

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Elizabeth Souder,

Petitioner/Appellant,

v.

THE CITY OF COLUMBIA and THE
CITY OF COLUMBIA BOARD OF
ZONING APPEALS,

Defendants/Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2025-CP-40-07466

**PETITIONER/APPELLANT'S
OPENING BRIEF**

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STATEMENT OF ISSUES ON APPEAL

In 2018, the City of Columbia issued Petitioner/Appellant Elizabeth (“Libby”) Souder a home occupation license so that she could offer private swim lessons in her backyard pool. Libby ran her business without issue until 2025, when the City shut her down after concluding that a preexisting provision of the City’s zoning code forbids home businesses from operating outdoors. The issues presented are:

- I. Whether banning Libby from teaching private swim lessons in her backyard pool, simply because those lessons take place outdoors, violates Libby’s right to equal protection, as protected by the Equal Protection Clause of Article I, Section 3 of the South Carolina Constitution.
- II. Whether Columbia’s ban on outdoor home businesses, as applied to Libby’s private swim lessons, exceeds the City’s limited police power and is therefore unconstitutional.
- III. Whether Columbia’s ban on outdoor home businesses, as applied to Libby’s private swim lessons, violates Libby’s constitutional rights to earn an honest living and use her private property, as protected by the Due Process Clause of Article I, Section 3 of the South Carolina Constitution.
- IV. Whether the City is estopped from interpreting a preexisting provision of its zoning code to shut down Libby’s private swim lessons.

STATEMENT OF THE CASE

In 2018, Defendant/Respondent City of Columbia issued Libby a business license that allowed her to offer private swim lessons in her backyard pool.

Petition/Notice of Appeal (filed Nov. 3, 2025) (the “Petition”) ¶ 6; Petition Ex. B. The City renewed that license every year thereafter until 2025, when the City stated that it would no longer renew Libby’s license going forward. Petition ¶¶ 7, 56; Petition Composite Ex. C. On July 9, 2025, the City served Libby with a formal written interpretation that concluded that a preexisting provision of the City’s zoning code requires all home-based businesses to operate indoors. Petition ¶¶ 66–67; Petition Ex. M. On August 8, 2025, Libby timely appealed the written interpretation to the Columbia Board of Zoning Appeals. Petition ¶ 76. The zoning board heard Libby’s appeal on September 4, 2025, and voted 3-2 to affirm the interpretation in a written order mailed to Libby on October 6, 2025. Petition ¶¶ 89–90; Petition Ex. A. This timely appeal follows, in which Libby argues that the ordinance, as applied to her private swim lessons business, violates her constitutional rights and is barred by the doctrine of equitable estoppel. Petition ¶¶ 91–137.

STANDARD OF REVIEW

Those aggrieved by a decision of a city zoning board may appeal to the circuit court by filing a written petition “setting forth . . . why the decision is contrary to law.” S.C. Code Ann. § 6-29-820(A). When reviewing the appeal, the court must treat the zoning board’s findings of fact “in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” *Id.* § 6-29-840(A). When reviewing the board’s legal conclusions, however, the court must determine “whether the decision of the board is correct as a matter of law.” *Id.*; *see also McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504–08, 719 S.E.2d 660, 662–65 (2011)

(reviewing a constitutional challenge to a city ordinance raised in a zoning appeal under a de novo standard of review).

Thus, when the zoning appeal raises issues related to the “construction of an ordinance[,] [those issues] are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (citation omitted); *id.* at 10 (holding that a zoning administrator’s interpretation of a county ordinance was a “legal conclusion” and thus not subject to the deference afforded to the zoning board’s findings of fact). In other words, “a broader and more independent review is permitted when the issue concerns the construction of an ordinance.”¹ *Id.* at 10.

Finally, “a decision of a city zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007). A municipal ordinance is unconstitutional when the ordinance has no reasonable relationship to a lawful purpose, or when the ordinance “arbitrarily and capriciously” deprives a person of “a cognizable property interest rooted in state law.” *McMaster* 395 S.C. at 505 (citation omitted).

¹ To facilitate this Court’s independent review of the questions of law raised by this appeal, Petitioner submitted an affidavit accompanying this brief with exhibits that contain true and correct copies of the relevant city ordinances cited in this brief. Citations to these exhibits are cited directly as “Ex.” Citations to the exhibits that Petitioner submitted with her Petition filed on Nov. 3, 2025, are made in the format of “Petition Ex.” Citations to the certified record of the board proceedings submitted by the Columbia Board of Zoning Appeals are made in the format of “BZA [page number].”

STATEMENT OF FACTS

The City Approves Libby's Private Swim Lessons

In 2018, Defendant/Respondent the City of Columbia issued Libby a business license that authorized her to teach private swim lessons in her backyard pool. BZA 015; Petition Ex. B. That 2018 license, as well as the licenses the City issued to Libby every year thereafter through the year ending April 30, 2025, were all signed by the City's Zoning Administrator, and stated that, "The issuance of this business license shall serve as a Zoning permit by the Zoning Administrator." Petition Composite Ex. C. For the seven years that Libby had the City's approval to do so, Libby taught her "one on one private swim lessons for a few hours per day for a few months per year without incident." BZA 015.

The City Shuts Libby Down

On July 9, 2025, however, the City served Libby with a formal written interpretation of its zoning code, wherein the Zoning Administrator concluded² that Libby's private swim lessons violated Section 17-4.3(d)(6)(f) of Columbia's Unified Development Ordinance. *See* BZA 029–30 (the Written Interpretation). The Zoning Administrator is the city official responsible for interpreting and enforcing the City's

² The City first indicated that it would not renew Libby's license on February 27, 2025, which is when Columbia's Zoning Administrator said as much to Libby's counsel over the phone. Petition ¶ 56. In response, Libby filed a declaratory judgment action in this Court in late April 2025. Petition ¶¶ 51–61. That action involves the same legal issues as those raised by this zoning appeal and has therefore been stayed pending the outcome of this zoning appeal. *See Souder v. City of Columbia, et al*, Case No. 2025-CP-40-02432 (S.C. Ct. Com. Pl. Apr. 15, 2026) (Order by Judge McGee Staying Declaratory Judgment Action and Allowing Zoning Appeal to Proceed).

zoning ordinances, including the ordinance that is being challenged in this lawsuit. *See* Columbia’s Unified Development Ordinance (“UDO”), a true and correct copy of which is attached as Exhibit 1, §§ 17-2.3(f)(1)(c)-(d), 17-8.5(a)(1).

