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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2024-000814

Folly East Indian Co., LLC,..... Appellant,

v.

City of Folly Beach.....Respondent,

and

Save Folly's Future.....Intervenor.

RECORD ON APPEAL

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I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

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November 12, 2024

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
FOLLY EAST INDIAN CO., LLC, Plaintiff, vs. CITY OF FOLLY BEACH, and SAVE FOLLY'S FUTURE, Defendants.	)	CASE NUMBER: 2023-CP-10-00264 ORDER GRANTING SAVE FOLLY'S FUTURE'S MOTION TO INTERVENE

This matter comes before the Court on a Motion to Intervene under Rule 24 of the South Carolina Rules of Civil Procedure brought by Save Folly's Future (SFF) and opposed by Plaintiff, Folly East Indian Co, LLC. Appearing for the intervenor SFF is Robert M. Turkewitz of the Law Office of Robert M. Turkewitz, LLC, and appearing for the Plaintiff are Alice F. Paylor and Bijan K. Ghom of Saxton & Stump, LLC. The parties briefed the issues, oral argument was held on February 9, 2023, and letter briefs were subsequently submitted by the above counsel. After careful consideration, a review of the arguments presented by counsel at the hearing, and review of the briefing submitted, SFF's Motion to Intervene is GRANTED.

This action involves a highly contested issue involving the interests of Folly Beach citizens who wish to limit the number of investor-owned short-term rentals (ISTR). Plaintiff SFF is an unincorporated advocacy group composed of volunteers whose overriding goal is to reverse the declining residential population on Folly Beach. As alleged in the Affidavit of SSF's founder, John McFarland, one of the leading causes of this decline has been the drastic increase in the number of ISTRs. Since its creation, SFF has focused its efforts on regulating and limiting the number of ISTRs on behalf of the citizens of Folly Beach. Notably, SFF has been proactively involved in

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attending public hearings, representing and keeping the citizens of Folly Beach informed, participating in the process, and advocating on the issue of ISTRs.

Intervention is set forth in Rule 24, which was described by the South Carolina Court of Appeals as follows:

> Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *See Black's Law Dictionary* 826 (7th ed.1999). Intervention may be of right or permissive; intervention of right is governed by Rule 24(a), SCRCP, which is modeled after the federal rule. Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected. *See Berkeley Electric* at 189, 394 S.E.2d at 714. However, this does not mean intervention should always be granted. Instead, "we must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2)." *Id.* "Each case will be examined in the context of its unique facts and circumstances." *Id.*

In re Horry County State Bank, 361 S.C. 503, 604 S.E.2d 723, 725 (S.C. App. 2004).

SFF seeks to intervene as a matter of right under Rule 24(a), which states:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

A party seeking intervention as a matter of right under Rule 24(a)(2) must satisfy the following elements:

> (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

In Re Horry County, 361 S.C. at 507-509, 604S.E.2d 723 (2004).

The first element is not in dispute. SFF's motion is timely, and intervention will not cause undue delay or prejudice to any existing parties.

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As for the second element, Plaintiff argues that SFF has no interest relating to the property or transaction and does not have standing. SFF argues that as a grass roots advocacy group representing the interests of Folly Beach citizens wishing to limit the number of ISTRs, it has been instrumental in educating citizens on this issue and in the proposal and passage of the Folly Beach referendum limiting the number of business licenses to be issued for ISTRs. As to the issue of standing, SFF argues that the public importance exception applies. South Carolina courts recognize an exception to the requirement that a plaintiff possess standing where, as in this case:

> an issue is of such public importance as to require its resolution for future guidance." *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642. Whether the exception applies in a particular case turns on whether resolution of the dispute is needed for future guidance. *ATC South, Inc. v. Charleston Cnty*., 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). While the need for future guidance generally dictates when the exception applies, the application of the exception in a particular case does not turn on a rigid formula but rather is determined by the competing policy concerns underlying the exception. Id. Those competing concerns are that: Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits. (*citing "Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004))
> . . .
>
> The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of "future guidance" that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance. *Baird*, 333 S.C. at 531, 511 S.E.2d at 75 ("[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.") (citations omitted); *Sloan v. Sanford*, 357 S.C. at 434, 593 S.E.2d at 472 ("[U]nder certain circumstances, standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.") (citations omitted). Yet the very nature of the public importance exception to general standing requirements resists a formulaic approach, as each case must turn on "the competing policy concerns" as we expressed in *Sloan v. Sanford*.

ATC South, 669 S.E.2d at 341. The Court in *ATC South*, gave examples where the exception has been held to apply:

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> For examples where this Court has conferred standing under the public importance exception, *See Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004), which held standing existed to challenge the sitting Governor's holding of a commission in the Air Force Reserve; *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000), which conferred standing to allege a preservation society exceeded its authority by conveying property; *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999), which provided standing to argue a county exceeded its authority by issuing hospital bonds.

Id. This Court finds that SFF's role and advocacy on this issue confirms that it has an interest (on behalf of some of the citizens of Folly Beach) in this litigation. Further, this Court finds that the issues in this case are "of such public importance as to require its resolution for future guidance."

As for the third element, whether SFF's interests would be impaired or impeded without intervention, it notes that the City Council has not sufficiently addressed the concerns of citizens. SFF further argues that unless it was allowed to intervene, there is no guarantee that the City Council will pursue the case on appeal should it become necessary. While the Plaintiff claim that this is speculative, the City of Folly Beach indicated during oral argument that this is a possibility.[1] This Court finds that without intervention, the disposition of the action may impair or impede SFF's ability to protect its member's interests.

As for the fourth element, requiring SFF to demonstrate that its interest is inadequately represented by other parties, South Carolina courts consider the following factors in determining adequacy of representation: "(1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent." *In re Horry County State Bank*, 604 S.E.2d at 726. SFF carries the burden of demonstrating inadequacy. *Berkeley Electric Co-op., Inc. v. Town of Mt. Pleasant,* 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990). Notably, the South Carolina

[1] The City of Folly Beach does not oppose SFF's Motion to Intervene.

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Supreme Court has stated, "This burden is minimal and the applicant need only show that the representation of his interests 'may be' inadequate." *Berkely Electric Co-op, Inc. v Town of Mount Pleasant*, 302 S.C. 186, 394 S.E.2d 712, 715 (S.C. 1990), *citing Trbovich v. United Mine Workers of America*, 404 U.S. 528, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972).

SFF notes that its interests have not aligned with the City of Folly Beach in the past and may not align in the future. SFF again argues that unless it was allowed to intervene, there's no guarantee that the City Council will pursue the case on appeal should it become necessary. SFF cites *Berkely Electric Co-op,*, in which the Court stated, "It has been held that a governmental entity's representation of a private party's interests does not constitute adequate representation." Id. 302 S.C. at 192, 394 S.E.2d at 716, citing, *National Farm Lines v. Interstate Commerce Commission*, 564 F.2d 381 (10th Cir.1977). In *National Farm Lines (cited in Berkeley Electric)*, a group of trucking associations sought to intervene under Rule 24 where the constitutionality of a regulation related to their business was being challenged. The panel concluded:

> In sum, then, there can be no question about the existence of an interest on the part of the present petitioners. In fact, there appears to be little disagreement here on that question. We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible. The cases correctly hold that this kind of a conflict satisfies the minimal burden of showing inadequacy of representation.

564 F.2d at 384.

This Court finds that there is a potential divergence of interests and without intervention, representation of SFF's interests 'may be' inadequate.

SFF also argues that it meets the requirements for permissive intervention under Rule 24(b), in which the Court "may permit anyone to intervene who" files a timely motion and who "has a claim or defense that shares with the main action a common question of law or fact." As

mentioned previously, SFF's motion is timely, and intervention will not cause undue delay or prejudice to any existing parties. As discussed previously, SFF has focused its efforts on regulating and limiting the number of ISTRs on behalf of some of the citizens of Folly Beach and has taken a leadership role in the process that led to the passage of the referendum and ordinance at issue in this case. I find that SFF's position and the subject Complaint involve common questions of fact and law.

For all of these reasons, this Court finds that SFF has carried its burden under Rule 24(a)(1) and 24(b), and therefore the motion is granted.

AND IT IS SO ORDERED.

_____
The Honorable Kristi Curtis
Circuit Court Judge

March __, 2023
Charleston, South Carolina

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Charleston Common Pleas

Case Caption: Folly East Indian Co Llc VS Folly Beach City Of

Case Number: 2023CP1000264

Type: Order/Intervene

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-0264
FOLLY EAST INDIAN CO., LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER GRANTING DEFENDANT**
	)	**CITY OF FOLLY BEACH'S MOTION**
CITY OF FOLLY BEACH,	)	**FOR SUMMARY JUDGMENT**
	)	
Defendant.	)	
	)	
and	)	
	)	
SAVE FOLLY'S FUTURE,	)	
	)	
Intervenor.	)	
	)	

This matter is before the Court on cross Motions for Summary Judgment by Plaintiff Folly East Indian Co., LLC, and Defendant City of Folly Beach. Intervenor Save Folly's Future joins in Defendant's Motion for Summary Judgment. The Court finds that the Petition and Referendum procedure, as set out in South Carolina Code § 5-17-10, *et. seq.*, can be used to create a cap on Short-Term Rental Business Licenses issued by the City. Therefore, the Court grants Defendant City of Folly Beach's Motion for Summary Judgment and denies Plaintiff Folly East Indian's Motion for Summary Judgment and dismisses this action.

FACTS

The relevant facts are not in dispute. Plaintiff owns and operates seven licensed short-term rentals located in the City of Folly Beach. In October 2022, Intervenor Save Folly's Future submitted a Petition to the City to Amend the City's Short-Term Rental Business License Ordinance (hereinafter the "Amendment") to limit the number of short-term rental licenses issued to "Investment Short Term Rentals" to 800. "Investment Short-Term Rentals" are dwelling units

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that are not claimed as legal residences. Owner-Occupied Short-Term Rentals are claimed as a legal residence and limited to a set number of rental nights per year and are not subject to the cap. Notably, the Petition "grandfathered" in existing licenses, so it allows Plaintiff to keep its existing licenses and continue its short-term rentals for as long as Plaintiff owns the properties.

The Petition was adopted by the residents of Folly Beach by referendum vote pursuant to South Carolina Code Section 5-17-10, *et seq.*, on February 7, 2023. By force of State law, the Amendment is now part of the City's Business Regulations, codified as Title XI of the City's Code of Ordinances. The City has always regulated short-term rentals through its Business Regulations, not its Zoning Code, contained in Title XV of the City's Code of Ordinances. The Amendment made no changes to the City's Zoning Code, which allows short-term rentals in all the City's zoning districts.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

"[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact[, then] the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006) (citations omitted). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (quoting *Middleborough Horizontal Prop. Regime Council of Co–Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995)).

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Since the relevant facts are not in dispute and this matter involves a pure question of law, summary judgment is appropriate.

LEGAL HOLDING

Plaintiff filed this declaratory judgment action to challenge whether the Amendment capping the number of short-term rental business licenses could be adopted by way of a citizens Petition and Referendum procedure, as set out in South Carolina Code § 5-17-10, *et. seq.* This Court finds that the Petition and Referendum procedure can be used to limit the number of short-term rental business licenses issued by a municipality.

As an initial matter, the Court finds that Plaintiff has suffered an "injury in fact" and has standing to bring this lawsuit. *Smiley v. S.C. Dep't of Health & Env't Control*, 374 S.C. 326, 649 S.E.2d 31, 33 (2007).

The State statute governing the Petition and Referendum procedure states:

> The electors of a municipality may propose *any ordinance*, except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the municipality equal in number to at least fifteen percent of the registered voters at the last regular municipal election and certified by the municipal election commission as being in accordance with the provisions of this section.

S.C. Code Ann. § 5-17-10 (emphasis added).

The Amendment did not appropriate money or authorize the levy of taxes. Thus, based on the plain language of Section 5-17-10, the Amendment capping the number of short-term rental business licenses can be adopted by Petition and Referendum.

Plaintiff attempts to escape the clear language of Section 5-17-10 by relying on the South Carolina Supreme Court case of *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). The Court in *I'On* added a limitation not contained in the explicit language of Section

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5-17-10, namely the Court ruled that "*zoning* by initiative and referendum is not allowed in South Carolina." *Id.* at 725 (emphasis added). The Court found that the Petition and Referendum process was not compatible with the South Carolina Comprehensive Planning Act's process for amending zoning ordinances. South Carolina Code § 6-29-760 (setting out procedure for amending zoning regulations or maps). The Court also found that using the Petition and Referendum process to amend a zoning ordinance would nullify the carefully developed rules set forth in the Comprehensive Planning Act. *Id.* at 719-21. The Court clearly limited this ruling to amendments to zoning ordinances. Further, since this court-created exclusion is not contained in the language of Section 5-17-10, it should be read narrowly.

The Amendment in this case is not an amendment to the City's Zoning Ordinance. It changes no language in the City's Zoning Code, contained in Title XV of the City's Code of Ordinances. It only amended the City's existing Business Regulations, contained in Title XI of the City's Code of Ordinances.

In addition, to not being in the City's zoning code, the Amendment looks nothing like a zoning ordinance. The Amendment did not rezone any property, as occurred in *I'On*. The Amendment did not impact the development or use of any property. The Amendment does not impact the development or use of Plaintiff's property. Plaintiff continues to operate short-term rentals on all its properties. The Amendment does not result "in arbitrary decisions and patchwork zoning with little rhyme or reason." *I'On*, 526 S.E.2d at 721. It does not nullify carefully developed rules for adoption of zoning provisions. *Id.*

The Amendment is not a zoning ordinance under state law. Zoning ordinances are adopted "for the general purposes of guiding *development* in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and

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general welfare." South Carolina Code § 6-29-710(A) (emphasis added). The goals of a zoning ordinance "include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents." *I'On*, 526 S.E.2d at 720. Zoning ordinances address building size, density of development, parking, and buffer areas. *Id.* The Amendment does none of these things.

The Amendment is clearly not a zoning ordinance. The Amendment simply places a limit on the number of short-term rental business licenses that the City can issue. This is a business regulation codified as part of the City's Business Regulations. It regulates how many short-term rental businesses there can be in the City, not where those businesses can be conducted. The cap does not regulate the development of Plaintiff's properties, all of which have already been developed. No state law requires that the City follow the South Carolina Comprehensive Planning Act to amend its Business Regulations.

The Amendment's indirect impact on how some owners (not Plaintiffs) may use their property does not convert the Amendment to a zoning ordinance. The South Carolina Supreme Court has also addressed this issue. *Greenville Cnty. v. Kenwood Enterprises, Inc*., 353 S.C. 157, 577 S.E.2d 428, 432 (2003), *overruled by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005). In *Kenwood Enterprises*, Greenville County adopted regulations of sexually oriented businesses that included restrictions on the locations of such businesses. Although the County originally prepared the regulations as an amendment to the zoning code, the County changed course and adopted the amendments as business regulations, not a part of its zoning code. *Id.* at 430.

A group of owners of sexually oriented businesses challenged the regulations. Much like the Plaintiff in this case, those businesses claimed that the regulations had to be adopted as part of

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the County's zoning code through the procedures set forth in the South Carolina Comprehensive Planning Act. *Id.* at 431-32. The plaintiffs in *Kenwood Enterprises*, like Plaintiff here, also relied upon the *I'On* decision, arguing that *I'On* dictates that any regulation of land use must be adopted in accord with the Comprehensive Planning Act. *Id.* at 433.

The Supreme Court rejected the argument that all ordinances that touch upon the use of land must be adopted as a zoning ordinance. Local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . ." *Id.* at 432 (*quoting Onslow County v. Moore*, 129 N.C.App. 376, 499 S.E.2d 780, *review denied*, 525 S.E.2d 453 (N.C.1998) (emphasis in original). In other words, the Comprehensive Planning Act did not preempt the entire field of business regulations or "completely prohibit any other local enactments from touching upon zoning or land use." *Id.* at 432 (citing *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (2000)). Rather, local governments are entitled to regulate businesses through their general police powers granted under the Home Rule Act, South Carolina Code § 5-7-30.

The Court in *Kenwood Enterprises* explicitly limited the holding in *I'On*:

> *I'On* does not stand for the proposition that **any** ordinance affecting land use must be part of the comprehensive plan and enacted pursuant to the Comprehensive Planning Act. Instead, *I'On* simply held that land use regulation[1] cannot be effected via the referendum and initiative process. Thus, *I'On* is not dispositive. To accept Platinum Plus and Heartbreakers' expansive reading of *I'On* would necessarily eviscerate a County's ability to exercise its police power if that exercise in any way impacted land use.

Kenwood Enterprises, 577 S.E.2d at 433 (emphasis in original).

[1] Plaintiff asserts that the court's use of the term "land use regulation" encompasses all regulations that conceivably impact land use. That is the opposite of the holding in *Kenwood Enterprises*. Clearly, the Court is using "land use regulation" as a synonym for a zoning ordinance adopted pursuant to the Comprehensive Planning Act.

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Thus, even if the Amendment capping business licenses "regards land use" as argued by Plaintiff, this does not make it a zoning ordinance that can only be passed pursuant to the Comprehensive Planning Act. Rather, regulations that regard land use can be adopted pursuant to the general police powers and placed in its Business Regulations, as the City has opted to do. *Kenwood Enterprises,* 577 S.E.2d at 432. Indeed, Plaintiff has admitted that the City could have adopted this cap pursuant to its police powers. Plaintiff's Consolidated Memorandum, Page 2.

Police power regulations that touch upon land use do not need to be adopted pursuant to the procedures of the Comprehensive Planning Act. The City has opted to regulate short-term rentals as part of its Business Regulations, as allowed by *Kenwood Enterprises*. Similarly, the Amendment adopted by Petition and Referendum, can amend the City's Business Code. Since the Amendment does not alter the City's Zoning Code, the ruling in *I'On* does not control this matter.[2]

CONCLUSION

The Petition and Referendum procedure adopted by the South Carolina State legislature allows electors of a municipality to "propose *any ordinance*, except an ordinance appropriating money or authorizing the levy of taxes." S.C. Code Ann. § 5-17-10 (emphasis added). Intervenor Save Folly's Future obtained the requisite signatures of 15% of registered voters of the City. The City then held a vote as *required* by South Carolina Code § 5-17-30, and the majority of residents voted to in favor of the Petition and Referendum capping short-term rental business licenses at

[2] Plaintiff has made brief arguments in its various pleadings regarding vested rights and a potential takings claim. Plaintiff has no vested right here because business licenses do not confer vested rights, *Dantzler v. Callison*, 230 S.C. 75, 94–95, 94 S.E.2d 177, 188 (1956), and the City has not approved a site-specific development plan. S.C. Code § 6-29-1520(9). Likewise, the remedy for a takings challenge is compensation not the declaratory and injunctive relief sought by Plaintiff. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005) (holding the Takings Clause of the Fifth Amendment "is designed not to limit the governmental interference with property rights *per se*, but rather to secure compensation in the event of otherwise proper interference amounting to a taking.") (emphasis in original).

800. Pursuant to this procedure, the City's Business Regulations were amended to include the language of the Petition. Since this was a change to the City's Business Regulations and not the City's Zoning Code, the ruling in *I'On* does not control this matter.

Based on the foregoing, the Court grants the City's Motion for Summary Judgment, which Intervenor Save Folly's Future has joined in, and denies Plaintiff's Motion for Summary Judgment. Since this disposes of all issues in this action, the action is dismissed.

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Charleston Common Pleas

Case Caption: Folly East Indian Co Llc VS Folly Beach City Of

Case Number: 2023CP1000264

Type: Order/Summary Judgment

So Ordered

s/Paul M. Burch, Judge #2048

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1000264

Folly East Indian Co Llc
PLAINTIFF(S)

Folly Beach City Of
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

After consideration, Plaintiff's Motion to Reconsider Order Denying Its Motion for Summary Judgment and Granting Defendant City of Follow Beach's Motion for Summary Judgment is DENIED.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/17/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Apr 17 2:08 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

Case Caption: Folly East Indian Co Llc VS Folly Beach City Of

Case Number: 2023CP1000264

Type: Order/Electronic Form 4

So Ordered

s/Paul M. Burch, Judge #2048

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-_____
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**SUMMONS**
vs.	)	
	)	
CITY OF FOLLY BEACH,	)	
	)	
	)	
DEFENDANT.	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Verified Complaint upon the subscribers, Saxton & Stump, LLC, at their offices at 151 Meeting Street, Suite 350, Charleston, South Carolina 29401, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Verified Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

SAXTON & STUMP, LLC

s/Alice F. Paylor
Alice F. Paylor
Bijan Ghom
151 Meeting Street, Suite 350
Charleston, SC 29401
afp@saxtonstump.com
bkg@saxtonstump.com
(843) 414-5080
ATTORNEYS FOR PLAINTIFF

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-_____
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**VERIFIED COMPLAINT**
vs.	)	**(NON-JURY)**
	)	
CITY OF FOLLY BEACH,	)	
	)	
DEFENDANT.	)	
	)	
	)	

The Plaintiff Folly East Indian Co., LLC, by and through its undersigned counsel, files this Complaint which alleges as follows:

1. Plaintiff is a limited liability company organized and existing under the laws of State of South Carolina, and owns real property located within the City of Folly Beach at 112 East Indian Ave. (units A & B), 114 East Indian Ave. (units A & B), 116 East Indian Ave., and 118 East Indian Ave. (units A & B), Folly Beach, South Carolina, 29439 (collectively referred to herein as the "Approved STR Property").

2. Defendant City of Folly Beach ("Folly Beach" or "City") is a municipality located within County of Charleston and organized under the laws of the State of South Carolina.

3. This Court has jurisdiction over the parties and subject matter hereto because the actions and omissions giving rise to this case took place in Charleston County, South Carolina.

FACTS

4. Plaintiff is a real estate development company wholly owned by Richard D. Brendel and Michael J. Riffert. Both Mr. Brendel and Mr. Riffert are full-time residents of Folly Beach and active members of the Folly Beach community.

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5. The Plaintiff currently has five Short Term Rental ("STR") licenses for the Approved STR Properties.

6. In 2020, the Plaintiff began building two new buildings at 112 East Indian Avenue with the intent of using them as STR properties. Due to supply chain shortages caused by COVID-19, the project took longer than expected and is still two months from completion. The development plans were fully approved and permitted by the Defendant.

7. The Folly Beach Code of Ordinances, in its Zoning section at §161.02, defines "Vacation Rental" as "a residential unit rented for 29 days or less that typically is utilized by tourists."

8. The Folly Beach Code of Ordinances, at §117.02, defines Short Term Rentals as "[r]esidential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling" and states that "[t]ourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered Short Term Rentals."

9. Thus, a Short Term Rental is a Vacation Rental under the Zoning ordinances and is referenced and included in the Table of Uses, §164.01, and is listed as a permitted use in every zoning district in that table.

10. In Zoning Ordinance, §164.03-01, which is entitled "Residential Uses," Paragraph (C) states that "[s]hort term rentals shall have a maximum overnight occupancy of two persons per bedroom, plus two persons per rental dwelling" and "[t]he maximum occupancy may be increased by the Building Official upon demonstration by the owner of DHEC compliance with allowable septic capacity."

11. On October 11, 2022, a petition was submitted to Defendant's City Council to request that it pass an ordinance capping short term rental licenses issued to 800. Said petition is

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a citizen's initiative pursuant to South Carolina Code of Laws, Title 5, Chapter 17, Section 10, *et. seq.*

12. The Petition states there has been an "unrestricted growth of the number of investment short term rentals within the City of Folly Beach" and further states that the goals of the Petition relate to:

i. quality of life for residents

ii. stress on city infrastructure and environment

iii. extraordinary burdens on public service

iv. existential threat to the community.

13. In addition to limiting the cap on STR licenses to 800, the Petition seeks to eliminate the transferability of current STR licenses. *See* Petition attached hereto as Exhibit A.

14. Defendant has set a special election on February 7, 2023, for electors residing in Folly Beach to vote on requiring City Council to adopt an ordinance putting into place the restrictions of STR licenses sought in the petition.

15. At the October 11, 2022, City Council meeting, the Council failed to pass an Ordinance capping short term rental licenses to 800 and, instead, adopted an Ordinance creating a moratorium on the issuance of new STR licenses for a three (3) month period.

16. On December 13, 2022, the City Council of Folly Beach failed to adopt a new zoning ordinance that would set a cap of 800 Short Term Rentals and, instead, gave first reading to Ordinance 34-22 which would extend the previously imposed moratorium for another three (3) month period after it expired on January 11, 2023

17. On January 10, 2023, City Council gave second reading to the moratorium ordinance. *See* Ordinance 34-22, attached hereto as Exhibit B.

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18. Contrary to the claims in the petition, STRs provide a significant benefit to the local economy. The Accommodations Taxes from STRs contribute over $1,500,000.00 to the Folly Beach re-nourishment program and another $1,500,000.00 to the City's General Fund.

19. Due to the importance of STRs to the local community and economy, state legislators have introduced a pending Bill, H. 4547[1], which would prohibit any municipality from enacting an ordinance that prohibits STRs. *See* Exhibit C.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to the Moratorium and Request for Temporary Injunctive Relief)

20. The paragraphs above are re-alleged as if set forth herein verbatim.

21. This is a proceeding for declaratory relief under the South Carolina Uniform Declaratory Judgment Act, South Carolina Code of Laws Section 15-53-10 et seq. (1976, as amended).

22. South Carolina Code § 15-53-30 allows any party whose rights, status, or other legal relations are affected by an ordinance to have determined any questions of construction or validity of the ordinance.

23. Plaintiff is a landowner in the City of Folly Beach whose rights, status, or other legal relations are adversely affected by the Moratorium and Petition.

24. Plaintiff seeks a declaration that the Moratorium is illegal, unconstitutional, and without force of law in the following respects, among others:

i. Plaintiff has established property rights prior to the Moratorium.

ii. Defendant permitted and approved the construction of the Property without any of the restrictions regarding STRs established in Ordinance 32-22.

[1] Publicly available at https://www.scstatehouse.gov/sess124_2021-2022/bills/4547.htm.

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iii. The Moratorium deprives Plaintiff of the economically viable use of its property, infringed upon its vested rights, and interfered with Plaintiff's reasonable, investment-backed expectations.

iv. The Moratorium, which was adopted for the purpose of suspending STR licenses until the referendum, is inextricably intertwined with the unconstitutional and unlawful Petition.

v. Defendant's actions amount to a regulatory taking for which it has not provided just compensation in violation of the South Carolina Constitution Article 1, Section 13 and the Fifth and Fourteenth Amendments of the United States Constitution.

25. Based on the foregoing, Plaintiff seeks a declaratory judgment from this Court declaring the Moratorium unconstitutional; that Defendant's application of the Moratorium constitutes a taking of property without just compensation; and that the Moratorium is ineffective and of no force of law.

26. Plaintiff seeks a Court Order in the form of a temporary injunction restraining and enjoining the City from enforcing the Moratorium until such time as a full hearing on the merits of this case may be held.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment as to the Petition and Request for Temporary and Permanent Injunctive Relief)

27. The paragraphs above are realleged as if set forth herein verbatim.

28. Pursuant to the authority conferred by the South Carolina Code of Laws, Title 6, Chapter 29, Section 710, the Defendant has enacted a zoning code which contains a comprehensive scheme for planning, approving, and rezoning real estate parcels to ensure efficient, equitable, and reasoned land use decisions in the City.

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29. The Defendant's Zoning Code was enacted in accordance with Title 6.

30. Under Title 6, "[z]oning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." S.C. Code Ann. § 6-29-710(A). Goals include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents. *Id.*

31. Zoning consists of the municipal laws or regulations that govern how real property can and cannot be used in certain geographic areas.

32. Zoning is subject to specific treatment found in Title 6 of the South Carolina Code (i.e., specific laws), while citizen petitions for initiatives or referenda are treated generally under S.C. Code Section 5-17-30 (i.e., general laws).

33. Use of the Petition to change the zoning of a particular tract of land without regard to the zoning laws, zoning code, procedure, or impact assessment is impermissible zoning.

34. As the South Carolina Supreme Court has held, "zoning provisions may not be enacted by the initiative and referendum process contained in Sections 5-17-10 and -30." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 725 (2000).

35. Plaintiff seeks a declaration that the Petition is illegal, unconstitutional, and without force of law in the following respects, among others:

i. The Petition seeks to change the zoning of particular tract of land in which the Plaintiff owns real property.

ii. As held in *I'On, L.L.C. v. Town of Mt. Pleasant*, zoning cannot be accomplished by referendum, and instead, the City must follow the zoning procedure.

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iii. Defendant permitted and approved the construction of Plaintiff's property intended for use as a STR without any restriction on obtaining STR licenses and the Zoning Code specifically states that STRs are allowed in every zoning district of the Defendant.

iv. The Petition deprives Plaintiff of the economically viable use of its property, infringes upon its vested rights, and will interfere with Plaintiff's reasonable, investment-backed expectations.

v. The Petition, if successful, would prevent property owners from complying with § 27-50-250, which requires property owners to honor vacation rentals after the sale and/or transfer of real property.

vi. The inability to comply with § 27-50-250 if the Petition is successful would subject property owners to unfair legal action and penalties.

vii. Because the Petition seeks to impose a restriction on property that conflicts with § 27-50-250, the Petition must be struck down as the proposed ordinance is preempted by a South Carolina statute.

36. Should the City act on the Petition, Plaintiff will suffer irreparable harm as set forth above.

37. The harm which the Plaintiff will incur cannot be rectified solely upon an award of monetary damages.

38. Plaintiff is likely to prevail on the legal merits as set forth in this Complaint based on the applicable state law and the terms of the Ordinance and the Petition.

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39. Plaintiff prays that this court will declare that the legislative process initiated by the citizens under the general authority of S.C. Code § 5-17-30 may not be invoked to limit the amount of STRs or otherwise restrict STRs as indicated in the Petition.

40. Plaintiff seeks a Court Order in the form of a temporary and permanent injunction restraining and enjoining the Defendant from taking any action in enforcing or implementing the Petition, or any future Petition which attempts to invoke § 5-17-30 to rezone property, to limit the amount of STRs or to otherwise restrict STRs.

WHEREFORE, the Plaintiff prays for the following relief:

a) That this court declare that the Moratorium and Petition are substantively defective for failure to comply with local, state, and constitutional law, and as such, are null and void;

b) That this court issue a Temporary Restraining Order and/or Temporary Injunction, preventing the Defendant from further enforcing the Moratorium and from acting upon the Petition pending the outcome of this action on its merits;

c) That this court permanently enjoin the Defendant from acting on the pending Petition or any future Petition which attempts to invoke § 5-17-30 to rezone property or to limit the amount of STRs or otherwise restrict STRs;

d) For the costs of this action; and

e) For such other and further relief as the Court may determine.

SAXTON & STUMP, LLC

s/Alice F. Paylor
Alice F. Paylor
Bijan K. Ghom
151 Meeting Street, Suite 350
Charleston, SC 29401
afp@saxtonstump.com
bkg@saxtonstump.com
(843) 414-5080

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
January 17, 2023

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VERIFICATION

PERSONALLY APPEARED before me, Michael J. Riffert, who being duly sworn, deposes and says: that he is an owner and authorized representative of Plaintiff in the foregoing action, that he has read the facts within Complaint, and that the facts are true of his own knowledge, except those matters and things therein alleged upon information and belief, and as to those, he believes them to be true.

Michael J. Riffert

Sworn to me this 17 day of January, 2023.

Notary Public for South Carolina

My commission expires: 9-21-32

EXHIBIT A

(Resized from Legal to Letter)

STATE OF SOUTH CAROLINA	**)**	**Petition**
	)	**To Limit Investment Short Term Rental**
CITY OF FOLLY BEACH	**)**	**Business Licenses to a maximum of 800**

To the Mayor and City Council of Folly Beach:

We the undersigned voters of the City of Folly Beach request that the City adopt the following ordinance: TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800. This Petition is submitted pursuant to the South Carolina Code of Laws, section 5-17-10, *et seq*.

Whereas the unrestricted growth of the number of *investment short term rentals* within the City of Folly Beach:

- lowers the quality of life for its residents
- stresses the city's infrastructure & environment
- places extra ordinary burdens on the city's public services sector and
- poses an existential threat to the community.

Whereas the requisite number of voters have affixed their names to this PETITION TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800, pursuant to South Carolina Code of Laws, section 5-17-10 et seq;

NOW THEREFORE:

We the undersigned request that the following additions be inserted into Chapter 117 of the Folly Beach Code of Ordinances:

DEFINITIONS:

1. ***Investment Short Term Rental (ISTR)*** - A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.

