

ORDINANCE 2022/39

AN ORDINANCE ESTABLISHING THE BEAUFORT COUNTY GREEN SPACE PROGRAM ORDINANCE AND SETTING FORTH THE METHODS BY WHICH COUNTY COUNCIL INTENDS TO PROCURE OPEN LANDS AND GREEN SPACE FOR PRESERVATION SUBJECT TO A REFERENDUM WITHIN BEAUFORT COUNTY PURSUANT TO SECTION 4-10-1010 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976 AS AMENDED

WHEREAS, the Beaufort County Council recognizes the need to preserve land that has scenic, natural, recreational, rural, and open space character which is deemed essential to the County's quality of life; and

WHEREAS, in recognition of the negative consequences which are often associated with environmentally unsustainable levels of development, South Carolina adopted, the "County Green Space Sales Tax Act," ("Act") which is designed to empower counties to undertake land preservation efforts.; and

WHEREAS, the Beaufort County Council has, by Ordinance 2022/36, provided for the imposition of a one percent (1%) sales and use tax pursuant to the Act subject to the results of a Referendum which is to be held on November 8, 2022 ("Referendum") on the imposition of the sales and use tax; and

WHEREAS, in the event voters approve the Referendum, the net revenues of the sales and use tax are to be applied by County Council for the purposes permitted under the Act; and

WHEREAS, the Act provides that two weeks before the Referendum a county's election commission must publish in a newspaper of general circulation the questions which are to appear on the ballot along with a description of the methods by which County Council intends to procure open lands and green space of preservation; and

WHEREAS, by the adoption of this ordinance County Council undertakes to set forth a description of the methods by which Council intends to procure open lands and green space for preservation if voters approve the Referendum imposing a one percent (1%) sales and use tax for preservation procurement under the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF BEAUFORT COUNTY AS FOLLOWS:

SECTION 1. TITLE

This article shall be known as the "Beaufort County Green Space Program Ordinance."

SECTION 2. PURPOSE

It is the purpose of this ordinance to:

- (a) Provide a means by which lands may be protected and enhanced as economic and environmental resources of major importance.
- (b) Encourage landowners to make a voluntary long-term commitment to conservation by offering landowners financial incentives and security of land use.
- (c) Preserve open space; protect critical and natural resources; and/or provide land for recreation.
- (d) Leverage federal, state, local, and private conservation efforts and development rights purchase funds and protect the investment of taxpayers in purchased and donated conservation easements.
- (e) Provide a means whereby rural landowners can maintain and preserve the rural character of their land through land conservation.
- (f) Provide compensation to landowners in exchange for relinquishment, in part or in whole, of their right to develop their private property.
- (g) Reduce and defer the need for major public infrastructure improvements in the county when the expenditure of public funds is the requirement for such improvements.
- (h) Provide for the purchase of fee simple interests in lands deemed critical to provide for the protection of the natural resources, historic and cultural significance, passive recreation, viewscapes and lands suitable for public use in a manner consistent with its conservation values.
- (i) Provide for purchase of development rights and fee simple interest in lands threatened by development, which if it occurs will have detrimental effects on land use patterns, traffic, public safety, stormwater runoff, water quality or other conservation objectives.
- (j) Provide for purchase of development rights on rural lands, which provide protection of natural resources and stability of agricultural, timber, and other open space uses.
- (k) Protect and preserve watersheds; natural habitat for plants and animals.

SECTION 3. TYPES OF ACQUISITIONS

Preservation procurements are defined in the Act. They include procuring for preservation, open lands or green spaces which are located within and without, or both within and without, the boundaries of Beaufort County, other counties, municipalities, and special purpose districts by and through the acquisition of interests in real property, including:

- (a) The acquisition of fee simple titles;
- (b) Conservation easements;
- (c) Development rights;
- (d) Rights of first refusal;
- (e) Options;

- (f) Leases with options to purchase;
- (g) Any other interest in real property.

SECTION 4. GREEN SPACE ADVISORY COMMITTEE MEMBERSHIP, TERMS, ORGANIZATION

To facilitate preservation procurement purchases Council establishes the following Committee, sets forth the terms of membership and its organization:

- (a) County Council shall appoint a seven-member Green Space Advisory Committee as follows:
 - (1) one member who is a member of the County Council;
 - (2) one member who is a member of the Beaufort County Legislative Delegation;
 - (3) one member who is knowledgeable about the geography and condition of Beaufort County's land; and
 - (4) four citizen members, each representing the northern, southern, eastern, and western portions of the county.
- (b) Terms of committee members are for four years and until their successors are appointed and qualify, except that the initial terms of the members must be staggered with the initial term noted on the appointment.
- (c) The committee is a public body, and its members are subject to the South Carolina Ethics Act, as amended, and must perform their duties in accordance with its provisions.
- (d) The committee must conduct its business in accordance with the South Carolina Freedom of Information Act.

SECTION 5. GREEN SPACE ADVISORY COMMITTEE DUTIES AND RESPONSIBILITIES

The duties and responsibilities of the Green Space Advisory Committee are to:

- (a) Identify stakeholder groups with extensive knowledge of and experience in land preservation to assist with recommendations to the Advisory Committee on which areas and types of properties to target for acquisition with guidance from the Greenprint Plan and the Comprehensive Plan ("Stakeholder groups").
- (b) Develop and recommend to County Council for adoption program criteria to guide the identification and prioritization of lands to be acquired through the Green Space Program. At a minimum the criteria shall include:
 - (1) That the program is transparent and equally distributes the funds within the County in the interest of Beaufort County residents.
 - (2) For properties which are located outside the geographic boundaries of the County known as Beaufort County, matching funds may be required.