UDO § 17-4.3(d)(6)(f) requires all home occupations to be “conducted entirely within the principal structure or within a fully enclosed, lawfully approved structure which is accessory to the residential use.” BZA 035. This provision of the City’s zoning code predates the City’s issuance of Libby’s license. *See* Petition ¶ 9; *see also* Petition Ex. E (listing the provision as part of the Home Occupations conditions form Libby signed in 2018). Libby always believed that her private swim lessons complied with this provision, as her backyard pool is fully enclosed by a fence, as required by Columbia Code of Ordinances Section 5-1. *See* Petition ¶ 10; BZA 015. Columbia Code of Ordinances Section 5-1(a) states that: “All outdoor swimming pools shall be completely enclosed by a barrier meeting the requirements hereinafter specified.” *See* Columbia Code of Ordinances Section 5-1, a true and correct copy of which is attached as Exhibit 2. Thus, Libby believed that by complying with Section 5-1’s “completely enclosed” requirement, her pool therefore also satisfied the “fully enclosed” requirement of UDO § 17-4.3(d)(6)(f). *See* Petition ¶ 10; BZA 015 (explaining that Libby’s pool is “properly enclosed by a fence pursuant to the requirements of” Columbia Code of Ordinances Section 5-1), BZA 022–24 (arguing that Libby’s pool satisfies the fully enclosed requirement based on how that term is used elsewhere by the City in its ordinances). Libby also believed that her business complied with the UDO because the City, including the City’s Zoning Administrator, repeatedly issued

her licenses/zoning permits that expressly stated that her business was permissible. *See* Petition Composite Ex. C.

In the 2025 Written Interpretation, however, the Zoning Administrator formally concluded that UDO § 17-4.3(d)(6)(f) requires all home occupations to operate entirely indoors. *See* Transcript of the Sept. 4, 2025, BZA Hearing, a true and correct copy of which is attached as Exhibit 3, at 4:19–22 (City Zoning Administrator: “[T]he intent of the standards of home occupations is for home occupations to be conducted indoors and not outside.”); 25:04–07 (Zoning Administrator: “What we are looking at is, in fact, that swimming pool, is that a situation where it is indoors? And is it fully enclosed in that sense? And it is not.”). The Zoning Administrator thus concluded that Libby’s swim lessons business violated UDO § 17-4.3(d)(6)(f) because Libby’s backyard pool was not indoors or otherwise surrounded by “at least four walls and a roof.” BZA 029–30; *see also* Ex. 3 at 4:19–22, 25:04–07.

In determining that UDO § 17-4.3(d)(6)(f) requires home occupations to operate entirely indoors, the Zoning Administrator cited, in part, neighboring provisions of the UDO that are designed to limit noise associated with home occupations. *See* BZA 030. This led the Zoning Administrator to conclude that, “the meaning of a ‘fully enclosed . . . structure’ in this context is a structure that would prevent the home occupation activity being seen or heard off-site, and a fenced-in outdoor pool would fail to meet these standards.” BZA 029–30; *see also* Ex. 3 at 24:11–13 (“But again, the intent is, you live in a neighborhood, you drive by, you’re not aware that somebody is conducting a business at the location.”). In other words, the Zoning Administrator

understood UDO § 17-4.3(d)(6)(f) as being designed to help prevent unreasonable noise or other disturbances in residential areas. *See* BZA 030; *see also* Ex. 3 at 26:04–07 (explaining that it would undermine the intent of the UDO to allow a piano teacher to offer lessons in their backyard).

The Written Interpretation, and its conclusion that Libby’s business violates UDO § 17-4.3(d)(6)(f), is “binding on subsequent decisions by the Zoning Administrator.” BZA 030. Having been formally notified that her longstanding business was now considered unlawful, Libby timely appealed to the Columbia Board of Zoning Appeals. *See* BZA 012–27.

The BZA Hearing: Libby’s Quiet, Well-Run Business Must Be Shut Down Simply Because It Operates Outdoors

The BZA heard Libby’s appeal on September 4, 2025. BZA 001. As Libby explained to the zoning board, her “one on one private swim lessons” “business [was] quiet and unobtrusive to neighbors.” BZA 015. Indeed, one of the defining characteristics of Libby’s business is that she offers a “very quiet environment” free of “distractions, so that special needs kids can learn to swim.” Ex. 3 at 13:11–16; *see also* BZA 099 (describing Libby’s swim lessons as “quiet and needed” because “children learn better in quiet one on one instruction”). In addition to Libby’s description of her business, the BZA received 30 letters from neighbors and other community members in support of Libby’s business. *See* BZA 049–90. These firsthand testimonials uniformly described Libby’s lessons as quiet and unobtrusive. *See* BZA 049–52, 054–56, 058, 060–62, 064, 066, 068–70, 072, 074, 076, 080–83, 085–88. One neighbor, Michael Hedgecock, wrote that in his 10 years living across the street from

Libby, he has “never experienced any problems such as excessive noise or congested road conditions.” BZA 052. Mr. Hedgecock also appeared in person to testify on Libby’s behalf and further explained that his wife would often work from home, where she “often had to be on Zoom calls . . . throughout the day, [and] never had any issue with loudness” or any other issues with Libby’s swim lessons. Ex. 3 at 21:03–18.