2. ***Owner-Occupied Short Term Rental (OSTR)*** – A property and/or dwelling unit, in whole or part, licensed for short term rentals whose owner claims the licensed property to be the owner's primary residence as evidenced by: (a) current S.C. drivers license or S.C. identification card, (b) the address where they are, or may be, enrolled and registered to vote in local, state and federal elections and (c) the physical address used for the purpose of filing local, state and federal income taxes.

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SHORT TERM RENTAL BUSINESS LICENSES:

(A) The City is authorized to issue two classes of short term rental business licenses:
(1) Investment Short Term Rental business license, and
(2) Owner-Occupied Short Term Rental business license.

(B) Owner Occupied Short Term Rental Business License:
There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.

(C) Investment Short Term Rental CAP

(1) The maximum number of permitted Investment Short Term Rental business licenses, city wide, shall be no more than 800, henceforth referred to as the CAP.

(a) Upon enactment the CAP shall be set at 800.

(2) No New Investment Short Term Rentals shall be permitted unless the total number of Investment Short Term Rentals is below the CAP.

(a) Exception : After enactment, all existing Investment Short Term Rental business License holders in good standing may continue to renew annually, even if the initial number of Investment Short Term Rentals exceeds the CAP.

(3) Investment Short Term Rental Wait List: If demand for Investment Short Term Rental business licenses exceeds the CAP a wait list will be established and maintained by the City of Folly Beach.

(a) When the number of allowable Investment Short Term Rental business licenses falls below the CAP, a license shall be offered by US Mail to the next qualified applicant on the wait list.

(b) If the applicant fails or neglects to complete an application for an Investment Short Term Rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.

(D) Non- transferable

(1) Investment Short Term Rental wait list status terminates upon transfer of property and is non-transferable.

(2) Investment Short Term Rental business licenses terminate upon transfer of property and are non-transferable.

(3) Owner Occupied Short Term Rental business licenses terminate upon transfer of property and are non- transferable.

EXHIBIT B

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CITY OF FOLLY BEACH

1st Reading: December 13th, 2022
2nd Reading:

Introduced by: Mayor Goodwin
Date: December 13th, 2022

ORDINANCE 034-22
AN ORDINANCE TO EXTEND A MORATORIUM ON THE ISSUANCE OF NEW BUSINESS LICENSES FOR SHORT TERM RENTALS WITHIN THE CITY OF FOLLY BEACH DUE TO VERIFICATION OF A CITIZEN INITIATIVE PETITION TO ESTABLISH A CAP ON SHORT TERM RENTALS.

WHEREAS, The City has received a citizen petition to limit the number of short-term rental licenses for the rental non primary residences to 800; and

WHEREAS, The Charleston County Board of Elections has verified that the petition contains the required number of signatures to trigger Council action; and

WHEREAS, The City has issued approximately 1,210 short term rental licenses for the 2022/2023 business license year as of December 9, 2022 with approximately 1,058 of those licenses issued for the rental of non primary residences; and

WHEREAS, The City desires to limit further increase in the number of short term rental licenses issued for the rental of non primary residences until the question posed by the petition is settled by vote of Council or general referendum; and

WHEREAS, The City approved a moratorium on the issuance of new rental licenses for non primary residences on 10/18/22 that expires on January 11, 2023.

NOW BE IT THEREFORE ORDAINED:

1. The City of Folly Beach imposes a moratorium, to be effective immediately upon ratification of this Ordinance, on the issuance of new business licenses for short term rentals of non primary residences within the City:
    a. Subject to Section (b) hereof, no application shall be approved for a business license to for any residential dwelling taxed at a 6% property tax rate.
    b. Subject to the limitations set forth in Section (c) excepted from the provisions of Section 1 (a) are each of the following:
        i. Renewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022.
        ii. New licenses resulting from the transfer of ownership of properties that were legally licensed as short term rentals as of October 18th, 2022.
        iii. New licenses for a short term rental for which an application, deemed sufficient

for approval, has been filed with the City of Folly Beach prior to October 18th, 2022.

iv. New licenses for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to the ratification of this ordinance.

c. In order to be excepted from this moratorium under Section 1.(b)(iv), all applications must comply with the following requirements:
   i. Applications must be deemed sufficient for approval by City staff; and
   ii. Applications must be for a license to rent:
      1. An existing residential unit that is currently available to rent or will be within thirty days of ratification of this Ordinance; or
      2. A planned residential unit for which an application for a building permit, sufficient for approval by City staff, has been submitted within thirty days of ratification of this Ordinance and which shall be available to rent within twelve months of the ratification of this Ordinance.
      3. A residential unit for which a building permit has been issued within thirty days of ratification of this Ordinance and for which a certificate of occupancy shall be issued and the unit made available to rent within twelve months of the ratification of this Ordinance.

2. This ordinance shall take effect immediately upon adoption and shall expire automatically on April 15th, 2023, or five business days after any special election called to adopt the ordinance proposed by petition, unless earlier repealed.

ADOPTED this 13h day of December 2022, at Folly Beach, South Carolina.

Ayes: _____ **Nays:** _____ **Abstains:** _____

_____ _____

Municipal Clerk **Tim Goodwin, Mayor**

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South Carolina General Assembly
124th Session, 2021-2022

EXHIBIT C

Download This Bill in Microsoft Word format

~~Indicates Matter Stricken~~
Indicates New Matter

H. 4547

STATUS INFORMATION

General Bill
Sponsors: Reps. Hewitt, Oremus and Bennett
Document Path: l:\council\bills\cc\16086zw22.docx

Introduced in the House on January 11, 2022
Currently residing in the House Committee on **Judiciary**

Summary: Local Govt's regulating vacation homes/short-term residential rentals

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
11/10/2021	House	Prefiled
11/10/2021	House	Referred to Committee on **Judiciary**
1/11/2022	House	Introduced and read first time (House Journal-page 50)
1/11/2022	House	Referred to Committee on **Judiciary** (House Journal-page 50)

View the latest legislative information at the website

VERSIONS OF THIS BILL

11/10/2021

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6-1-190 SO AS TO PROVIDE THAT A GOVERNING BODY OF A MUNICIPALITY, COUNTY, OR OTHER POLITICAL SUBDIVISION OF THE STATE MAY NOT ENACT OR ENFORCE AN ORDINANCE, RESOLUTION, OR REGULATION THAT PROHIBITS THE RENTAL OF A RESIDENTIAL DWELLING TO A SHORT-TERM GUEST; TO PROVIDE PENALTIES; AND TO DEFINE RELEVANT TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 1, Title 6 of the 1976 Code is amended by adding:

"Section 6-1-190. (A) Notwithstanding another provision of law, a governing body of a municipality, county, or other political subdivision of the State may not enact or enforce an ordinance, resolution, or regulation that prohibits the rental of a residential dwelling to a short-term guest.

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(B) A municipality, county, or other political subdivision of the State that enacts or enforces an ordinance, resolution, or regulation that violates the provisions of subsection (A) may not:

(1) assess or collect the six percent property assessment ratio for qualifying real property pursuant to Section 12-43-220(e); and

(2)(a) receive any distributions from the Local Government Fund pursuant to Chapter 27, Title 6; and

(b) the Office of the State Treasurer shall withhold the municipality's, county's, or political subdivision's State Aid to Subdivisions Act distribution until the ordinance, resolution, or regulation in violation of subsection (A) is repealed.

(C) This section supersedes and preempts any ordinance, resolution, or regulation enacted by a municipality, county, or other political subdivision of the State that purports to prohibit the rental of a residential dwelling to a short-term guest.

(D) For purposes of this section:

(1) 'Residential dwelling' means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one or more persons to the exclusion of all others.

(2) 'Short-term rental' means a residential dwelling that is offered for rent for a fee and for fewer than twenty-nine consecutive days.

(3) 'Short-term guest' means a person who rents a short-term rental."

SECTION 3. This act takes effect upon approval by the Governor.

----XX----

This web page was last updated on January 12, 2022 at 4:05 PM

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-_____
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**MOTION FOR PRELIMINARY INJUNCTION**
vs.	)	
	)	
CITY OF FOLLY BEACH,	)	
	)	
DEFENDANT.	)	
	)	
	)	

PLEASE TAKE NOTICE that Plaintiff will move for a preliminary injunction before this court prohibiting Defendant City of Folly Beach from taking any action in enforcing or implementing the Petition (attached as Exhibit A to Plaintiff's Verified Complaint), or any future Petition which attempts to invoke § 5-17-30 to rezone property to limit the amount of Short Term Rentals ("STRs") or to otherwise restrict STRs within the City of Folly Beach.

For a temporary injunction to be granted, Plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). As explained in Plaintiff's Verified Complaint, and as will be further argued in a hearing before the court, Plaintiff is likely to prevail on the merits of its case against Defendant based on the clear requirements of South Carolina law as set forth in *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 415, 526 S.E.2d 716, 721 (2000). If the Defendant is allowed to proceed with its zoning measure by initiative and referendum in clear violation of *I'On, L.L.C. v. Town of Mt. Pleasant*, Plaintiff will suffer irreparable damages and has no adequate remedy at law.

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SAXTON & STUMP, LLC

s/Alice F. Paylor

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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
January 17, 2023

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-0264
FOLLY EAST INDIAN CO., LLC,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT'S MEMORANDUM
vs.	)	IN OPPOSITION TO MOTION FOR
	)	PRELIMINARY INJUNCTION
CITY OF FOLLY BEACH,	)	
	)	
Defendant.	)	
	)	

This matter is before the Court on the motion of Plaintiff Folly East Indian Co, LLC, for a preliminary injunction 1) enjoining Defendant City of Folly Beach from enforcing a Moratorium, Exhibit No. 1 and 2, on the issuance of business licenses to short-term rentals, and 2) enjoining the City from "taking any action in enforcing or implementing" a Petition and Referendum election, currently scheduled for February 7, 2023, that would place a cap on the number of short-term rental licenses that the City can issue. Petition or Proposed Ordinance, Exhibit No. 3.

Defendant City of Folly Beach would ask that the Plaintiff's motion for a preliminary injunction be denied because Plaintiff has not shown it will likely succeed on the merits on the following grounds:

a. The Petition proposes an amendment to the City's ordinance regulating short-term businesses and the issuance of licenses for same. City of Folly Beach Ordinance, Title XI: Business Regulations, Chapter 117: Short Term Rentals, Exhibit No. 4. The Petition proposes to amend the City's business regulations. It has nothing to do with the zoning of Plaintiff's property. As such, it is not barred by *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

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b. The City is authorized to issue and regulate business licenses. The Home Rule Act specifically grants municipalities the right to "levy a business license tax on gross income." S.C. Code § 5-7-30. Similarly, Folly Beach is entitled to regulate the use of property through either its business regulations or its zoning ordinances. *Greenville Cnty. v. Kenwood Enterprises, Inc*., 353 S.C. 157, 577 S.E.2d 428, 432 (2003), *overruled by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005) (local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . ."). Since 2010, when the City first adopted an ordinance governing short-term rentals, Folly Beach has chosen to regulate short-term rentals as part of its business regulations, contained in Title XI of its Code of Ordinances. Chapter 117: Short Term Rentals, Exhibit No. 4; Affidavit of Aaron Pope, Paragraphs 4-7, Exhibit No. 5. The City does not regulate short term rentals under its zoning ordinance. Accordingly, the Proposed Ordinance is a business regulation, not a zoning ordinance. Therefore, the South Carolina Supreme Court's criticism of referendum and petitions that address zoning issues does not prohibit this particular Petition and Referendum. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000)

c. Both the Moratorium and the Petition allow current holders of short-term business licenses to renew those licenses and continue to rent their properties. So, neither the Moratorium nor the Petition interferes with Plaintiff's ability to renew its business licenses and continue to rent properties that currently hold business licenses.

d. The Moratorium and Petition will only limit Plaintiff's ability to obtain a business license on its one property that has two unfinished houses that have never been rented or even occupied. Plaintiff has no vested right in receiving short-term business licenses in the future on a property that has never been rented or even occupied. *Dantzler v. Callison*, 230 S.C. 75, 94–95,

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94 S.E.2d 177, 188 (1956) ("No person can acquire a vested right to continue, when once licensed, in a business, trade or profession which is subject to legislative control and regulation under the police power, as regulations prescribed for such may be changed or modified by the legislature, in the public interest, without subjecting the action to the charge of interfering with contract or vested rights.").

e. The City is authorized to enact a moratorium. S.C. Code Ann. § 6-1-110; *Excitement Video, Inc. v. Bd. of Zoning Appeals*, No. 2004-UP-553, 2004 WL 6336793 (S.C.Ct App. Nov. 1, 2004) (local governments can enact moratoria on business licenses). Moratoria are not regulatory takings. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535* U.S. 302 (2002) (Concluding that a 32-month moratorium on land use did not constitute a regulatory taking per se, noting that "a 32-month moratorium is just not that harsh.").

STANDARDS FOR REVIEW

I. STANDARD OF REVIEW FOR PRELIMINARY INJUNCTION

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). "The facts alleged must be sufficient to support a temporary injunction and the injunction must be reasonably necessary to protect the rights of the moving party." *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007). "The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009).

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"Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Id.* at 51, 674 S.E.2d at 508.

II. STANDARD OF REVIEW FOR CHALLENGES TO ORDINANCES

"A municipal ordinance is a legislative enactment and is presumed to be constitutional." *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999). The burden of proving the invalidity of an ordinance is on the party attacking it. *Id.* Determining whether an ordinance is valid is a two-step process. First, the Court must determine whether a municipality has the power to adopt the ordinance. If no power exists, the ordinance is invalid. Second, the Court must determine whether the ordinance is consistent with the Constitution and general laws of this state. *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 384, 563 S.E.2d 651, 654 (2002); *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000); *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 425, 593 S.E.2d 462, 467 (2004).

The court has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid. *Curtis v. State*, 345 S.C. 557, 569–70, 549 S.E.2d 591, 597 (2001); *Davis v. County of Greenville,* 322 S.C. 73, 470 S.E.2d 94 (1996). A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt. *Westvaco Corp. v. South Carolina Dep't of Revenue,* 321 S.C. 59, 467 S.E.2d 739, 741 (1995); *University of South Carolina v. Mehlman*, 245 S.C. 180, 139 S.E.2d 771 (1964). A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the constitution. *Id.; Rothschild v.*

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Richland Cnty. Bd. of Adjustment, 309 S.C. 194, 198, 420 S.E.2d 853, 856 (1992) (ordinance's "unconstitutionality must be proven beyond a reasonable doubt."). "A possible constitutional construction must prevail over an unconstitutional interpretation." *Curtis*, 549 S.E.2d at 597.

III. STANDARD OF REVIEW FOR FACIAL CHALLENGE TO ORDINANCE

Plaintiff has not applied for or been denied a business license or exhausted its administrative remedies, including the procedures available to appeal the denial of a business license. As such, this Complaint and request for preliminary injunction should be reviewed as a facial challenge to the Moratorium and Petition, as opposed to an "as applied" challenge.

"A facial challenge is an attack on a statute itself as opposed to a particular application." *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) (citing *City of Los Angeles, Calif. v. Patel*, —— U.S. ——, 135 S.Ct. 2443, 192 L.Ed.2d 435 (2015)). Consequently, in analyzing a facial challenge to the constitutional validity of a statute, a court "considers only the text of the measure itself and not its application to the particular circumstances of an individual." *Doe v. State*, 421 S.C. 490, 502–03, 808 S.E.2d 807, 813 (2017) (quoting 16 C.J.S. *Constitutional Law* § 163, at 161 (2015)).

One asserting a facial challenge claims that the law is "invalid *in toto*—and therefore incapable of any valid application." *Id.* (quoting *Steffel v. Thompson*, 415 U.S. 452, 474, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974)). This type of challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *Id.* (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)). Thus, "[u]nless the statute is unconstitutional in all its applications, an as-applied challenge must be used to attack its constitutionality." *Travelscape, L.L.C. v. S.C. Dep't of Revenue*, 391 S.C. 89, 109 n.11, 705 S.E.2d 28, 39 n.11 (2011) (quoting

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Williams v. Pryor, 240 F.3d 944, 953 (11th Cir. 2001)); *Renne v. Geary*, 501 U.S. 312, 323-24, 111 S.Ct. 2331, 115 L.Ed.2d 288 (1991) (recognizing that a facial challenge should generally not be entertained when an "as-applied" challenge could resolve the case). *See also Richardson on behalf of 15th Cir. Drug Enf't Unit v. Twenty Thousand Seven Hundred Seventy-One & 00/100 Dollars*, 437 S.C. 290, 297–98, 878 S.E.2d 868, 871–72 (2022).

FACTS

I. THE CITY'S SHORT-TERM RENTAL ORDINANCE IS A BUSINESS LICENSE STATUTE, NOT A PART OF THE ZONING CODE.

The City has always required a business license for all property rentals. Pope Affidavit, Paragraph 4, Exhibit No. 5. The City's first ordinance addressing short-term rentals was adopted on September 28, 2010. Ordinance 190-10, established requirements for obtaining a business license to rent property on a short term basis. Ordinance 19-10, Exhibit No. 6. Ordinance 19-10 was codified as a business license regulation, not a zoning ordinance. It was originally codified as Chapter 116: Short Term Rentals, which is part of Title XI: Business Regulations and later renumbered to Chapter 117: Short Term Rentals, which is again part of Title XI: Business Regulations. The City's Zoning Ordinance is codified as Title XV: Land Use. Pope Affidavit, Paragraph 5, Exhibit No. 5.

Since 2010, and through several amendments, the City has regulated short-term rentals through its business license ordinances and not as a zoning ordinance. Ordinance 26-17, Exhibit No. 7 (re-numbering ordinance to Chapter 117: Short Term Rentals). The short-term rental ordinances have never been adopted in compliance with the South Carolina Comprehensive Planning Act, and, no one has ever complained to the City that it should have been adopting these business regulations as part of our zoning code. Pope Affidavit, Paragraph 6, Exhibit No. 5.

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In 2018, the City amended Chapter 117: Short Term Rentals to address various nuisance and quality of life issues, including noise and special events as well as changes to licensing and registration requirements. Ordinance 26-17, Exhibit No. 7. Although the ordinance mitigated some of the community issues related to rentals, the number of rentals has continued to rise. Pope Affidavit, Paragraph 7, Exhibit No. 5.

In May of 2021, the City of Folly Beach again began to examine amendments to its existing Short-Term Rental Ordinance, Title XI: Business Regulations, Chapter 117: Short Term Rentals. Among other things, the City's staff recommended a cap on the number of short-term rental business licenses to curb their explosive growth. Pope Affidavit, Paragraphs 8-9, Exhibit No. 5; May 11, 2021 Pope Memorandum. Exhibit No. 8. The City's data indicated that short-term rental licenses had grown from 329 in 2015 to 1,196 in 2022, which is approximately half of all parcels on the island:

Year	License Count	Increase over Prior Year	Percent Increase	Residential Parcels	Percentage of Parcels
2015	329	N/A	N/A	2341	14%
2016	374	45	14%	2354	16%
2017	473	99	26%	2358	20%
2018	663	190	40%	2389	28%
2019	784	121	18%	2391	33%
2020	923	139	18%	2389	39%
2021	993	70	8%	2424	41%
2022	1196	203	20%	2425	49%
*2017/2018 STR software implementation - increase in compliance created large jump in licenses					

The City formed a committee of citizens to study the issue. The Committee reviewed national case studies and other literature on short-term rental regulations, including caps on the issuance of short-term business licenses, which are commonly used throughout the country. Among other things, the Short Term Rental Committee recommended a cap on the number of

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short-term rental business licenses issued to properties taxes at 6%, that is properties that are not a primary residence. Pope Affidavit, Paragraph 9, Exhibit No. 5; January 5, 2022 Short Term Rental Committee Report, Exhibit No. 9.

In June of 2022 the Mayor proposed amendments to Chapter 117 based on the Committee's recommendations. June 2022 Mayor Recommendations, Exhibit No. 10. The proposal included limiting short-term rental business licenses for non-owner occupied properties to 800, referred to as "non-restricted rentals" in the proposed amendments and referred to as "Investment Short Term Rentals" in the pending Petition. Under the Mayor's proposal, there would be no limit on business licenses issued to owner-occupied properties, that is properties where residents lived and rented out individual bedrooms, which are referred to as "Owner-Occupied Short Term Rentals" in the Petition. In addition, no existing short-term rental business licenses would be revoked, but the licenses could not be transferred upon a sale of the property. Pope Affidavit, Paragraph 10, Exhibit No. 5.

The Mayor's recommendations were presented as Ordinance 26-22 to reflecting this cap was voted down by City Council on June 28, 2022. June 28, 2022 Meeting Minutes, Exhibit No. 11.

II. THE CITY IS REQUIRED BY LAW TO HOLD AN ELECTION ON THE CERTIFIED PETITION.

On October 12, 2022, the City received the Petition that is the subject of this lawsuit. The Petition proposed a cap on short-term rental business licenses issued to Investment Short Term Rentals of 800. Petition, Exhibit No. 12. Like the ordinance considered by the City, the Petition exempts Owner-Occupied Short Term Rentals from the cap, and allows current holders of Investment Short Term Rentals business licenses to keep and renew those licenses until they sell

their property. The business licenses are not transferable. Pope Affidavit, Paragraph 11, Exhibit No. 5.

The Petition contained over 450 signatures, representing nearly 25% of the City's registered voters. On November 29, 2023, the Petition was certified by the Charleston County Election Commission. Petition Certification, Exhibit No. 13; Pope Affidavit, Paragraph 12, Exhibit No. 5.

Pursuant to South Carolina Code § 5-17-30, the City can either adopt the ordinance proposed in the Petition or hold an election for all qualified electors to vote on the Petition. The Petition came before City Council on December 13, 2022, Town Council failed to enact the ordinance proposed by the Petition. December 13, 2023 Meeting Minutes, Exhibit No. 14. Consequently, by State law, the City *must* hold an election on the Petition. S.C. Code § 5-17-30. Pope Affidavit, Paragraph 13, Exhibit No. 5.

On October 18, 2022, the City's Town Council adopted a Moratorium on the issuance of new business licenses for short-term rentals of Investment Short Term Rentals. October 2022 Moratorium, Exhibit No. 1. Like the Petition, the Moratorium did not impact the issuance of business licenses to Owner-Occupied Short Term Rentals and also allowed owners of existing business licenses for Investment Short Term Rentals to renew those licenses. The Moratorium expired on January 11, 2023. The Moratorium was renewed on January 10, 2023 and extended to April 15, 2023. January 2023 Moratorium, Exhibit No. 2; Pope Affidavit, Paragraph 14, Exhibit No. 5.

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III. PLAINTIFF'S CURRENTLY LICENSED PROPERTIES CAN CONTINUE TO OPERATE AS SHORT-TERM RENTALS. PLAINTIFF'S UNLICENSED AND INCOMPLETE HOUSES ON 112 EAST INDIAN HAVE NEVER BEEN APPROVED AS SHORT-TERM RENTALS.

As noted in the Complaint, Plaintiff owns four adjacent lots on East Indian Avenue. Three of those lots, 114 East Indian, 116 East Indian, and 118 East Indian currently have licensed short-term rentals on them. Folly East Indian Business Licenses, Exhibit No. 15. These existing licenses are not impacted by the ordinance proposed in the Petition or the by the Moratorium. Both the Petition and the Moratorium allow existing short-term rental business licenses to be renewed, so each of these properties can continue to be operated as licensed short-term rentals until they are sold. Pope Affidavit, Paragraph 15, Exhibit No. 5.

Plaintiff is currently constructing two houses on 112 East Indian Avenue. The houses are not complete, and no Certificate of Occupancy has been issued on these houses. Plaintiff has never held or even applied for a short-term rental business license for this property or these incomplete houses. Pope Affidavit, Paragraph 16, Exhibit No. 5.

Plaintiff's Complaint implies that the City has approved the use of the houses at 112 East Indian Avenue as short-term rentals. This is not the case. Plaintiff has not submitted any site specific development plans for this property (the South Carolina Vested Rights Act only protects "site specific development plans"), and the City has not approved any site specific development plans for this property.

Plaintiff did apply for two building permits for the houses, and the City did approve those permits. Building Permits and Applications, Exhibit No. 16. But nothing in those building permits references or approves any use for those houses. Certainly, neither the application nor the permits reference short-term rentals. In short, building permits approve the construction of the residences.

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They do not approve the use of those residences as short-term rentals. Pope Affidavit, Paragraph 17, Exhibit No. 5.

Although they have not been previously approved for rentals, the new houses are still eligible to be used as short term rentals should the Petition succeed. Short term rentals remain an allowable use under the zoning code. However, the licenses required to conduct that use will be limited and the owner may need to join a waitlist prior to obtaining a license. Pope Affidavit, Paragraph 18, Exhibit No. 5. So, as long as the Plaintiff has a license, he can use the property as a short-term rental.

IV. MUNICIPALITIES ACROSS THE STATE HAVE ADOPTED CAPS AND OUTRIGHT BANS ON INVESTMENT SHORT TERM RENTALS, NONE OF WHICH HAVE BEEN RULED UNCONSTITUTIONAL OR INVALID.

Local governments across the State and across the nation have adopted caps on short-term rental licenses to address the explosive growth of short-term rentals in residential neighborhoods. The following is a short list of municipalities along the South Carolina coast that have adopted such caps. Like the Moratorium and the cap in the Proposed Ordinance, most of these cities separately regulate 1) owner-occupied properties, which are typically not subject to the cap, and 2) whole-house rentals, referenced as "Investment Short-Term Rentals" in the Proposed Ordinance, which are subject to the cap. Also, like the Moratorium and the cap in the Proposed Ordinance, most municipalities grandfather in existing licenses and allow existing short-term rentals to continue and renew until the property is sold.

The only unusual thing about the cap in the Proposed Ordinance is that it allows for over 40% of all properties in the City to be used as short-term rentals. Most caps are well below that number, and many local governments ban all Investment Short-Term Rentals in residential districts.

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The City of Charleston only allows commercial short-term rentals (the equivalent of Investment Short Term Rentals) in commercially zoned properties in a very limited number of zoning districts reflected in a Short Term Rental Overlay Zone. City of Charleston, Code of Ordinances, Section 54-227, Exhibit No. 17. In short, City of Charleston completely bans Investment Short Term Rentals on any residential property.

The Town of Sullivan's Island prohibits all vacation rentals and strictly regulates rentals that existed when the ban was passed, including not allowing transfer of licenses. Town of Sullivan's Island, Code of Ordinances, Section 21-117, *et seq.*, Exhibit No. 18.

The Town of Mt. Pleasant caps all short-term rentals at 400, which is approximately 1% of all dwelling units in the Town. Town of Mt. Pleasant, Code of Ordinances, Section 156.340(C), Exhibit No. 19.

The Town of Kiawah Island has capped all short-term rentals in single-family and two-family residential districts to 20% of all developed lots. Town of Kiawah Island, Code of Ordinances, Section 14-505, Exhibit No. 20.

The Town of Myrtle Beach considers short term rentals, referenced as "visitor accommodations," as a commercial use, and does not allow any short-term rentals in residential districts. City of Myrtle Beach, Code of Ordinances, Sections 203 (Definitions) and 1714.B, Exhibit No. 20.

The City of Beaufort considers Investor Short Term Rentals as a commercial use and has set a cap of 6% for all Investor Short Term Rentals. City of Beaufort, Code of Ordinances, Section 3.6.2.c.2, Exhibit No. 21.

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The Town of Summerville allows only owner-occupied short term rentals in residential districts, which amounts to a ban on all Investor Short Term Rentals in residential districts. Town of Summerville, Code of Ordinances, Section 3.4.3, Exhibit No. 22.

LEGAL ARGUMENT

I. PLAINTIFF HAS AN ADEQUATE REMEDY AT LAW.

Plaintiff has an adequate remedy at law, namely a claim for a taking which is referenced repeatedly in its Complaint, Paragraphs 24(iii) & (v), 25, 35(iv). The remedy for a takings challenge, whether facial or as-applied, is compensation not the declaratory and injunctive relief sought by Plaintiffs. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005) (holding the Takings Clause of the Fifth Amendment "is designed not to limit the governmental interference with property rights *per se*, but rather to secure compensation in the event of otherwise proper interference amounting to a taking.") (emphasis in original).

II. PLAINTIFF IS NOT IN DANGER OF SUFFERING AN IRREPARABLE INJURY.

"The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009).

Both the Moratorium and the Petition allow current holders of short-term business licenses to renew those licenses and continue to rent their properties. So, neither the Moratorium nor the Petition interferes with Plaintiff's ability to renew its business licenses and continue to rent properties that currently hold business licenses, namely is houses at 114, 116, and 118 East Indian Avenue.

Plaintiff also owns 112 East Indian Avenue, a property with two unfinished houses. Plaintiff does not currently have a short-term rental business license on this property and has never

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operated a short-term rental on this property. Plaintiff has provided no date for its completion. Plaintiff has no vested right in an unregulated future business license on this unfinished property. Plaintiff will suffer no injury if the referendum is election is held and enforced because it has not even applied for a business license on this property.

In other words, the status quo that is protected by preliminary injunctions is that Plaintiff has no license on 112 East Indian Avenue. Since Plaintiff faces no irreparable injury, the requestion for a preliminary injunction should be denied.

II. PLAINTIFF IS NOT LIKELY TO SUCCEED ON THE MERITS.

A. THE PROPOSED ORDINANCE IS NOT A ZONING ORDINANCE.

Plaintiff claims that the Petition "seeks to change the zoning of a particular tract" owned by Plaintiff. Complaint, Paragraph 35(i). The South Carolina Supreme Court has held that zoning provision cannot be enacted by initiative and referendum. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). The Court held that South Carolina's Comprehensive Planning Act "indicates a legislative intent that zoning matters must be decided only in the manner specified in those acts."). *Id.* at 721.[1]

The decision in *I'On* does not apply to the current Petition because the Petition proposes an amendment to the City's business license ordinance governing short-term rentals, not a zoning ordinance change, like the one considered in *I'On*. The Proposed Ordinance is a business regulation, not a zoning provision, because 1) the Petition seeks to amend a business license ordinance, not a zoning ordinance, 2) Folly Beach is entitled to regulate businesses, including

[1] The challenged referendum in *I'On* proposed to rezone a 243 acre tract from Planned Development to R-1 (residential). The tract had already been through the lengthy regulatory process to be zoned Planned Development, including review by the Zoning Board and compliance with the South Carolina Comprehensive Planning Act. The referendum then sought to directly undo this process by reverting the property back to R-1. This matter involves no such changes to zoning classifications.

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short-term rentals, as part of its police powers, and 3) the Petition regulates businesses, not land use. *Greenville Cnty. v. Kenwood Enterprises, Inc*., 353 S.C. 157, 577 S.E.2d 428, 432 (2003), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005) (local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . .") (quoting *Onslow Cnty. v. Moore*, 129 N.C.App. 376, 499 S.E.2d 780, 785 (1998) (emphasis in original)). Thus, even though the Petition touches upon the *use* of land, and Folly Beach has always regulated short-term rentals through the issuance of business licenses and the exercise of its police power. Pope Affidavit, Paragraphs 4-7, Exhibit No. 5.

1. <u>The Petition is a business regulation.</u>

First, as pointed out above, the City's first ordinance addressing short-term rentals was adopted on September 28, 2010. Ordinance 19-10 established requirements for obtaining a business license to rent property on a short term basis. Ordinance 19-10, Exhibit No. 6. As such, the ordinance was codified as a business license regulation, not a zoning ordinance. It was codified as Chapter 116: Short Term Rentals and is now codified as Chapter 117: Short Term Rentals, both of which are part of Title XI: Business Regulations. Pope Affidavit, Paragraph 6, Exhibit No. 5.

Since its initial adoption in 2010, the City has amended Chapter 117 several times. It has always remained a part of the City's business regulations, and the City of Folly Beach has always regulated short-term rentals pursuant to its police powers. All short-rental regulations are included in Title XI: Business Regulations, not Title XV: Land Usage.

The Petition proposes a change to Title XI: Business Regulations. Petition, Exhibit No. 12. The Petition solely addresses the issuance of business licenses and is appropriately placed in Chapter 117: Short Term Rentals, contained in the City's Business Regulations. The Petition to

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cap business licenses for short-term rentals does not propose changing any part of the City's zoning ordinance, contained in Title XV: Land Usage of the City's Code of Ordinances.

Thus, on its face, the Petition is not a proposal to change the City's zoning code or rezone a property or district.

