

August 5, 2020

To: FILE

From: Paula Boggs Muething, Interim City Manager

Subject: COVID-19 – Safe and Healthy Schools Program

1. INTRODUCTION

Starting August 6, 2020, the City Manager's Office will implement a Safe and Healthy Schools Program to allow existing schools providing pre-K through 12th grade instruction to temporarily expand their facilities for the 2020/2021 school year and thereby enhance their ability to provide safe in-person instruction. To accomplish this, the program rules will supersede certain laws that govern the installation or construction of school facilities.

The City of Cincinnati has developed this program to allow schools to create safe and healthy environments during the COVID-19 pandemic. Through it, the City wants to support schools in complying with applicable state and local orders and guidance related to safe practices for protecting their students, faculty, and staff. This program therefore will help schools adhere to state and local health requirements and allow for enhanced health measures throughout the pandemic.

This program has been developed under joint emergency order no. 13 issued by Mayor John Cranley and City Health Commissioner Melba R. Moore. That order authorizes the City Administration to take appropriate measures to streamline approvals for temporary school facilities in order to promote the safe operation of schools during the COVID-19 pandemic. The order complements guidance issued by the State of Ohio for the safe, gradual reopening of school facilities. A copy of the State's "Prevention Guidance for Ohio K-12 Schools" is attached to this memo.

All temporary school facilities permitted under this program must make good faith efforts to observe state and local health guidance intended to slow or prevent the transmission of COVID-19, including, but not limited to, the guidelines in the attached "Prevention Guidance for Ohio K-12 Schools."

2. GENERAL PROGRAM GUIDELINES

The Safe and Healthy Schools Program is a temporary program under the direct authority of the City Manager's Office. Approvals granted under this program are not building permits or zoning permits. Rather, the authorization is a special temporary permission to suspend certain City laws that govern the use and development of land in order to address public health concerns. The City Manager delegates authority to the Director of Buildings and Inspections to implement the program and to oversee the application and approval process, subject to City Manager oversight and review. This delegation includes the authority to grant, condition, and revoke approvals under this program.

Temporary school facilities that meet all of the following criteria may be approved under the Safe and Healthy Schools Program:

1. The proposed school facility is associated with an existing school that has been legally established under applicable laws.
2. The proposed school facility is located in a zoning district in which schools are permitted or conditionally permitted.
3. The proposed school facility is located on the same property as, or property adjacent to, the school with which it is associated.
4. The proposed school facility is located on property under the control of the school, e.g. via ownership, lease, license or other written permission of the property owner.
5. The installation of the proposed school facility itself will not result in an increase in the number of students served by the school and any increase in the number of students served by the school results from ordinary fluctuations in school attendance.

Each request to establish a temporary school facility will be evaluated by the City to determine eligibility and appropriateness based on existing conditions and its surroundings. The City will approve appropriate requests for eligible school facilities and may impose conditions on the approval or suggest measures to mitigate public health, safety, or welfare concerns. Further, the City, in its sole discretion, may deny an application for one or more of the following reasons:

1. The potential for adverse impacts on the use and operation of neighboring properties, particularly places of residence and other sensitive operations like nursing homes and health care facilities;
2. The potential for adverse impacts on sidewalk and street accessibility, taking into consideration transportation and circulation needs;
3. Environmental or physical constraints on the ability to address elements of life safety and fire safety;
4. Environmental or physical constraints that impact the ability to ensure adequate spacing of students, faculty, and staff within the proposed area; and

5. Environmental or physical constraints that impact the ability to comply with state accessibility requirements.

As noted, the Safe and Healthy Schools Program will *temporarily* supersede existing laws that conflict with the program's goal of allowing for the efficient and orderly expansion of school facilities to promote public health and safety. These laws include, but are not limited to, the following regulations:

1. Requirements for conditional use hearings for new or expanded school facilities.
2. Requirements to provide new off-street parking, or to maintain existing off-street parking to the extent a proposed school facility is located in a parking lot used to meet parking requirements; provided that parking spaces for persons with disabilities must be provided and existing spaces must be relocated without reducing their number.
3. The requirement that accessory structures for schools typically must be confined to the same lot.
4. Requirements calling for review by the Zoning Administrator, Zoning Hearing Examiner, Urban Conservator, Historic Conservation Board, or City Planning Commission, including requirements related to historic districts, hillside overlay districts, urban design overlay districts, and planned development districts.

The Safe and Healthy Schools Program does not supersede applicable building codes, fire codes, health codes, accessibility laws, or other laws, rules, or regulations under the jurisdiction of the Cincinnati Health Department, the Ohio Department of Health, and other analogous requirements that govern the construction and operation of schools.

3. APPLICATION PROCESS

Program applications may be found at the City Permit Center at 805 Central Avenue, Suite 500, or by contacting City staff via phone at 513-352-4793 or via email at zoninginfo@cincinnati-oh.gov. There is no fee to apply. Program applications shall be filed together with completed building permit applications, and normal building permit fees will apply.