Another neighbor, Sean Sullivan, wrote that in his “experience in living as a neighbor to the Souders . . . [t]raffic has never been an issue for me, and [the Souders] do a great job of limiting any potential noise or inconvenience to those who live around them.” BZA 072. Fort and Suzanne Jones are neighbors who “live around the corner [from Libby] on Woodlake Road.” BZA 050. Based on what they have “seen living nearby, [Libby’s] home-based program is quiet, well organized, and respectful of the neighborhood.” *Id.* Bryan and Rebecca Norris live “just down the street from” Libby, and they described Libby’s swim lessons as “run responsibly and without disturbance.” BZA 081. Russ McFall lives “a few houses down on Quail Lane,” and wrote that Libby “is a considerate and respectful neighbor [whose] business does not interfere with happenings in the neighborhood.” BZA 083. The record below is replete with similar testimonials from both neighbors and clients, who consistently describe Libby’s lessons as quiet, well-managed, and otherwise respectful of her neighbors. *See* BZA 049–52, 054–56, 058, 060–62, 064, 066, 068–70, 072, 074, 076, 080–83, 085–88.

Moreover, the City has a separate ordinance that regulates sound in residential areas and otherwise makes it “unlawful for any person to . . . permit, or allow any unreasonably loud, disturbing or unnecessary noise.” *See* Columbia Code

of Ordinances Sections 8-61(a) and 8-93(c), a true and correct copy of which is attached as Exhibit 4. Yet, in all the years Libby was operating, Libby never received a citation, notice of violation, or even an informal warning relating to noise or any other disturbances. Indeed, the previous City Zoning Administrator affirmatively stated that, although city zoning inspectors conducted “site visits” of Libby’s property in the past, they never found a single violation. BZA 018 (April 1, 2024, email from previous City Zoning Administrator Hope Hasty).

Importantly, no City official nor any member of the BZA ever disputed this evidence demonstrating the quiet and unobtrusive nature of Libby’s business. Nor did any City official or board member suggest or even speculate that Libby’s business was disruptive in any way. Indeed, the evidence of Libby’s business as quiet and unobtrusive was so overwhelming that one board member described Libby as “running a good business . . . that has had zero violations” and generated “[n]o complaints.” Ex. 3 at 37:18–24.³ Although that board member was ultimately outvoted when the BZA voted 3-2 to affirm the Written Interpretation, Petition Ex. A at 2, it was not because the board members in the majority disputed the description of Libby’s business as quiet and unobtrusive. Instead, the board members who voted to affirm the Written Interpretation repeatedly emphasized that they were concerned only with whether Libby’s pool was “fully enclosed” or not. Ex. 3 at 38:05–07 (BZA

³ Although the transcript identifies the speaker as “MALE SPEAKER,” a review of the video of the BZA hearing at <https://www.youtube.com/watch?v=x0HFbCPzVNo>, beginning at 1:15:50, shows that the speaker making these comments is a BZA Board Member.

Board Chair: “It’s either fully enclosed or it’s not fully enclosed. That’s the bottom line. There’s no other issue relevant.”). The Zoning Administrator likewise explained that his role was limited to interpreting and applying the zoning ordinance, while acknowledging that Libby’s swim lessons were a “valuable” service. Ex. 3 at 23:18–23 (“[T]his is not a value judgment on swim lessons and the value of giving swim lessons to children. I think we all agree that’s a valuable thing. But . . . my job as zoning administrator is to look at the zoning ordinance and what it’s asking for me to do.”).

In other words, the BZA affirmed the Written Interpretation, and thus shut Libby down, simply because Libby’s lessons take place outdoors. *See, e.g.*, Ex. 3 at 29:15–17 (BZA Board Chair: “I don’t believe we’re talking about noise. I believe we’re talking about whether or not it’s a fully-enclosed structure.”); 34:15–35:22 (BZA Board Chair rebuffing arguments about estoppel and fairness and stating that the only issue before the board was whether Libby was “technically within the realm of . . . the ordinance”). On October 6, 2025, the BZA mailed Libby its written order, which confirmed that Libby could no longer offer private swim lessons in her backyard pool. *See* Petition Ex. A (BZA Order). Libby timely filed her appeal with this Court on November 3, 2025, and respectfully requests that this Court reverse the board’s decision on the grounds that UDO § 17-4.3(d)(6)(f), as applied to Libby’s private swim lessons, violates Libby’s constitutional rights or, in the alternative, is barred by the doctrine of equitable estoppel. *See* Petition ¶¶ 91–137.

ARGUMENT

Under the South Carolina Constitution, the right of the people “to conduct their business without interference by the authorities of the law save and except where it is necessary,” is an “essential” aspect of “constitutional government.” *State v. Grant*, 174 S.C. 195, 177 S.E. 148, 149 (1934). Yet, here, Columbia has categorically forbidden Libby from teaching in her backyard pool, simply because her pool is outside. It does not matter how quiet or well-managed Libby’s private swim lessons are. The mere fact that the lessons take place outdoors is the City’s sole justification for shutting Libby down.⁴ As applied to Libby’s private swim lessons, UDO § 17-4.3(d)(6)(f) (the “ban”) is contrary to law and otherwise unlawful for at least four independently sufficient reasons.

First, the ban violates Libby’s right to equal protection, as there is no rational basis for allowing residential family daycares to operate outdoor play areas for up to six children, while categorically banning Libby’s private swim lessons. (Part I). Second, the ban, as applied to Libby, exceeds the City’s limited police power and is therefore unconstitutional. (Part II). Third, the ban also violates Libby’s substantive due process rights, as the ban is not reasonably related to any legitimate governmental interest. (Part III). Fourth, in the alternative, the City should be

⁴ In fact, because UDO § 17-4.3(d)(6)(f) only applies if Libby charges money for her swim lessons as part of her home occupation, that means that Libby is allowed to offer *free* lessons in her backyard pool. This is another reason why the challenged ban is irrational, arbitrary and capricious, and “therefore unreasonable and void.” *See Grant*, 177 S.E. at 149 (striking down an ordinance where the legality of a taxicab ride turned solely on whether the passenger paid for the ride).

estopped from enforcing the ban against Libby, as Libby relied in good faith on the City's past approvals to her detriment, and she had no way to know that the City would later interpret its ordinance in this manner. (Part IV).