2. <u>The City is authorized to regulate businesses as part of its police powers.</u>

The City is clearly authorized to issue and regulate business licenses within the boundaries of the City through its police powers, as opposed to its zoning powers. The Home Rule Act specifically grants municipalities the right to "levy a business license tax on gross income." S.C. Code § 5-7-30. *See also Olds v. City of Goose Creek*, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018) ("One such power possessed by a municipality is the power to 'levy a business license tax on gross income.'"); *Town of Hilton Head Island v. Kigre, Inc.,* 408 S.C. 647, 649, 760 S.E.2d 103, 103 (2014) ("The legislature has specifically granted municipalities the authority to enact ordinances and 'levy a business license tax on gross income.'"). Indeed, nearly half the Home Rule Act addresses the right of municipalities to issue and collect fees for a business license.

Business regulations arise from the local government's police powers granted by the Home Rule Act. They are not zoning ordinances that need to be passed in compliance with South Carolina's Comprehensive Planning Act. *Kenwood Enterprises*, 577 S.E.2d at 431-433 (An ordinance establishing both a licensing scheme and location restrictions for sexually oriented businesses "was not part of the County's Zoning Ordinance . . . may be adopted pursuant to the County's general police powers and . . . the Comprehensive Planning Act does not, in effect, preempt this particular type of legislation.").

The South Carolina Comprehensive Planning Act, which governs the adoption of zoning codes, makes no reference to business licenses, and no case has ever held that municipalities must

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follow the procedures set out in the Comprehensive Planning Act for business license ordinances or the regulation of businesses.

Thus, the City, and by extension the Petition, is entirely within its right to regulate the use of land through its police powers rather than zoning. The case law is clear that local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . ." *Kenwood Enterprises,* 577 S.E.2d at 432.

The City of Folly Beach has always regulated short-term rentals pursuant to its police powers, and such regulations are included in Title XI: Business Regulations, not Title XV: Land Usage. Pope Affidavit, Paragraphs 4-7, Exhibit No. 5. In other words, as allowed by *Kenwood Enterprises*, the City has chosen to regulate short-term rentals by way of business license provisions in reliance on the City's police power, not as a zoning issue.

Likewise, the Proposed Ordinance is an amendment to the City's business license ordinance, not a zoning ordinance. As such, the holding in *I'On* has no relevance to the adoption or amendment of those business regulations by petition and referendum.

3. <u>The Petition in fact regulates businesses, not land.</u>

The Petition is undoubtedly a regulation of businesses, not land. The Petition seeks to limit the number of business licenses issued for short-term rentals. The Petition applies the regulation to the entire City. It does not limit the operation of short-term rentals to any particular district, but instead regulates the operation of short-term rentals uniformly throughout the entire City. All properties in the City, including Plaintiff's properties, remain zoned for short-term rentals. Owners can operate a short-term rental on any property in the City both now and if the Proposed Ordinance

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is adopted. The Proposed Ordinance simply places additional conditions on the issuance of licenses to operate a short-term rental. Pope Affidavit, Paragraph 18, Exhibit No. 5.

If the Petition passes, it would not restrict Plaintiff's use of the property, but instead restrict Plaintiff's ability to obtain a business license in the future, regardless of which property the Plaintiff owns. Plaintiff can still continue its short-term rental business on three of its four properties, which currently have a license. Plaintiff's property at 112 East Indian, which is not currently licensed, can still operate a short-term rental business there if the proposed cap is not reached. In addition, if the Petition passes, Plaintiff can still operate an Owner-Occupied Short Term Rental at 112 East Indian, operate a long term rental at the property, or occupy the property. In short, the Petition does not seek to rezone the property, but to create a general, city-wide business license regulation.

The regulation of business through the issuance of business licenses is not the same thing as a zoning ordinance. Licenses confer no property right, but are permits issued pursuant to the State's police power. *Army Navy Bingo, Garrison No. 2196 v. Plowde*n, 281 S.C. 226, 314 S.E.2d 339 (1984)*; Feldman v. South Carolina Tax Comm'n,* 203 S.C. 49, 26 S.E.2d 22 (1943) (liquor licenses).

Ordinances that regulate businesses, even those that control where a business may be operated, are considered business regulations adopted pursuant to the municipality's police powers, not part of the zoning ordinance. *Kenwood Enterprises,* 577 S.E.2d at 428. Business license ordinances control how a business is operated.

The goals of a zoning ordinance are entirely different. They are concerned with *development* of a piece of property, that is the structures that are to be built on the property. Zoning ordinances "must be for the general purposes of guiding *development* in accordance with existing

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and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." S.C. Code § 6-29-710(A). The goals of a zoning ordinance "include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents." *I'On*, 526 S.E.2d at 720. Zoning ordinances address building size, density of development, parking, and buffer areas. *Id.*

The Proposed Ordinance does none of these things. It simply limits the number of short-term rental business licenses city-wide. It regulates the business of short-term rentals. It does not regulate the development of any lots. Plaintiff has already obtained the permits necessary to develop its lots, and the Proposed Ordinance does not interfere with that development. It simply regulates existing and potential businesses on the Plaintiff's lots. It does not rezone the lots or even exclude short term rentals as a use on those lots. Since the Proposed Ordinance is a business regulation, not a zoning ordinance, it is not barred by the ruling in *I'On*.

The distinction between business regulation and zoning ordinances arises frequently in the context of regulating sexual oriented businesses. In *Kenwood Enterprises*, the plaintiffs, owners of a sexually oriented business, argued that Greenville County's ordinance regulating such businesses was actually a zoning ordinance that had to be adopted pursuant to the Comprehensive Planning Act. The Greenville County Ordinance "established both a licensing scheme and location restrictions for sexually oriented businesses." *Kenwood Enterprises*, 577 S.E. at 429. The licensing scheme required the business to obtain a permit from the County's zoning administrator. *Harkins v. Greenville Cnty.*, 340 S.C. 606, 533 S.E.2d 886 (2000) (considering the same ordinance). This licensing scheme was held to be unconstitutional by the Supreme Court in *Harkins*, so the only issue before the Court in *Kenwood Enterprises* were the remaining regulations

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governing the location of sexually oriented businesses. *Kenwood Enterprises*, 577 S.E.2d at 429-30. The Greenville Ordinance was initially proposed and drafted as an amendment to the County's Zoning Ordinance, but was ultimately not passed as a zoning ordinance in part because it was applied county-wide. *Id.*

Even though the Greenville County Ordinance was solely concerned with the placement of sexual oriented businesses and even though it was originally proposed as part of the County's zoning ordinance, the Supreme Court concluded it was not a zoning ordinance governed by the Comprehensive Planning Act. The Court noted that the Comprehensive Planning Act did not preempt the entire field of business regulations or "completely prohibit any other local enactments from touching upon zoning or land use." *Id.* at 432 (citing *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (2000)). In other words, just because a business regulation touches upon land use, it is not a zoning ordinance. Rather, local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . ." *Id.* To hold otherwise would require all business regulations to be adopted in accord with the Comprehensive Planning Act.

By the same token, just because the Proposed Ordinance touches upon the use of property does not make it a zoning ordinance. Because the Proposed Ordinance is directed toward the regulation of business and the local government choses to regulate a use through business licensing, then it is a business regulation, not a zoning ordinance.

4. <u>The decision in *I'On* does not bar the adoption of business regulations by initiative and referendum.</u>

Like the Plaintiff in this case, the plaintiff in *Kenwood Enterprises* cited *I'On* as supporting their argument that any business regulation that touched upon land use is a zoning act governed by the Comprehensive Planning Act. *Kenwood Enterprises*, 577 S.E.2d at 433. The Supreme Court

unequivocally rejected this argument. "To accept [plaintiffs'] expansive reading of *I'On* would necessarily eviscerate a County's ability to exercise its police power if that exercise in any way impacted land use." *Id.*

In *I'On,* the Supreme Court was concerned that the initiative and referendum process could result "in arbitrary decisions and patchwork zoning with little rhyme or reason," and would nullify carefully developed rules for adoption of zoning provisions. *I'On*, 526 S.E.2d at 721. There is no such concern in the adoption of a cap on business licenses. The cap applies to the entire City. It is nearly identical to a cap earlier proposed and considered by City Council. There is no danger of the creation of patchwork zoning. There is no danger of nullifying the rules of the Comprehensive Planning Act or the City's existing zoning ordinance. Rather, the initiative and referendum process simply allows residents to decide if the City should limit short-term rentals to 40% of all dwelling units in the City.

In summary, the Proposed Ordinance is plainly a regulation of business licenses, not a zoning ordinance. It does not rezone Plaintiff's properties or even bar the operation of a short-term rental on those properties. It simply limits the number of short-term rentals that can be operated city-wide. Plaintiff can continue to operate short-term rentals on three of its properties, and can apply for a short-term license on its newly constructed property so long as the cap is not exceeded. Because the Proposed Ordinance is a business regulation, it is not prohibited by the decision in *I'On*.

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B. NEITHER THE PROPOSED ORDINANCE NOR THE MORATORIUM INTERFERE WITH PLAINTIFF'S VESTED RIGHTS.[2]

Plaintiff makes a number of unsupported allegations that the Proposed Ordinance and Moratorium interfere with Plaintiff's vested rights and effectuate a regulatory taking of its property. This argument again confuses property rights with business license regulations.

First, as noted above, three of Plaintiff's properties are currently licensed as short-term rentals and neither the Moratorium nor the Proposed Ordinance interfere with those existing licenses. Plaintiff is entitled to renew those licenses and continue renting on those properties.

Plaintiff's fourth property at 112 East Indian Avenue is still under construction, and Plaintiff does not currently hold any business license to operate any business at that property. Thus, Plaintiff is essentially arguing it has a constitutional right to start a new business and receive a new license to operate a short-term rental license on this property. There is no such right, and no court has ever ruled that an owner has a constitutional right to start a new short-term rental business on a residential property.

Plaintiff has no vested or property right in having a license renewed without additional restrictions, much less receiving a brand new business license. "No person can acquire a vested right to continue, when once licensed, in a business, trade or profession which is subject to legislative control and regulation under the police power, as regulations prescribed for such may be changed or modified by the legislature, in the public interest, without subjecting the action to the charge of interfering with contract or vested rights." *Dantzler v. Callison*, 230 S.C. 75, 94–95, 94 S.E.2d 177, 188 (1956).

> Licenses confer no property right, but are permits issued pursuant to the State's police power. [*Army Navy Bingo, Garrison No. 2196 v. Plowde*n, 281 S.C. 226,

[2] Plaintiff's Motion for a Preliminary Injunction does not raise this issue, so Defendant would object to any ruling based on this argument. It is only raised in Plaintiff's Complaint. However, Plaintiff's attorney has indicated that it does not feel bound by the arguments and relief set forth in the Motion, so Defendant will address the argument.

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> 314 S.E.2d 339 (1984)]; *Feldman v. South Carolina Tax Comm'n,* 203 S.C. 49, 26 S.E.2d 22 (1943) (liquor licenses). A license is a special privilege and not a contract. *Heslep v. State Hwy. Dep't,* 171 S.C. 186, 171 S.E. 913 (1933). As such, it creates neither a vested nor a permanent right. *Id.* It is a creature of statute, and the rights of the licensee are only as the statute confers. *See State ex rel. Pollard v. Superior Court of Marion County,* 233 Ind. 667, 122 N.E.2d 612 (1954) (liquor licenses). The license is to be enjoyed only so long as the licensee complies with the restrictions and conditions governing its continuance. *Feldman v. South Carolina Tax Comm'n,* 203 S.C. 49, 26 S.E.2d 22 (1943).
>
> . . .
>
> Because the license is issued pursuant to the police power, the licensee takes it subject to the right of the State, at any time, for the public good, to make further restrictions and regulations.

S.C. Dep't of Revenue & Tax'n v. Rosemary Coin Machines, Inc., 331 S.C. 234, 243-44, 500 S.E.2d 176, 180-81 (Ct. App. 1998), *rev'd sub nom. S.C. Dep't of Revenue v. Rosemary Coin Machines, Inc.*, 339 S.C. 25, 528 S.E.2d 416 (2000).

"[T]his is the general rule notwithstanding the expenditure of money by the licensee in reliance thereon, and regardless of whether the term for which the license was given has expired." *Id.* (quoting *Heslep v. State Hwy. Dep't,* 171 S.C. 186, 189, 171 S.E. 913, 916 (1933)).

Likewise, South Carolina's Vested Rights Act does not provide vested rights to business license holders, much less potential business license holders. First, the Vested Rights Act confirms that "vested right" means "the right to undertake and complete the development of property under the terms and conditions of site specific development plan . . ." S.C. Code § 6-29-1520(9). Neither the Proposed Ordinance nor the Moratorium interferes with the development of Plaintiff's property. *See also* S.C. Code § 6-29-1550 ("A vested right pursuant to this section is not a person right, but attaches to and runs with the applicable real property.").

Second, the Vested Rights Act only provides a two year vested right for the "*approval* of site specific development plans." S.C. Code § 6-29-1530(A)(1) (emphasis added). While the City has approved a site specific development plan and issued a building permit for Plaintiff's property,

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it has not approved the operation of a short-term rental on that property. Nothing in the Plaintiff's submissions seeks such approval, and nothing the City's approvals address the use of the Property. As such, there are not vested rights.

Third, a business license application is not a "site specific development plan:"

> (9) "Site specific development plan" means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land-use approval designations as are used by a county or municipality.

S.C. Code Ann. § 6-29-1520. A business license is not a development plan describing with reasonable certainty the types and density or intensity of uses. Although the City has The City has not approved a development plan describing with reasonable certainty the types and density or intensity of uses for Owner's property. The Vested Rights Act has never been applied to a business license, which is not a development plan setting forth the density or intensity of uses of a property.

C. NEITHER THE PROPOSED ORDINANCE NOR THE MORATORIUM IMPLICATED AN INTEREST PROTECTED BY THE TAKINGS CLAUSE.[3]

Neither the Moratorium nor the Proposed Ordinance creates a compensable taking of the Plaintiff's property. Not to state the obvious, but even if the Moratorium or Proposed Ordinance did effectuate a taking, then Plaintiff could bring an action alleging a taking and seeking damages. Because Plaintiff has a remedy at law for a taking, this claim has no relevance to the preliminary injunctive relief presently before the court.

[3] Plaintiff's Motion for a Preliminary Injunction does not raise this issue, so Defendant would object to any ruling based on this argument. It is only raised in Plaintiff's Complaint. However, Plaintiff's attorney has indicated that it does not feel bound by the arguments and relief set forth in the Motion, so Defendant will address the argument.

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Moreover, Plaintiff can continue to short-term rent its three existing properties and has the opportunity to rent or occupy the property currently under construction. So, the Moratorium and Proposed Ordinance have only impacted one property owned by Plaintiff, 112 East Indian Avenue. The residences at 112 East Indian Avenue have not been completed and have never been rented, and Plaintiff has never held a business license to rent that property. In short, the Moratorium and Proposed Ordinance only interfere with a hypothetical future right and future use of Plaintiff's property. It does not involve interference with an existing right or use.

1. <u>A moratorium is not a taking.</u>

It is well-settled that moratoria do not effectuate a taking. Local governments can enact moratoria on business licenses. S.C. Code Ann. § 6-1-110; *Excitement Video, Inc. v. Bd. of Zoning Appeals*, No. 2004-UP-553, 2004 WL 6336793 (S.C.Ct App. Nov. 1, 2004) (specifically rejecting due process argument). Moratoria are not regulatory takings. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535* U.S. 302 (2002) (Concluding that a 32-month moratorium on land use did not constitute a regulatory taking per se, noting that "a 32-month moratorium is just not that harsh."); *Moskovic*, 2022 WL 16548948, at * 20-21.

2. <u>The anticipated denial of a future license for a future business is not a taking.</u>

A regulation does not constitute a taking if the party's interests "were not part of his title to begin with." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027, 112 S.Ct. 2886 (1992); *see Wyatt v. United States*, 271 F.3d 1090, 1097 (Fed. Cir. 2001) ("[T]he existence of a valid property interest is necessary in all takings claims."); *Moskovic v. City of New Buffalo*, No. 1:21-CV-144, 2022 WL 16548948, at *21 (W.D. Mich. Oct. 31, 2022) (Plaintiffs never possessed a vested right to a permit, so a moratorium on short-term rental licenses did not create a taking.).

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Since the operation of a short-term rental was not part of Plaintiff's title, and Plaintiff has no vested interest in starting a brand new short-term rental business, then no taking has occurred.

The Takings Clause of the Fifth Amendment does not protect businesses from business regulations, and certainly not future businesses. The Takings Clause protects the assets of a business from a taking by the government, but it does not protect regulations on the activity of a business. The general right to do business is not a property interest cognizable under the Takings Clause. *Nekrilov v. City of Jersey City*, 45 F.4th 662, 669-70 (3d Cir. 2022) (ruling that short term rental regulations do not effectuate a taking). "The plaintiff's forward-looking right to pursue their short-term rental business is not cognizable under the Takings Clause." *Id.*

As the Supreme Court held in *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, while "[t]he *assets* of a business (including its good will) unquestionably are property, and any state taking of those *assets* is unquestionably a 'deprivation' under the Fourteenth Amendment .... business in the sense of *the activity of doing business*, or *the activity of making a profit* is not property in the ordinary sense." 527 U.S. 666, 675, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999); *see also Nekrilov v. City of Jersey City*, 528 F. Supp. 3d 252 (D.N.J. 2021), aff'd, 45 F.4th 662 (3d Cir. 2022) (dismissing takings claim based on short-term rental regulations); *Antietam Battlefield KOA v. Hogan*, 2020 WL 6777590, 2020 U.S. Dist. LEXIS 215250 (D. Md. Nov. 18, 2020) (inability to conduct business is not a taking); *AJE Enter. LLC v. Justice*, 2020 WL 6940381 at *5, 2020 U.S. Dist. LEXIS 222186 at *20 (N.D. W. Va. Oct. 27, 2020); *Savage v. Mills*, 478 F. Supp. 3d 16, 31 (D. Me. Aug. 7, 2020) ("To state a taking claim, it is not enough to allege that government conduct frustrated a business enterprise .... Takings jurisprudence is directed at government conduct that denies beneficial use of *property*, meaning things like legal interests in real or personal property, not the liberty interest to engage in business

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activity."); *Talleywhacker, Inc. v. Cooper*, 465 F. Supp. 3d 523, 541 (E.D. N.C. 2020) ("the assertion of a 'general right to do business' has not been recognized as a constitutionally protected right"); *Tuchman v. Connecticut*, 185 F. Supp. 2d 169, 174–75 (D. Conn. 2002) (ability to engage in a business is not a federally protected property interest).

Recognizing a sweeping right to bring a takings claim for interference with a future business opportunity would unreasonably broaden the scope of the Takings Clause so that it applied to any instance of business regulation, which the courts have steadfastly refused to do. *See In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 283 (4th Cir. 2007) ("The recognition of such a broad 'right to do business' would be akin to that recognized in *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905) and its progeny, which the Supreme Court has long since refused to recognize."); *Nekrilov*, 528 F. Supp.3d at 268 (applying to short-term rental regulation). Put another way, the activity of operating a short-term rental business is not a "stick" in the Plaintiff's bundle of property rights protecting by the Takings Clause of the Fifth Amendment. *Rick's Amusement, Inc. v. State*, 351 S.C. 352, 570 S.E.2d 155, 158 (2001).

3. <u>Short-term rental regulations are not takings.</u>

Even if Plaintiff's loss of a potential future license was a protected property interest, Plaintiff has not suffered a taking. Plaintiff makes identical claims as were made by the landowners and potential renters in *Nekrilov*, who were seeking compensation for short-term rental regulations. The Court of Appeals disposed of all of those claims in a thorough analysis.

Plaintiff has alleged that it lost all beneficial use of its properties. This is demonstrably false. Plaintiff can continue using three of is properties as it has in the past: as a short-term rental. Plaintiff's fourth property retains significant value even if the Proposed Ordinance is adopted. Plaintiff can 1) occupy the property, 2) rent it long term, 3) rent it short-term as an owner occupied

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property, 4) rent it short-term as an Investment Short Term Rental if the cap is not exceeded, or 5) sell the property. *Nekrilov*, 45 F.4th at 670-71.

Any claim by Plaintiff that it cannot make as much money on the future rental of its properties is completely irrelevant. The central question for a total taking is not whether the regulation allows operation of the property as 'a profitable enterprise' for the owners, but whether others 'might be interested in purchasing all or part of the land' for permitted uses. *Id.* (quoting *Park Ave. Tower Assocs. V. City of New York*, 746 F.2d 135, 139 (2d Cir. 1984). Because the purchased properties may still be put to multiple economically viable uses, there has been no total taking of the purchased properties.

Any interest to operate a business on Plaintiff's property is, at best, just one of the bundle of property rights that the plaintiffs hold in their property. *Andrus v. Allard*, 444 U.S. 51, 65–66, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979) (no taking where government seizes only one "strand" in the bundle of property rights; prohibition on business of selling artifacts not a total taking where owners "retain the rights to possess and transport their property, and to donate or devise" it); *see also Penn Cent.*, 438 U.S. at 130–31, 98 S.Ct. 2646 (" 'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated .... [t]his Court focuses rather both on the character of the action and the nature and extent of the interference with rights in the parcel as a whole ...."). "There is no total taking where the government seizes only on strand in the "bundle" of property rights." *Nekrilov*, 45 F.4th at 671 (citing *Andrus*, 444 U.S. at 66). Here the single strand is use of the properties for short-term rentals. The loss of that single strand is not a compensable taking.

The Third Circuit in *Nekrilov* also examined the landowner complaints pursuant to a regulatory takings analysis under *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S.

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Ct. 2646, 57 L. Ed. 2d 631 (1978), concluding that no regulatory taking had occurred. One whose property has not been deprived of all economically beneficial use may still be entitled to compensation if the government action constitutes a partial taking under the *Penn Central* factors. The factors are: "(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action." *Murr*, 137 S. Ct. at 1943. Although the test is flexible, the *Penn Central* "inquiry turns in large part, albeit not exclusively, upon the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 540, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005). The *Penn Central* takings test serves to "identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539, 125 S.Ct. 2074.

Applying these factors, the Court in *Nekrilov* concluded that no regulatory taking arose from the short-term rental regulations. Again, lost future profits is a slender reed upon which to rest a takings claim and are not an appropriate measure of economic impact under *Penn Central*. This is particularly true when owners fail to account for other potentially profitable uses. Compensation is typically only required in cases where the value of the property has been drastically reduced. "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 67 L.Ed. 322 (1922). The inability to start a new short-term rental business does not equate to such a drastic reduction in value. *Nekrilov*, 45 F.4th at 673-74.

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With regards to investment-backed expectations, distinct, investment-backed expectations are reasonable only if they take into account the power of the state to regulate in the public interest. *Id.* The plaintiffs do not suffer a taking requiring compensation merely because "they have been denied the ability to exploit a property interest that they heretofore had believed was available for development." *Penn Cent.*, 438 U.S. at 130, 98 S.Ct. 2646. Nor does the Takings Clause mean that "once a property has been devoted to a particular use, the owner has a reasonable expectation of being able to continue with that use absent the payment of compensation." *Nekrilov*, 45 F.4th at 674-75. Of course, the Takings Clause does not protect a property that has never been put to a particular use, namely short-term rentals.

Finally, with regards to the nature of the government action, a taking is more "readily ... found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn. Cent.,* 438 U.S. at 124, 98 S.Ct. 2646 (quotation marks omitted). This is especially true when the regulation concerns housing. The Supreme Court has "consistently affirmed that States have broad power to regulate housing conditions in general." *Yee v. City of Escondido*, 503 U.S. 519, 528, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992) (citation omitted). In particular, courts are more likely to uphold a regulation that "applies generally to a broad class of properties." *Nekrilov*, 45 F.4th at 677 (quoting *Rogin v. Bensalem Tp.*, 616 F.2d 680, 690 (3d Cir. 1980)).

Numerous other courts have ruled, like *Nekrilov*, that short-term rental regulations, particularly those that grandfather in existing licenses, do not amount to an unconstitutional taking. *See, e.g., Mogan v. City of Chicago*, No. 21 C 1846, 2022 WL 4181783 (N.D. Ill. Sept. 12, 2022); *Selvaggi v. Borough of Point Pleasant Beach*, No. CV 22-00708 (FLW), 2022 WL 1664623

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(D.N.J. May 25, 2022); *Short Term Rental Owners Ass'n of Georgia, Inc. v. Cooper*, 515 F. Supp. 3d 1331 (N.D. Ga. 2021), *aff'd sub nom. Heyman v. Cooper*, 31 F.4th 1315 (11th Cir. 2022) (complete ban on short-term rentals not a taking); *Wallace v. Town of Grand Island*, 184 A.D.3d 1088, 126 N.Y.S.3d 270 (2020) (law banning all rentals of property not occupied by owner was not a taking); *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (Ct. App. 1991) (complete ban on short term rentals not a taking).

The proposed cap on short-term rental licenses looks nothing like a physical invasion of Plaintiff's land by the government. It is instead a public program adjusting the benefits and burdens of economic life for the public good. These interests far outweigh Plaintiff's perceived interest in pursuing a brand new short-term rental business in a residential property. Certainly, the Proposed Ordinance and Moratorium are not compensable takings, either as a *per se* taking or a regulatory taking under *Penn Central*.

D. THE PROPOSED ORDINANCE DOES NOT PREVENT PLAINTIFF FROM COMPLYING WITH S.C. CODE § 27-50-250.[4]

S.C. Code § 27-50-250(A) states that grantees of residential property subject to a vacation rental shall take title subject to the vacation rental agreement for all rental periods that begin no later than ninety days after the transfer of the property is recorded. In its Complaint, Plaintiff has claimed that the Proposed Ordinance would prevent property owners from complying with this section. Plaintiff further asserts that this Section amounts to a preemption of the Proposed Ordinance. Complaint, Paragraph 35(vii).

First, the Section 27-50-250(A) does not conflict with the Proposed Ordinance. Plaintiff can still sell its property and comply with Section 27-50-250(A) simply by not booking rentals

[4] Plaintiff's Motion for a Preliminary Injunction does not raise this issue, so Defendant would object to any ruling based on this argument. It is only raised in Plaintiff's Complaint. However, Plaintiff's attorney has indicated that it does not feel bound by the arguments and relief set forth in the Motion, so Defendant will address the argument.

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after an anticipated sale when the property is put on the market. Similarly, Plaintiff could easily delay any closing until all such rentals have been completed. In short, the Proposed Ordinance and Section 27-50-250(A) are easily reconciled and both can be complied with. There is certainly no language in Section 27-50-250(A) preempting the Proposed Ordinance. This is obvious from the many local governments that have adopted short-term rental caps and outright bans.

Second, as pointed out above, Plaintiff has not exhausted its administrative remedies, so Plaintiff is asserting a facial challenge to the statute. One asserting a facial challenge claims that the law is "invalid *in toto*—and therefore incapable of any valid application." *Doe v. State*, 421 S.C. 490, 502–03, 808 S.E.2d 807, 813 (2017) (quoting *Steffel v. Thompson*, 415 U.S. 452, 474, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974)). Any seller of a property subject to short-term rentals can pursue administrative remedies, such as an appeal or limited extension of a license and entirely avoid this conjured issue. In short, this argument is an "as-applied" challenge in that it is only an issue in very narrow circumstances which are not currently faced by Plaintiff. As such, it does not support Plaintiff's claims.

III. PLAINTIFF HAS NOT ASKED TO STAY THE ELECTION AND HAS NO STANDING OR GROUNDS TO STAY THE ELECTION.

Plaintiff's Motion for a Preliminary Injunction asks the Court to prohibit Defendant "from taking any action in enforcing or implementing the Petition . . ." Similarly, Plaintiff's Complaint seeks an injunction "restraining and enjoining the Defendant from taking any action in enforcing or implementing the Petition . . ." Neither the Motion nor the Complaint asks the court to enjoin the referendum vote or election itself. It merely asks that the Defendant be enjoined from enforcing the result. Since Plaintiff has not asked to enjoin the election, no such injunction should be issued.

"[T]he power to interfere by injunction to prevent the expression of the popular will by an election, if it exists, should be exercised with the greatest caution; and only where, under the well–

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recognized rule of equity, there is no other adequate legal remedy, and it is made clear that an irremediable wrong will result from holding the election. state." *Parler v. Fogle*, 78 S.C. 570, 59 S.E. 707, 709 (1907). Because the conduct of elections is so essential to a state's political self-determination, the strong public interest in having elections go forward generally weighs heavily against an injunction that would postpone an upcoming election. *See, Page v. Bartels,* 248 F.3d 175, 194–97 (3d Cir. 2001); *Chisom v. Roemer,* 853 F.2d 1186, 1189–90 (5th Cir. 1988); *United States v. Charleston Cnty.*, 318 F. Supp. 2d 302, 327–28 (D.S.C. 2002).

"The right to vote freely for the candidate of one's choice is of the essence of a Democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). The right to vote is a "fundamental political right ...preservative of all rights." *Harper v. Virginia Board of Elections,* 383 U.S. 663, 667, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (quoting *Yick Wo v. Hopkins,* 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886)). In fact, even after an adjudication on the merits, the court has been encouraged to exercise restraint in issuing injunctions. *United States v. Charleston Cnty.*, 318 F. Supp.2d at 327–28.

Plaintiff has presented no argument supporting the judicial suspension of the election on the eve of the election.

CONCLUSION

Plaintiff seeks to stop a referendum election based on an entirely false argument. Although zoning ordinances cannot be adopted by referendum, no such ban applies to business licenses. And the referendum undoubtedly proposes an amendment to the City's business license.

The amendment seeks to place a cap on the number of business licenses that the City can issue to persons who wish to operate an Investment Short Term Rental. This is a business

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regulation, not a zoning ordinance. It does not rezone Plaintiff's property or change the zoning rules for Plaintiff's property. Plaintiff can still operate an Owner Occupied Short Term Rental on the property. Plaintiff can even operate an Investment Short Term Rental on the property if the number of licenses goes below the proposed cap. In short, the Proposed Ordinance has no impact on Plaintiff's property. It only impacts Plaintiff's ability to operate a business on any property it owns. As such, it is not a zoning ordinance and is not barred by the ruling in *I'On*.

Based on the foregoing, Defendant would ask that the Court deny Plaintiff's Motion for Preliminary Injunction. If the Court is inclined to grant the Motion at all, Defendant would urge the Court to allow the election to go forward (early voting has already begun) and simply hold that the Proposed Ordinance cannot be enforced, as requested in the Plaintiff's Motion.

Respectfully submitted,

/s/ Joseph C. Wilson, IV
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(843) 834-2390
jwilson@follybeach.gov

January 26, 2023
Folly Beach, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by electronic service in the manner prescribed by the applicable Rule of Civil Procedure.

This 26th day of January, 2023.

/s/ Joseph C. Wilson, IV

EXHIBIT NO. 1

CITY OF FOLLY BEACH

1st Reading: October 11th, 2022
2nd Reading: October 18th, 2022

Introduced by: Mayor Goodwin
Date: October 11th, 2022

ORDINANCE 32-22
AN ORDINANCE TO IMPOSE A MORATORIUM ON THE ISSUANCE OF NEW BUSINESS LICENSES FOR SHORT TERM RENTALS WITHIN THE CITY OF FOLLY BEACH DUE TO PENDING CITIZEN INITIATIVE PETITION TO ESTABLISH A CAP ON SHORT TERM RENTALS.

WHEREAS, The City has received a citizen petition to limit the number of short-term rental licenses to 800; and

WHEREAS, The City has issued 1,112 short term rental licenses for the 2022 business license year as of October 18th, 2022; and

WHEREAS, The City desires to limit further increase in the number of short term rental licenses until the question posed by the petition is settle by vote of Council or general referendum.