- (3) Acquisitions of development rights secured through annexations, rezonings, and/or other entitlements occurring after the adoption of this ordinance will be closely scrutinized and use of/access to Green Space funds may be restricted or prohibited.
- (4) A jurisdictional letter of support or opposition for projects located in other governmental jurisdictions shall be required at the time of application.
- (c) Develop and recommend to County Council an application process that includes a measurable scoring system based on adopted program criteria. When applicable, scoring may at a minimum consist of the following factors:
 - (1) The extent to which the acquisition will protect valuable natural resources, habitat, and water quality.
 - (2) Consistency with adopted plans including the Beaufort County Comprehensive Plan and the Greenprint Plan.
 - (3) The extent to which the acquisition will result in the reduction of vehicle miles traveled and reduce the need for future roadway improvements.
 - (4) The extent to which matching funds will be available for applications.
 - (5) For purchases of existing development rights, how recently the property was entitled for development.
- (d) Submit to South Carolina Department of Revenue, Council approved program criteria and application process for acknowledgement.
- (e) Review and recommend to County Council Green Space lands to be acquired based on the adopted program criteria and scoring system (Section 5-a & 5-b).
- (f) Perform such other duties as may be assigned by County Council.

SECTION 6. METHOD OF PROGRAM AND PROCEDURES

The following procedures shall be followed in evaluating preservation procurements:

- (a) County Staff Receipt and Review of Applications:
 - (1) Applications for participation in the Green Space Program shall be submitted to County staff.
 - (2) County staff, upon determining completeness of the application, shall review and provide a ranking and recommendation to the Green Space Advisory Committee based on the adopted program criteria and scoring (Section 5-a & 5-b).
- (b) Review, Recommendation, and Action to Proceed with Due Diligence and Acquisition Negotiations:

- (1) The Green Space Advisory Committee shall review and make recommendations whether to engage in due diligence and acquisition negotiations based upon staff scoring and recommendation.
 - (2) The Advisory Committee recommendation will be presented to the Natural Resources Committee where a decision to fund due diligence and acquisition negotiations will or will not be approved for each application.
 - (3) If approved by the Natural Resources Committee, county staff will proceed with due diligence and acquisition negotiations.
- (c) Review, Recommendation and Action to Proceed with Acquisition:
- (1) Based on the due diligence and the acquisition negotiations, staff shall make any necessary revisions to the original scoring and recommendation to the Green Space Advisory Committee.
 - (2) The Green Space Advisory Committee shall review and make recommendations whether to approve funding for acquisitions.
 - (3) The Advisory Committee's recommendations will be presented to the Natural Resources Committee where a recommendation to acquire will or will not be approved for each application.
 - (4) The Natural Resources Committee's recommendations will be presented to County Council for final consideration. Approval will be by Resolution.

SECTION 7. DUE DILIGENCE

All proposed acquisitions will be subject to due diligence being satisfactorily completed, reviewed, and approved by the county. All due diligence shall be initiated and reviewed by appropriate county staff before being sent to County Council for action. Due diligence shall include, but may not be limited to:

- (a) An appraisal of the value of the interest being acquired prepared by a member of the appraisal institute (MAI), or other appropriately licensed or certified South Carolina Appraiser.
- (b) A boundary survey completed by a South Carolina Registered Land Surveyor. For purchase of fee simple interests, a topographic survey, tree survey, archaeological survey, or other due diligence items shall also be obtained when appropriate.
- (c) A Phase I environmental assessment by a qualified environmental consulting firm. In instances where the Phase I report so indicates, a Phase II environmental assessment including a plan for any remediation, by the seller or purchaser, is required for the property to address the concerns to the satisfaction of the county.
- (d) When warranted, a title search, title opinion, and/or title insurance commitment with only normal title exceptions will be required.

SECTION 8. CONSERVATION EASEMENTS

- (a) Conservation easements shall concurrently be placed on property where development rights are being acquired with all documents ready to be filed with the Register of Deeds.
- (b) The conservation easements shall be granted directly to an appropriate easement holder by the owner or by the county. The Green Space Advisory Committee shall recommend appropriate easement terms/language to County Council in recordable form.
- (c) The stewardship funding required by the easement holder to defend and provide the necessary annual monitoring required for the easement may be granted by the county for the easement depending on the nature of the agreement reached between the county and the easement holder.
- (d) When the county and Marine Corps Air Station (MCAS) Beaufort collaborate on a purchase of development rights acquisition, an appropriate restrictive easement will be applied to the acquired property.

SECTION 9. EFFECTIVE DATE; SEVERABILITY

This Ordinance shall take effect immediately upon third reading; provided however, the Green Space Advisory Committee shall not be appointed, and Beaufort County shall not appropriate funds for preservation procurement under this Ordinance or under Ordinance 2022/36 unless voters approve the Referendum imposing a Green Space Sales and Use Tax.

If any provision of the Ordinance or its application to any circumstance is held by a court of competent jurisdiction to be invalid, such holding shall not affect other provisions of this Ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance are severable.

Adopted this 3rd day of October 2022.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: 
Joseph Passiment, Chairman

ATTEST: 

Sarah W. Brock, Clerk to Council
First Reading: September 12, 2022 / Vote 9:1
Second Reading: September 26, 2022 / Vote 11:0
Public Hearing: September 26, 2022
Third and Final Reading: October 3, 2022 / Vote 10:0