I. The Ban Violates Libby's Equal Protection Rights.

The ban violates Libby's equal protection rights and is therefore unconstitutional because it irrationally prohibits Libby from offering private swim lessons in her backyard pool, while simultaneously requiring family child care homes ("residential daycares") to operate outdoor play areas for up to six children. *See* Ex. 1 at UDO § 17-4.3(d)(5)(a), (e) (authorizing a "family child care home . . . as an accessory use to a single-family dwelling," while requiring such daycares to provide "a fenced outdoor play area of not less than 500 square feet" for the as many as "six children" that may be in their care).

Under South Carolina's Equal Protection Clause, "all persons [must] be treated alike under like circumstances and conditions[.]" *League of Women Voters of S.C. v. Alexander*, 446 S.C. 591, 612, 921 S.E.2d 660, 671–72 (2025) (citation omitted). Here, the rational basis test governs Libby's equal protection claim. *Town of Hollywood v. Floyd*, 403 S.C. 466, 480, 744 S.E.2d 161, 168 (2013) ("Where an alleged equal protection violation does not implicate a suspect class or abridge a fundamental right, the rational basis test is used."). To prevail on her equal protection claim, Libby must show that "similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose." *Id.* Libby easily satisfies that test, as she is similarly situated to operators

of residential daycares, is treated differently, and that “disparate treatment” lacks any “rational relationship to a legitimate government purpose.” *Id.*

A. Libby’s Private Swim Lessons Are Similarly Situated To Residential Daycares, Yet The Two Uses Are Treated Differently.

Libby’s private swim lessons are similarly situated to residential daycares because the two uses are similarly situated for all relevant purposes. *See Williams v. Vermont*, 472 U.S. 14, 23–24 (1985) (holding that, in the context of an equal protection claim, “similarly situated” means “similarly situated for all relevant purposes”). The relevant purpose here is the City’s stated purpose for the ban, which is to prevent the “home occupation activity [from] being seen or heard off-site,” and to “reduce [any] potentially adverse impacts on surrounding lands.” BZA 029–30.

The two uses are similarly situated in all relevant respects. Both uses are home-based commercial activities that occur on residential property. *See* Ex. 1 at UDO § 17-4.3(d)(5) (“A family child care home is permitted as an accessory use to a single-family dwelling[.]”); *id.* § 17-4.3(b)(2) and Table 17-4.3(B)(5) (authorizing “family child care homes” in residential districts). Both uses involve commercial supervision of children outdoors in a residential setting. *Id.* § 17-4.3(d)(5)(e) (requiring residential daycares to provide an “outdoor play area of not less than 500 feet”). Accordingly, both uses raise the same concerns related to the City’s interest in preventing home occupations from being seen or heard offsite. BZA 030. Thus, Libby is similarly situated to operators of residential daycares.

Next, it is undisputed that Libby is treated differently than daycare operators. As the Zoning Administrator acknowledged, “a narrowly defined Family Child Care

Home *must* provide a fenced-in outdoor play area of at least 500 square feet, even though it conflicts with the standards for a Home Occupation.” BZA 004 (emphasis in original). Libby’s swim lessons, however, must be conducted “within a fully enclosed structure,” *id.*, meaning they must be indoors. *See* BZA 029–30. This disparity is further underscored by the Zoning Administrator’s admission that Libby could operate outdoors at her *current location* if she ran a residential daycare instead of offering swim lessons. *See* BZA 004. Thus, the City treats Libby differently from operators of residential daycares solely because she engages in a different type of home-based business and not based on any difference in external impact between the two uses. Libby has therefore demonstrated that she is similarly situated to operators of residential daycares, yet treated differently.

B. It Is Irrational And Contrary To The City’s Stated Interests To Ban Libby’s Low Impact Swim Lessons While Permitting High Impact Residential Daycares.

The ban violates Libby’s equal protection rights because banning Libby’s less intensive swim lessons while permitting the more intensive use of residential daycares is irrational. *See Town of Hollywood*, 403 S.C. at 480 (explaining that the disparate treatment of similarly situated persons must bear a “rational relationship to a legitimate government purpose”). In fact, any legitimate concern the City might assert to justify the outdoor ban—noise, neighborhood disruption, or otherwise—is more pronounced in residential daycares than in Libby’s one-on-one swim instruction, which further underscores the irrationality of the challenged disparate treatment here.

Residential daycares may have up to six children outdoors at once, whereas Libby normally teaches only a single student at a time. Ex. 1 at UDO § 17-4.3(d)(5)(a), (e); Petition ¶ 26. Libby’s lessons run on a seasonal basis, but residential daycares typically operate year-round. Petition ¶¶ 28, 115. Finally, residential daycares may operate their “outdoor play activities” until 8 p.m., whereas Libby’s lessons do not extend past 4 p.m. Ex. 1 at UDO § 17-4.3(d)(5)(e)(4); Petition ¶¶ 28–30.

In every relevant respect, the permitted use of residential daycares is more intensive than the prohibited swim lessons. Thus, if the City’s goal is to limit the external impacts of home occupations, the challenged classification and accompanying disparate treatment does the opposite. The City offered no explanation for this mismatch. Although the Zoning Administrator acknowledged the disparity, he explained only that he is required to apply the ordinance as written. *See* Ex. 3 at 25:17–26:02; 23:21–23. But the question before this Court is not simply what the ordinance requires, but whether what the ordinance requires is constitutional. Where, as here, an ordinance permits more intensive conduct while prohibiting less intensive conduct, which undermines the ordinance’s very purpose, the ordinance fails rational basis review. *See Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. 436, 451–52, 790 S.E.2d 763, 771 (2016) (plurality) (holding that it violates equal protection to treat similarly situated persons differently when the disparate treatment “has no rational relationship to the legislative purpose of the statute”).

This Court should therefore hold that the ban, as applied to Libby, violates her right to equal protection and reverse the BZA’s decision as contrary to law.

II. The Ban Exceeds The City’s Police Power Because The City Cannot Make A Lawful Business A Nuisance By Merely Declaring It To Be Such.