NOW BE IT THEREFORE ORDAINED:

1. The City of Folly Beach imposes a moratorium, to be effective immediately upon ratification of this Ordinance, on the issuance of new business licenses for short term rentals within the City:
    a. Subject to Section (b) hereof, no application shall be approved for a business license to for any residential dwelling taxed at a 6% property tax rate.
    b. Subject to the limitations set forth in Section (c) excepted from the provisions of Section 1 (a) are each of the following:
        i. Renewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022.
        ii. New licenses resulting from the transfer of ownership of properties that were legally licensed as short term rentals as of October 18th, 2022.
        iii. New licenses for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to the ratification of this ordinance.
        iv. New licenses for a short term rental for which an application has been filed with the City of Folly Beach prior to ratification of this Ordinance and that has been deemed sufficient for approval.
    c. In order to be expected from this moratorium, all exceptions listed in Section (b) must comply with the following requirements:

i. Applications must be submitted in a timely manner. With regards to licenses falling under Subsection (b)(iii), applications must be submitted within thirty days of ratification of this Ordinance; and
ii. Applications must be deemed sufficient for approval by City staff; and
iii. Applications must be for a license to rent:
    1. An existing residential unit that is currently available to rent or will be within thirty days of ratification of this Ordinance; or
    2. A planned residential unit for which an application for a building permit, sufficient for approval by City staff, has been submitted within thirty days of ratification of this Ordinance and which shall be available to rent within twelve months of the ratification of this Ordinance.
    3. A residential unit for which a building permit has been issued within thirty days of ratification of this Ordinance and for which a certificate of occupancy shall be issued and the unit made available to rent within twelve months of the ratification of this Ordinance.

2. The Mayor will propose to the City Council on or prior to January 11th, 2023 the text of any ordinances required to be acted upon by the petition.

3. This ordinance shall take effect immediately upon adoption and shall expire automatically on September January 11th, 2023 unless earlier repealed.

ADOPTED this 18th day of October 2022, at Folly Beach, South Carolina.

Ayes: _____ **Nays:** _____ **Abstains:** _____

_____ _____

Municipal Clerk **Tim Goodwin, Mayor**

EXHIBIT NO. 2

CITY OF FOLLY BEACH

1st Reading: December 13th, 2022
2nd Reading: January 10th, 2023

Introduced by: Mayor Goodwin
Date: December 13th, 2022

ORDINANCE 034-22

AN ORDINANCE TO EXTEND A MORATORIUM ON THE ISSUANCE OF NEW BUSINESS LICENSES FOR SHORT TERM RENTALS WITHIN THE CITY OF FOLLY BEACH DUE TO VERIFICATION OF A CITIZEN INITIATIVE PETITION TO ESTABLISH A CAP ON SHORT TERM RENTALS.

WHEREAS, The City has received a citizen petition to limit the number of short-term rental licenses for the rental non primary residences to 800; and

WHEREAS, The Charleston County Board of Elections has verified that the petition contains the required number of signatures to trigger Council action; and

WHEREAS, The City has issued approximately 1,210 short term rental licenses for the 2022/2023 business license year as of December 9, 2022 with approximately 1,058 of those licenses issued for the rental of non primary residences; and

WHEREAS, The City desires to limit further increase in the number of short term rental licenses issued for the rental of non primary residences until the question posed by the petition is settled by vote of Council or general referendum; and

WHEREAS, The City approved a moratorium on the issuance of new rental licenses for non primary residences on 10/18/22 that expires on January 11, 2023.

NOW BE IT THEREFORE ORDAINED:

1. The City of Folly Beach imposes a moratorium, to be effective immediately upon ratification of this Ordinance, on the issuance of new business licenses for short term rentals of non primary residences within the City:
    a. Subject to Section (b) hereof, no application shall be approved for a business license to for any residential dwelling taxed at a 6% property tax rate.
    b. Subject to the limitations set forth in Section (c) excepted from the provisions of Section 1 (a) are each of the following:
        i. Renewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022.
        ii. New licenses resulting from the transfer of ownership of properties that were legally licensed as short term rentals as of October 18th, 2022.
        iii. New licenses for a short term rental for which an application, deemed sufficient

for approval, has been filed with the City of Folly Beach prior to October 18th, 2022.

iv. New licenses for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to the ratification of this ordinance.

c. In order to be excepted from this moratorium under Section 1.(b)(iv), all applications must comply with the following requirements:
   i. Applications must be deemed sufficient for approval by City staff; and
   ii. Applications must be for a license to rent:
      1. An existing residential unit that is currently available to rent or will be within thirty days of ratification of this Ordinance; or
      2. A planned residential unit for which an application for a building permit, sufficient for approval by City staff, has been submitted within thirty days of ratification of this Ordinance and which shall be available to rent within twelve months of the ratification of this Ordinance.
      3. A residential unit for which a building permit has been issued within thirty days of ratification of this Ordinance and for which a certificate of occupancy shall be issued and the unit made available to rent within twelve months of the ratification of this Ordinance.

2. This ordinance shall take effect immediately upon adoption and shall expire automatically on April 15th, 2023, or five business days after any special election called to adopt the ordinance proposed by petition, unless earlier repealed.

ADOPTED this 13h day of December 2022, at Folly Beach, South Carolina.

Ayes: _____ **Nays:** _____ **Abstains:** _____

Municipal Clerk **Tim Goodwin, Mayor**

EXHIBIT NO. 3

CITY OF FOLLY BEACH

1st Reading: December 13th, 2022
2nd Reading:

Introduced by: Mayor Goodwin
Date: December 13th, 2022

ORDINANCE 033-22

AN ORDINANCE AMENDING THE FOLLY BEACH CODE OF ORDINANCES CHAPTER 117 (SHORT TERM RENTALS) BY INCLUDING LANGUAGE PROPOSED BY CITIZEN PETITION TO DEFINE OWNER OCCUPIED AND INVESTMENT SHORT TERM RENTAL LICENSES AND LIMIT THE NUMBER OF INVESTMENT SHORT TERM RENTAL LICENSES TO EIGHT HUNDRED

§ 117.01 PURPOSE, APPLICABILITY, AND DEFINITIONS.

(A) The purpose of this chapter is to regulate the use of residential units as short term rentals in order to:

(1) Protect the integrity of the city's neighborhoods and the quality of life of its citizens;
(2) Establish a system to track the short term rental inventory in the city;
(3) To protect the health and safety of occupants of short term rental units;
(4) To ensure a level playing field for individuals in the short term rental market; and
(5) To protect the residential character of the residential districts of the city.

FAILED

(B) The following definitions apply:

DESTINATION CLUBS. Destination or private vacation clubs ("destination clubs") are classified as private and/or exclusive membership organizations or commercial businesses primarily engaged in providing short term overnight accommodations and related services for its club members with non-ownership interest who seek alternative options to standard vacation home rentals. ***DESTINATION CLUBS*** typically own or lease properties from the owners on a long term basis, provide those properties in a variety of locations to its members on a short term basis, and model a membership access structure where its members purchase membership levels granting access to properties and personalized services. Properties offered by destination clubs to a member for less than 30 days are considered short term rentals whether the destination club is an owner of record or a lessee. All references to "owners" in this chapter apply to destination clubs.

HOUSE EXCHANGE PROGRAMS. The occasional occupancy of a residential occupancy assessed by Charleston County at a 4% property tax rate by someone other than the owner of the residence while the owner is temporarily absent from the residence, and no monetary compensation is paid to the owners for such occupancy. ***HOUSE EXCHANGE PROGRAMS*** are not short term rentals.

TIME SHARES. "Vacation time sharing plans" as defined in S.C. Code § 27-32-10(9) are not short-term rentals. However, any "vacation time sharing lease plan" as defined in S.C. Code § 27-32-10(8) that is less than three years is considered a short term rental. "Vacation multiple ownership interests" as defined in S.C. Code § 27-32-250(1) are not short term rentals.

INVESTMENT SHORT TERM RENTAL (ISTR) - A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.

OWNER-OCCUPIED SHORT TERM RENTAL (OSTR) – A property and/or dwelling unit, in whole or part, licensed for short term rentals whose owner claims the licensed property to be the owner's primary residence as evidenced by: (a) current S.C. drivers license or S.C. identification card, (b) the address where they are, or may be, enrolled and registered to vote in local, state and federal elections and (c) the physical address used for the purpose of filing local, state and federal income taxes.

RENTAL OCCUPANT. Any person who, in exchange for compensation paid, occupies a dwelling unit for less than 30 days.

SHORT TERM RENTALS. Residential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling. Tourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered ***SHORT TERM RENTALS***.
(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 027-22, passed 9-13-22)

§ 117.02 SHORT TERM RENTAL BUSINESS LICENSES.

(A) The City is authorized to issue two classes of short term rental business licenses:
(1) Investment Short Term Rental business license, and
(2) Owner-Occupied Short Term Rental business license.

FAILED

(B) Owner Occupied Short Term Rental Business License: There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.

(C) Investment Short Term Rental CAP.
(1) The maximum number of permitted Investment Short Term Rental business licenses, city wide, shall be no more than 800, henceforth referred to as the CAP.
(a) Upon enactment the CAP shall be set at 800.
(2) No New Investment Short Term Rentals shall be permitted unless the total number of Investment Short Term Rentals is below the CAP.
(a) Exception: After enactment, all existing Investment Short Term Rental business License holders in good standing may continue to renew annually, even if the initial number of Investment Short Term Rentals exceeds the CAP.
(3) Investment Short Term Rental Wait List: If demand for Investment Short Term Rental business licenses exceeds the CAP a wait list will be established and maintained by the City of Folly Beach.
(a) When the number of allowable Investment Short Term Rental business licenses falls below the CAP, a license shall be offered by US Mail to the next qualified applicant on the wait list.
(b) If the applicant fails or neglects to complete an application for an Investment Short Term Rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.

(D) Non- transferable.
(1) Investment Short Term Rental wait list status terminates upon transfer of property and is non-transferable.
(2) Investment Short Term Rental business licenses terminate upon transfer of property and are non-transferable.
(3) Owner Occupied Short Term Rental business licenses terminate upon transfer of property and are non- transferable.

§ 117.02~~2~~3 LICENSE, REGISTRATION, AND TAX REQUIREMENTS.

Any owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.

(A) *Business license.* A business license must be obtained and renewed annually by the submittal of a form and fee as established by the city for each residential dwelling unit or portion thereof offered as a short term rental

(1) No business license shall be issued for the rental of a residential unit which is planned or under construction until a certificate of occupancy is issued for the unit.

(2) A business license shall only be issued to owners of a residential unit. Lessees of residential dwelling units may not apply for a business license to rent the unit.

(3) A designated agent may apply for a short term rental business license on behalf of an owner. An application for a business license submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner including name, address, phone number, email, and any other information as required on the application form.

(B) *Rental registration permit.* A rental registration permit must be obtained and renewed annually by the submittal of a form and fee as established by the city for each residential dwelling unit or portion thereof offered as a short term rental.

(1) *Annual registration.* The rental registration permit application shall be completed prior to June 1 of each year.

(a) No new business license to operate a short term rental shall be issued prior to the approval of a rental registration permit.

(b) Renewals of valid prior year business licenses shall be allowed prior to the approval of a rental registration permit. Failure to complete a rental registration permit application within 30 days of the business license renewal date shall be grounds for revocation of the license.

(2) *Annual fee.* The fee for a rental registration permit shall be set by City Council and shall be reviewed periodically.

(3) A rental registration permit shall only be issued to owners of a residential unit. Lessees of a residential dwelling unit may not apply for a rental registration permit.

(4) A designated agent may apply for a rental registration permit on behalf of an owner. An application for a rental registration permit submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner, including name, address, phone number, email, and any other information as required on the application form.

(5) *Change in registered information.* The owner or designated agent of a rental dwelling already registered with the city shall re-register within 60 days after any change occurs in the registration information. There shall be no additional fee upon change of registration information except that a new owner of a registered dwelling, upon application for a new business license, shall re-register the dwelling and pay the appropriate fee within 60 days of assuming ownership.

(6) *Information required.* Application for rental registration permit shall contain the following information:

(a) The street address of the rental dwelling unit;

(b) The unit number if applicable;

(c) The number of bedrooms in each rental dwelling unit;

(d) The number of parking spaces provided on site as well as a site plan showing the location of all on site parking spaces. One on site parking space must be provided for each bedroom being rented. This requirement shall not apply to:

1. New and renewed permits issued to residential units located in a multi-family housing development.

FAILED

2. New and renewed permits issued to residential units approved by the city for resident only parking signs in the right-of-way.

3. Renewed permits issued to residential units with a valid business license and rental registration permit before September 13, 2022. Rental registration permits for such properties may be renewed without the required parking until such time as the ownership of the property changes.

(e) The maximum overnight occupancy of each rental dwelling unit, which shall not exceed two persons per bedroom, plus two additional people per rental dwelling unit, except as allowed under an exception under § 164.03-01(C);

(f) The type of wastewater system (septic or sewer). If the property is serviced by a septic system, the owner must certify that the system is protected from parking;

(g) The name, mailing address, business phone number, personal phone number, and business address of the owner and local agent;

(h) The physical address and email address where the owner and local agent will accept notices and orders from the city and acknowledgment that service by U.S. Mail and/or transmission to the provided email addresses will constitute acceptable service of any notice, notice of violation, ordinance summons, or ticket;

(i) Certification that the owner has read applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts;

(j) Certification that a copy of the parking diagram provided to the city for the property as well as a summary of applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented;

(k) Certification that tenants listed on any rental agreement shall receive a copy of the parking diagram provided to the city for the property as well as a summary of applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented. The summary of applicable ordinances shall be in a form determined by the city, and made available to all owners of rental property;

(l) Proof of payment from the owner or designated agent for payment of local, county, and state taxes due on short term rental accommodations;

(m) Certification that the owner is aware that short term rental licensees shall be subject to strikes issued against the license when the owner, agent, occupant, or guest has been convicted of any violation of the requirements of this chapter or other city ordinances related to the use of the property as a short term rental, and that three strikes during any rolling twelve-month period can result in suspension, revocation, or non-renewal of the license;

(n) Certification by the owner verifying the presence of smoke alarms, carbon monoxide monitors, fire extinguishers, the number of bedrooms, the number of parking spaces, the provision of trash receptacles, the posting of address and house numbers, and posting of rules and regulations, and, if present, that sprinklers are operational; and

(o) Documentation in the form of Charleston County property records or a certificate of occupancy confirming the number of bedrooms offered for rent.

(7) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be responsible for operating the rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner, and any notice served on the agent shall be deemed to have been served upon the owner of record.

(a) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

FAILED

(b) Non owner agents must be licensed by the State of South Carolina as an attorney, real estate agent, broker in charge, or property manager. Employees under the direct supervision of attorneys, real estate agents, brokers in charge, or property managers licensed by the State of South Carolina may be designated as local agents.

(c) The agent shall be required to be able to physically respond to the site upon notification from the city within 60 minutes in case of emergency or need by the city for entry into the property.

(8) *More than one owner or ownership by entity.* Where more than one person has an ownership interest in a short term rental, the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required shall be provided for the organization owning the rental dwelling, and for the president, general manager, or other chief executive officer of the organization.

(C) *Taxes.* Owners of short term rentals are subject to local, county, and state taxes, including, but not limited to, sales, use, and accommodations taxes, and are liable for the payment thereof as established by state law and the city code of ordinances.

(D) *Violations and penalties.*

(1) *Violations.* Violations of this chapter include but are not limited to:

(a) Operating a short term rental without complying with the requirements of this chapter and the city code of ordinances;

(b) Advertising a property as being available as a short term rental without first complying with the requirements of this chapter;

(c) Operating a short-term rental without a business license, registration permit, and accommodations tax account;

(d) Advertising a short-term rental without listing the business license number and rental registration permit number;

(e) Operating a short-term rental in such a manner that individual rooms are rented at the same time under separate rental contracts;

(f) Advertising a short term rental as being available for more overnight occupants than have been permitted pursuant to this chapter;

(g) Expanding the allowable occupancy of a short term rental without obtaining a new permit;

(h) Advertising more short term rental units on a property than have been permitted pursuant to this chapter. For example, advertising a single-family dwelling as accommodating multiple short term rentals is not permitted;

(i) Advertising a property as a short term rental or “event house” for events or parties with more than 25 people in attendance;

(j) Offering a short-term rental in any zoning district for fewer than two consecutive nights;

(k) Failure to post the business license number, rental registration permit number, allowable overnight occupancy, and city approved beach rules prominently within a rental unit;

(l) Failure to obtain a rental registration permit within 30 days of renewing a business license, failure to provide accurate information for the registration of rental dwellings, failure to provide information required by the application form;

(m) Failure to complete a new rental registration permit application within 60 days of a change in ownership;

(n) Failure of the designated agent listed on the rental registration permit to respond physically to the site within 60 minutes of notification from the city of an emergency;

(o) Failure to maintain, and provide to the city, any and all information required in § 117.02(A);

(p) Failure to provide tenants listed on any rental agreement information as required under § 117.02(B);

(q) Failure to inspect and repair a failed septic system as required under § 55.07;

FAILED

(r) Operating a business out of a short term rental or otherwise using a short term rental for non-residential use except for allowable home occupations, e-commerce, and remote work; and

(s) Operating a short term rental that has received three strikes within any twelve-month rolling period.

1. The number strikes shall be reset upon a change of ownership that results in no overlap with prior common ownership.

2. For the purpose of determining the total number of strikes, all convictions stemming from violations occurring within a single rental contract period shall be considered one instance. In no case shall strikes exceed one per rental contract period.

3. All strikes issued prior to the date of this section shall not be counted for the purposes of license revocation.

(2) *Penalties.* No permit may be issued or approved unless the requirements of this chapter, or any ordinance adopted pursuant to it, are complied with. A violation of this chapter may result in the following penalties:

(a) Any person violating any provision of this chapter shall be deemed guilty of a civil offense and shall be subject to a fine of up to $500 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violations shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this chapter.

(b) Denial, revocation, suspension, or non-renewal of a business license pursuant to §§ 110.14 or 110.15 and in accordance with the appeal procedures set forth in § 110.16.

(c) Revocation, suspension, or non-renewal of the short term rental business license, in accordance with the appeal procedures set forth in § 110.16, for three strikes during a rolling twelve-month period.

1. The license will be assessed a strike when the owner, agent, occupant, or guest of the property has been convicted of any violation of the requirements of this chapter or any other city ordinances related to the use of the property as a short term rental including but not limited to noise, trash, parking, litter, dune protection, animals at large, and sea turtle violations and when the registered agent of the property is given notice of the strike as set forth herein.

2. For the purpose of determining the total number of strikes, each strike issued upon conviction shall be considered in effect on the date of the original offense and all convictions related to offenses occurring within a single rental contract period shall be considered one strike. In no case shall strikes exceed one per rental contract period.

3. Strikes will re-set upon the transfer of the property.

4. The city will provide notice of each strike to the registered agent of the property as follows:

A. First strike: a description of the violationand resultant conviction, and a warning that progressive action shall be taken by the city in the case of further violations.

B. Second strike: a description of the violation and resultant conviction, and a warning that the city shall initiate revocation of the rental license in the case of further violations.

C. Third strike: a description of the violation and resultant conviction, and notice of the initiation of license revocation procedures.

(d) Any violation of a noise ordinance that occurs on the property will result in a notice that the owner is strongly encouraged to install noise monitoring.

(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 32-19, passed 11-12-19; Am. Ord. 033-21, passed 11-9-21; Am. Ord. 027-22, passed 9-13-22)

§ 117.03~~4~~4 ADDITIONAL REQUIREMENTS FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep the following for city inspection and copying for a period of one year:

(1) The name, address, and other contact information of each signatory on the rental agreement;

FAILED

(2) A copy of the city approved rental regulations summary, signed by each signatory of the rental agreement.

(3) A document signed by the owner and/or agent responsible for renting the dwelling, certifying the number of persons intended to occupy the dwelling.

(4) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.

(B) The owner and/or agent shall provide the following for each person signing a rental agreement as a responsible party for a short term rental:

(1) The address of the short term rental and emergency contact numbers;

(2) The name and contact information for the owner or designated agent; and

(3) A copy of the parking diagram provided to the city for the property as well as a copy of the city's rules and regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts.

(C) Each residential dwelling unit may contain only one short term rental. Individual rooms in short term rentals may not be rented under separate contracts at the same time. For example, a single family home or individual multi-family unit may only be rented as a single short term rental under one contract.

(D) Any events held on the premises of a short term rental shall meet the following requirements:

(1) Must follow any applicable special event notification rules established by the city in § 153.05 for events on private property;

(2) Shall be subject to all applicable provisions of the noise regulations in §§ 131.30 through 131.35; and

(3) May not feature mobile food trucks, carts, or other outdoor retailers offering products for sale or in exchange for donations. Caterers are allowed at events on the premises of short term rentals.

FAILED

(E) All special events held after October 11, 2022, on the premises of a short term rental shall meet the following requirements:

(1) May not exceed 25 people; and

(2) May not include outdoor amplified music, including bands, deejays, music broadcast through speakers and electronic musical instruments.

(3) These requirements do not apply to events hosted by the owner of the property for which the owner is on site for the duration the event, the owner has completed the required special event notification, and for which no compensation has been paid for the event or the use of the house.

RATIFIED this _____ day of _____2022, at Folly Beach, South Carolina, in City Council duly assigned.

ATTEST:

Municipal Clerk **Tim Goodwin, Mayor**

EXHIBIT NO. 4

CHAPTER 117: SHORT TERM RENTALS

Section

117.01 Purpose, applicability, and definitions

117.02 License, registration, and tax requirements

117.03 Additional requirements for short term rentals

Cross-reference:

Noise from short term rental properties, see § 131.31

§ 117.01 PURPOSE, APPLICABILITY, AND DEFINITIONS.

(A) The purpose of this chapter is to regulate the use of residential units as short term rentals in order to:

(1) Protect the integrity of the city's neighborhoods and the quality of life of its citizens;

(2) Establish a system to track the short term rental inventory in the city;

(3) To protect the health and safety of occupants of short term rental units;

(4) To ensure a level playing field for individuals in the short term rental market; and

(5) To protect the residential character of the residential districts of the city.

(B) The following definitions apply:

DESTINATION CLUBS. Destination or private vacation clubs ("destination clubs") are classified as private and/or exclusive membership organizations or commercial businesses primarily engaged in providing short term overnight accommodations and related services for its club members with non-ownership interest who seek alternative options to standard vacation home rentals. ***DESTINATION CLUBS*** typically own or lease properties from the owners on a long term basis, provide those properties in a variety of locations to its members on a short term basis, and model a membership access structure where its members purchase membership levels granting access to properties and personalized services. Properties offered by destination clubs to a member for less than 30 days are considered short term rentals whether the destination club is an owner of record or a lessee. All references to "owners" in this chapter apply to destination clubs.

HOUSE EXCHANGE PROGRAMS. The occasional occupancy of a residential occupancy assessed by Charleston County at a 4% property tax rate by someone other than the owner of the residence while the owner is temporarily absent from the residence, and no monetary compensation is paid to the owners for such occupancy. ***HOUSE EXCHANGE PROGRAMS*** are not short term rentals.

TIME SHARES. "Vacation time sharing plans" as defined in S.C. Code § 27-32-10(9) are not short-term rentals. However, any "vacation time sharing lease plan" as defined in S.C. Code § 27-32-10(8) that is less than three years is considered a short term rental. "Vacation multiple ownership interests" as defined in S.C. Code § 27-32-250(1) are not short term rentals.

RENTAL OCCUPANT. Any person who, in exchange for compensation paid, occupies a dwelling unit for less than 30 days.

SHORT TERM RENTALS. Residential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling. Tourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered ***SHORT TERM RENTALS***.

(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 027-22, passed 9-13-22)

§ 117.02 LICENSE, REGISTRATION, AND TAX REQUIREMENTS.

Any owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.

(A) *Business license.* A business license must be obtained and renewed annually by the submittal of a form and fee as established by the city for each residential dwelling unit or portion thereof offered as a short term rental

(1) No business license shall be issued for the rental of a residential unit which is planned or under construction until a certificate of occupancy is issued for the unit.

(2) A business license shall only be issued to owners of a residential unit. Lessees of residential dwelling units may not apply for a business license to rent the unit.

(3) A designated agent may apply for a short term rental business license on behalf of an owner. An application for a business license submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner including name, address, phone number, email, and any other information as required on the application form.

(B) *Rental registration permit.* A rental registration permit must be obtained and renewed annually by the submittal of a

form and fee as established by the city for each residential dwelling unit or portion thereof offered as a short term rental.

(1) *Annual registration.* The rental registration permit application shall be completed prior to June 1 of each year.

(a) No new business license to operate a short term rental shall be issued prior to the approval of a rental registration permit.

(b) Renewals of valid prior year business licenses shall be allowed prior to the approval of a rental registration permit. Failure to complete a rental registration permit application within 30 days of the business license renewal date shall be grounds for revocation of the license.

(2) *Annual fee.* The fee for a rental registration permit shall be set by City Council and shall be reviewed periodically.

(3) A rental registration permit shall only be issued to owners of a residential unit. Lessees of a residential dwelling unit may not apply for a rental registration permit.

(4) A designated agent may apply for a rental registration permit on behalf of an owner. An application for a rental registration permit submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner, including name, address, phone number, email, and any other information as required on the application form.

(5) *Change in registered information.* The owner or designated agent of a rental dwelling already registered with the city shall re-register within 60 days after any change occurs in the registration information. There shall be no additional fee upon change of registration information except that a new owner of a registered dwelling, upon application for a new business license, shall re-register the dwelling and pay the appropriate fee within 60 days of assuming ownership.

(6) *Information required.* Application for rental registration permit shall contain the following information:

(a) The street address of the rental dwelling unit;

(b) The unit number if applicable;

(c) The number of bedrooms in each rental dwelling unit;

(d) The number of parking spaces provided on site as well as a site plan showing the location of all on site parking spaces. One on site parking space must be provided for each bedroom being rented. This requirement shall not apply to:

1. New and renewed permits issued to residential units located in a multi-family housing development.

2. New and renewed permits issued to residential units approved by the city for resident only parking signs in the right-of-way.

3. Renewed permits issued to residential units with a valid business license and rental registration permit before September 13, 2022. Rental registration permits for such properties may be renewed without the required parking until such time as the ownership of the property changes.

(e) The maximum overnight occupancy of each rental dwelling unit, which shall not exceed two persons per bedroom, plus two additional people per rental dwelling unit, except as allowed under an exception under § 164.03-01(C);

(f) The type of wastewater system (septic or sewer). If the property is serviced by a septic system, the owner must certify that the system is protected from parking;

(g) The name, mailing address, business phone number, personal phone number, and business address of the owner and local agent;

(h) The physical address and email address where the owner and local agent will accept notices and orders from the city and acknowledgment that service by U.S. Mail and/or transmission to the provided email addresses will constitute acceptable service of any notice, notice of violation, ordinance summons, or ticket;

(i) Certification that the owner has read applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts;

(j) Certification that a copy of the parking diagram provided to the city for the property as well as a summary of applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented;

(k) Certifications that tenants listed on any rental agreement shall receive a copy of the parking diagram provided to the city for the property as well as a summary of applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented. The summary of applicable ordinances shall be in a form determined by the city, and made available to all owners of rental property;

(l) Proof of payment from the owner or designated agent for payment of local, county, and state taxes due on short term rental accommodations;

(m) Certification that the owner is aware that short term rental licensees shall be subject to strikes issued against the license when the owner, agent, occupant, or guest has been convicted of any violation of the requirements of this chapter or other city ordinances related to the use of the property as a short term rental, and that three strikes during any rolling twelve-month period can result in suspension, revocation, or non-renewal of the license;

(n) Certification by the owner verifying the presence of smoke alarms, carbon monoxide monitors, fire extinguishers, the number of bedrooms, the number of parking spaces, the provision of trash receptacles, the posting of address and house numbers, and posting of rules and regulations, and, if present, that sprinklers are operational; and

(o) Documentation in the form of Charleston County property records or a certificate of occupancy confirming the number of bedrooms offered for rent.

(7) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be responsible for operating the rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner, and any notice served on the agent shall be deemed to have been served upon the owner of record.

(a) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

(b) Non owner agents must be licensed by the State of South Carolina as an attorney, real estate agent, broker in charge, or property manager. Employees under the direct supervision of attorneys, real estate agents, brokers in charge, or property managers licensed by the State of South Carolina may be designated as local agents.

(c) The agent shall be required to be able to physically respond to the site upon notification from the city within 60 minutes in case of emergency or need by the city for entry into the property.

(8) *More than one owner or ownership by entity.* Where more than one person has an ownership interest in a short term rental, the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required shall be provided for the organization owning the rental dwelling, and for the president, general manager, or other chief executive officer of the organization.

(C) *Taxes.* Owners of short term rentals are subject to local, county, and state taxes, including, but not limited to, sales, use, and accommodations taxes, and are liable for the payment thereof as established by state law and the city code of ordinances.

(D) *Violations and penalties.*

(1) *Violations.* Violations of this chapter include but are not limited to:

(a) Operating a short term rental without complying with the requirements of this chapter and the city code of ordinances;

(b) Advertising a property as being available as a short term rental without first complying with the requirements of this chapter;

(c) Operating a short-term rental without a business license, registration permit, and accommodations tax account;

(d) Advertising a short-term rental without listing the business license number and rental registration permit number;

(e) Operating a short-term rental in such a manner that individual rooms are rented at the same time under separate rental contracts;

(f) Advertising a short term rental as being available for more overnight occupants than have been permitted pursuant to this chapter;

(g) Expanding the allowable occupancy of a short term rental without obtaining a new permit;

(h) Advertising more short term rental units on a property than have been permitted pursuant to this chapter. For example, advertising a single-family dwelling as accommodating multiple short term rentals is not permitted;

(i) Advertising a property as a short term rental or “event house” for events or parties with more than 25 people in attendance;

(j) Offering a short-term rental in any zoning district for fewer than two consecutive nights;

(k) Failure to post the business license number, rental registration permit number, allowable overnight occupancy, and city approved beach rules prominently within a rental unit;

(l) Failure to obtain a rental registration permit within 30 days of renewing a business license, failure to provide accurate information for the registration of rental dwellings, failure to provide information required by the application form;

(m) Failure to complete a new rental registration permit application within 60 days of a change in ownership;

(n) Failure of the designated agent listed on the rental registration permit to respond physically to the site within 60 minutes of notification from the city of an emergency;

(o) Failure to maintain, and provide to the city, any and all information required in §117.02(A);

(p) Failure to provide tenants listed on any rental agreement information as required under §117.02(B);

(q) Failure to inspect and repair a failed septic system as required under §55.07;

(r) Operating a business out of a short term rental or otherwise using a short term rental for non-residential use except for allowable home occupations, e-commerce, and remote work; and

(s) Operating a short term rental that has received three strikes within any twelve-month rolling period.

1. The number strikes shall be reset upon a change of ownership that results in no overlap with prior common ownership.

2. For the purpose of determining the total number of strikes, all convictions stemming from violations occurring within a single rental contract period shall be considered one instance. In no case shall strikes exceed one per rental contract period.

3. All strikes issued prior to the date of this section shall not be counted for the purposes of license revocation.

(2) *Penalties.* No permit may be issued or approved unless the requirements of this chapter, or any ordinance adopted pursuant to it, are complied with. A violation of this chapter may result in the following penalties:

(a) Any person violating any provision of this chapter shall be deemed guilty of a civil offense and shall be subject to a fine of up to $500 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violations shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this chapter.

(b) Denial, revocation, suspension, or non-renewal of a business license pursuant to §§110.14 or 110.15 and in accordance with the appeal procedures set forth in § 110.16.

(c) Revocation, suspension, or non-renewal of the short term rental business license, in accordance with the appeal procedures set forth in § 110.16, for three strikes during a rolling twelve-month period.

1. The license will be assessed a strike when the owner, agent, occupant, or guest of the property has been convicted of any violation of the requirements of this chapter or any other city ordinances related to the use of the property as a short-term rental, including but not limited to noise, trash, parking, litter, dune protection, animals at large, and sea turtle violations and when the registered agent of the property is given notice of the strike as set forth herein.

2. For the purpose of determining the total number of strikes, each strike issued upon conviction shall be considered in effect on the date of the original offense and all convictions related to offenses occurring within a single rental contract period shall be considered one strike. In no case shall strikes exceed one per rental contract period.

3. Strikes will re-set upon the transfer of the property.

4. The city will provide notice of each strike to the registered agent of the property as follows:

A. First strike: a description of the violationand resultant conviction, and a warning that progressive action shall be taken by the city in the case of further violations.

B. Second strike: a description of the violation and resultant conviction, and a warning that the city shall initiate revocation of the rental license in the case of further violations.

C. Third strike: a description of the violation and resultant conviction, and notice of the initiation of license revocation procedures.

(d) Any violation of a noise ordinance that occurs on the property will result in a notice that the owner is strongly encouraged to install noise monitoring.

