower than the highest adjacent grade.

- (c) *Manufactured homes.* Manufactured home standards shall apply to all installations after April 1, 1987 and shall include homes placed in manufactured home parks or subdivisions, or homes not placed in such parks or subdivisions.

Staff Explanation: Modified for consistency with the IRC Section R322.1.9 and to reference appropriate governing regulations.

All new, replaced or substantially improved manufactured homes ~~to be placed or substantially improved within zones A1-30, and AE~~ shall be elevated on a permanent foundation such that the ~~lowest floor~~bottom of the frame of the manufactured home is three (3) feet at or above the base flood elevation or elevated to thirteen (13) feet using NAVD88, whichever is higher and be securely anchored to an adequately anchored foundation system in accordance ~~with Section 40-29-10 of the South Carolina Manufactured Housing Board Code of State Regulations, Chapter 79,~~ as amended.

- (d) *Recreational vehicles.* Recreational vehicles placed on sites shall either be on site for fewer than one hundred eighty (180) consecutive days or must be fully licensed and ready for highway use.

A recreational vehicle is ready for highway use if it is on wheels or jacking system, attached to the site only by quick-disconnect type utilities and security devices; and has no permanently attached additions.

Staff Explanation: FEMA recently updated the policy regarding agricultural and accessory structures and the State Coordinator's office is requiring that Town modify this language for consistency with the updated requirements. This requirement does not change the way these structures are currently permitted by the Town.

- (e) *Accessory structures.* ~~Accessory structures must be elevated to the base flood elevation or meet the requirements of section 15-9-312(f).~~

~~Accessory structures shall be placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall be firmly anchored to prevent flotation, collapse, or lateral~~

~~movement of the structure. All service facilities, such as electrical, shall be installed in accordance with section 15-9-311(d).~~

(1) If the size of an accessory structure is smaller than one-story and 600 square feet, then the following criteria shall be met:

a. Accessory structures shall not be used for any uses other than the parking of vehicles and storage.

b. Accessory structures shall be designed to have low flood damage potential.

c. Accessory structures shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.

d. Accessory structures shall be firmly anchored to prevent flotation, collapse and lateral movement of the structure.

e. All service facilities shall be elevated as follows:

1. In the special flood hazard area, equipment servicing the structure shall be elevated to the base flood elevation plus one foot, or

2. Outside of the special flood hazard area, equipment servicing the structure shall be located no lower than the highest adjacent grade.

f. Accessory structures shall be built with flood resistance materials in accordance with the most recent addition of Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, which is available from the Federal Emergency Management Agency. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials; and

g. Openings to relieve hydrostatic pressure during a flood shall be provided below base flood elevation in conformance with 15-9-312(f).

(2) If the size of an accessory structure is larger than one-story and 600 square feet, then the following criteria shall be met:

a. All service facilities shall meet the requirements of section 15-9-311(d);

b. Residential accessory structures must meet the requirements of section 15-9-312(a); or

c. Nonresidential accessory structures must meet the requirements of section 15-9-312(b).

(f) *Enclosures below lowest floor.*

(1) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(2) Designs for meeting this requirement must either be certified by a registered professional South Carolina engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two (2) openings, each on a separate building face, shall be provided. These openings should have a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;:-

b. The bottom of all openings shall be no higher than one (1) foot above grade;:- and

c. Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(3) Doors and windows are not to be considered as a part of the minimum requirement.

Staff Explanation: Removed second sentence because it created a circular reference.

- (4) Uses below the base flood elevation are restricted to parking, limited storage and building access. ~~Enclosed areas below base flood elevation must comply with [subsection] (f)(1) above.~~
-

Staff Explanation: Removed reference to partitioning for clarification as the area cannot be finished, but separation between permitted uses is allowed.

- (5) The interior portion of such enclosed areas shall not be finished ~~or partitioned into separate rooms~~, must be void of utilities, except for essential lighting as required for safety, and cannot be temperature controlled.
- (6) All construction materials below the required lowest floor elevation specified in the specific standards outlined in section 15-9-312(a), (b), (c) and (e) shall be of flood-resistant materials.
- (g) *Fill*. If fill is the only alternative to raising the building to meet the residential and non-residential construction requirements of section 15-9-312(a) and (b), an applicant shall demonstrate that the amount of fill used will not affect the flood storage capacity. The following provisions shall apply to all fill placed in the special flood hazard area:
- (1) Fill shall consist of suitable compact soil or small rock materials only. Sanitary landfills shall not be permitted;
 - (2) Uncontained fill shall extend laterally no less than five (5) feet beyond the building line at all points;
 - (3) Fill shall be used only to the extent to which it does not adversely affect adjacent properties;
 - (4) Fill slopes shall be no steeper than allowed by acceptable engineering standards for the type of fill material used; ~~and~~;
 - (5) Nonresidential sites shall not be elevated with fill material to an average height greater than three (3) feet above existing grade with the exception of critical facilities.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Staff Explanation: Added reference to Coastal A zones as these are new zones on the map, which are regulated the same as Zone VE in the Building Code.