The ban is also unconstitutional as applied to Libby because it exceeds the City’s limited police power. The government exceeds its limited police power when it shuts down a lawful business without first demonstrating that doing so is necessary to protect the public. *See James v. City of Greenville*, 227 S.C. 565, 584–85, 88 S.E.2d 661, 670–71 (1955) (Legge, J., concurring) (controlling opinion, joined by four of five justices); *see also Painter v. Town of Forest Acres*, 231 S.C. 56, 60, 97 S.E.2d 71, 73 (1957) (“A municipal corporation cannot make a business a nuisance by merely declaring it to be such.”). Importantly, “[t]he authority of a municipality to enact zoning ordinances [that restrict] the use of privately owned property is founded in the police power.” *McMaster*, 395 S.C. at 505 (citation omitted). The police power is “not unlimited,” however. *James*, 227 S.C. at 584 (Legge, J., concurring). One way the government exceeds its limited police power is when it suppresses or removes an “already established” business without first demonstrating “that the continuance of such business would be detrimental to the public health, safety, morals or general welfare.” *Id.* at 584–85. In *James*, for example, the South Carolina Supreme Court struck down an ordinance that shut down an “already established” trailer park simply because the park was in a (newly zoned) residential district. 227 S.C. at 584–86. Because the challenged ban here likewise shuts down Libby’s private swim lessons simply because they take place in a residential district, and without any showing of harm, the ban exceeds the City’s limited police power and is therefore unlawful. *See id.*

It is undisputed that Libby operated her business lawfully—with the City’s express, written approval—for seven years before the City enforced the ban against her. *See* Petition ¶¶ 6–8; Petition Composite Ex. C. It is further undisputed that the City shut Libby down solely because her swim lessons take place outdoors, and not because of any factual showing that her business harms the public health, safety, morals or general welfare. *See* BZA 029–30; Ex. 3 at 4:19–22, 25:04–07, 38:05–07. To the contrary, the record shows just the opposite: Libby was “running a good business” “that has had zero violations” and generated “[n]o complaints.” Ex. 3 at 37:18–24; *see also* BZA 018 (April 1, 2024, email from previous zoning administrator stating that zoning inspectors never observed a single violation at Libby’s property); BZA 049–90 (testimonials from clients and neighbors). The City instead shut Libby down simply because they determined that she fell within the City’s previously unenforced categorical prohibition on outdoor home businesses, not because her business was alleged to be harmful in any way. *See, e.g.*, Ex. 3 at 23:18–23, 34:15–35:22, 38:05–07. Under settled law, that is impermissible. *See James*, 227 S.C. at 584–86. Because the City removed Libby’s lawfully established business without any showing of harm—and based only on the fact that her lessons occur outdoors—the ban is “a clearly invalid exercise of the police power” and is therefore unconstitutional. *See id.* at 586 (Legge, J., concurring).

The rule espoused in *James* is deeply rooted in South Carolina’s case law. The South Carolina Supreme Court has consistently held that the government may not categorically prohibit or severely restrict lawful businesses absent a factual showing

of harm. *See, e.g., Painter*, 231 S.C. at 60. As the Court explained in *Painter*, “[a] municipal corporation cannot make a business a nuisance by merely declaring it to be such.” *Id.* Instead, the police power only authorizes a categorical prohibition when the prohibited business constitutes a “nuisance per se[.]”⁵ *James*, 227 S.C. at 586 (Legge, J., concurring). Absent such a showing, however, the police power authorizes only regulation, not prohibition. *See id.* (explaining that prohibition of a lawful business is only proper when the business constitutes a “nuisance per se,” otherwise mere “regulation may be called for” (citation omitted)).

Thus, when municipalities have sought to suppress or prohibit lawful businesses without a factual showing that the business constitutes a nuisance per se, the South Carolina Supreme Court has repeatedly struck down such restrictions. *See City of Orangeburg v. Farmer*, 181 S.C. 143, 186 S.E. 783, 785 (1936) (striking down ban on door-to-door solicitation in residential districts because the law “simply and boldly declares a lawful occupation a nuisance”); *Fincher v. City of Union*, 186 S.C. 232, 196 S.E. 1, 5–6 (1938) (striking down ordinance that prohibited a barbecue stand from operating late at night); *Painter*, 231 S.C. at 61 (striking down ordinance requiring businesses to close at midnight, which would “seriously impair, if not destroy, many lawful businesses”).

⁵ A “nuisance per se” exists only when the operation of the business would pose a danger to life, health or property “at all times and under all circumstances.” *Lucas v. Rawl Fam. Ltd. P’ship*, 359 S.C. 505, 512, 598 S.E.2d 712, 715 (2004); *see also Fincher*, 196 S.E. at 5 (defining a “nuisance per se” as a business that has “many objectionable features which are inevitably incident to its operation” and would remain objectionable “regardless of how” the business was operated or maintained).

The prohibition here is both more extreme and less justified than those struck down in *Orangeburg*, *Fincher*, *James*, and *Painter*. First, the prohibited activity here is essentially indistinguishable from normal residential use and is thus about as far removed from a “nuisance per se” as possible. In fact, because Libby’s private lessons are intentionally quiet, *see* BZA 015, 049–52, 054–56, 058, 060–62, 064, 066, 068–70, 072, 074, 076, 080–83, 085–88; Ex. 3 at 13:11–16, her lessons are likely quieter than the ordinary residential use of a backyard pool, which includes things like pool parties in addition to the normal laughter and other noise associated with children and family members’ routine use of a backyard pool.

The ordinances struck down in the cases cited above, by contrast, all involved activity that was far more potentially disruptive than Libby’s swim lessons, such as door-to-door solicitation in residential districts, *Orangeburg*, 186 S.E. at 785, operating a barbecue stand in a residential district late at night, *Fincher*, 196 S.E. at 1, 5–6, operating a drive-in restaurant after midnight, *Painter*, 231 S.C. at 60, and operating a trailer park on land newly zoned as residential. *James*, 227 S.C. at 568, 570. Second, the ordinances held unconstitutional in *Fincher* and *Painter* merely limited hours; the ban here eliminates the business entirely. Thus, because the ban effectively makes Libby’s harmless home business a nuisance by merely declaring it to be such, the ban exceeds the City’s police power and is therefore unconstitutional. *See, e.g., Orangeburg*, 186 S.E. at 784–85; *Painter*, 231 S.C. at 60–61.