(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 32-19, passed 11-12-19; Am. Ord. 033-21, passed 11-9-21; Am. Ord. 027-22, passed 9-13-22)

§ 117.03 ADDITIONAL REQUIREMENTS FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep the following for city inspection and copying for a period of one year:

(1) The name, address, and other contact information of each signatory on the rental agreement;

(2) A copy of the city approved rental regulations summary, signed by each signatory of the rental agreement.

(3) A document signed by the owner and/or agent responsible for renting the dwelling, certifying the number of persons intended to occupy the dwelling.

(4) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.

(B) The owner and/or agent shall provide the following for each person signing a rental agreement as a responsible party for a short term rental:

(1) The address of the short term rental and emergency contact numbers;

(2) The name and contact information for the owner or designated agent; and

(3) A copy of the parking diagram provided to the city for the property as well as a copy of the city's rules and regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts.

(C) Each residential dwelling unit may contain only one short term rental. Individual rooms in short term rentals may not be rented under separate contracts at the same time. For example, a single family home or individual multi-family unit may only be rented as a single short term rental under one contract.

(D) Any events held on the premises of a short term rental shall meet the following requirements:

(1) Must follow any applicable special event notification rules established by the city in §153.05 for events on private property;

(2) Shall be subject to all applicable provisions of the noise regulations in §§131.30 through 131.35; and

(3) May not feature mobile food trucks, carts, or other outdoor retailers offering products for sale or in exchange for donations. Caterers are allowed at events on the premises of short term rentals.

(E) All special events held after October 11, 2022, on the premises of a short term rental shall meet the following requirements:

(1) May not exceed 25 people; and

(2) May not include outdoor amplified music, including bands, deejays, music broadcast through speakers and electronic musical instruments.

(3) These requirements do not apply to events hosted by the owner of the property for which the owner is on site for the duration the event, the owner has completed the required special event notification, and for which no compensation has been paid for the event or the use of the house.

(Ord. 26-17, passed 1-9-18; Am. Ord. 027-22, passed 9-13-22)

EXHIBIT NO. 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-0264
FOLLY EAST INDIAN CO., LLC,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF AARON POPE
vs.	)	
	)	
CITY OF FOLLY BEACH,	)	
	)	
Defendant.	)	
	)	

COMES NOW, Aaron Pope, and swears or affirms under the penalty of perjury that:

1. I am older than eighteen years of age and am competent to make this Affidavit. The statements in this Affidavit are based on my own personal knowledge.

2. I started working for the City of Folly Beach in 2002, and, as part of my employment, I have learned a great deal about the City's operations and the island in general. I am currently the City Administrator, having served in the role for over two years. Prior to serving in this capacity, I served at various times, sometimes concurrently, as Zoning Administrator (approximately 15 years), Business License Official (approximately 10 years), and Deputy Administrator (approximately 5 years).

3. In all these roles, I have been involved in issues related to the City's efforts to manage short-term rentals.

4. When I began work with business licenses (approximately 2007), the City required a business license for all owners who rented their property.

5. On September 28 2010, Ordinance 19-10 established further requirements for obtaining a business license to rent property on a short term basis by requiring an additional rental registration in addition to requiring a business license. As such, the ordinance was codified as a

business license regulation, not a zoning ordinance. It was originally codified as Chapter 116: Short Term Rentals, which is part of Title XI: Business Regulations. The City's Zoning Ordinance is codified as Title XV: Land Use.

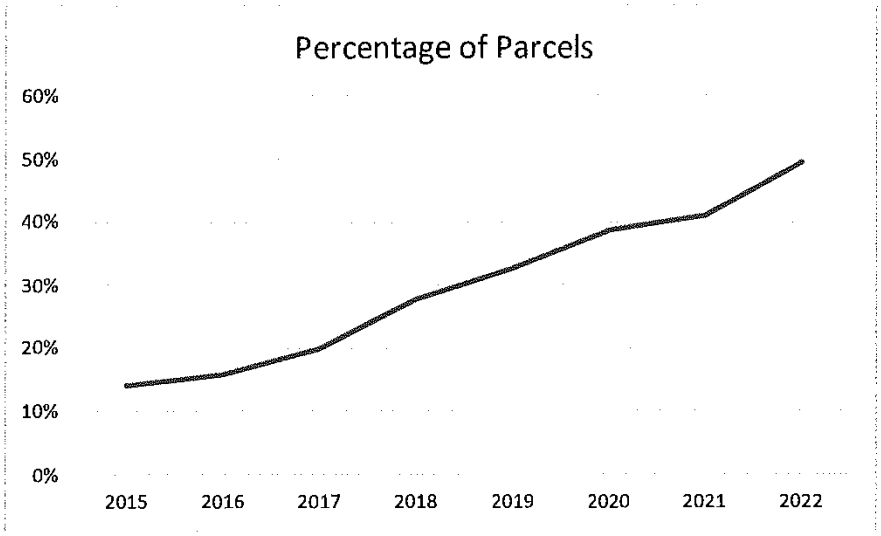
6. Since 2010, and through several amendments, the City has continued to regulate short-term rentals through its business license ordinances and not as a zoning ordinance. It was renumbered as Chapter 117: Short Term Rentals in 2017. The short-term rental ordinances have never been adopted in compliance with the South Carolina Comprehensive Planning Act, and, to my knowledge, no one has ever complained to the City that we should have been adopting these business regulations as part of our zoning code.

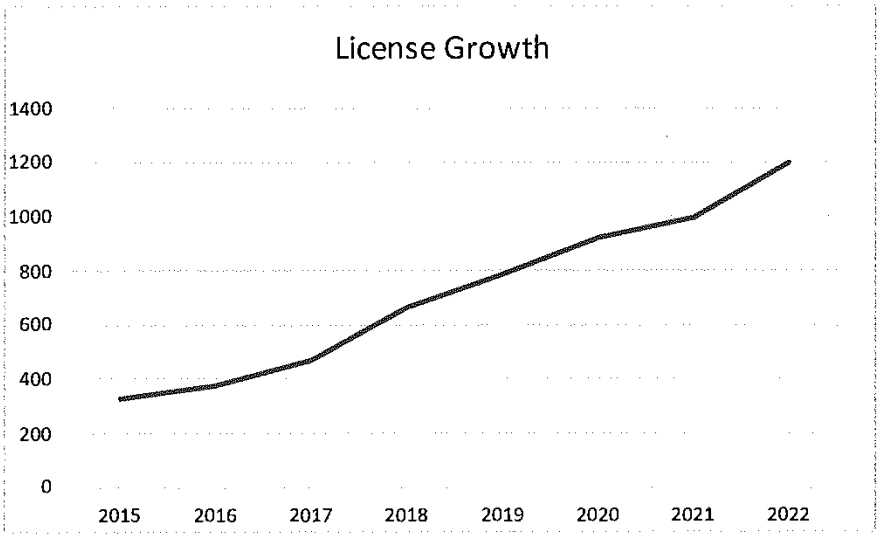
7. In 2018, the City amended Chapter 117: Short Term Rentals to address various nuisance/quality of life issues including noise and special events as well as changes to licensing and registration requirements. Although the ordinance mitigated some of the community issues related to rentals, the number of rentals has continued to rise.

8. The City has generated a great deal of data on this growth. License Growth Table and Charts, Exhibit A. To summarize, short-term rental licenses grew from 329 in 2015 to 923 in 2020, nearly tripling over five years. From 2020 to 2022 the number of licenses continued to increase to 1,196. The number of short term rentals now represents 49% of all parcels taxed at the residential rate by Charleston County.

Year	License Count	Increase over Prior Year	Percent Increase	Residential Parcels	Percentage of Parcels
2015	329	N/A	N/A	2341	14%
2016	374	45	14%	2354	16%
2017	473	99	26%	2358	20%
2018	663	190	40%	2389	28%
2019	784	121	18%	2391	33%
2020	923	139	18%	2389	39%
2021	993	70	8%	2424	41%

2022	1196	203	20%	2425	49%
*2017/2018 STR software implementation - increase in compliance created large jump in licenses					





9. In May of 2021, the City of Folly Beach began to examine new amendments to Chapter 117: Short Term Rentals and established a Short Term Rental Committee made of staff, citizens, and City Board members. The Committee reviewed national case studies and other literature on short-term rental regulations, including caps on the issuance of short-term business

licenses, which are commonly used throughout the country. Among other things, the Short Term Rental Committee recommended a cap on the number of short-term rental business licenses.

10. In June of 2022, the Mayor proposed amendments to Chapter 117 based on the committee's recommendations. The Mayor's proposal included limiting short-term rental business licenses for non-owner occupied properties to 800, referred to as "non-restricted rentals" and "Investment Short Term Rentals" in the pending Petition. Under the Mayor's proposal, there would be no limit on business licenses issued to owner-occupied properties, which are properties claimed as legal primary residences by owners and are referred to as "Owner-Occupied Short Term Rentals" in the Petition. In addition, under the Mayor's proposal, no existing short-term rental business licenses would have been revoked, and all licenses associated with legal primary residences could have been reissued to the next owner of the property. Ordinance 26-22 reflecting this cap was voted down by City Council on June 28, 2022.

11. On October 12, 2022, the City received the Petition that is the subject of this lawsuit. The Petition proposed a cap on short-term rental business licenses issued to Investment Short Term Rentals of 800. Like the ordinance proposed by the Mayor and considered by the City, the Petition 1) exempts Owner-Occupied Short Term Rentals from the cap, and 2) allows current holders of Investment Short Term Rentals business licenses to keep those licenses until they sell their property. No business licenses are transferable under the petition.

12. The Petition contained over 450 signatures, significantly more than the 15% of registered voters required. On November 29, 2022, the Petition was certified by the Charleston County Election Commission.

13. Pursuant to South Carolina Code § 5-17-30, the City can either adopt the ordinance proposed in the Petition or hold an election for all qualified electors to vote on the Petition. The

Petition came before City Council on December 13, 2022, and City Council failed to enact the ordinance proposed by the Petition. Consequently, by State law, the City *must* hold an election on the Petition. S.C. Code § 5-17-30.

14. On October 18, 2022, after receiving the Petition, the City Council adopted a Moratorium on the issuance of new business licenses for short-term rentals of Investment Short Term Rentals. Like the Petition, the Moratorium did not impact the issuance of business licenses to Owner-Occupied Short Term Rentals and also allowed owners of existing business licenses for Investment Short Term Rentals to renew those licenses and for new owners of any previously licensed property to obtain a license. The Moratorium was adopted with an expiration date of January 11, 2023. On January 10, 2023 City Council adopted a new Moratorium which extended to April 15, 2023 or 5 business days after any special election that was scheduled.

15. As noted in the Complaint, Plaintiff owns four adjacent lots on East Indian Avenue. Three of those lots, 114 East Indian, 116 East Indian, and 118 East Indian currently have licensed short-term rentals on them. These existing licenses are not impacted by the ordinance proposed in the Petition or the by the Moratorium. Both the Petition and the Moratorium allow existing short-term rental business licenses to be renewed, so each of these properties can continue to be operated as licensed short-term rentals until they are sold.

16. Plaintiff is currently constructing two houses on 112 East Indian Avenue. The houses are not complete, and no Certificate of Occupancy has been issued on these houses. Plaintiff has never held or even applied for a short-term rental business license for this property or these incomplete houses.

17. Plaintiff's Complaint implies that the City has approved the use of houses at 112 East Indian Avenue as short-term rentals. This is not the case. Plaintiff has not submitted any site

specific development plans for this property to be used as rentals, and the City has not approved any site specific development plans for this property for these properties to be used as rentals. Plaintiff did apply for two building permits for the houses, and the City did approve those permits. But nothing in those building permits references or approves any use for those houses. Certainly, neither the application nor the permits reference short-term rentals. In short, building permits approve the construction of the residences. They do not approve the use of those residences as short-term rentals.

18. Although they have not been previously approved for rentals, the new houses are still eligible to be used as short term rentals should the Petition succeed. Short term rentals remain an allowable use under the zoning code. However, the licenses required to conduct that use will be limited and the owner may need to join a waitlist prior to obtaining a license.

FURTHER AFFIANT SAYETH NOT.

Aaron Pope, AICP

January 25, 2023

Sworn and subscribed before me
this 25th day of JANUARY, 2023

Eric Lutz
Notary Public for South Carolina.

ERICA LUTZ NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 09-28-2023

My commission expires 09-28-23.

EXHIBIT NO. 6

CITY OF FOLLY BEACH

CODIFY CITY OF FOLLY BEACH

Introduced by: Mayor Goodwin
Date: July 22, 2010

1st Reading: July 12, 2010
2nd Reading September 28, 2010

ORDINANCE NO. 19-10

AN ORDINANCE CREATING SECTION 116 OF THE FOLLY BEACH CODE OF ORDINANCES ESTABLISHING REQUIREMENTS FOR OBTAINING A BUSINESS LICENSE TO RENT PROPERTY ON A SHORT TERM BASIS.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains as follows:

SECTION 1. That the Folly Beach Code of Ordinances, Title XI: Business Regulations be amended by the creation of Chapter 116: Short Term Rentals:

§ 116.01 Registration of Short Term Rentals Required

In order to receive a business license for the rental of residential property all owners of rental dwellings shall register the rental property with the city on an application in a form provided by the city. At the time an application is filed a registration fee in an amount established from time to time by City Council shall be paid in full.

(A) Annual Registration

The annual registration date shall be January first of each year and all fees required by this article shall be paid on or before February fifteenth of each year.

(B) Registry of New Rental Dwellings

The owner of a new rental dwelling or of any dwelling newly converted to a rental dwelling shall register the rental dwelling prior to obtaining a business license to rent the property.

(C) Change in Registered Information

The owner of a rental dwellings already registered with the City shall re-register within sixty (60) days after any change occurs in the registration information. A new owner of a registered dwelling shall re-register the dwelling within sixty (60) days of assuming ownership.

(D) Information Required

Application for rental registration shall contain the following information:

1) The address of the rental dwelling.
2) The number or rental dwelling units.
3) The name, residence address, business phone, personal phone, and business address or the owner and local agent.
4) The address where the owner and/or local agent will accept notices and orders from the City.
5) Acknowledgement that the owner has read applicable Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts.
6) Acknowledgement that the owner has prominently posted within the property a summary of applicable Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts.
7) Acknowledgement that tenants listed on any rental agreements will receive a summary of Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts.

    a) The summary of applicable Codes shall be in a form determined by the City and made available to all owners of rental property.

(E) Inaccurate or incomplete register information

It shall be a violation of this article for an owner to provide inaccurate information for the register of rental dwellings or to fail to provide information required by the application.

(F) Designation of Local Agent

The owner of a rental dwelling shall designate a responsible agent who shall be legally responsible for operating such rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner and any notice served on the agent shall be deemed to have been served upon the owner of record.

1) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.
2) The agent shall be required to be able to physically respond to the site within thirty (30) minutes in case of emergency or need by the City for entry into the property.

(G) More Than one Owner or Ownership by Entity

Where more than one person has an ownership interest, the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required for the register shall be provided for the organization owning the rental dwelling and for the president, general manager, or other chief executive officer of the organization.

§ 116.02 Records Required for Short Term Rentals

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep for the purpose of City inspection and copying for a period of one (1) year the following:

(1) The name, address, and other contact information of each signatory on the rental agreement.
(2) A document signed by the person responsible for renting the dwelling certifying the number of persons intended to occupy the dwelling.

(B) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.
(C) Compliance with this section may be achieved through the inclusion of the required information into a rental agreement or lease signed by each occupant.

§ 116.03 Definitions

As used in this article, the following words and terms shall have the meanings respectively ascribed to them:

(1) "Occupant" means any person, other than a legal or equitable title holder, occupying or possessing all or part of a short term rental property.
(2) "Rental Dwelling" or "rental property" means any residential dwelling which is in whole or in part occupied by one or more person(s) pursuant to an oral or written agreement for monetary or any other consideration, but which person(s) is not acquiring an ownership interest in the dwelling. This shall include single-family, two family, and multi family properties and short term rentals.
(3) "Short term rentals" means any residential property providing transient accommodations for periods of less than one month.
(4) "Tenant" means any person, other than a legal or equitable title holder, occupying or possessing all or part of a rental dwelling.

(H) The annual registration date shall be January first of each year and all fees required by this article shall be paid on or before February fifteenth of each year.

ADOPTED this _28th_ day of September, 2010, at Folly Beach, South Carolina.

Ayes: 6 **Nays: 0** **Abstains:**

Timothy Goodwin, Mayor **Attest: Municipal Clerk**

Council Member Rich ***Council Member Ellis***

Council Member Beck ***Council Member Hume***

Council Member Clamp ***Council Member McCarty***

EXHIBIT NO. 7

CITY OF FOLLY BEACH

1st Reading: December 12, 2017
2nd Reading: January 9, 2018

Introduced by: Mayor Tim Goodwin
Date: August 8, 2017

ORDINANCE 26-17

AN ORDINANCE AMENDING CHAPTER 110 (GENERAL LICENSING PROVISIONS), CHAPTER 117 (SHORT TERM RENTALS), CHAPTER 163 (ZONING DISTRICTS), CHAPTER 164 (USE STANDARDS), OF THE FOLLY BEACH CODE OF ORDINANCES BY AMENDING LICENSING AND REGISTRATION REQUIREMENTS FOR SHORT TERM RENTALS, CREATING STANDARDS FOR EVENTS HELD ON PROPERTIES USED AS SHORT TERM RENTALS, DEFINING SHORT TERM RENTALS AS AN ALLOWABLE USE AND ALLOWING PENALTIES TO BE ASSESSED TO THE OWNERS OF SHORT TERM RENTALS FOR NUISANCE VIOLATIONS.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that the Folly Beach Code of Ordinance be amended as follows:

NOTE: ~~Deleted material struck through~~; new material in red.

CHAPTER 110, GENERAL LICENSING PROVISIONS

SECTION 110.05 REGISTRATION REQUIRED.

(A) The owner, agent or legal representative of every business subject to this chapter, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year. A new business shall be required to have a business license prior to operation within the city.

(B) Application shall be on a form provided by the License Official which shall contain the Social Security Number and/or the Federal Employer's Identification Number, the South Carolina Retail License Number (if applicable), the business name as reported on the South Carolina income tax return, and all information about the applicant and the business deemed appropriate to carry out the purpose of this chapter by the License Official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross income figures.

(C) The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments and personal property taxes on business property due and payable to the city have been paid.

(D) No business license shall be issued until the applicant first submits documents necessary to establish compliance with the Zoning Ordinance, Building Code, Electrical Code, Mechanical

Code, Plumbing Code, Roofing Code and other regulatory Codes as adopted by City Council and, if applicable, the Short Term Rental Ordinance, Chapter 117.

(E) Insurance agents and brokers shall report the name of each insurance company for which a policy was issued and the total premiums collected for each company for each type of insurance coverage on a form approved by the License Official. An insurance agent not employed by an insurance company or employed by more than one insurance company shall be licensed as a broker.

(Ord. 34-06, passed 9-26-06)

SECTION 110.16 DENIAL OF LICENSE.

(A) The License Official shall deny a license to an applicant when the License Official determines:

(1) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact;

(2) The activity for which a license is sought is unlawful or constitutes a public nuisance;

(3) The applicant, licensee or prior licensee or the person in control of the business has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude, or an unlawful sale of merchandise or prohibited goods;

(4) The applicant, licensee or prior licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the municipality or in another jurisdiction;

(5) The applicant, licensee or prior licensee or the person in control of the business is delinquent in the payment to the municipality of any tax or fee; ~~or~~

(6) The license for the business or for a similar business of the licensee in the municipality or another jurisdiction has been denied, suspended or revoked in the previous license year~~.~~, or

(7) The applicant, licensee, or a prior licensee for a Short Term Rental has failed to comply with the requirements of Chapter 117 or has received four or more notifications that an occupant or guest has received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period. The number of allowable notices and violations shall be reset upon a change of ownership where there is no overlap with previous ownership.

(B) A decision of the License Official shall be subject to appeal to City Council as herein provided. The ~~D~~denial shall be written with reasons stated.

(C) Licensees or businesses that begin or continue operations after the denial of a business license will be immediately subject to prosecution for doing business without a license. An appeal will not stay any prosecution.

SECTION 110.17 SUSPENSION OR REVOCATION OF LICENSE.

(A) ~~When the License Official determines that~~ A business license may be suspended or revoked when:

(1) A license has been mistakenly or improperly issued or issued contrary to law; or

(2) A licensee has breached any condition upon which the license was issued or has failed to comply with the provision of this chapter; or

(3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application, including any communications made by the licensee or its agent in the application process; or

(4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or

(5) A licensee has engaged in an unlawful business activity, including but not limited to a violation of City, County, State or Federal law, ordinance or regulation; or

(6) The licensee's operation of the business constitutes a public nuisance; or

(7) The applicant, licensee, or a prior licensee for a Short Term Rental has failed to comply with the requirements of Chapter 117 or has received four or more notifications that an occupant or guest has received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period. The number of allowable notices and violations shall be reset upon a change of ownership which results in no overlap with prior common ownership; or

(8) A licensee is delinquent in the payment to the City of any tax or fee.

(B) When the License Official determines that a violation of Section 110.17(A) has occurred, ~~The~~ the License Official shall give written notice to the licensee or the person in control of the business within the City by personal service or certified mail that the license is suspended pending a hearing before City Council for the purpose of determining whether the license should be revoked. In the case of Short Term Rental businesses, notice shall be given to the person listed as agent on the City of Folly Beach Rental Registration Form. The notice shall state the time and place at which the hearing is to be held, which shall be within 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter. A licensee may surrender the business license and cease doing business prior to the revocation hearing date. The License Official has the discretion to cancel the hearing after surrender of the business license.

(C) Licensees or businesses that continue operations after the revocation of a business license shall be subject to prosecution for doing business without a license the earlier of: (1) 45 days after notice of suspension; (2) ten days after issuance of the City Council's written decision after revocation hearing; or (3) immediately following the surrender of a license.
(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7-12-16)

CHAPTER 117, SHORT TERM RENTALS

~~117.01 REGISTRATION OF SHORT TERM RENTALS REQUIRED.~~

~~In order to receive a business license for the rental of residential property all owners of rental dwellings shall register the rental property with the city on an application in a form provided by the city. At the time an application is filed a registration fee in an amount established from time to time by City Council shall be paid in full.~~

~~(A) *Annual registration.* The annual registration date shall be January 1 of each year and all fees required by this chapter shall be paid on or before February 15 of each year.~~

(B) *Registry of new rental dwellings.* The owner of a new rental dwelling or of any dwelling newly converted to a rental dwelling shall register the rental dwelling prior to obtaining a business license to rent the property.

(C) *Change in registered information.* The owner of a rental dwellings already registered with the city shall re-register within 60 days after any change occurs in the registration information. A new owner of a registered dwelling shall re-register the dwelling within 60 days of assuming ownership.

(D) *Information required.* Application for rental registration shall contain the following information:

(1) The address of the rental dwelling;

(2) The number or rental dwelling units;

(3) The name, residence address, business phone, personal phone, and business address or the owner and local agent;

(4) The address where the owner and/or local agent will accept notices and orders from the city;

(5) Acknowledgment that the owner has read applicable Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts;

(6) Acknowledgment that the owner has prominently posted within the property a summary of applicable Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts;

(7) Acknowledgment that tenants listed on any rental agreements will receive a summary of Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts.

(a) The summary of applicable codes shall be in a form determined by the city and made available to all owners of rental property.

(E) *Inaccurate or incomplete register information.* It shall be a violation of this article for an owner to provide inaccurate information for the register of rental dwellings or to fail to provide information required by the application.

(F) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be legally responsible for operating such rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner and any notice served on the agent shall be deemed to have been served upon the owner of record.

(1) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

(2) The agent shall be required to be able to physically respond to the site within 30 minutes in case of emergency or need by the city for entry into the property.

(G) *More than one owner or ownership by entity.* Where more than one person has an ownership interest, the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required for the register shall be provided for the organization owning the rental dwelling and for the president, general manager, or other chief executive officer of the organization.

(Ord. 19-10, passed 9-28-10)

SECTION 117.02 RECORDS REQUIRED FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep for the purpose of city inspection and copying for a period of one year the following:

~~(1) The name, address, and other contact information of each signatory on the rental agreement;~~
~~(2) A document signed by the person responsible for renting the dwelling certifying the number of persons intended to occupy the dwelling.~~
~~(B) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.~~
~~(C) Compliance with this section may be achieved through the inclusion of the required information into a rental agreement or lease signed by each occupant.~~
~~(Ord. 19-10, passed 9-28-10)~~
~~SECTION 117.03 DEFINITIONS.~~
~~For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~
~~***OCCUPANT.*** Any person, other than a legal or equitable title holder, occupying or possessing all or part of a short term rental property.~~
~~***RENTAL DWELLING or RENTAL PROPERTY.*** Any residential dwelling which is in whole or in part occupied by one or more person(s) pursuant to an oral or written agreement for monetary or any other consideration, but which person(s) is not acquiring an ownership interest in the dwelling. This shall include single-family, two-family, and multi-family properties and short term rentals.~~
~~***SHORT TERM RENTALS.*** Any residential property providing transient accommodations for periods of less than one month.~~
~~***TENANT.*** Any person, other than a legal or equitable title holder, occupying or possessing all or part of a rental dwelling.~~
~~(Ord. 19-10, passed 9-28-10)~~

SECTION 117.01 PURPOSE, APPLICABILITY AND DEFINITIONS

(A) The purpose of this Chapter is to regulate the use of residential units as short term rentals in order to:

1. Protect the integrity of the City's neighborhoods and the quality of life of its citizens;
2. Establish a system to track the short term rental inventory in the City;
3. To protect the health and safety of occupants of short term rental units;
4. To ensure a level playing field for individuals in the short term rental market; and
5. To protect the residential character of the Residential Districts of the City.

(B) The following definitions apply:

1. Short Term Rentals are residential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling. Tourist Accommodations including hotels, motels, inns, and bed and breakfasts are not considered Short Term Rentals.
2. Rental Occupant shall mean any person who, in exchange for compensation paid, occupies a dwelling unit for less than 30 days.

SECTION 117.02 LICENSE, REGISTRATION, AND TAX REQUIREMENTS

Any owner wishing to operate a Short Term Rental must maintain a current business license, comply with rental registration requirements, and make proper payment of local, county, and state taxes.

(A) *Business License*. Business licenses must be renewed annually by the submittal of a form and fee as established by the City. The business license account number and the maximum occupancy for each short term rental must be prominently displayed in the rental unit as well as in any advertisement for the rental of the unit excluding signs posted on the rental property.

(B) *Rental Registration*. Each new Short Term Rental license application must be accompanied by a rental registration application form provided by the City and must be renewed on an annual basis. At the time an application is filed or renewed a registration fee in an amount established from time to time by City Council shall be paid in full.

(1) *Annual registration.* The registration fee shall be paid prior to February 1st of each year. Any registration fee paid after this date as a renewal from the previous year shall be doubled.

(2) *Change in registered information.* The owner of a rental dwellings already registered with the City shall re-register within 60 days after any change occurs in the registration information. A new owner of a registered dwelling shall re-register the dwelling within 60 days of assuming ownership.

(3) *Information required.* Application for rental registration shall contain the following information:

(a) The address of the rental dwelling;

(b) The number of rental dwelling units;

(c) The number of bedrooms in each rental dwelling;

(d) The number of parking spaces provided on site for each rental dwelling;

(e) The maximum overnight occupancy of each rental dwelling which shall not exceed 2 persons per bedroom plus 2 additional people per rental dwelling except as allowed under an exception under Section 164.03-01(C);

(f) The type of wastewater system (septic or sewer);

(g) The names, mailing addresses, business phone numbers, personal phone numbers, and business addresses of the owner and local agent;

(h) The address where the owner and/or local agent will accept notices and orders from the City;

(i) Certification that the owner has read applicable Folly Beach Ordinances including (but not limited to regulations regarding noise, trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtles and golf carts;

(j) Certification that the owner has prominently posted within the property a summary of applicable Folly Beach Ordinances including (but not limited to) regulations regarding noise, trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtles and golf carts;

(k) Certifications that tenants listed on any rental agreement shall receive a summary of Folly Beach Ordinances including (but not limited to) regulations regarding noise, trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtles and golf carts. The summary of applicable ordinances shall be in a form determined by the City and made available to all owners of rental property.

(1) Certification that the owner is aware that, upon receiving four or more notifications that occupants or guests have received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period, penalties may be assessed including business license revocation or nonrenewal.

(4) *Inaccurate or incomplete registration information.* It shall be a violation of this article for an owner to provide inaccurate information for the registration of rental dwellings or to fail to provide information required by the application form.

(5) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be responsible for operating such rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner and any notice served on the agent shall be deemed to have been served upon the owner of record.

(a) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

(b) The agent shall be required to be able to physically respond to the site within 30 minutes in case of emergency or need by the City for entry into the property.

(6) *More than one owner or ownership by entity.* Where more than one person has an ownership interest in a Short Term Rental the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required for the register shall be provided for the organization owning the rental dwelling and for the president, general manager, or other chief executive officer of the organization.
(Ord. 19-10, passed 9-28-10)

(C) *Taxes.* Owners of Short Term Rentals are subject to local, county, and state taxes including but not limited to sales, use, and accommodations taxes and are liable for the payment thereof as established by state law and the Folly Beach Code of Ordinances.

(D) *Violations and penalties.*

(1) *Violations.* It shall be a violation of this Chapter:

(a) to operate a Short Term Rental without complying with the requirements of this Chapter and the Code of the City of Folly Beach,

(b) to expand the allowable occupancy of a Short Term Rental without obtaining a new permit,

(c) to advertise a property as being available as a Short Term Rental without first complying with the requirements of this Chapter,

(d) to advertise a Short Term Rental as being available for more overnight occupants than have been permitted pursuant to this Chapter,

(e) to advertise more Short Term Rental units on a property than have permitted pursuant to this Chapter,

(f) to advertise a property as a Short Term Rental or "event house" for events or parties with more than 49 people in attendance, or

(g) to operate a Short Term Rental that has received four or more notifications of occupant or guest violations of noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period.

(i) The number of allowable notices and violations shall be reset upon a change of ownership which results in no overlap with prior common ownership

(ii) For the purpose of determining the total number of notifications to the owner, all written warnings and violations occurring within a single rental contract period shall be considered one instance. In no case shall notifications to the owner exceed one per rental contract period.

(2) *Penalties.* No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. A violation of this chapter can result in a civil penalty pursuant to Section 110.99, revocation or suspension of a business license pursuant to Section 110.17, or the non-renewal of the license.

Short Term Rental licensees shall be subject to graduated penalties as the licensee receives notifications that an occupant or guest has received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period. For the purpose of determining the total number of notifications to the owner, all written warnings and violations occurring within a single rental contract period shall be considered one instance. In no case shall notifications to the owner exceed one per rental contract period. The licensee may respond within 10 days of receiving the certified notice with evidence that demonstrates that the notice was issued in error. The graduated penalties are:

(a) First violation- a description of the violation committed by the tenant and a warning that progressive action shall be taken by the City in the case of further violations.

(b) Second violation- a description of the violation committed by the tenant and a second warning that progressive action shall be taken by the City in the case of further violations.

(c) Third violation- a description of the violation committed by the tenant, a civil penalty of $500.00 dollars, and a third warning that progressive action shall be taken by the City in the case of further violations.

(d) Fourth violation- a description of the violation committed by the tenant and initiation by the City of business license revocation procedures pursuant to Section 110.17 or notice that the license will not be renewed.

SECTION 117.03 ADDITIONAL REQUIREMENTS FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep for the purpose of City inspection and copying for a period of one year the following:

(1) The name, address, and other contact information of each signatory on the rental agreement;

(2) A document signed by the owner and/or agent responsible for renting the dwelling certifying the number of persons intended to occupy the dwelling.

(3) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.

(B) The owner and/or agent shall provide each person signing a rental agreement as a responsible party for a Short Term Rental the following:

(1) The address of the Short Term Rental and emergency contact numbers;

(2) The name and contact information for the owner or designated agent; and

(3) A copy of the City's rules and regarding noise, trash, parking, alcohol on the beach, litter, dune protection, sea turtles, requirements for special events, maximum occupancy, and golf carts.

(C) Individual rooms in Short Term Rentals may not be rented under separate contracts at the same time.

(D) Any events held on the premises of a Short Term Rental shall meet the following requirements:

(1) Must follow any applicable special event notification rules established by the City in Section 153.05 of the Folly Beach Code of Ordinances for events on private property;

(2) Shall be subject to all applicable provisions of the noise regulations in Sections 131.30 through 131.35 ; and

(3) May not feature mobile food trucks, carts, or other outdoor retailers offering products for sale or in exchange for donations. Caterers are allowed at events on the premises of Short Term Rentals.