Sec. 15-9-313. - Special standard for construction in coastal high hazard areas (zones ~~V₁~~ ~~and~~ VE and Coastal A).

Located within the special flood hazard areas are areas known as coastal high hazard areas (VE and coastal A zones). These coastal high hazard areas have special flood hazards associated with high-velocity waters from tidal surge and hurricane wave wash and therefore the following special construction standards shall apply in the coastal high hazard areas as determined by the town manager or designee.

- (a) All new construction and substantial improvements shall be located landward of the reach of the mean high tide.

Staff Explanation: Staff is proposing to raise the required lowest floor requirement for all V Zone construction to the higher of 3 feet above the base flood elevation or 13' above mean sea level. The update FIRMS show minimal property remaining in zone V such that there is no distinction between residential or nonresidential construction.

- (b) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal supporting member is located no lower than ~~three (3) feet one (1) foot~~ above the base flood elevation level, or thirteen (13) feet above mean sea level using NAVD88, whichever is higher, with all space below the lowest supporting member free of obstruction and open so as not to impede the flow of the water, except as provided for breakaway walls in subsection (i), below.
 - (c) All new construction and substantial improvements shall be securely anchored on pilings or columns.
 - (d) The pile or column foundation and structure attached thereto shall be designed and anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. (Windloads will comply with the latest edition of the International Building Code, with amendments, that has been adopted by the South Carolina Building Codes Council.) The waterloads are those associated with the base flood.
-

Staff Explanation: Section (e) was modified for consistency with the IRC and IBC as ASCE 24 is the standard for construction in Coastal High Hazard Areas and Section (f) was removed to avoid conflict with section (e).

- (e) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with the most recent edition of ASCE 24 accepted standards of practice for meeting the provisions of paragraphs (b) through (d) of this section.
 - ~~(f) Pilings or columns used as structural support shall be spaced so that when measured perpendicular to the general direction of flood flow shall not be less than eight (8) feet apart at the closest point.~~
-

Staff Explanation: Added for consistency with state model ordinance.

- (g) There shall be no fill used as structural support. Non-compacted, non-structural fill may be used under or around an elevated building provided that it is beach compatible sand and no greater than 18 inches in depth.
- (h) There shall be no alteration of primary sand dunes which would increase potential flood damage.
- (i) Breakaway walls shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used. Breakaway walls shall be open lattice work or screening only.
- (j) If breakaway walls are utilized, such enclosed space shall not be used for human habitation. The enclosed areas may only be used for parking of the vehicles, building access or limited storage.
- (k) Reserved.
- (l) Manufactured homes to be placed in VE or coastal A zones shall meet the same standards as conventional housing; i.e., meet the provisions at section 60.3(e)(3), (4), (5), (6), and (7) of NFIP criteria, as required by this section.

- (m) Recreational vehicles may be permitted in VE or coastal A zones provided that the zoning of the property allows for recreational vehicle parks as a principal use and they meet the recreation vehicle criteria of section 15-9-312(d).
- (n) Accessory structures to be placed in VE or coastal A zones shall meet the same standards as conventional housing as required by this section.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Staff Explanation: Standards for Areas of Shallow Flooding (AO zones) as required by the State Coordinator's office. The language is slightly modified from the State Model Ordinance.

Sec. 15-9-314. - Special standard for construction in areas of shallow flooding (zone AO).

Located within the special flood hazard areas are areas known as areas of shallow flooding (AO zone). The following provisions shall apply within such areas:

- (a) All new construction and substantial improvements of residential structures shall have the lowest floor elevated to at least as high as the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade, or thirteen (13) feet above mean sea level using NAVD88, whichever is higher.
- (b) All new construction and substantial improvements of nonresidential structures shall:
 - (1) Have the lowest floor elevated to at least as high as the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade or eleven (11) feet above mean sea level using NAVD88, whichever is higher; or
 - (2) Be completely floodproofed together with attendant utility and sanitary facilities to or above the depth number so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (c) All structures on slopes must have drainage paths around them to guide water away from the structures.

Staff Explanation: Procedure added for Appeal. The State Coordinator's office required that we add a definition for *Appeal*, so Staff also added appeal procedure.

ARTICLE 4. -- VARIANCES AND APPEALS

Sec. 15-9-411. - Requirements for variances.