For all these reasons, this Court should hold that the ban, as applied to Libby, exceeds the City's police power and is therefore unconstitutional, and reverse the BZA's decision applying the ban to Libby as contrary to law.

III. The Ban Violates Libby's Substantive Due Process Rights Because It Is Not Reasonably Related To Any Legitimate Governmental Interest.

The ban is also unconstitutional because it violates Libby's substantive due process rights, as the ban is not reasonably related to any legitimate governmental interest. *See Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004) (setting forth the test for substantive due process challenges) (citation omitted). The due process clause of Article I, Section 3 of the South Carolina Constitution protects, among other things, Libby's right to use her private property and right to earn a living. *See id.* at 96–98 (recognizing a substantive due process claim arising under the “protected property right to conduct business”); *Henderson v. City of Greenwood*, 172 S.C. 16, 172 S.E. 689, 691 (1934) (“The Constitution prohibits the passage of such laws or ordinances as will interfere with the legal use and enjoyment of property.”). Here, the ban implicates both rights, as it restricts Libby's right to use her private property, as well as her right to run a lawful business. Petition ¶¶ 25, 98.

The standard for reviewing substantive due process challenges to municipal ordinances is “whether the ordinance bears a reasonable relationship to any legitimate interest of government.” *Denene*, 359 S.C. at 96 (citation omitted). Thus, the ban is unconstitutional if Libby can show that (1) the ban does not serve any legitimate interest of government, or (2) the ban lacks a reasonable relationship to

any legitimate interest of government. *See id.* As applied to Libby, the ban fails both prongs of this test.

A. The Ban Does Not Serve Any Legitimate Government Interest.

First, the ban does not serve any legitimate governmental interest as applied to Libby's private swim lessons. The ban's purpose, according to the City, is to make sure that "the home occupation activity [is not] seen or heard off-site," and to "reduce [any] potentially adverse impacts on surrounding lands." BZA 029-30; Ex. 1 at UDO § 17-4.3(a)(1) (stating the purpose and intent of the standards set forth in UDO § 17-4.3, which includes the challenged ban). There are thus two legitimate government interests that the ban might conceivably serve in other contexts: (1) maintaining the visual appeal and character of a residential district, and (2) preventing objectively unreasonable or disruptive noise to surrounding lands. As applied to Libby, however, the ban serves neither interest for two simple reasons: first, Libby's business does not harm those interests; and second, existing regulations already address those interests.

i) The Ban Does Not Promote The City's Interest In Preserving The Residential Character And Appearance Of The Neighborhood

There are at least three reasons why the ban, as applied to Libby, does not serve the City's interest in maintaining the visual appeal and character of a residential district. *See* Ex. 3 at 24:11-13 (Zoning Administrator: "[T]he intent is, you live in a neighborhood, you drive by, you're not aware that somebody is conducting a business at the location."). First, from all outward appearances, Libby's private swim lessons are indistinguishable from normal residential use. In other words, it is an

entirely ordinary residential activity to see people swimming in backyard pools. Thus, allowing Libby to operate her swim lessons would not undermine the City's interest in preserving the residential character and appearance of the neighborhood, even assuming that such lessons were visible from the street.

Second, Libby's lessons are not visible from the street, as they take place in her fenced-in backyard pool and thus cannot be seen by those walking or driving past her property. *See* BZA 015; BZA 062 (client explaining that Libby's lessons take place in a "secluded" backyard pool, and thus from "the outside, you would never even know such an important program was taking place"). Thus, even if the lessons appeared commercial in nature somehow, they are not, in fact, visible to onlookers, and thus banning her business does not advance the City's interest in maintaining the residential character and appearance of the neighborhood. Third, the City already has restrictions that prevent home occupations from operating in a way that would signal a commercial use is ongoing or otherwise produce a change "in the residential character or external appearance of the dwelling unit, its associated structures, or its principal residential use." Ex. 1 at UDO § 17-4.3(d)(6)(e). Thus, the ban's only function, in this context, is to categorically prohibit Libby's swim lessons, even when those lessons are operated in a manner that does not alter the "residential character or external appearance" of her property. *See id.*

For all these reasons, the ban does not serve the City's interest in preserving the residential character and appearance of the neighborhood.

ii) The Ban Does Not Promote the City’s Interest In Preventing Objectively Unreasonable or Disruptive Noise.

The second interest the ban might serve in other contexts, but not here, is the City’s interest in preventing objectively unreasonable noise.⁶ *See* BZA 030; *see also* Ex. 3 at 26:04–07. Here, the ban does not serve this interest because (1) Libby’s lessons are intentionally quiet and are thus likely quieter than typical residential use, *see* BZA 015, 049–52, 054–56, 058, 060–62, 064, 066, 068–70, 072, 074, 076, 080–83, 085–88, 099; Ex. 3 at 13:11–16, and (2) Columbia already regulates noise in residential districts and otherwise makes it “unlawful for any person to . . . permit, or allow any unreasonably loud, disturbing or unnecessary noise.” *See* Ex. 4, §§ 8-61(a), 8-93(c). Accordingly, the ban’s only function in this context is to prohibit Libby from offering swim lessons, regardless of how quiet those lessons are. *See id.*

In short, because the ban targets a use that is lawful, harmless, and already regulated, the ban is incapable of advancing any legitimate governmental interest. This Court should therefore declare the ban unconstitutional as applied to Libby and reverse the BZA’s decision.