(E) All Special Events held after August 1, 2018 on the premises of a Short Term Rental shall meet the following requirements:

(1) May not exceed 49 people; and

(2) May not include outdoor amplified music to include bands, deejays, music broadcast through speakers and electronic musical instruments.

(3) These requirements do not apply to events hosted by the owner of the property for which the owner is on site for the duration the event, the owner has completed the required special event notification, and for which no compensation has been paid for the event or the use of the house.

CHAPTER 163 ZONING DISTRICTS

SECTION 163.02-02 RESIDENTIAL DISTRICTS AND SPECIFIC PURPOSES

(A) *Single-Family Residential (RSF).* The RSF District is established as a district in which the principal use of land is single-family detached residential development at moderate densities. The regulations of this district are intended to prohibit any use that substantially interferes with the development of single-family detached dwellings and that is detrimental to the quiet residential nature of the district. Complementary uses customarily found in residential zoning districts, such as community centers, religious institutions under 3,500 square feet in area, private docks, parks, and playgrounds are permitted. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Accessory dwelling units are not permitted. The minimum lot area for development is 10,500 square feet and the maximum density allowed is four dwelling units per acre. Maximum lot coverage in the district is 35% of a lots high ground area.

(B) *Two-Family Residential (RTF).* The RTF District is established as a district in which the principal use of land is single-family detached and two-family residential development at moderate densities. The regulations of this district are intended to prohibit any use that interferes with the quiet residential nature of the district. Complementary uses customarily found in residential zoning districts, including religious institutions under 3,500 square feet in area, civic institutions less than 5,000 square feet in area, community centers, private docks, parks, and playgrounds are permitted. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Accessory dwelling units are not permitted. The minimum lot area for development is 10,500 square feet and the maximum density allowed is eight units per acre. Duplex dwellings located upon a single lot may be detached structures. Maximum lot coverage in the district is 35% of a lots high ground area.

(C) *Multi-Family Residential (RMF).* The RMF district is established and intended to encourage a wide range of medium and high density housing types, especially multiple family development, although single-family dwellings and two-family dwellings are also allowed. In addition to the range of complementary uses typically found in residential zoning districts, limited neighborhood-serving nonresidential uses (e.g., day cares, parking lots, and Type I retail uses) are permitted as special exception uses (See Table 164.01, Table of Allowed Uses), but accessory dwelling units are prohibited. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. The minimum lot area for all permitted uses (except townhouses) is 10,500 square feet. Individual townhouse units may be located on 3,500 square foot lots, provided the townhouse development includes the minimum open space set-aside required in § 166.03, Open Space Standards. Multi-family development shall include at least 3,500 square feet of lot area per dwelling unit, but in no instance shall multi-family development exceed 12 units per acre. Maximum lot coverage in the district is 35% of a sites total high ground.

SECTION 163.03-02 NONRESIDENTIAL DISTRICTS AND SPECIFIC PURPOSES.

(A) *Downtown Commercial (DC).*

(1) *Purpose and intent.* The DC District is established as a commercial focal point for Folly Beach characterized by a vibrant mix of retail, service, restaurant, entertainment, cultural, governmental, civic, residential, and visitor-service uses unique to the City. The district is intended to:

(a) Protect and enhance the unique aesthetic and architectural character of Folly Beach's downtown;

(b) Allow for a diverse mix of business, office, institutional, recreational, and residential uses above street-level;

(c) Encourage pedestrian-friendly development;

(d) Require new development that is consistent with the existing template of downtown development; and

(e) Promote the economic and development potential of Folly Beach while also protecting its unique character.

(2) *District-specific standards.* In addition to the other standards in this ZDO, development in the DC District shall comply with the following:

(a) Mixed-use structures in the DC District shall not include residential uses on the ground floor of the structure.

(b) Commercial uses on ground floor shall not be converted to a residential use.

(c) Nonconforming lots of record lawfully established on or before April 13, 1999 may be developed in accordance with the standards in § 168.04-01(C), Lots in the DC and IC Districts.

(d) Residential uses located above a nonresidential use in the DC District shall not exceed two stories or 35 feet above base flood elevation.

(e) Lot coverage is limited to a maximum of 50% of the lots high ground area.

(f) Except where exempted by the Design Review Board, new development on lots in the DC district fronting Center Street shall be built to the edge of the sidewalk or right-of-way edge.

(g) New development in the "A" Flood Zone shall be:

1. Elevated and enclose the entire perimeter of the structure below the base flood elevation with solid walls which are hydrostatically vented and aesthetically incorporated into the overall design of the structure; or

2. Floodproofed in lieu of elevating.

(h) New development on lots fronting Center Street located in the "V" Flood Zone shall be elevated and shall enclose the entire perimeter of the structure below the base flood elevation with solid breakaway walls which are aesthetically incorporated into the overall design of the structure.

(i) Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances.

(B) *Island Commercial (IC).*

(1) *Purpose and intent.* The IC district is established to provide for a "resort center" within the City that provides a variety of visitor-oriented business services, including visitor lodging, visitor attractions, and support facilities. The district is intended to accommodate visitor-oriented structures such as hotels, bed and breakfast inns, and time share units. Indoor and outdoor recreational facilities, parking, and low-intensity retail uses are also appropriate. This district is intended to foster pedestrian access particularly along the beachfront, in order to minimize traffic impacts to surrounding residential areas. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Multi-family dwellings, accessory dwelling units, and intense commercial uses are prohibited. The minimum lot area for residential uses is 10,500 square feet and 5,250 square feet for all other uses. Duplex dwellings located upon a single lot may be detached structures. Lot coverage is limited to 35% of the lots high ground area.

(2) *District-specific standards.*

(a) Mixed-use structures in the IC District shall not include residential uses on the ground floor of the structure.

(b) Commercial uses on ground floor shall not be converted to a residential use.

(c) Nonconforming lots of record lawfully established on or before April 13, 1999 may be developed in accordance with the standards in § 168.04-01(C), Lots in the DC and IC Districts.

(d) All development in the IC District shall not exceed two stories or 40 feet above base flood elevation.

(C) *Marine Commercial (MC).* The MC District is established to recognize areas within the City where, due to proximity to navigable waterways, commercial marine related-activity takes place. A full range of marine-related uses (e.g., docks and marinas), major and minor utilities, and outdoor storage facilities are appropriate uses in addition to limited residential uses,

institutional uses, and limited retail uses. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Applications to amend the official zoning map to establish or expand the MC District are prohibited.

(D) *Corridor Commercial (CC).* The CC District is established and intended to provide for a wide variety of general retail and high intensity residential and nonresidential uses located along the Folly Road corridor north of the Folly Creek Bridge, and to maintain scenic vistas along this corridor. The CC District is intended to accommodate the largest and most intense form of retail in the City (those uses greater than 10,000 square feet). Visitor-oriented services including hotels and indoor and outdoor recreational facilities are also permitted. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Maximum lot coverage is limited to 35% of a lots high ground, and maximum building heights are limited to 35 feet above base flood elevation. Detached units may be located on individual lots, provided the newly created lots extend no more than five feet from the building envelope and the development includes the minimum open space set-aside required in § 166.03, Open Space Standards.

CHAPTER 164 USE STANDARDS

SECTION 164.01 TABLE OF USES

TABLE 164.01: TABLE OF ALLOWED USES

P = Permitted S = Special Exception A = Allowed in PD District Blank Cell = Prohibited

Use Category	Use Type	Zoning District									Additional Standards
		Residential			Nonresidential					PD (1)	
		RSF	RTF	RMF	DC	IC	MC	CC	CN		
RESIDENTIAL USE CLASSIFICATION											
Household Living	Multi-family dwelling			P	P			P		A	§ 164.03-01(A)(1)
	Single-family dwelling	P	P	P	P	P	P	P		A	§ 166.05-02
	Two-family dwelling		P	P	P	P	P	P		A	§ 164.03-01(A)(2)
	Townhouse			P				P		A	§ 166.05-03
	Residential unit over nonresidential use			P	P	P	P	P		A	
Group Living	Family day care home	P	P	P	P	P	P	P		A	§ 164.03-01(B)(1)

	Group day care home	P	P	P	P	P	P	P		A	§ 164.03-01(B)(2)
	Rooming house									A	§ 164.03-01(B)(3
Short Term Rentals		P	P	P	P	P	P	P		A	164.03-01(C)

SECTION 164.02-02 Residential Use Categories.

(A) *Household living.*

(1) *Characteristics.* Household living is characterized by the residential occupancy of a dwelling unit by a household. Accessory uses commonly associated with household living are recreational activities, raising of pets, hobbies, and parking of the occupants vehicles. Home occupations are accessory uses that are subject to additional regulations. (See § 164.04-05(C)) Owner occupied dwelling units in which the owner rents individual rooms to transient guests shall be subject to the use standards for Short Term Rentals.

(2) *Examples.* Examples include occupancy of single-family houses, two-family houses, and other multi-dwelling structures; some group home facilities, if the individual units meet the definition of "dwelling unit"; manufactured homes; and other structures with self-contained dwelling units. Mobile homes are prohibited.

~~(3) *Exceptions.* Lodging in a dwelling unit or where units are rented on a less than monthly basis is classified in the visitor accommodations category.~~

(B) *Group living.*

(1) *Characteristics.* Group living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of "household". The size of the group may be larger than the average size of a household. Generally, group living structures have a common eating area for residents. The residents may receive care, training, or treatment, as long as the caregivers also reside at the site. Common accessory uses include recreational facilities, dining facilities, and parking of vehicles for occupants and staff.

(2) *Examples.* Examples include group day care homes or rooming houses.

(3) *Exceptions.*

(a) Lodging where tenancy may be arranged for periods of less than 30 days and no care, training, or treatment is provided is classified as ~~visitor a~~ Short Term Rentals.

(b) Lodging where the residents meet the definition of "household" and where tenancy is arranged on a month-to-month basis or for a longer period is classified as household living.

(c) Most group home facilities are classified as institutions. However, group home facilities where individual units meet the definition of a "dwelling unit" in Chapter 161, Definitions, are classified as household living.

(4) *Exemptions.* In accordance with S.C. Code § 6-29-770(E), as amended, homes licensed by the state to provide 24-hour care to nine or fewer mentally or physically handicapped persons are exempt from the provisions of this ZDO. Such uses serving ten or more persons shall be considered as group home, nursing home, or assisted living facilities uses, as appropriate. (Ord. 05-10, passed 3-23-10)

(C) *Short Term Rentals.*

(1) *Characteristics*. Short Term Rentals are residential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling. Tourist Accommodations including hotels, motels, inns, and bed and breakfasts are not considered Short Term Rentals.

() *Examples.* Rental facilities where the owner does not live on site and no services are provided, non owner occupied units rented to either families or unrelated persons for any amount of time that is less than 30 consecutive days, or owner occupied units where individual rooms are rented to transient guests.

SECTION 164.02-04 Commercial Use Categories.

(J) *Tourist accommodations.*

(1) *Characteristics.* This category includes ~~dwelling units~~ buildings other than Short Term Rentals arranged for short-term stays of less than 30 days for rent, lease, or interval occupancy. This category ~~also~~ includes ~~convention~~ facilities primarily oriented for visitor use. Accessory uses may include pools and other recreational facilities, limited storage, restaurants, bars, meeting facilities, and offices.

(2) *Examples.* Examples include ~~vacation rentals, bed and breakfast inns, hotels~~, and hotels, motels, inns, bed and breakfasts and convention centers.

SECTION 164.03-01 Residential Uses.

(A) *Household living.*

(1) *Multi-family dwelling.* Multi-family dwellings shall comply with the following standards:

(a) Parking structures may be permitted as an accessory use to serve any multi-family development provided the structure does not exceed 35 feet in height (from base flood elevation) and provided its visual impact on adjacent lands is mitigated through building placement, screening, or architectural treatment.

(b) Multi-family structures shall be subject to the maximum height of the district where located, and shall not exceed two stories of heated floor area.

(2) *Two-family dwelling.*

(a) Two-family dwellings shall comply with the standards in § 166.05-03, Single- and Two-Family Design Standards.

(b) Nothing in this ZDO shall prevent a two-family dwelling on a lot in the RTF District from consisting of two detached structures.

(B) *Group living.*

(1) *Group day care home.* The number of children shall be limited to a maximum of eight children, including residents.

(2) *Family day care home.* The number of children shall be limited to a maximum of five children, including the residents.

(Ord. 05-10, passed 3-23-10)

(C) *Short Term Rentals.* Short Term Rentals shall have a maximum overnight occupancy of 2 persons per bedroom plus 2 persons per rental dwelling. The maximum occupancy may be

increased by the Building Official upon demonstration by the owner of DHEC compliance with allowable septic capacity.

CHAPTER 131 OFFENSES AGAINST PUBLIC PEACE

SECTION 131.31 ~~NOTICE TO RENTERS ABOUT NOISE ORDINANCE REQUIRED.~~ NOISE FROM SHORT TERM RENTAL PROPERTIES

A) Owners of ~~rental houses~~ Short Term Rentals shall ensure that a City-prepared notice about the noise ordinance is posted in houses that are rented for 30 days or less and is included in all ~~short and long term~~ rental contracts.

ADOPTED this 9th day of January 2018, at Folly Beach, South Carolina.

Ayes: 4 Nays: 3 Abstains: _____

Signature Attest

Tim Goodwin, Mayor

EXHIBIT NO. 8

City of Folly Beach

21 Center Street
Folly Beach, SC 29439

Date: May 11th, 2021
Re: Short Term Rental Moratorium

Mayor and Council,

In 2018, the City amended the rules for short term rentals to address various nuisance/quality of life issues including noise and special events as well as changes to licensing and registration requirements. Although the ordinance mitigated some of the community issues related to rentals, the number of rentals has continued to rise.

In 2011, the first year for which data is available, the City tracked 438 rentals. In 2017, the year prior to the last rental ordinance revisions, the City tracked 779 rentals. In September of 2020, the last year with complete data, the City tracked 1,019 fully licensed and registered rentals. A percentage of this increase can be attributed to better tracking tools, however it is clear that the number of rentals in the community has been rising steadily and shows no sign of slowing down.

As the number of short term rental properties on Folly has increased other trends have emerged: long term rentals have been lost to short term rental conversion, real estate prices have increased and lessened affordability, multiple lots in the commercial district have been developed as short term residential rentals, peak traffic on turnover days has increased, and short term rentals have further encroached into previously residential areas. It is not a stretch to say that short term rentals are currently the highest and best economic use of property on the island. As long as this is the case, the growth of rentals has no limit.

Since Folly led the way in 2018, surrounding communities have enacted or revised their own rental regulations. The City of Charleston, Charleston County, The Town of Mount Pleasant, the Town of Kiawah, and the Isle of Palms have all seen changes to rental rules. Although our ordinance has been a model for some of these communities, it is clear that the 2018 rental ordinance is ripe for review. Accordingly, staff requests that Council approve a six month moratorium on the issuance of new rental licenses to provide adequate time for study and recommendation for appropriate changes. The proposed moratorium would not apply to properties for which a 2020 license was issued. These owners could continue to renew/transfer licenses for existing properties, new licenses for which

the DRB has already approved plans for development, or new licenses applied for (with the correct information) prior to the moratorium.

Thank you

Aaron Pope
City Administrator

EXHIBIT NO. 9

Folly Beach Short Term Rental Committee Regular Meeting

January 5, 2022

12:00PM REGULAR MEETING
City Hall – Conference Room
21 Center St, 1st Floor
Folly Beach, SC 29439

Committee Members:

Adam Barker: City Council, Laura Pace: Planning Commissioner, Joe Vandiver: Resident (Design Review Board), Alex Hunter: Rental Manager (Carolina One), Katie Gerling: Planner, Amberly Flowers: Business License Official, Aaron Pope: City Administrator

2:00 PM REGULAR MEETING

This meeting agenda was posted but not streamed. This is an exploratory committee accepting public comment and assessing the current trends of short term rentals at Folly Beach. The committee was formed by the Mayor on May 11 tostudy the impacts of Short Term Rentals. The scope of this committee is centered around the balance of rentals vs. residences and the impacts on the community, regulating rentals and managing growth.

The committee discussed various proposed recommendations throughout the meeting including the cap exemption for high density multifamily dwelling units and the reasoning behind that, the value of having a one timer waiver for 4% property owners, the imposition of annual inspections and septic tank documentation on homeowners, and the overall goals wanting to be achieved.

Ultimately, the committee is aware that not all recommendations will come to fruition but wanted to include the full picture of what the committee discussed and debated.

Mr. Barker made a motion to recommend the STR Recommendations to the Mayor with two changes. 1. Changing the word renting to advertising in Issue 2, Recommendation 2 in the third bullet point.

2. Adding in the livability committee and website feedback form to Issue 4, Recommendation 1.

Mr. Vandiver seconded. There was no further discussion. All Board members voted to approve the recommendations.

This was the final meeting of the short term rental committee meeting.

City of Folly Beach

Date: January 5th, 2022
Topic: Short Term Rental Discussion

Committee Members:

Below are the four main issues identified from discussion in previous meetings. Each issue has multiple recommendations listed below along with policy, reasoning and data supporting each one. There are some information gaps and recommendations that the Committee must fill in through discussion of our upcoming meeting. Below is the format of what Council will see.

Issue #1: The number of short term rentals in the City is increasing.

Recommendation 1: The STR committee recommends that the City limit future growth of short term rentals while preserving the right of full time residents (4% owners) to rent their homes.
Policy: Short term rental of primary residences shall not be capped. Residency shall be established by the prior year property tax bill showing 4% exemption.
Reasoning: Currently, the number of primary residences used as rentals is low. However, the committee believes that growth should be allowed in this category. 1) Short term rentals in primary homes have less negative impact than those in secondary homes. 2) Primary residence rentals are limited by duration (less than 72 days a year) and more likely to occur when the owner is on premise. 3) The ability of residents to rent their homes for income to offset taxes, insurance, and other expenses lowers the overall cost of ownership and allows more people the option to live in the City. 4) The conversion of new construction to STR has not occurred at a rapid rate despite no current restrictions.
Data: Current percentage of STR primary residences, various white paper articles, #of homes built.

Recommendation 2: The STR committee recommends that the City limit future growth of short term rentals while preserving the rights of existing rental uses.
Policy: Existing regulations for nonconforming uses will be applied to short term rentals licensed on the date of the ordinance. This includes the right to sell the property to new owners who will be able to obtain licenses.

- Any license that is not renewed within 30 days of expiration or transfer of ownership must be renewed under new limits.
- Any license that is inactive (with no documented short term rental reservations within 12 months or submits documented reasoning (including court order, condemnation letter, probate, etc.) to not allow for the use of that property for more than 12 months) will lapse and must be renewed under new limits. <u>This will require assistance from additional staff</u>.
- Currently, strikes are attached to the business license owner not the property. A new business license starts the strike count over. Sham owners do not wipe the slate clean.

- Anyone who is a 4% property owner without a rental license at the time the ordinance passes will have the opportunity to maintain that right via a one-time waiver for new owners to apply for a short term rental license within 30 days of sale of home. This will require assistance from additional staff.

Reasoning: Discourage hoarding of licenses but uphold vested rights**.** The City wishes to preserve the right to sell their property to whomever and not impact property values based on available short term rental licenses.
Data: Nonconforming use codes from Folly's ordinance, other model ordinances.

Recommendation 3: The STR committee recommends that the City limit future growth but not hinder various property types from procuring a short term rental license by allowing high density multifamily units (structures with 6 units or more) to not be included in a cap.
Policy: Short term rentals in a property used as multifamily will not be subject to a cap with proof of legal ownership at the address.
Reasoning: Many condos do not allow STRs, or they are already almost fully run as short term rentals. They are also controlled by HOA and that should/can be a building by building decision Having these entire buildings become short term rentals would not impact quality of life as they are either off island or within the commercial districts. New multifamily dwellings are not allowed per zoning ordinance. By exempting these properties from the cap, it allows the City to set a realistic number for a cap.
Data: License registration data, Parcel data, HomeCompliance maps

Recommendation 4: The STR committee recommends that the City limit future growth by implementing a cap on the total amount of STR licenses for 6% properties in Folly Beach.
Policy: The target total number of renters on the island is X as a set number is easiest for enforcement. This will require assistance from additional staff.
Options:

1. Freeze all issuance of new licenses and eliminate licenses through attrition to a set number of allowable licenses (ex: 750).
2. Exempt 4% owners, existing license holders and 6% multifamily dwelling units (recommendations 1-3 above) and set a low cap of licenses (ex: 200 non-exempt licenses). Currently ~1780 licenses are exempt under this proposal.
3. Exempt only existing license holders and set a higher cap of licenses (ex: 500 non-exempt licenses).

Reasoning: Control growth and maintain a diverse and vibrant community to foster full time residency.
Data: County tax assessor and business license fee annual data; Case studies on home values and selling homes under STR cap.

Issue #2: Fees charged for short term rentals do not provide enough support to City resources based on the demand brought by the STR population.

Recommendation 1: The STR committee recommends that the City increase the fees associated with Short Term Rentals.
Policy: New application fee for ALL property is $500 annually- this is in line with other communities which do not differentiate with 4% and 6% owners. In 2023, after standardization is complete, an evaluation should be conducted to increase the base fee.
Reasoning: Business license fees/rates cannot be adjusted this year due to state standardization of

business licenses. Thus, an additional application fee will be implemented. These fees are absorbed by the renters, not residents or owners. The new application fee can then be used of fund infrastructure (sidewalks, parks and ped paths), services (public safety, sanitation), and staff (full time dedicated rental staff). These fees could also be used to subsidize long term rentals and affordable housing with some zoning law changes at the City level to encourage this development. Fee would also be used to support more personnel for enforcement of either civil noise violations or for rental management in general. Another option is to set up a dedicated fund for public improvements that serve tourism. Long term rentals would not be impacted as this is a separate application.
Data: Fee schedules from surrounding and similar municipalities.

Recommendation 2: The STR Committee recommends increasing the fines and immediacy of fines when there is a rental strike.
Policy:

- Change the STR ordinance to state that fines are implemented on the second strike rather than two warnings.
    1. Warning
    2. $500
    3. $500
    4. Hearing
- Add if local agents cannot appear on site or respond to emergency within two hours of emergency, then that constitutes a strike.
- Add if renting for less than 3 nights, then that constitutes a rental strike (refer to Issue 3, Recommendation 5).
- Add dogs at large to constitute a rental strike.
- <u>This will require assistance from additional staff</u>.

Reasoning: Strikes happen so rarely that two warnings is not needed and impacts of strikes should be more immediate to discourage strikes from being obtained.
Data: Strikes written, noise complaint reports

Recommendation 3: The STR Committee recommends adding City staff for short term rental related issues.
Policy: Hire two additional staff (1 administration and 1 code enforcement) to administer the short term rental ordinance and related tasks.
Reasoning: Short term rentals are a growing concern on the island, and it takes staff personnel to administer a successful program including consistent and timely enforcement and faster application issuance and compliance.
Data: Fees, workload, rental license applications

Issue #3: Short term rentals cause an unwanted atmosphere on the island for full time residents.

Recommendation 1: The STR committee recommends that the City require clearly marked parking spaces on site for rental properties upon issuance or renewal of license.
Policy: All required parking spaces must be delineated on the property with a minimum of front stop bumpers or City approved method. Number of spaces is determined by bedroom count. If a

license cannot meet this requirement, it has an option to present an alternate parking plan to the Building Official for approval with reasoning. If a property does not have the required spots or approved plan, then no business license will be issued.
Reasoning: Increase safety and aesthetics on the island.
Data: Anecdotal evidence and accounts from full time residents stating cars are illegally parking on ROW; parking tickets

Recommendation 2: The STR committee recommends that the City use a more robust verification of local agents.
Policy: Require properties be managed by someone with a SC property managers license and an office located within 20 miles of Folly Beach.
Reasoning: This will limit the number of poorly run rentals by 4% property owners who only rent during high season and reduce the number of nonlocals from violating the short term rental ordinances. Local agents are invested in the community.
Data: Public safety call log and emergency response times

Recommendation 3: The STR committee recommends that the City utilize a notification more flexible and quicker than certified letters via mail.
Policy: The City will use email or an automated response to the local contact when a violation occurs, a process similar to what Turtle Patrol utilizes. This will require assistance from additional staff.
Reasoning: The renters are already gone by the time the notice is received and owners/agents cannot correct the issue in a timely manner.
Data: Rental strike letters, feedback from property management companies

Recommendation 4: The STR committee recommends that the City make the noise ordinance easier to enforce.
Policy:

- Installation and maintenance of noise monitoring software in rentals at owners' expense with at least one noise violation.
- Change a noise violation from a criminal to civil violation (taking away jail time) and make it a true code enforcement issue which will allow enforcement by code officers versus law officers.

Reasoning: Strikes are historically difficult to get, and full time residents are growing frustrated that noise violations are not being cited and therefore a strike is not issued. This will reduce the complaints, make enforcement easier and encourage a more desirable atmosphere. Increases efficiency of resources and frees up law enforcement officers.
Data: Noise complaint reports, anecdotal evidence from Public Safety.

Recommendation 5: The STR committee recommends restricting the numbers of nights a rental can advertise.
Policy: Make a minimum 3 night requirement per rental reservation.
Reasoning: This will reduce the strain on city resources by having less turnover in rentals, limiting the number of renters, and eliminating certain clientele and quick trips, similar to day trippers.
Data: Articles on short term rental impacts and nuisance rentals.

Recommendation 6: The STR Committee recommends adding the requirement that a building have a Certificate of Occupancy, or it is a habitable dwelling before a short-term rental business license is issued.
Policy: Require a CO be issued or proof that a dwelling is habitable before a license is issued. If a building has an active building permit the date of the ordinance passing, then they have 18 months from permit issuance date to obtain a CO and apply for a license. If they do not meet the deadline, then they fall under the cap limits.
Reasoning: This will reduce the speculative building of STRs or people trying to rush to get a short term rental license and increase safety on the island.
Data: Building code

Recommendation 7: The STR Committee recommends adding the requirement that an annual third party inspection be completed for STRs to verify the property meets the 2018 Property Maintenance Code.
Policy: Require an inspection report completed within last 12 months to be submitted with a STR application. This will require assistance from additional staff.
Reasoning: The Property Maintenance Code covers life safety aspects of a building and would reduce the likelihood structural collapse and personal injury. There are different standards for new construction and existing buildings.
Data: Recent porch collapse and railing failures, Building code

Recommendation 8: The STR Committee recommends adding the requirement of septic tank capacity documentation must be provided as part of the STR permit application.
Policy: Provide a copy of a valid septic permit showing 120 GPD of capacity per bedroom to be rented. If no septic permit is available, certification from a licensed septic installer demonstration 120 GPD of capacity per bedroom to be rented shall also meet this requirement.
Reasoning: Existing septic systems can have detrimental effects on the environment if not maintained correctly. Many systems are old and short term rentals potentially have an increased load.
Data: Existing failed septic systems

Issue #4: Short term rentals regulations are confusing and hard to find.

Recommendation 1: The STR Committee recommends developing a robust communications plan addressing all stakeholders to provide information on short term rentals.
Policy: This could include a dedicated page on the website, a robust communication plan addressing all stakeholders to educate them on existing ordinances (STR and Noise) via the Sandspur and Folly Current, insert educational material into tax bills, how enforcement works with Public Safety, utilize TVPC to market beach as a family beach, and what tools they can appeal to Council for a Rezoning under a neighborhood preservation zoning overlay.
Reasoning: Many stakeholders find the rules confusing or difficult to navigate. The City also wishes to be as transparent and helpful as possible.
Data: Anecdotal evidence

Please let me know if you have any questions about this data. You can email me at or call my cell at 843-

693-1101.

Thank you,

Katherine Gerling, Zoning Administrator

EXHIBIT NO. 10

Issue #1: The number of short term rentals in the City is increasing.

Recommendation 1.1: The Mayor recommends that rentals be classified according to the maximum rental nights allowed according to property tax assessment rates. Properties with a maximum of 72 rental days allowed (assessment restricted rentals) will not be subject to a cap.

Policy: All properties eligible for an assessment restricted rental licenses on will be allowed to obtain or transfer a license subject to the following:

- Assessment restricted licenses may be transferred to any new owner as an assessment restricted license.
- Assessment restricted licenses may be converted to a non-restricted license:
    - Upon sale of the property when the new owner applies within 30 days of closing, and the property was subject to the 4% tax assessment on both the date the ordinance passed and the date the property was sold.
    - Upon transfer of the property to an eligible family member.

Recommendation 1. 2: The Mayor recommends that rentals be classified according to the maximum rental nights allowed according to property tax assessment rates. Properties no assessment related limit on maximum rental days (non-restricted rentals) will be subject to a cap.

Policy: All existing non restricted rental licenses on the date of the ordinance will be allowed to remain and be renewed until transfer of ownership outside of eligible family, inactivity, or failure to renew.

- Non restricted licenses may be converted to assessment restricted licenses upon proof of property tax assessment status.
- Non restricted licenses may transferred to an eligible family member as a non-restricted license.
- Other license transfers shall make the license subject to the cap and, if the cap has been reached, put the license onto the waitlist.
- Any non-restricted license that is inactive (with no documented short term rental reservations within 12 months) without documented reasoning (including court order, condemnation letter, probate, etc.) will lapse and must be renewed under new limits. Any non-restricted licenses that does not document at least $3,000 of income shall be considered inactive.

Recommendation 1.3: The Mayor recommends that the City limit future growth of rentals including within multifamily complexes.

Policy: Non-restricted short term rentals in a property used as multifamily will be subject to the overall cap.

Recommendation 1. 4: The Mayor recommends that the City limit future growth by implementing a cap on the total amount of non-restricted STR licenses in Folly Beach.

Policy: The total number of non-restricted rental licenses shall be 800. No new non-restricted licenses will be issued until the number of licenses falls below the cap.

- Existing restricted licenses may be renewed until they are disqualified.
    - Late renewals (more than 30 days after license renewal due date) shall make an existing license subject to the cap.
    - Inactivity shall make the license subject to the cap.
    - Transfer of property ownership (except to eligible family members) shall make the license subject to the cap.
- Renewals of existing licenses shall be given first priority in determining the availability of new licenses.
- Once attrition lowers the total number of licenses to the allowable limit, a waitlist will be established to replace licenses within the limits of the cap. The waitlist renews annually.
- Additional license applications can be made an anytime and will be added to a waitlist. When spots open under the cap, the City will give the oldest application first priority.

Issue #2: Fees charged for short term rentals do not provide enough support to City resources based on the demand brought by the STR population.

Recommendation 2.1: The Mayor recommends that the City increase the fees associated with Short Term Rentals.

Policy: The Mayor proposes a fee of $360 annually for assessment restricted rentals properties and $1825 annually for non restricted properties. This is a separate fee from the business license cost.

Recommendation 2.2: The Mayor recommends increasing the fines and immediacy of penalties when there are rental related violations.

Policy:

- All rental violations subject to $500 general penalty (civil tickets).
- Strikes to be based on convictions for offenses, not the initial ticket/warning.
- The number of strikes before a license revocation starts reduced from 4 in 6 months to 3 in one year (rolling time period).
- Add if local agents cannot appear on site or respond to emergency within 30 minutes of an emergency, then that is a ticketed offense.
- Add if advertising for less than 7 nights in the RSF district, then that is a ticketed offense.
- Add if advertising for less than 3 nights in other zoning districts, then that is a ticketed offense.

Recommendation 2.3: The Mayor recommends adding City staff for short term rental related issues.
Policy: Hire additional staff to administer the short term rental ordinance and related tasks. The number of staff shall be suitable to manage enforcement, licensing, rental

registration, and administration of the rental ordinance. This includes night and weekend enforcement.

Recommendation 2.4: The Mayor recommends that all applications for a rental license renewal include proof of paid up status for accommodations tax accounts.

Issue #3: Short term rentals cause an unwanted atmosphere on the island for full time residents.

Recommendation 3.1: The Mayor recommends that the City require parking spaces on site for rental properties upon issuance of all new rental licenses.

Policy: All required parking spaces must be shown on a site plan at a rate of one parking space per bedroom. If a license cannot meet this requirement, it has an option to present an alternate parking plan to the Building Official for approval with reasoning. If a property does not have the required spots or approved plan, then no business license will be issued.

Recommendation 3.2: The Mayor recommends that the City use a more robust verification of local agents.
Policy: Require properties be managed by the owner or someone with a SC property manager, broker in charge, realtor, or attorney license. Require property agents to be able to respond within 30 minutes.