Upon the submission of a written application to the town construction board of adjustments and appeals, a variance may be granted permitting the new construction or substantial improvement of structures with a lowest floor elevation, lower than regulatory flood elevation if one (1) of the following are met:

- (a) A historical structure, which has been determined upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and

the variance is the minimum necessary to preserve the historic character and design of the structure.

- (b) Development necessary to conduct a functionally dependent use, provided the criteria of this article are met, no reasonable alternative exist, and the development is protected by methods that minimize flood damage and create no additional threat to public safety.
- (c) Wet floodproofing of an agricultural structure, provided it is used solely for agricultural purposes. In order to minimize flood damages during the base flood and the threat to public health and safety, the structure must meet all of the conditions and considerations of section 15-9-312(f), this section, and the following standards:
 - (1) Use of the structure must be limited to agricultural purposes as listed below:
 - a. Pole frame buildings with open or closed sides used exclusively for the storage of farm machinery and equipment;
 - b. General-purpose barns for the temporary feeding of livestock that are open on at least one (1) side;
 - c. For livestock confinement buildings, poultry houses, dairy operations, and similar livestock operations, variances may not be issued for structures that were substantially damaged. New construction or substantial improvement of such structures must meet the elevation requirements of section 15-9-312(f) of this chapter.
 - (2) The agricultural structure must be built or rebuilt, in the case of an existing building that is substantially damaged, with flood-resistant materials for the exterior and interior building components and elements below the base flood elevation.
 - (3) The agricultural structure must be adequately anchored to prevent flotation, collapse, or lateral movement. All of the structure's components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, hydrodynamic, and debris impact forces. Where flood velocities exceed five (5) feet per second, fast-flowing floodwaters can exert considerable pressure on the building's enclosure walls or foundation walls.
 - (4) The agricultural structure must meet the venting requirement of section 15-9-312(f) of this chapter.
 - (5) Any mechanical, electrical, or other utility equipment must be located above the base flood elevation, plus any required freeboard, or be contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with section 15-3-311(d) of this chapter.
 - (6) Major equipment, machinery, or other contents must be protected. Such protection may include protective watertight floodproofed areas within the building, the use of equipment hoists for readily elevating contents, permanently elevating contents on pedestals or shelves above the base flood elevation, or determining that property owners can safely remove contents without risk to lives and that the contents will be relocated to a specified site out of the floodplain.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-412. - Required findings.

If the proposed new construction or substantial improvement meets one (1) or more of the requirements in section 15-9-411, a variance may be granted if the town construction board of adjustment and appeals determines and expresses in writing all of the following findings:

- (a) Good and sufficient cause exists for the granting of the variance.
- (b) Failure to grant the variance would result in exceptional hardship to the applicant.

- (c) The issuance of the variance would not result in increased flood heights, additional threats to public safety or extraordinary public expense.
- (d) The variance would not have the effect of nullifying the intent and purpose of the chapter.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-413. - Hearing.

- (a) All applications for variances shall be heard by the construction board of adjustments and appeals.
- (b) Prior to the granting of a variance, the ~~e~~C~~o~~nstruction ~~b~~B~~o~~ard of ~~a~~A~~d~~justments and ~~a~~A~~p~~peals must find that justifications exist in accordance with the terms of this chapter. These findings, together with the granting of a variance, shall be reduced to writing, and may be a part of the public record. All variances shall pertain to the particular parcel of land and apply only to the proposed structure set forth in the variance and application.
- (c) Such variance shall be freely transferable with the land and shall not be personal to the applicant.
- (d) Unless otherwise provided therein, a variance shall be valid for a period of one (1) year after the date of its issuance. If construction has not commenced pursuant thereto within such time, said variance shall become void. Lapse of a variance by the passage of time shall not preclude subsequent application for variance.
- (e) No variance except herein specifically permitted may be granted from the provisions of this chapter. The variance procedures herein provided shall be the exclusive method for obtaining variances under the provisions herein.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-414. - Fee.

Each written application for a variance shall be accompanied by a fee of seventy-five ~~dollars~~ (\$75.00) ~~dollars~~. Such application shall reflect the type of structures for which a variance is sought, the size of such structures, the approximate location upon the parcel and intended use thereof and the reasons for which the variance is being sought.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-415. - Notice of possible increased insurance cost.

Any applicant to whom a variance is granted shall be given notice that the proposed structure will be located in the floodprone area. The structure will be permitted to be built with a lowest flood elevation below the regulatory flood elevation, and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced first floor elevation.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-416. – Requirements for appeals

The Town Construction Board of Adjustments and Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the local floodplain administrator in the enforcement or administration of this division; provided, however, that, the person aggrieved requests a hearing before the town construction board of adjustment and appeals.