B. The Ban Also Violates Substantive Due Process Because It Is Not Reasonably Related To Any Lawful Purpose.

The ban is also unconstitutional for the additional reason that, even assuming the ban serves a legitimate governmental interest, the ban is not reasonably related to that interest and is otherwise unreasonable. *See Henderson*, 172 S.E. at 692 (“The

⁶ The City does not have a legitimate interest in preventing *any* amount of noise, of course, but only in preventing objectively unreasonable noise that would disturb the “peace and good order of the community.” *See Fincher*, 196 S.E. at 3.

unreasonableness of the ordinance is the basis for its unconstitutionality.”); *Orangeburg*, 186 S.E. at 784–85 (applying reasonableness test); *Fincher*, 196 S.E. at 3–6 (same); *Painter*, 231 S.C. at 61 (holding ordinance that required all businesses to close at midnight to be “so unreasonable as to violate the owners’ Constitutional privilege”);⁷ *see also Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 447 S.C. 275, 282–84, 926 S.E.2d 224, 228–29 (2026) (explaining that, when reviewing a substantive due process challenge, “[t]he first question is whether the [law] furthers a legitimate government interest” and “the next question is whether the [law] bears a reasonable relationship to that government interest”).

The ban fails part two of the test for much the same reason it fails part one. To be reasonably related to a legitimate interest, a regulation should be (1) a “limited measure designed” to address (2) real “problems” that (3) cannot be controlled “through [the] enforcement of existing ordinances[.]” *See Denene*, 359 S.C. at 92–94, 98 (upholding ordinance that prohibited bars from operating between 2 a.m. and 6

⁷ Although these cases are older, they are still good law. *See, e.g., Denene*, 359 S.C. at 97 (where, in a 2004 opinion, the state supreme court implicitly acknowledged that *Painter* is good law by explaining why it was distinguishable from the facts at issue there); *Sandlands C & D, LLC v. County of Horry*, 394 S.C. 451, 461, 716 S.E.2d 280, 285 (2011) (citing *Henderson* for a legal principle related to determining whether “a local governmental action is a valid exercise of [the police power]”); *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 299–300, 737 S.E.2d 601, 611 (2013) (citing *Orangeburg* to establish the test for substantive due process challenges). Moreover, the Supreme Court frequently relies on older cases when deciding constitutional claims. *See, e.g., Retail Servs. & Sys., Inc. v. S.C. Dep’t of Revenue*, 419 S.C. 469, 472–74, 799 S.E.2d 665, 666–67 (2017) (citing two cases from 1894 to establish the relevant constitutional principles there); *Owens v. Stirling*, 443 S.C. 246, 261, 904 S.E.2d 580, 587–88 (2024), *reh’g denied* (Aug. 16, 2024) (citing two cases from the 1930s to establish the standard of review governing constitutional challenges to state statutes).

a.m. because it was a “limited measure designed to curb” the numerous documented problems caused by the late-night operations of bars, “while still allowing appellants to operate their businesses twenty hours a day”). Here, by contrast, the ban (1) is a categorical prohibition rather than a “limited measure,” (2) does not address any problems caused by Libby’s business because there are none, and (3) is excessive and thus unreasonable because the City’s concerns can be addressed by enforcing its existing ordinances. *See supra* Part III.A. That makes the ban unreasonable and thus unconstitutional. *See Orangeburg*, 186 S.E. at 785; *Painter*, 231 S.C. at 61; *cf. Denene*, 359 S.C. at 98.

In addition, the ban is also unreasonable and thus unconstitutional because it imposes a categorical prohibition where targeted regulation would suffice. *See Fincher*, 196 S.E. at 5–6 (acknowledging noise issues with a barbecue stand operating late at night, but nevertheless striking down hours restriction because the city has a “duty” to enforce its existing ordinances that would address those issues, rather than depriving the business owner of “a substantial use of his property” and his constitutional right to run a business in a responsible manner). Indeed, in *Fincher*, the state supreme court held that it was unreasonable to require a “Bar-B-Q stand” to shut down at 11 p.m. to address the “loud talking and laughing” *known to occur there*, as the city had a “duty” to enforce its existing noise ordinances, rather than resorting to an hours restriction that would devastate the business. 196 S.E. at 3–4, 6. Thus, because Columbia has imposed a categorical ban on Libby’s private and

intentionally quiet swim lessons where mere regulation would suffice, the ban is therefore “unreasonable” and “unconstitutional” for that reason as well. *See id.*

This Court should therefore hold that the ban violates Libby’s substantive due process rights because the ban is not reasonably related to any government interest and reverse the BZA’s decision as contrary to law.

IV. The City Is Estopped From Repudiating Its Repeated Approvals Of Libby’s Business.

In the event this Court disagrees with Libby’s constitutional arguments, the Court should hold that the City is estopped from adopting a new interpretation of an undefined term in its ordinance to prohibit an activity the City repeatedly approved for years. *See Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 219–22, 329 S.E.2d 423, 424–26 (1985) (holding that the government was estopped from reinterpreting an undefined term to prohibit a previously approved use). “Estoppel is an equitable doctrine, essentially flexible, and therefore to be applied or denied as equities between the parties may preponderate.” *Id.* at 221 (citation omitted).

Estoppel applies here because Libby lacked any reasonable basis to know her use was prohibited, reasonably relied on the City’s repeated approvals, and suffered resulting detriment. *See Grant v. City of Folly Beach*, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001) (setting forth the three elements required to “prove estoppel against the government”). Moreover, the City’s repeated approvals were all issued and signed by the Zoning Administrator—the official charged with interpreting and enforcing the ordinance—confirming they were made with proper authority. *See Charleston County v. Nat’l Advert. Co.*, 292 S.C. 416, 418, 357 S.E.2d 9, 10 (1987).

A. Libby Did Not Know, And Lacked The Means To Know, That The City Would Interpret The Phrase “Fully Enclosed Structure” To Mean Indoors.