Recommendation 3.3: The Mayor recommends that the City utilize a notification more flexible and quicker than certified letters via mail.
Policy: The City will use email or an automated response to the local contact when a violation occurs, a process similar to what Turtle Patrol utilizes. <u>This will require assistance from additional staff</u>.

Recommendation 3.4: The Mayor recommends that the City make the noise ordinance easier to enforce.
Policy:

- Installation and maintenance of noise monitoring software in rentals at owners' expense with at least one noise violation.
- Change a noise violation from a criminal to civil violation (taking away jail time) and make it a true code enforcement issue which will allow enforcement by code officers versus law officers.

Recommendation 3.5: The Mayor recommends restricting the numbers of nights a rental can advertise.
Policy: Make a minimum 7 night requirement per rental reservation in the Single Family District and a minimum of 2 nights in all other districts.

Recommendation 3.6: The Mayor recommends adding the requirement that a building have a Certificate of Occupancy, or it is a habitable dwelling before a short-term rental business license is issued. No licenses shall be issued for properties under construction.
Policy: Require a CO be issued or proof that a dwelling is habitable before a license is

issued.

Recommendation 3.7 The Mayor recommends adding the requirement that an annual third party inspection be completed for STRs to verify the property meets the 2018 Property Maintenance Code. All first time licenses will only be issued after a documented inspection.
Policy: Require an inspection report completed within last 12 months to be submitted with a STR application. The inspection will verify smoke alarms, carbon monoxide monitors, fire extinguishers, the # of bedrooms, the # of parking spaces, certain structural elements, the provision of trash receptacles, the posting of address and house numbers, and posting of rules and regulations, and, if present, that sprinklers are operational. This will require assistance from additional staff.

Recommendation 3.8: The Mayor recommends adding the requirement of septic tank capacity documentation must be provided as part of the STR permit application.
Policy: Provide a copy of a valid septic permit showing 120 GPD of capacity per bedroom to be rented. If no septic permit is available, certification from a licensed septic installer demonstration 120 GPD of capacity per bedroom to be rented shall also meet this requirement.

Recommendation 3.9: The Mayor recommends that the number of bedrooms be supported by data from the Charleston County Tax assessors office.

Issue #4: Short term rentals regulations are confusing and hard to find.

Recommendation 4.1: The Mayor recommends developing a robust communications plan addressing all stakeholders to provide information on short term rentals.
Policy: This could include a dedicated page on the website with a feedback form, a robust communication plan addressing all stakeholders to educate them on existing ordinances (STR and Noise) via the Sandspur and Folly Current, insert educational material into tax bills, how enforcement works with Public Safety, utilize TVPC to market beach as a family beach, and what tools they can appeal to Council for a Rezoning under a neighborhood preservation zoning overlay.

EXHIBIT NO. 11

City Council Special Meeting Tuesday June 28, 2022

Special Meeting 7:00 PM
City Hall
21 Center Street
2nd Floor Council
Chambers Folly Beach, SC
29439

1. **CALL TO ORDER/ROLL CALL**

2. **STAFF REPORTS**
   a. Aaron Pope City Administrator. Mr. Pope reviewed the Mayor's Recommendations and Proposed Short Term Rental Ordinances. He pointed out that on the website previous minutes and documentation can be found.

3. **CITIZENS' COMMENTS**
   a. Forty-five citizen comments were received by email to the Clerk and distributed to Council.
   b. Chris Henderson, 315 E. Cooper. Mr. Henderson stated he is not in favor of the cap ordinance or a 7-day minimum.
   c. Rhett Smith 316 E. Ashley. Agreed with Mr. Henderson he brought up the idea of bringing this to a vote for the citizens to decide.
   d. Richard Brendel, 3 Red Sunset Ln. Mr. Bendel said that he is not in favor of a cap system or night minimum.
   e. Sarah Goodwin 217 Walsh ave. Ms. Goodwin stated that she manages a few STRs on the island. She said there is an unfair characterization of STRs on the island. Ms. Goodwin said that more conversation is needed.
   f. Donna Bowling, 421 E Hudson. Ms. Bowling stated she is against the night minimum. She added that she is against the cap until there is a clear understanding of what the cap entails.
   g. Michael Riffert, 110 E. Cooper. Mr. Fiffert stated that he would not be able to live or afford Folly Beach if it weren't for STRs.
   h. John McFarland, 1780 Chelwood Cr. Mr. McFarland stated that he is in favor of the cap.
   i. Patricia Van 1114 E Ashley. She said she is not in favor of the night minimum.
   j. Phillip Follner 320 East Arctic. Mr. Follner stated he is against the fees.
   k. Jonathan Smith, 304 W Hudson Ave. Mr. Smith stated that he agrees with statements from previous citizens.
   l. Steven Nicktas 1710 E Ashley Ave. Mr. Nicktas said he is against the cap and 7-night minimum and fees.
   m. Allen Boyd & Yvett Boyd, 1668 E. Ashley. Mr. Boyd stated that there is a conversation at the state level that will overrule the work being done by the city. Ms. Boyd said that she is not in favor of the recommendations or cap.
   n. Jim Nemish, 518 E Cooper. Mr. Nemish said that Folly can be different we don't have to be like everywhere else.
   o. Wesley Moore, 516 E Huron Ave. Mr. Moore stated he would like a 7-day minimum.
   p. Skip Fink, 607 West Beach Court. Mr. Fink urged council to be careful of the choice they are making. He added he does not want to see his home to turn into a Fort Lauderdale.
   q. Christine Bickel, 1721 East Ashley. Ms. Bickel asked what is the data the city is using to

make this decision.

r. Stratton Laurance, 912 E Ashley. Mr. Laurance stated that there is a lot of fear in the community and a lot of local families will be affected by this decision.

s. John Brown, 210 West Artic. Mr. Brown stated that with a cap we would be sacrificing a lot of the ATax money the city receives.

t. Elton Culpepper 1208 E Arctic. Mr. Culpepper stated that he opposes the proposed ordinances 026 and 027.

u. Kelly G. 106 W Arctic. She stated that she is not in support of the cap and the 7-night minimum.

4. **NEW BUSINESS**

a. **ORDINANCE 026-22:** An Ordinance Establishing a Cap on The Number of Non-Restricted Rental Licenses Applicable to Properties Taxed as Non-Primary Residences.
Councilmember Houghton moved for approval**.** Mayor Goodwin seconded.
Councilmember Farley motioned to Call to Question. Councilmember Ellis seconded.
Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, No; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, No.
Motion Passes, 5-2.
Ordinance 026-22
Councilmember Barker, No; Councilmember Farley, No; Councilmember Grooms, No; Councilmember Houghton, Yes; Councilmember Ellis, No; Councilmember Rich, No; Mayor Goodwin, Yes.
Motion Fails, 2-5.

b. **ORDINANCE 027-22**: An Ordinance Amending the Folly Beach Code of Ordinances Chapter 117 (Short Term Rentals) By Changing the Requirements for Business Licenses and Rental Registration Permits for Short Term Rentals, Amending the Violations Subject to Rental Strikes, And Lowering the Number of Strikes Required Prior To The Initiation of License Revocation.
Councilmember Houghton moved for approval. Councilmember Barker seconded.
Councilmember Rich motioned to postpone the discussion. Councilmember Ellis seconded.
Councilmember Rich stated that they were just given this information and need time to read thoroughly and understand the material.
Councilmember Barker, No; Councilmember Farley, No; Councilmember Grooms, Yes; Councilmember Houghton, No; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, No.
Motion Fails, 4-3.
Councilmember Rich moved to amend section O by removing the langue involving the 2018 property maintenance code while keeping smoke detectors, carbon monoxide detectors, and fire extinguishers.
Councilmember Grooms seconded.
Councilmember Rich stated that the 2018 inspection maintenance code is more for new construction not for an individual home rentals.
Mayor Goodwin stated that this inspection is not by the city but rather by a 3rd party and a good idea for the homeowners to go through this.
Councilmember Ellis said he would like to remove the language of inspections, rather at the time of registration state or check off a box that they meet all the inspection requirements.
Councilmember Rich stated that he wants the homeowner to be able to sign their name stating that they meet all the requirements rather than producing a document from varying departments and agencies.

Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.

All in Favor. Motion Passes.

Councilmember Farley asked what will the cost be for the enforcement positions.

Mayor Goodwin stated that at least 4 positions and added costs to support them it is unclear at this time.

Councilmember Ellis stated that 4 positions may be too much. He said that there would be a lot of downtime.

Mayor Goodwin stated that there will really be no downtime. He gave a proposed schedule.

Councilmember Rich stated that council is trying to be proactive rather than reactive.

Councilmember Ellis moved to remove Section J 7-night requirements. Councilmember Rich seconded.

Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.

All in Favor. Motion Passes.

Councilmember Houghton moved to amend the language in Section K to establish a 2-night minimum island- wide. Councilmember Rich seconded.

Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, No; Councilmember Rich, Yes; Mayor Goodwin, Yes.

Motion Passes,6-1.

Councilmember Rich asked the reasoning for the number of 49 guests. He alluded to a situation with protests that took place on private property vs public property.

Mr. Pope said he could not find any information on restrictions on private property. Mr. Pope asked City Attorney Joe Wilson if he was aware of anything.

Mr. Wilson said he does not remember any particular number cut off. He explained there are differences between the number of protesters on public property vs guests on private property.

Councilmember Rich moved to amend section O to strike the language to the property and change the time limit from 30 minutes to 60 minutes. Councilmember Ellis seconded.

Councilmember Farley objected to the time change and said that an hour is too long.

Councilmember Houghton said that 30 minutes or 60 minutes doesn't make the difference as a homeowner you should be picking up the phone to deal with the issue.

Councilmember Farley stated that if he was a property manager he would answer the phone any hour of the day, that this is part of the job and responsibility.

Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, No; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, No.

Motion Passes, 5-2.

Councilmember Rich moved to amend section D to replace the wording of requirement to strongly urge and remove Section S. Councilmember Houghton seconded.

Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.

All in Favor. Motion Passes.

Councilmember Barker moved to add language in Section D to designate where the parking is supposed to be at each rental. Councilmember Farley seconded.

Councilmember Grooms objected to the motion and said include this language in K, and add that a diagram must be shown in the residence along with the Rules & Regulations.

Councilmember Barker agreed to Councilmember Groom's suggestion.

Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.

All in Favor. Motion Passes.

Councilmember Barker moved to make I, J, K and B(3) the same list and add rules about smoking on the beach. Councilmember Farley seconded.

Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.

All in Favor. Motion Passes.

Ordinance 027-22 As Amended.

Councilmember Barker, Yes; Councilmember Farley, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, No; Councilmember Rich, Yes; Mayor Goodwin, Yes.

Motion Passes, 6-1.

5. CITY COUNCIL COMMENTS

Councilmember Ellis stated that he is appointing Marsha Riggs to the Planning Commission.

6. ADJOURNMENT

EXHIBIT NO. 12

STATE OF SOUTH CAROLINA	)	**Petition**
	)	**To Limit Investment Short Term Rental**
CITY OF FOLLY BEACH	)	**Business Licenses to a maximum of 800**

To the Mayor and City Council of Folly Beach:

We the undersigned voters of the City of Folly Beach request that the City adopt the following ordinance: TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800. This Petition is submitted pursuant to the South Carolina Code of Laws, section 5-17-10, *et seq*.

Whereas the unrestricted growth of the number of *investment short term rentals* within the City of Folly Beach:

- lowers the quality of life for its residents
- stresses the city's infrastructure & environment
- places extra ordinary burdens on the city's public services sector and
- poses an existential threat to the community.

Whereas the requisite number of voters have affixed their names to this PETITION TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800, pursuant to South Carolina Code of Laws, section 5-17-10 et seq;

NOW THEREFORE:

We the undersigned request that the following additions be inserted into Chapter 117 of the Folly Beach Code of Ordinances:

DEFINITIONS:

1. ***Investment Short Term Rental (ISTR)*** - A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.

2. ***Owner-Occupied Short Term Rental (OSTR)*** – A property and/or dwelling unit, in whole or part, licensed for short term rentals whose owner claims the licensed property to be the owner's primary residence as evidenced by: (a) current S.C. drivers license or S.C. identification card, (b) the address where they are, or may be, enrolled and registered to vote in local, state and federal elections and (c) the physical address used for the purpose of filing local, state and federal income taxes.

SHORT TERM RENTAL BUSINESS LICENSES:

(A) The City is authorized to issue two classes of short term rental business licenses:
(1) Investment Short Term Rental business license, and
(2) Owner-Occupied Short Term Rental business license.

(B) Owner Occupied Short Term Rental Business License:
There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.

(C) Investment Short Term Rental CAP

(1) The maximum number of permitted Investment Short Term Rental business licenses, city wide, shall be no more than 800, henceforth referred to as the CAP.
(a) Upon enactment the CAP shall be set at 800.

(2) No New Investment Short Term Rentals shall be permitted unless the total number of Investment Short Term Rentals is below the CAP.

(a) Exception : After enactment, all existing Investment Short Term Rental business License holders in good standing may continue to renew annually, even if the initial number of Investment Short Term Rentals exceeds the CAP.

(3) Investment Short Term Rental Wait List: If demand for Investment Short Term Rental business licenses exceeds the CAP a wait list will be established and maintained by the City of Folly Beach.
(a) When the number of allowable Investment Short Term Rental business licenses falls below the CAP, a license shall be offered by US Mail to the next qualified applicant on the wait list.
(b) If the applicant fails or neglects to complete an application for an Investment Short Term Rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.

(D) Non- transferable

(1) Investment Short Term Rental wait list status terminates upon transfer of property and is non-transferable.
(2) Investment Short Term Rental business licenses terminate upon transfer of property and are non-transferable.
(3) Owner Occupied Short Term Rental business licenses terminate upon transfer of property and are non- transferable.

EXHIBIT NO. 13

PETITION CHECK WORKSHEET	Statement of Purpose If candidate petition, enter name, office, and date of election.	Petition: To Limit Investment Short Term Rental Businesses Licenses to a maximum of 800 within the City of Folly Beach	
Date Petition Submitted	10/13/2022	**Signatures on Petition**	478
County	Charleston	**Signatures Required**	370

Part I – Complete this section for all petitions. If using percentage method, report at least the first 500 signatures here and complete Part II for remaining signatures.

	A. Signatures Checked		415
	B. Signatures Rejected by Reason	**Signature missing**	
		Insufficient information to locate record	
		Not a registered voter	
		Not a resident of district / area	1
		Inactive voter	1
		Not the voter's signature	2
		Duplicate signature	
		TOTAL	4
	C. Signatures Valid		411

Part II – Complete this section only if using percentage method (for petitions with more than 500 signatures).

	D. Total Signatures to Which Percentage Method Applied		
	E. Signatures Checked		
	F. Signatures Rejected by Reason	**Signature missing**	
		Insufficient information to locate record	
		Not a registered voter	
		Not a resident of district / area	
		Inactive voter	
		Not the voter's signature	
		Duplicate signature	
		TOTAL	0
	G. Signatures Valid		0
	H. Signatures Valid via Percentage Method = [(G ÷ E) × D]		
Total Signatures Valid = (C + any total from line H)			411

Signature of Official Supervising Petition Check: Bryan E. Hagy **Date:** 11/29/22

SEC FRM 1002-200910

SOUTH CAROLINA ELECTION COMMISSION

EXHIBIT NO. 14

City Council Meeting 7:00 PM
Tuesday, December 13, 2022

1. CALL TO ORDER/ROLL CALL
Councilmember Farley was not present.

2. INVOCATION & PLEDGE OF ALLEGIANCE
Councilmember Barker lead the invocation.

3. MAYOR'S COMMENTS
Mayor Goodwin stated that there are still appointments for the Folly Beach blood drive on December 15th. Mayor Goodwin thanked the Clerk of Council Wes Graham and Community Coordinator Lacey Deeds for an excellent job with the Christmas parade.

4. STAFF REPORTS
Aaron Pope, City Administrator. Mr. Pope stated that the city sponsored yoga program has become pretty informal with no contract, no set agreement, nor a bid process. He proposed a remedy by formalizing the sponsorship by granting Community Yoga as a franchise.
Councilmember Rich stated that council received an email from Community Yoga stating they would rather keep it how it is and not become a franchise.
Councilmember Grooms asked if there was any money being exchanged.
Mr. Pope stated that there is no outright fee, however, there are donations which makes it a commercial activity. He asked council for some direction on this topic.
Council rejected the idea of Community Yoga becoming a franchise and will move forward as a true private community group.

5. APPROVAL OF AGENDA
Councilmember Grooms moved for approval. Councilmember Rich seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

6. APPROVAL OF MINUTES
Councilmember Barker moved for approval. Councilmember Rich seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

7. PERSONAL APPEARANCES
a. Paula Hinton requesting special usage of the Community Center. Ms. Hinton said that she wants to bring Ageless Grace which is a dance exercise class for the local seniors. She added that there is a cost associated with the class since the trainer will be coming from North Carolina.
Councilmember Rich moved for approval. Councilmember Ellis seconded.
Councilmember Rich asked if there is a club associated with this so individuals have to pay to attend the class. He explained that if not this goes against the no commercial activities

ordinance.

Ms. Hinton stated that they would charge the participants.

Councilmember Barker, No; Councilmember Grooms, Yes; Councilmember Houghton, No; Councilmember Ellis, Yes; Councilmember Rich, No; Mayor Goodwin, No.

Motion Fails, 2-4

b. Kelly Travers with FAB updated City Council on upcoming annual events Polar Plunge, Taste of Folly, and Sea and Sand. Ms. Travers outlined the timeline and impacts on the community for each event. She explained that each event is very similar to years past.

Councilmember Barker asked if Ms. Traver can confirm that Taste of Folly and Sea and Sand will be free for Folly residents with ID.

Ms. Traver stated that is true. No charge for residents with Folly ID and kids under 12.

c. Vince Perna and Ms. Travers requested approval for an Ice Rink to be placed on E. Arctic. Mr. Perna gave a quick overview of the rink and timeline. He stated that this year's impact will be small and more of a test run for next year.

Councilmember Houghton moved for approval. Councilmember Barker seconded.

Mayor Goodwin asked how many vendors will be operating.

Ms. Travers stated that there will be three a night.

Councilmember Grooms asked if the bathrooms across the street will be open.

Ms. Travers said they will reach out to Park Folly and the City to coordinate that.

Councilmember Barker stated that in the future please get City Council's approval before the advertisement starts.

Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.

All in Favor. Motion Passes.

d. Guy Vorster with Rugby CHS. Mr. Vorster wanted to start the conversation about Folly hosting a touch rugby tournament in the fall of 2023. He explained this is a fun tournament for high schoolers to introduce them to the sport.

Mayor Goodwin asked when he is expecting to hold this event.

Mr. Vorster stated in the fall October or November. He said he would gather more information and come back to council closer to the date.

Councilmember Barker suggested looking at November dates since the beach is still busy during the month of October.

e. Timothy McKevlin Commercial District Signage Request. Mr. McKevlin asked City Council to consider an ordinance change to the commercial district sign rules. He explained they intend to remove all current signs and have one larger sign on the sign to make the building look cleaner and professional.

Councilmember Rich stated that he recalls a meeting years ago where council gave special permission to the Tides hotel to go over the sign allotment. He explained that he likes what Mr. McKevlin is requesting and the look is much better.

Mayor Goodwin stated that they will need to speak with the City Attorney when he returns to discuss the proper path this request needs to take.

8. CITIZENS' COMMENTS

a. Sam Meader 318 E. Arctic. Mr. Meader requested a city or civic club sponsored event to hear both sides of the STR discussion before the special election.
b. Omar C. asked if the city is participating in information persuasion about the referendum.
c. Star Aitchison. Ms. Aitchison stated that she opposes the STR cap.
d. Nadine Vogel 1611 E Ashley. Ms. Vogel asked if the city could work with the County to clean up the graffiti on the lighthouse inlet preserve.
e. Richard Beck, 1613 Folly Creek Way. Mr. Beck asked City Council to pass the moratorium.
f. Mary C. quoted Thomas Paine about government overreach in reference to the STR conversation.
g. Tom Powers Summerville. Mr. Powers opposed the moratorium.
h. Mary Catoe 1636 E Ashley Ave. Ms. Catoe asked for the moratorium to be left in place.
i. Ann Peets 606 W Beach Ct. Ms. Peets thanked everyone who is working on this extremely tough conversation. She spoke in favor of the moratorium.

9. COMMISSION, BOARD, COMMITTEE REPORTS

10. OLD BUSINESS

11. NEW BUSINESS

a. **ORDINANCE 033-22:** An Ordinance Amending the Folly Beach Code of Ordinances Chapter 117 (Short Term Rentals) By Including Language Proposed by Citizen Petition to Define Owner Occupied and Investment Short Term Rental Licenses and Limit the Number of Investment Short Term Rental Licenses to Eight Hundred. **(FIRST READING)**

No motion was given. Ordinance Fails.

ORDINANCE 034-22: An Ordinance to Extend a Moratorium on The Issuance of New Business Licenses for Short Term Rentals Within the City of Folly Beach Due to Verification of a Citizen Initiative Petition to Establish a Cap on Short Term Rentals.**(FIRST READING)**

Councilmember Rich moved for approval. Councilmember Barker seconded.

Councilmember Rich asked what about the group of license holders appealing.

Mayor Goodwin stated that the individuals have been instructed by staff to contact Joe Wilson the City Attorney and he will arrange a hearing.

Councilmember Houghton asked if the question is answered before the 3 month expiration then the moratorium will end then.

Mayor Goodwin stated that is correct.

Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, No; Councilmember Rich, Yes; Mayor Goodwin, Yes.

Motion Passes 6-1.

b. **ORDINANCE 035-22:** An Ordinance Rezoning the High Ground of Long Island and The Associated Small Marsh Islands Including Palm Island from Residential Single Family to Marsh Island Residential and Amending the Official Zoning Map to Reflect Said Change in Order to Implement the Goals of the 2020 Comprehensive Plan.**(REMAND TO PLANNING COMMISSION)**
Councilmember Rich motioned to remand to the Planning Commission. Councilmember Grooms seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

c. **RESOLUTION 48-22:** A Resolution by The Folly Beach City Council Adopting The 2023 Regular Meeting Calendars for Folly Beach City Council, Planning Commission, Design Review Board, Parks And Recreation Board, And The Official Holiday Calendar.
Councilmember Grooms moved for approval. Councilmember Ellis seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

d. **RESOLUTION 49-22:** A Resolution by The Folly Beach City Council Authorizing the Administration to Pay Weston and Sampson an Additional $10,000 For Grant Writing and RFP Development Related to Water Main Replacement and Stormwater Improvement Grant Applications.
Councilmember Ellis moved for approval. Councilmember Grooms seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

e. **RESOLUTION 50-22:** A Resolution by The Folly Beach City Council Authorizing the Payment Of $1,200.00 From the Council Discretionary Account to The Folly Beach Exchange Club for Sponsorship of the 2023 Folly Beach Exchange Club/Fab Golf Tournament.
Councilmember Ellis moved for approval. Councilmember Houghton seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

12. COUNCIL COMMENTS

a. Councilmember Grooms wished everyone a Merry Christmas. He reminded everyone that the Exchange Club will be hosting a Christmas party at Planet Follywood.

b. Councilmember Houghton stated that she loved her time as the Civic Club President and will be around to help the new President Amy Ray.

c. Councilmember Barker wished everyone a Merry Christmas and Happy Hanukkah and Happy New Year.

d. Councilmember Rich wished everyone Happy Holidays.

13. ADJOURNMENT

EXHIBIT NO. 15

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC046210

10/5/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Sea of Tranquility, 112 E Indian Ave, Unit A

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

112 E Indian Unit A 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC046210

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/5/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 112 E Indian Unit A 29439
LICENSE NO: LIC046210
CLASS: 9.5
EXPIRATION: 4/30/2023

must have Certificate of Occupancy to issue Rental Registration

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC046211

10/5/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name 112 E Indian Ave, Unit B

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

112 E Indian Ave 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC046211

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/5/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 112 E Indian Ave 29439
LICENSE NO: LIC046211
CLASS: 9.5
EXPIRATION: 4/30/2023

must have Certificate of Occupancy to issue Rental Registration

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC048423

10/11/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Druken Sailor - 114 E Indian Ave, Unit A

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC048423

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/11/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC048423
CLASS: 9.5
EXPIRATION: 4/30/2023

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC048424

10/11/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Kings Tide - 114 E Indian Ave, Unit B

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC048424

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/11/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC048424
CLASS: 9.5
EXPIRATION: 4/30/2023

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC003728

5/24/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name 116 E Indian Ave

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC003728

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 5/24/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC003728
CLASS: 9.5
EXPIRATION: 4/30/2023

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC048425

10/11/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Turtles Nest - 118 E Indian Ave, Unit A

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC048425

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/11/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC048425
CLASS: 9.5
EXPIRATION: 4/30/2023

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC048426

10/11/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Surf Shack - 118 E Indian Ave, Unit B

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC048426

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/11/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC048426
CLASS: 9.5
EXPIRATION: 4/30/2023

EXHIBIT NO. 16

City of Folly Beach

21 Center Street
PO Box 48
Folly Beach, SC 29439

Permit Application

Please fill out completely the application and contractors licenses information, print, sign, and date. Any information that if found to be missing or fraudulent shall result in voiding the Permit. Permits are not transferable, and fees paid to this department will only be refunded with-in 20 days after written request by the applicant. Dumpster and toilet must be onsite.
NOTE: Please submit two (2) sets of plans drawn to scale and a site plan with this application. See checklist for permitting.

PID/Tax Map # 328-10-00-054 Folly Beach Business License #

Job Address Lot 6 112 East Indian Ave Unit A (REAR OF PROPERTY) Property Owner Name & Address Folly East Indian Co LLC

State License # (SCLLR) 12254 Expiration Date 6/30/22

Company/Owner Construction Consultants Address PO Box 1922

City Folly Beach State SC Zip Code 29439 Phone 843-452-5291 Mike 843-834-5898 Allison

Fax Email

Type of permit : New Const [X] Remodel [ ] Elec [X] Mech [X] Plumbing [X] Gas [ ] Sign [ ] Tree [ ] Encroach [ ] Other [ ]

Brief Description work Build modular home A ~~the exact same house~~

Square Footage 1951 Total Cost of Job 425,000 Base Flood Elevation(BFE) Certificate attached

Roofing- submit material specifications with permit application. Must be tested to 130 MPH. Shingles must meet ASTM D-7158 H or ASTM D-3161 F

Office Use Only

Zoning Administrator — Date 10/14/21

Building Official — Date 10-28-24

Public Safety Fire Official — Date

By signing this application, I attest that all information is accurate and I will abide by all local ordinances, County, and State regulations in effect at time of application. I also understand that as long as this permit is valid, City officials and Inspectors (City employees and 3rd party inspectors) have the right to inspect the property at any time.

Print Name Allison Burbage

Signature Allison Burbage

Date 10.4.21

BLDG W/ PLANS

City of Folly Beach

21 Center Street
PO Box 48
Folly Beach, SC 29439

Permit Application

Please fill out completely the application and contractors licenses information, print, sign, and date. Any information that if found to be missing or fraudulent shall result in voiding the Permit. Permits are not transferable, and fees paid to this department will only be refunded with-in 20 days after written request by the applicant. Dumpster and toilet must be onsite.
NOTE: Please submit two (2) sets of plans drawn to scale and a site plan with this application. See checklist for permitting.

PID/Tax Map # 328-10-00-054 Folly Beach Business License #

Job Address Lot 6 112 East Indian Ave Unit A+B Property Owner Name & Address Folly East Indian Co LLC

State License # (SCLLR) 12254 Expiration Date 6/30/22

Company/Owner Construction Consultants Address PO Box 1922

City Folly Beach State SC Zip Code 29439 Phone 843-832-5898 Allison 843-452-5491 Mike

Fax Email

Type of permit : New Const [X] Remodel [ ] Elec [X] Mech [X] Plumbing [X] Gas [ ] Sign [ ] Tree[ ] Encroach [ ] Other [ ]

Brief Description work Build modular home (B) one exact same house IAW MODULAR PLANS & STRUCTURALS BY CURRY ENGINEERING

Square Footage 1951 Total Cost of Job 425,000 Base Flood Elevation(BFE) Certificate attached

Roofing- submit material specifications with permit application. Must be tested to 130 MPH. Shingles must meet ASTM D-7158 H or ASTM D-3161 F

Office Use Only

Zoning Administrator — Date 10/14/21

Building Official — Date 10-15-21

Public Safety Fire Official — Date

By signing this application, I attest that all information is accurate and I will abide by all local ordinances, County, and State regulations in effect at time of application. I also understand that as long as this permit is valid, City officials and Inspectors (City employees and 3rd party inspectors) have the right to inspect the property at any time.

Print Name Allison Burbage

Signature Allison Burbage

Date 10.4.21

City of Folly Beach
21 Center Street | PO Box 48
Folly Beach, SC 29439

Permit

Permit NO. **BLDR-3624-2021**
Permit Type: **Building (Residential)**
Work Classification: **Modular Home**
Permit Status: **Issued**

Issue Date: 10/28/2021

Expiration: 08/22/2022

Location Address | **Parcel Number**

112 E INDIAN AVE A, FOLLY BEACH, SC 29439 | **3281000054**

Contacts

Folly East Indian Co., LLC **Owner** 112 E INDIAN AVE, FOLLY BEACH, SC 29439	Construction Consultants **Contractor** PO Box 1922, Folly Beach, SC 29439 (843)452-5291 mmikrif@aol.com

Description: Build modular home - unit A IAW modular plans and specs by Curry Engineering

Valuation: **$425,000.00**

Total Sq Feet: **1,951.00**

Inspection Requests:
Please email:
inspect@cityoffollybeach.com

Fees	Amount
Building Permit Fee	$2,497.50
Flood Plain Management Fee	$50.00
Permit Application Fee	$100.00
Plan Review Fee	$1,373.75
Zoning Permit Fee	$100.00
Total:	**$4,121.25**

Payments	Amt Paid
Total Fees	**$4,121.25**
Check # 2031	$4,121.25
Amount Due:	**$0.00**

Available Inspections:	
Inspection Type	
Footing	
Footing	
Foundation Wall/Pier Pre-Pour	
Foundation Wall/Pier Final	
Concrete Slab	
Framing	
Weather Resitive Barrier	
Flashing	
Pre-Insulation	
Insulation	
Roof	
Septic	
Final Building	
Final Planning/Zoning	

Permit must be displayed on job site and visible from the street frontage.
Toilet and dumpster must be provided on-site by Contractor.
Work hours are Monday-Friday only from 8:00am-6:00pm. Saturday and Sunday work is subject to noise ordinance.
All contractors must be State Licensed. A copy of State Contractors license is required when permit is applied for.
Contractor must visibly display Folly Beach Business License or decal on job site."
It is the responsibility of the Permit Holder to schedule all inspections and see that work has passed inspection prior to concealment.
All requests for required inspections should be made at least 24 hours in advance.

Issued By: Amber Watts — October 28, 2021

Date

Authorized City Official — Date

City of Folly Beach
21 Center Street | PO Box 48
Folly Beach, SC 29439

Permit

Permit NO. **BLDR-3625-2021**
Permit Type: **Building (Residential)**
Work Classification: **Modular Home**
Permit Status: **Issued**

Issue Date: 10/29/2021

Expiration: 10/27/2022

Location Address	Parcel Number
112 E INDIAN AVE B, FOLLY BEACH, SC 29439	**3281000054**

Contacts

Folly East Indian Co., LLC **Owner** 112 E INDIAN AVE, FOLLY BEACH, SC 29439	Construction Consultants **Contractor** PO Box 1922, Folly Beach, SC 29439 (843)452-5291 mmikrif@aol.com

Description: Build modular home - unit B IAW modular plans and specs by Curry Engineering

Valuation:	**$425,000.00**
Total Sq Feet:	**1,951.00**

Inspection Requests:
Please email:
inspect@cityoffollybeach.com

Fees	Amount
Building Permit Fee	$2,497.50
Flood Plain Management Fee	$50.00
Permit Application Fee	$100.00
Plan Review Fee	$1,373.75
Zoning Permit Fee	$100.00
Total:	**$4,121.25**

Payments	Amt Paid
Total Fees	**$4,121.25**
Check # 2031	$4,121.25
Amount Due:	**$0.00**

Available Inspections:	
Inspection Type	
Footing	
Foundation Wall/Pier Pre-Pour	
Foundation Wall/Pier Final	
Concrete Slab	
Framing	
Weather Resitive Barrier	
Flashing	
Pre-Insulation	
Insulation	
Roof	
Septic	
Final Building	
Final Planning/Zoning	

Permit must be displayed on job site and visible from the street frontage.
Toilet and dumpster must be provided on-site by Contractor.
Work hours are Monday-Friday only from 8:00am-6:00pm. Saturday and Sunday work is subject to noise ordinance.
All contractors must be State Licensed. A copy of State Contractors license is required when permit is applied for.
Contractor must visibly display Folly Beach Business License or decal on job site."
It is the responsibility of the Permit Holder to schedule all inspections and see that work has passed inspection prior to concealment.
All requests for required inspections should be made at least 24 hours in advance.