Each application will be evaluated by City staff to determine eligibility and appropriateness based upon application requirements and program guidelines. For assistance with completing an application or understanding program rules, please contact City staff via phone at 513-352-4793 or via email at zoninginfo@cincinnati-oh.gov.

Applicants should become familiar with application requirements and program guidelines before submitting an application to install or construct a temporary school facility. Approval for temporary school facilities under this program will be conditioned on compliance with the application requirements and program guidelines, and the failure to adhere to the requirements and guidelines may slow the review process or result in denial of the application.

Following review of an application, the City will notify the applicant of its approval or denial, including any reasons for denial and what steps, if any, the applicant may take to reapply and receive an approval. The City may also impose conditions on the approval or suggest measures to address public health and safety concerns.

Application Requirements

Each applicant seeking to install or construct a temporary school facility under this program must submit a Safe and Healthy Schools Program application in conjunction with an application for a building permit. The program application must include the following information:

a) A certification that:

- a. The proposed school facility is to be associated with an existing school that has been legally established under applicable laws;
- b. The installation of the proposed school facility itself will not result in an increase in the number of students served by the school and any increase in the number of students served by the school results from ordinary fluctuations in school attendance; and
- c. The applicant will abide by the terms and conditions of the Safe and Healthy Schools Program, which may be modified from time-to-time to address public health and safety concerns.

b) An acknowledgement that:

- a. Permission to operate a temporary school facility under the program is temporary in nature;
 - b. The temporary approval does not create a permanent right to operate and maintain the temporary school facility;
 - c. The temporary approval is subject revocation at the conclusion of the 2020/2021 school year; and
 - d. The temporary approval is subject to additional conditions, modification, or revocation by the City upon 60 days' notice for good cause.
- c) If the property on which the facility is to be located is not owned by the school, written proof that the property under the control of the school, e.g. via lease, license, or other written permission of the property owner; and
- d) Other information requested by the City Administration if it is not provided in connection with the related building permit application, which information may include:

- a. A site plan depicting the proposed location of the temporary school facility in relation to existing buildings, parking lots, site improvements, and points of egress; and
- b. A plan of operation for the temporary school facility, including the proposed occupancy capacity for the facility; a proposed plan for addressing traffic safety and circulation; a description of separations or barriers the school will use to divide the space from vehicular traffic; and proposals to address any anticipated impacts on the use and operation of neighboring properties.

4. TERMS AND CONDITIONS

General Terms and Conditions

Any approval to operate a temporary school facility under this program will indicate the time period of approval and confirm that legal nonconforming status is not conferred upon the affected property beyond the period of approval. In addition, any approval may be rescinded if the affected property is not operated in compliance with applicable conditions of approval, e.g. if spacing requirements are not met or permitted occupancy is exceeded. The approval will also be subject to the following additional terms and conditions.

Operating Terms and Conditions

Each approval shall be subject to the following specific, operating conditions:

1. Use good faith efforts to observe state and local health guidance intended to slow or prevent the transmission of COVID-19, including, but not limited to, the State's "Prevention Guidance for Ohio K-12 Schools" and any subsequent orders or guidance issued by appropriate public health authorities. A copy of the State's "Prevention Guidance for Ohio K-12 Schools" is available on request.
2. Frequently clean and disinfect all temporary school facilities and the furniture contained therein with approved cleaning/disinfecting agents.
3. Thoroughly clean and maintain portable restrooms, if applicable.
4. Provide hand sanitizer on site and make adequate hand washing stations available for students, faculty, and staff.

Sole Authority to Approve, Deny, and Revoke Temporary Authorizations

The City Manager retains full authority and the sole discretion to grant, deny, and revoke temporary approvals under this program, which authority may also be exercised by her program designee, the Director of the Department of Buildings and Inspections. This includes the authority to condition or revoke approvals deemed to have been improvidently granted or inappropriate in light of new information or changed circumstances. Revocations for good cause shall be effective following 60 days' prior written notice, except that revocations based on non-compliance with program terms and conditions or based upon urgent public health and safety concerns shall be effective immediately upon notice.

In addition, the City Manager or her designee may impose conditions on new or existing approvals in order to promote the public health, safety, and welfare and to mitigate adverse impacts that have arisen or may arise in connection with a temporary school facility approved under this program.

Anyone who wishes to challenge the approval, denial, or revocation under this program may seek reconsideration by the City Manager or her designee by submitting the challenge via email at art.dahlberg@cincinnati-oh.gov or via a signed writing or delivered to Art Dahlberg, Director, Department of Buildings and Inspections, 805 Central Avenue, Suite 500, Cincinnati, Ohio 45202. This shall be the exclusive means of appealing any approvals granted, denied, or revoked under the program. The City Manager or her designee shall have the sole discretion to approve or reject a challenge, but such determination shall consider application requirements, program guidelines, and public health, safety, and welfare needs.

By the authority granted to me under joint emergency order no. 13 issued by Mayor John Cranley and City Health Commissioner Melba R. Moore, the Safe and Healthy Schools Program described herein is hereby established as of August 5, 2020.



Paula Boggs Muething
Interim City Manager
City of Cincinnati