TOWN OF HILTON HEAD ISLAND

Executive Department

TO: Town Council
Marc Orlando, ICMA~CM - Town Manager

CC: Joshua A. Gruber, Deputy Town Manager
Diane Busch, Staff Attorney

DATE: March 10, 2021

SUBJECT: Consideration of an Emergency Ordinance, Requiring Individuals to Wear Face Coverings

RECOMMENDATION:

Request Town Council's consideration of the attached Emergency Ordinance which renews the current requirement for wearing of face coverings in certain public settings.

AN EMERGENCY ORDINANCE TO REQUIRE INDIVIDUALS TO WEAR FACE COVERINGS IN CERTAIN CIRCUMSTANCES AND LOCATIONS IN THE MUNICIPAL LIMITS OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, on March 16, 2020, Mayor John J. McCann , under the authority of § 7-7-20, *Municipal Code of the Town of Hilton Head Island* (1983), declared that a State of Emergency exists throughout the Town as a result of impacts arising from the COVID-19 pandemic; and

WHEREAS, as of March 10, 2021 the State of Emergency still exists in the Town of Hilton Head Island; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) and South Carolina Department of Health and Environmental Control (“SCDHEC”) advise the use of cloth or other types face coverings to slow the spread of COVID-19; and

WHEREAS, there are large numbers of visitors and residents who patronize grocery stores, pharmacies, restaurants, retail establishments and other establishments within the municipal limits of the Town; and

WHEREAS, on March 5, 2021, South Carolina Governor Henry McMaster issued *Executive Order 2021-12*, encouraging all individuals within the State of South Carolina to wear a face covering in public settings; and

WHEREAS, Governor McMaster, in *Executive Order 2021-12*, expressed his continued support for counties and municipalities in the State enacting or implementing, or modifying or amending emergency ordinances, orders, or other such measures requiring individuals to wear a face covering in public settings; and

WHEREAS, the Town Council finds that it is in the best interest of the citizens and visitors of the Town that an Emergency Ordinance be adopted requiring the wearing of cloth or other types of face coverings in certain circumstances, and that the Emergency Ordinance be put into immediate effect; and

WHEREAS, S.C. Code § 5-7-250(d) provides that “to meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment.”

NOW, THEREFORE, BE IT ORDERED, AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL, AS FOLLOWS:

1. As used in this Ordinance, “Face Covering” means a cloth or other type of masking device that covers the wearer’s nose and mouth, and which remains in place without use of the wearer’s hands.
2. As used in this Ordinance, “Commercial Business Establishment” means any establishment located in a closed building or other indoor environment that primarily sells or provides goods or services, or a combination of them, to the general public, including but not limited to, grocery stores, restaurants, lobbies and public spaces in hotels, motels, and timeshare complexes, pharmacies, bars, salons, retail stores, medical and dental offices.
3. Subject only to the exemptions and exceptions stated in Section 6 of this Ordinance, any person entering any Commercial Business Establishment in the municipal limits of the Town must wear a Face Covering while inside the Commercial Business Establishment.
4. Commercial Business Establishments shall post conspicuous signage at all entrances to the establishment informing its patrons of the requirements of Section (3) of this Ordinance.
5. All Commercial Business Establishments in the municipal limits of the Town shall require all employees to wear a Face Covering at all times that the employees are in any area where the general public is allowed, or when the employees must be in close proximity to one another.
6. The following persons are exempt from the requirements of this Ordinance:
 - (i) Any person who is unable to safely wear a Face Covering due to age, an underlying health condition, or who is unable to don or remove the Face Covering without the assistance of others is exempt from the requirements of this ordinance;
 - (ii) Persons eating or consuming food and beverages; and
 - (iii) Persons receiving medical care or treatment
7. Any person found to have violated any mandatory provision of this Ordinance shall be guilty of a misdemeanor and shall be subject to the penalties set forth in Section 1-5-10, Municipal Code of the Town of Hilton Head Island (1983).

8. Any Commercial Business Establishment that is subject to this Ordinance at which three more violations of this Ordinance occur is hereby declared a nuisance. To abate the nuisance, the Town may:
- (i) Seek a restraining order, preliminary injunction, permanent injunction, or any other means authorized under the Laws of the State of South Carolina to abate the nuisance; and,
 - (ii) Seek suspension or revocation of the business license issued by the Town, under the authority of Section 10-1-150 and Section 10-1-160, Municipal Code of the Town of Hilton Head Island (1983).
9. 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, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.
10. This Ordinance shall become effective immediately following the adoption by the Town Council for The Town of Hilton Head Island, South Carolina, and will expire on the sixty first day following adoption or the end of the State of Emergency in The Town of Hilton Head Island, South Carolina, whichever occurs first.

MOVED, APPROVED, AND ADOPTED THIS _____ DAY OF MARCH, 2021.

John J. McCann, Mayor

ATTEST:

By: _____
Krista M. Wiedmeyer, Town Clerk

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____