Libby did not know, and could not have reasonably known, that UDO § 17-4.3(d)(6)(f) prohibited her swim lessons because the ordinance’s key term is undefined and ambiguous, and the Zoning Administrator repeatedly interpreted it to allow her business. *See Landing Dev. Corp.*, 285 S.C. at 219–20 (holding that the city was estopped from interpreting a zoning ordinance that only allowed “dwellings . . . for permanent occupancy” to ban short-term rentals, because the term “permanent occupancy was not defined by the zoning ordinance” and the zoning director repeatedly approved and allowed short-term rentals under that ordinance, and “he was the public official who interpreted and enforced the ordinance”).

This is not a case where the ordinance explicitly states that home occupations must be indoors. Instead, the relevant language states that “[t]he home occupation shall be conducted entirely . . . within a fully enclosed, lawfully approved structure.” Ex. 1 at UDO § 17-4.3(d)(6)(f). Moreover, the UDO does not define the term, “fully enclosed . . . structure,” which is precisely why the Zoning Administrator was “authorized to interpret its meaning[.]” *Id.* § 17-9.1(k) (“Term Not Defined”) (authorizing the Zoning Administrator to interpret terms that are “not defined in this Ordinance”); *see also* BZA 029–30 (Zoning Administrator relying on context and surrounding provisions to interpret the phrase “fully enclosed . . . structure”).

Libby’s sincere belief that her fenced-in pool was a fully enclosed structure was objectively reasonable for several reasons. First, and most importantly, the City’s own Zoning Administrator—the official charged with interpreting and enforcing the

ordinance—approved Libby’s business seven separate times over seven years, each time issuing a permit that expressly authorized “private swim lessons” at her home. *See* Petition Composite Ex. C. These formal approvals consistently represented that Libby’s swim lessons were permissible and in compliance with the zoning ordinance.

Second, the City’s regulations for backyard pools separately require that Libby’s pool be “completely enclosed by a barrier,” and Libby complied with that requirement. *See* Ex. 2, § 5-1(a). It was thus reasonable for her to believe that a pool deemed “completely enclosed” under one City ordinance satisfied the “fully enclosed” requirement under another. Third, the ordinary meaning of “fully enclosed” includes being “closed in or fenced off,” reinforcing Libby’s understanding that her fenced-in pool satisfied the requirement. *See* BZA 022–23 (including screenshots of the relevant dictionary definitions).

This is not a case where the ordinance clearly prohibited Libby’s use or where she relied on informal or unauthorized representations. The operative term—“fully enclosed . . . structure”—is undefined and reasonably susceptible to multiple interpretations, as evidenced by the City’s own need to issue a formal interpretation after years of approving Libby’s business. Nor did Libby rely on informal statements or approvals from low-ranking officials unauthorized to provide them. She instead relied on the City’s formal approvals issued by the Zoning Administrator, who is the official charged with formally interpreting and enforcing the ordinance. Under these circumstances, Libby’s reliance was the direct product of the City’s consistent and authoritative application of its own ordinance and was thus eminently reasonable.

Accordingly, Libby “lacked the knowledge or means to know that” her swim lessons were prohibited, and she thus satisfies the first element of estoppel. *See Landing Dev. Corp.*, 285 S.C. at 220 (holding that respondents “lacked the knowledge or means to know that short-term vacation rentals were prohibited” under an ordinance that only authorized dwellings “for permanent occupancy” because the relevant terms were undefined and the zoning director issued numerous “business licenses for these rentals”).

B. Libby Justifiably Relied On The City’s Repeated, Formal Approvals Of Her Swim Lessons Business, To Her Detriment.

Libby justifiably relied on the City’s repeated, formal approvals of her business and made substantial expenditures as a direct result.

In March 2019, Libby spent \$6,000 to construct a second driveway after a zoning inspector visited her property and told Libby that her clients must park in her driveway, and not on the street in front of her house. Petition ¶¶ 13–18; *see also* BZA 082 (testimonial referencing this second driveway and stating that Libby’s “circular driveway provides ample room for clients to park their vehicles”). That expenditure was made in direct reliance on the City’s approval of her business and its instructions regarding compliance, and it is money Libby would not have otherwise spent if she had any reason to believe that her business was prohibited by the City’s zoning ordinance. *See* Petition ¶¶ 12, 18, 131 (explaining that Libby built the second driveway to provide parking for her swim clients, in “reliance on the City’s repeated representations that her business was lawful and in compliance with the City’s zoning code”); *Landing Dev. Corp.*, 285 S.C. at 221 (holding that detrimental reliance

occurs when a party spends money they “would not have otherwise spent”). Libby also devoted substantial time and resources to building her business in reliance on the City’s repeated approvals. Petition ¶¶ 19, 23. These efforts—including organizing lessons, managing registration systems, and marketing—were also undertaken only because the City consistently represented that her business complied with the zoning ordinance. *See id.*

Allowing the City to enforce its new interpretation now would “prejudicially alter” Libby’s financial position after years of reliance. *Landing Dev. Corp.*, 285 S.C. at 221. Under these circumstances, it would be inequitable to permit the City to reverse course after inducing Libby to invest in and operate her business for years. Accordingly, estoppel is proper here. *See id.* (applying estoppel in a nearly identical context and holding that it “would be unconscionable” to “allow the City to repudiate its former interpretation . . . based upon a re-assessment of the meaning of an undefined term in the ordinance”).

The Court should therefore hold that the City is estopped from reinterpreting UDO § 17-4.3(d)(6)(f) to prohibit Libby’s swim lessons and reverse the BZA’s decision.

CONCLUSION

As applied to Libby, the City’s categorical ban on home businesses that operate outdoors (1) violates Libby’s right to equal protection, (2) exceeds the City’s limited police power, and (3) violates Libby’s constitutional rights to earn a living and use her private property. The Court should therefore issue an order declaring as much, reverse the BZA’s decision, and enjoin the City and the BZA from applying the

challenged ordinance to Libby. In the alternative, the Court should enter an order declaring that the City and the BZA are estopped from interpreting the ordinance to prohibit Libby's swim lessons and issue an injunction to that effect.

Respectfully submitted,

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May 14, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2026 a true and correct copy of the foregoing **PETITIONER/APPELLANT’S OPENING BRIEF** was served via electronic filing upon the following counsel of record:

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