Issued By: Amber Watts — October 29, 2021
Date

Authorized City Official — Date

Sec. 54-227. - Short Term Rental, ST Overlay Zone.

EXHIBIT NO. 17

a. Intent . The Short Term Rental, ST Overlay Zone is intended to identify those areas within the City limits where Commercial short term rental uses and bed and breakfast uses, as herein defined, are allowed as a conditional use. Commercial short term rentals are prohibited except on commercially zoned properties within the ST Overlay Zone. Bed and breakfast uses are prohibited except on properties within the ST Overlay Zone. The City places a high value on the preservation of the character of its residential neighborhoods. Potential negative impacts affecting residential neighborhoods shall be avoided or minimized to the greatest extent possible.

b. Commercial Short Term Rental Use .

1. Accommodations Use . Subject to the conditions in Section 54-227, b. 2, a dwelling unit converted into a commercial short term rental may be rented to not more than four (4) unrelated people pursuant to the definition for family for a period of between one (1) and twenty-nine (29) days; provided, however, only one (1) family at a time may occupy and use a dwelling unit converted into a commercial short term rental.
2. Conditions . A conforming or legal nonconforming dwelling unit may be converted into a commercial short term rental only when all of the following conditions are satisfied, as evidenced by an application, a site plan, and floor plans:
   (a) The lot is located entirely within one or more of the following base zoning districts: CT, LB, GB, UC, MU-1, MU-1/WH, MU-2, or MU-2/WH; and
   (b) The lot is commercially zoned and located entirely within the Short Term, ST Overlay Zone, as shown on the Zoning Map; and
   (c) The dwelling unit being converted to a commercial short term rental is not designated as an affordable housing unit or a workforce housing unit; and
   (d) The owner of the dwelling unit being converted into a commercial short term rental complies with all business license and revenue collections laws of the City of Charleston, Charleston County and the State of South Carolina; and
   (e) Any commercial uses on the lot must be completely separate and independent operations, unrelated to the Commercial Short Term Rental; and
   (f) There are no common areas or other areas serving more than one dwelling unit and/or commercial short term rental on the lot, except driveways; and
   (g) There are no exterior signs for the commercial short term Rental use of the lot; and
   (h) Existing parking spaces on the lot, if any, that satisfy the off-street parking requirements of this Chapter for the existing dwelling units being converted to short term rentals and all other uses on the lot shall be shown on the site plan submitted with the application.

No additional parking spaces shall be required for the dwelling units being converted to short term rentals; and

(i) No more than nine (9) dwelling units may be converted to short term rentals on any one (1) lot. Ten (10) or more short term rental units on one (1) lot shall require approval as an accommodations use pursuant to Section 54-220 of the Zoning Ordinance. This provision shall not be interpreted to permit an increase in the maximum density permitted under the base zoning district for dwelling units on the lot; and

3. Except as expressly stated otherwise in this Section 54-227, a dwelling unit converted into a commercial short term rental shall continue to be subject to the regulations for such a dwelling unit in the base zoning district, including without limitation the site regulations in Article 3 of the Zoning Ordinance.
4. Impact on Nonconforming Uses . For the purposes of applying Section 54-110 concerning nonconforming uses, a commercial short term rental is considered a continuation of the nonconforming use of a legal nonconforming dwelling unit.
5. Prohibition on Construction of Commercial Short Term Rentals . Nothing in this Section 54-227 shall be construed to permit a property owner to construct a commercial short term rental. A property owner seeking a conditional use for a commercial short term rental must construct a dwelling unit in accordance with applicable standards for the dwelling unit under the base zoning district for the subject property and then apply for the conversion of the conforming dwelling unit to a commercial short term rental use.
6. Approved Short Term Rentals Within the ST Overlay Zone . All STR uses within the ST Overlay Zone that have City approval to operate on the effective date of this ordinance shall be issued a commercial STR permit, which shall be valid for one (1) year from the date of issuance and shall be renewable annually unless revoked. Permit holders shall adhere to the requirements of this Chapter.
7. New Short Term Rentals Within the ST Overlay Zone, Permit . New STR uses within the ST Overlay Zone that receive City approval to operate shall be issued a commercial STR permit, which shall be valid for one (1) year from the date of issuance, and shall be renewable annually unless revoked. Permit holders shall adhere to the requirements of this Chapter.
8. Annual Renewal . For renewal of a commercial STR permit, a property owner shall be required to recertify compliance with this section with the zoning administrator. An application for annual recertification of the commercial STR permit must include the application fee, an affirmation by the applicant that the nature of the STR use at the property has not changed, and must be notarized, filed with, and approved by the zoning administrator to continue the STR use.

c. Bed and Breakfast Use .

1. Accessory Use . Subject to the conditions in Section 54-227, c., 2, a bed and breakfast use may be established in a dwelling unit as an accessory to the principal residential use, on any property located within the ST Overlay Zone, and each approved bed and breakfast unit may be rented to one (1) family for a period of between one (1) and twenty-nine (29) consecutive days.
2. Conditions : A bed and breakfast may be approved only when all of the following conditions are satisfied, as evidenced by an application, a site plan, and floor plans:
   (a) The number of bed and breakfast units shall not exceed four (4) units; except that a lot may have between four (4) and ten (10) bed and breakfast units if the total square footage of conditioned floor area in the building or buildings containing the bed and breakfast units is equal to or greater than the sum of the number of bed and breakfast units multiplied by 560, and all other requirements of this section are met. Each unit shall consist of one (1) or more rooms arranged for the purpose of providing sleeping accommodations for one (1) family for a period of between one (1) and twenty-nine (29) consecutive days; and
   (b) The subject property is located entirely within the ST Overlay Zone; and
   (c) The bed and breakfast shall be operated by the record owner of the subject property who also resides at the subject property at least 183 days each year; and
   (d) The principal building on the property on which the bed and breakfast use will be located shall have been constructed 50 or more years ago although the bed and breakfast unit(s) may be located in a building that was not constructed 50 or more years ago; and
   (e) Bed and breakfast unit(s) located in buildings constructed 50 or more years ago shall provide one (1) off street, maneuverable parking space on the subject property for each two (2) bed and breakfast units, or fraction thereof. Bed and breakfast unit(s) located in buildings not constructed 50 or more years ago shall provide one (1) off street, maneuverable parking space on the subject property for each bed and breakfast unit. Spaces required for the bed and breakfast unit(s) shall be in addition to providing, on the subject property, required off street parking for existing uses on the property; and
   (f) The property shall be permitted to have one sign advertising the Bed and Breakfast. The permitted sign may have a maximum of two sides and no side shall exceed four (4) square feet in total sign face area; and
   (g) The bed and breakfast shall be located on property which is in compliance with allowed uses for the zone district in which the property is located; and
   (h) The bed and breakfast shall be operated by someone who has not had a bed and breakfast permit revoked within the previous twelve (12) months.
3.

Operational Requirements. In all cases, bed and breakfast use shall meet the following operational requirements:

(a) No meals other than breakfast may be served by the resident owner to the paying guests.

(b) The resident owner shall keep a guest register including names, addresses, telephone numbers and dates of occupancy of all guests for three (3) years and shall make this available to the City upon request.

(c) The resident owner shall comply with all business license and revenue collection laws of the City of Charleston, Charleston County and State of South Carolina.

4. Application Process.

(a) New applications for bed and breakfast uses shall be notarized and include the location of the property and resident owner of record of the property, an application fee, floor plans drawn to scale of the habitable structures on the property, a site plan of the lot showing the location of the proposed bed and breakfast units, the location of any existing bed and breakfast units, and the location of the required off-street parking spaces and driveways, and photographs of the current principal views of the structure where the proposed bed and breakfast units are to be located. The floor plans shall clearly note all rooms to be used by bed and breakfast guests, with the room or rooms to be used by bed and breakfast guests for sleeping designated. The application shall also include a statement which the resident-owner must sign acknowledging that he or she has reviewed and understands the requirements of this section.

Upon receiving a complete application and prior to the issuance of a zoning permit, the lot upon which the proposed use is to be located shall be posted for fifteen (15) consecutive days, advising that the resident-owner of the property has applied for a zoning permit to establish a bed and breakfast use at the location and supplying a phone number to call for further information. During this fifteen (15) calendar day period, the zoning administrator shall determine if the application meets the requirements as set forth above. If, at the end of the fifteen (15) day posting period, the zoning administrator determines that the application meets the requirements, the zoning administrator shall notify the applicant that the application is approved and shall, after waiting an additional five business days to allow for appeals, issue the zoning permit, which shall be valid for one (1) year from the date of issuance and shall be renewable annually unless revoked. Any appeals filed within the five-day period shall cause the issuance of the zoning permit to be stayed pending resolution of the appeal.

(b) Renewal application.

(1)

For renewal of a bed and breakfast permit, a property owner shall be required to recertify compliance with this section with the zoning administrator. An application for annual recertification of the bed and breakfast permit must include the application fee, an affirmation by the applicant that the nature of the bed and breakfast use at the property has not changed, and must be notarized, filed with, and approved by the zoning administrator to continue the bed and breakfast use.

(2) Upon a change in ownership of a property, and prior to the issuance of a new business license to allow continuation of an existing, permitted bed and breakfast use upon said property, the new property owner shall be required to recertify compliance of the bed and breakfast use with the zoning administrator by having an application for recertification of the bed and breakfast use notarized, filed with, and approved by the zoning administrator.

5. The bed and breakfast use shall not be expanded in any respect throughout the structure or structures, or elsewhere on the property nor shall the use be changed to any other use not permitted by the Zoning Ordinance without reapplication to and approval by the zoning administrator.
6. All operators of bed and breakfast uses permitted under this section shall cooperate fully with the zoning administrator and his designees, including, but not limited to, providing pertinent information upon request and affording access to that portion of the premises which is used for the bed and breakfast use for reasonable site inspections.
7. Existing Approved and Bed and Breakfast Uses . All approved, legal bed and breakfast uses that are operating on the effective date of the ordinance from which this section derives or that are entitled to be in operation on the effective date of this ordinance shall be issued a bed and breakfast permit which shall be valid for one (1) year of issuance and shall be renewable annually unless revoked and shall adhere to the requirements of this Chapter.

d. Violations and Penalties .

1. Violations . It shall be a violation of this Chapter for an owner, his agent or manager to:
   (a) Operate an STR use, a bed and breakfast use or other accommodations use without complying with the requirements of this Chapter and the Code of the City of Charleston; or
   (b) Expand an STR use or bed and breakfast use without obtaining a new permit; or
   (c) Advertise a property as being available for an STR use, bed and breakfast use or other accommodations use without first complying with the requirements of this Chapter; or
   (d) Represent or submit for advertising or marketing, or to otherwise hold out an STR unit, bed and breakfast unit or other accommodations unit as being available for use or occupancy unless the STR or bed and breakfast has been permitted pursuant to this

Chapter and the permit number is displayed in the materials used to represent, advertise, market or otherwise hold out the property as available for STR or bed and breakfast use or occupancy; or

(e) Represent or submit for advertising or marketing, or otherwise to hold out the availability of an STR or bed and breakfast for use or occupancy by more than the number of occupants that are permitted pursuant to this Chapter; or

(f) Represent or submit for advertising, or marketing, or to otherwise hold out more STR or bed and breakfast units or other accommodations type units on a property than are permitted pursuant to this Chapter.

2. Penalties . A violation of this Chapter is a misdemeanor punishable by a fine and/or incarceration. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use, or other violation under this Chapter continues is considered a separate offense.

   Should the STR or bed and breakfast use fail to continue to meet the requirements under which it was authorized or be discontinued for a period of twelve (12) months or more, the operating permit issued pursuant to this Chapter shall be revoked.

(Ord. No. 2012-41, § 4, 1-24-12; Ord. No. 2018-043 , § 13, 4-10-18)

EXHIBIT NO. 18

ARTICLE XIII: VACATION RENTALS

Sec. 21-117. Prohibition and nonconformity.

Vacation Rentals are prohibited uses on Sullivan's Island. Nothing in this Ordinance shall be construed to permit any Principal Building or other structure to be used as a Vacation Rental. All legally established Vacation Rentals are interpreted to be Nonconforming Uses.

Sec. 21-118. Certificate of zoning compliance and business license required.

In order for the owner of a Principal Building that has been lawfully used as a Vacation Rental during the twelve (12) months prior to November 21, 2000 to continue to use the property as a Vacation Rental, the owner shall apply for, and if approved by the Zoning Administrator upon meeting the requirements of this Article, be issued a Certificate of Zoning Compliance and shall secure a Vacation Rental Business License.

A. A Certificate of Zoning Compliance shall be obtained for each calendar year the property is used for a Vacation Rental.

B. A Certificate of Zoning Compliance shall be obtained for each Principal Building.

C. A Certificate of Zoning Compliance shall not be granted, even if the Principal Building otherwise qualifies for a Certificate of Zoning Compliance, if subsequent to the ratification of this Ordinance, that Principal Building has been enlarged or razed or otherwise destroyed.

D. If a lot has more than one legally existing Principal Building, a Certificate of Zoning Compliance shall be obtained for each Principal Building that is being used for a Vacation Rental.

Sec. 21-119. Certificate of zoning compliance application.

A. An applicant for a Certificate of Zoning Compliance shall provide the following information to the Town Clerk in the application for a Certificate of Zoning Compliance for a Vacation Rental:

(1) The complete street address, lot and block number and the tax map number as used by Charleston County;

(2) Proof of ownership, including the name, address and phone number of each person or entity with an ownership interest in the property;

(3) If the applicant is someone other that an owner, the applicant shall provide proof in writing of the owner's (or owners') authorization of the applicant to apply for the Certificate of Zoning Compliance and a Vacation Rental Business License;

(4) The applicant shall provide a letter signed by all of the owners of the property acknowledging that a violation of the Town's Vacation Rental Ordinance by the applicant, any manager of the property, or tenant shall be considered a violation by the owner(s);

(5) The owner's valid and current federal employer tax identification number or the social security number which is used for reporting of state and federal income tax for income derived from the Vacation Rental property;

(6) The name, address and twenty-four (24) hour phone number of the person who will be operating the Vacation Rental;

(7) The name and signature of all owners, authorized agents and authorized property managers; and,

(8) Agreement to comply with all of the rules and regulations set out in Sec. 21-122.

B. No Certificate of Zoning Compliance shall be granted until sufficient written evidence is provided to show that:

(1) A Sullivan's Island Vacation Rental Business License was issued for the Vacation Rental for the previous calendar year;

(2) The property was not assessed under the State, County and Town Municipal ad valorem tax laws as a qualified assessment for owner occupied property but rather assessed at the six percent (6%) rate and paid at the six percent (6%) rate for the previous calendar year. If a property has previously or is presently being assessed with a qualified assessment as owner occupied property four percent (4%), then the owner shall present sufficient proof satisfactory to the Town Clerk that the property has lawfully met and continues to meet the requirements for the four percent (4%) assessment under the criteria set out in Section 12-43-220 of the Code of laws of South Carolina, as amended;

(3) Personal rental residential property taxes were assessed and paid for the previous calendar year;

(4) State accommodation taxes were collected and paid for the rental of the property for the previous calendar year;

(5) Sales taxes were collected and paid for the rental of the property for the previous calendar year;

(6) Local option sales taxes were collected and paid for the rental of the property for the previous calendar year;

(7) County accommodation taxes were collected and paid for the rental of the property for the previous calendar year;

(8) Water and sewer fees have been paid in full;

(9) The property was actually held out and used as a Vacation Rental during the previous calendar year and was so

used as a Vacation Rental for a period of more than two (2) weeks during the previous calendar year;

(10) The owner consents to an inspection of the property by the Fire Chief of the Town of Sullivan's Island and the Building Official for the Town of Sullivan's Island to determine if the property complies with all Town of Sullivan's Island fire and building ordinances; and,

(11) The Zoning Administrator confirms that the property has not been used in an unlawful manner in the prior twelve (12) months and that the owner(s) has not violated any laws of the Town of Sullivan's Island.

C. Except in cases involving the initial receipt of a Certificate of Zoning Compliance, the owner shall have complied with all of the rules and regulations set out in Sec. 21-122 during the previous twelve (12) months and there has been a determination by the Zoning Administrator that the owner has not violated the said rules and regulations on more than two (2) occasions in the previous twelve (12) months.

Sec. 21-120. Standards for denial.

(A) If the Zoning Administrator finds substantial and credible evidence that one or more of the requirements of Sec. 21-119 have not been met, then the Zoning Administrator shall deny the applicant a Certificate of Zoning Compliance.

(B) If the Certificate of Zoning Compliance is denied, the applicant may request a review and re-inspection by the Zoning Administrator. If the review and re-inspection is denied or if, after review and re-inspection, there is no change in the denial of the license, the owner/applicant may appeal the decision by petition to the Board of Zoning Appeals.

Sec. 21-121. Transferability.

The Certificate of Zoning Compliance and the Vacation Rental Business License may not be assigned or transferred, pledged, sold, or otherwise transferred by the license holder to any other person, business, or entity. The license belongs solely to the owner and shall remain in the owner's name until such time that the owner ceases to use the property for a short-term rental purpose or sells the property. If a new owner wishes to continue to use the property for a Vacation Rental, an application shall be made to the Town within thirty (30) days of the transfer of the property or thirty days before the first Vacation Rental of the property.

Sec. 21-122. Operational requirements.

A. Any owner of a Vacation Rental who obtains a Certificate of Zoning Compliance and a Vacation Rental Business License shall comply with the following:

(1) All Vacation Rentals shall comply with the terms of the current Sullivan's Island Waste Hauler contract associated with excessive garbage and charges for containment and collection of the same;

(2) Except as provided herein, each residential property where transient lodging use is in effect shall prominently display so as to be visible from the outside of the property the Vacation Rental Business License;

(3) A contact person shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of responding promptly to complaints regarding the conduct of the occupants of the Vacation Rental. The name and phone number of the contact person shall be registered with the Police Department;

(4) The occupancy of a Vacation Rental shall conform to the occupancy limits of the Town of Sullivan's Island and Fire and Building Ordinances and total occupancy in all cases shall be subject to the following:

(a) No more than two (2) occupants for each one hundred twenty (120) square feet of bedroom area, plus one (1) additional occupant for each additional sixty (60) square feet of bedroom area in bedrooms shared by more than two (2) occupants;

(b) No more then twelve (12) occupants and no more than twenty-four (24) people (including both occupants and temporary guests) gathered at the Vacation Rental or otherwise on the property at any time; and,

(c) There shall be no weddings, parties, or other social events where more than twenty-four (24) people would congregate or gather on the property at one time.

(5) The owner or manager shall maintain a tenant and vehicle registration which shall include the name and address of each unit's tenant(s), and the make, year and tag number of the tenant's (s') vehicle(s). This information shall be readily available upon request of any officer of the Town responsible for the enforcement of this Ordinance;

(6) The owner shall provide off-street parking on the Vacation Rental property for all vehicles, watercraft and trailers to be used by the tenants during any occupancy;

(7) There shall be a written lease between a Vacation Rental owner and the tenant and it shall contain the tenant's agreements to the regulations contained in this subsection; and,

(8) There shall be neither overnight leases nor any conversion from providing Vacation Rentals to operating an inn or motel. All leases, rentals or uses by a tenant shall be for a minimum of three (3) continuous nights.

B. Nothing in this subsection is intended to exclude the application of any other ordinance for the Town of Sullivan's Island to the property or to the related parties.

Sec. 21-123. Suspension, revocation or abandonment.

A. A Certificate of Zoning Compliance and/or a Vacation Rental Business License may be suspended or revoked upon a determination by the Zoning Administrator of the existence of two (2) or more instances of failure to satisfy the conditions that are required to be shown as set out in Sec. 21-119 or in violation of the conditions and regulations set out in Sec. 21-122. An appeal of such determination of the Zoning Administrator may be made by petition to the Board of Zoning Appeals in accordance with the provisions of this Zoning Ordinance.

B. The abandonment or failure to use a property as a Vacation Rental for a period of twelve (12) consecutive months for any period shall be deemed an abandonment of the Vacation Rental use and the property shall no longer be used as a Vacation Rental and the owner of the property shall no longer be entitled to obtain a Certificate of Zoning Compliance nor a Vacation Rental Business License. Furthermore, the owner of the property and any broker, real estate agent or authorized agent of the owner shall be prohibited from using the property as a Vacation Rental.

Sec. 21-124. Violations.

A. It shall be a violation of these regulations to enter into a long-term lease with a mutual intent to subvert the regulatory goals of this Article. It shall be a violation of these regulations to sublease or allow the subleasing of a Principal Building for less than twenty-eight (28) days with intent to subvert the regulatory goals of this Ordinance. It shall also be a violation of these regulations for a property owner to lease space to “roommates” for a period of less than twenty-eight (28) days when not licensed as provided hereunder. For the purposes of enforcement, a reputable presumption that “roommates” are involved shall exist if the persons use a common entrance to the Principal Building.

B. It shall be unlawful for any person, owner, tenant, broker, real estate agent, other agent or other representative of the owner to hold out or advertise a residential dwelling for a Vacation Rental if the property has not been issued a Certificate of Zoning Compliance and a Vacation Rental Business License. It shall further be unlawful to hold out and/or advertise a residential dwelling for occupancy or uses not permitted by these regulations. A broker or real estate agent who is found in violation of this regulation shall be subject to having his/her business license revoked.

C. Any violation of the regulations provided in this Article by any person, owner, tenant, agent, broker real estate agent or other representative of an owner shall be punishable as a misdemeanor and by a fine of up to Five Hundred Dollars ($500) per day per violation and/or a sentence of thirty (30) days in jail. Each day the violation continues or occurs shall constitute a separate offense. In addition to any other remedy available to the Town of Sullivan’s Island, the Town or any adversely affected party may enforce these regulations or the terms of this Ordinance in law or in equity. The Town of Sullivan’s Island or any party adversely affected by any violation may seek injunctive relief from a Court of competent jurisdiction to prevent a violation of this Article.

Sec. 21-125. Reserved.

§ 156.340 PURPOSE, DEFINITIONS AND APPLICABILITY. EXHIBIT NO. 19

(A) *Purpose.* The purpose of this subchapter is to regulate the use of residential dwelling units as short term rentals (STR) in order to:

(1) Protect the integrity of the residential character of the town's existing neighborhoods and the quality of life of its citizens;

(2) Establish a system to track and manage STR inventory in the town; and

(3) To protect the health and safety of occupants of STR units.

(B) *Definitions.* For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RESIDENTIAL DWELLING UNIT. Building or portion of a building arranged or designed to provide complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

SHORT-TERM RENTAL, or STR.

(a) The rental or lease for valuable consideration of a residential dwelling unit, or portion thereof, for a duration of less than 30 consecutive days is considered an STR and is subject to this subchapter;

(b) This subchapter and its requirements shall apply to any, and all, businesses that were previously defined as a bed and breakfast under earlier town ordinances; and

(c) Home-based businesses and tourist accommodations, including hotels (includes motel and extended stay), boutique hotels (includes inn), and similar accommodations located on property in a commercial zoning district are not defined as ***SHORT TERM RENTALS*** and thus are not subject to this subchapter.

STR OPERATOR. Any property owner who receives payment for operating a residential dwelling unit, or portion thereof, as a short-term rental. For the purposes of this subchapter, ***OPERATOR*** may be interpreted to mean property owner.

(C) *Maximum number allowed.* At no time shall the maximum number of residential dwelling units used as STRs exceed 400, (the “Cap”), except as otherwise set forth in § 156.341(A)(2).

(Ord. 19048, passed 8-13-19; Am. Ord. 21019, passed 4-13-21; Am. Ord. 22052, passed 12-8-22)

Use, Conditional: The use allowed in a particular zoning district provided all the conditions, restrictions or limitations set forth in the text of the Ordinance are met.

Use, Permitted: The use allowed by right in a particular zoning district.

Use, Residential: Use of land or structure(s) thereon, or portion thereof, for residential occupancy of a permanent or semi-permanent nature with an intended continuous occupancy period, by any one individual or family, of not less than one month; and, except that this definition does not include occupancy of a visitor nature such as in hotel, motel or time-sharing uses involving periods of continuous occupancy of less than one month.

Use, Special Exception: The use allowed in a particular zoning district, after review by the Board of Zoning Appeals, for conformance with the conditions, restrictions or limitations set forth in the text of the zoning district as well as those set forth in Article 15 – *Conditional And Accessory Uses And Special Exceptions*.

Vapor Product: Any non-combustible product, which may or may not contain nicotine that employs a heating element, power source, electronic circuit, or other electronic chemical or mechanical means, regardless of shape or size that can be used to produce vapor from a solution or any other form. **Vapor Product** includes any electronic cigarette, hookah, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe or similar product or device, as well as any vapor cartridge or other container that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. **Vapor Product** does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

Variance: Permission, granted by the Board of Zoning Appeals, to depart from the literal requirements of the Ordinance.

Vehicular Use Area: Any area used for circulation, parking, and/or display of any and all types of vehicles, whether self-propelled or not, whether moving or at rest, including but not limited to parking lots, loading and unloading areas, mobile home parks, and sales service areas. Driveways are considered to be vehicular use areas wherever they are adjacent to public streets or other vehicular use elements described previously in this paragraph (intervening curbs, sidewalks, yards, landscape, strips, etc., do not eliminate an adjacency).

VE Zone: A flood insurance zone that corresponds to areas in the 100-year flood plain including the potential for wave action associated with the potential flood hazard. The VE Zone is the coastal high hazard area subject to high velocity waters, including but not limited to hurricane wave wash. The area is designated on the flood insurance rate map as Zone VE.

Vine: A plant whose natural growth characteristic produces climbing, meandering stems.

Visitor Accommodation: A visitor accommodation or transient accommodation, aka "short term rental" means a living unit or other accommodation used as a place of human habitation with sleeping accommodations (hereinafter collectively referred to as "an accommodation"), regardless of the manner of ownership or structure, which is exchanged, furnished to another, used, rented, leased or sub-leased for any time period less than ninety (90) continuous days or which is subject to time sharing, fractional ownership, tenancy in common (TIC), shared appreciation mortgages, or investment partnership pursuant to general law which is exchanged,

furnished to another, used, rented, leased or sub-leased for any time period less than ninety (90) continuous days. A visitor accommodation shall be considered a commercial use.

Warehouse: A warehouse is a commercial building for storage of goods, equipment, or materials.

Wearing Apparel: Inner and outer clothing and wearing accessories including dresses, suits, shirts, pants, blouses, hats, socks, shoes, jewelry, gloves, and ties.

Wireless Internetworking: A wireless extension of a wired Local Area Network (LAN) that provides all the capabilities normally associated with a wired LAN such as network management, data security, user authentication and authorization, traffic and congestion control, quality of service guarantee, real-time and constant/variable bit-rate support for voice and video.

Wireless Internetworking Node: A combination of antennas and radio components encased in a compact environmentally hardened outdoor package designed to be deployed outdoors to provide wireless internetworking and Wi-Fi coverage in nearby buildings or over large outdoor areas.

Wireless Internetworking Node, Support Structure: Any building, pole, or other permanently placed object used to mount the wireless internetworking node in the desired location for permanent operation.

Yard: Open space on a lot which is unoccupied and unobstructed from its lowest level upward for drives, landscaping, retaining and sea walls, fences, open patios, entrance steps, open parking space, transformers, gas meters, air conditioning units and solid waste containers. The area between the property line and the building line.

Yard, Front: A yard, contiguous to an adjacent right-of-way, extending across the full width of the lot, the depth (front yard setback) of which is the minimum horizontal distance between the front lot line and the building line parallel thereto (see Figure 2-9 – *Setback Yards*). An ocean yard shall not be considered a front yard. See the definition for "Yard, Ocean."

Yard, Ocean: Any yard contiguous to the ocean shall constitute an ocean yard, and shall meet the minimum ocean yard requirements of the district within which it is located.

Yard, Rear: A yard extending across the full width of the lot, the depth (rear yard setback) of which is the minimum horizontal distance between the rear lot line and the building line parallel thereto (see Figure 2-9 – *Setback Yards*).

Yard, Side: A yard extending along a side lot line and back to the building line drawn parallel to the side lot line at a distance therefrom equal to the width of the required minimum side yard (side yard setback), but excluding any area encompassed within a front yard or rear yard (see Figure 2-9 – *Setback Yards*). Unless otherwise stated, dimensions of minimum side yards specified in the district regulations of this ordinance refer to the required width of each side yard rather than to the total width of both side yards.

1712.G. In the Business Park (BP) district, exterior building materials shall consist of masonry (brick, stone, stucco, split-face and textured concrete block), glass, double-sided metal panel systems, or concrete. Pre-engineered building systems are permissible as long as they conform to the list of exterior materials above. Prefabricated metal buildings are specifically prohibited.

1712.H. Cooling towers and mechanical units in the Business Park (BP) district shall be screened to prevent view from any public right-of-way.

1712.I. There shall be no outdoor storage in the Business Park (BP) district.

Section 1713. Additional Design Standards for Commercial, Industrial and Mixed-Use Properties Contiguous to Residential (R, RM and residential PUD) Districts

1713.A. When a property abuts a residential (R, RM and residential PUD) district, the maximum height for the first 100' of that property (as measured from the district boundary) shall be either those of the district in which the property is located or the same as those in the abutting residential district, whichever is more restrictive. The minimum setback from the residential boundary line shall be 30'.

1713.B. When a property is directly across a public right-of-way from a residential (R, RM and residential PUD) district, the maximum height in the first one hundred feet of that property (as measured from the public right-of-way) shall be equal to that of the residential district or equal to the width of the right-of-way, whichever is greater, but in no case shall exceed that of the district in which the property is located.

Section 1714. Additional Standards for Residential Properties Throughout the City

1714.A. Front yard setbacks for dwellings. Where lots comprising 25 percent or more of the frontage of the same street, within the same block are developed with buildings having an average front yard with a variation in depth of not more than six feet, no building hereafter erected or structurally altered shall project beyond the average front yard so established.

1714.B. Rental Periods. Within any Single-family (R) or Multifamily (RM) district, no property or structure shall be leased for less than a 90-day period.

Section 1715. Design Standards for the Highway Commercial (HC2) District.

1715.A. Loading and storage areas: No loading or storage area shall be visible from any public right-of-way, unless that lot is a corner lot or fronts two (2) streets. in which case the loading or storage area may be visible from the street with the lowest traffic count so long as it is buffered in accordance with landscaping provisions found elsewhere in the zoning ordinance.

1715.B. Large developments: Development parcels larger than one acre in size and development subdivisions with one or more parcels greater than one acre in size

P-permitted use C-conditional use S-special exception Blank Cell-use type not allowed

Use Category and Type	Residential																											Additional Regulations
	R5	R7	R8	R10	R15	RMM	RMH	RMH-MH	RMV	MU-M	MU-H	C6	C7	C8	A	CG	E	HC1	HC2	MP	IN	AP	BP	LM	WM	CS	IR	PRC	
Transportation terminals and establishments providing for the interchange of freight													P	P				P	P			P		P	P				
Travel agencies										P	P				P			P	P	P									
Truck terminals																						P		P	P				
Unlicensed group residential (caregiving)										S	S							S	S	S									1501.E
Veterinary offices, clinics, and hospitals																		P	P	C					C				1501.GG
Video and other media productions															P		P							P	P				
Visitor accommodations not otherwise listed									P		P	P			P		P	P	P								S		1503.A
Visitor information reception center											P				P		P	P	P										
Warehouse storage																		P						P	P				
Welding shops																								P	P				

within 500 feet of a proposed B&B in either of these districts. Distances shall be measured from the property line.

e. **Meals:** No meals will be served to anyone other than registered guests, except as provided for in Section 3.6.2.C.1.f below. No variances from this condition shall be permitted.

f. **Events:** Business meetings, receptions, teas, and other events are permitted, provided that the events are hosted for registered guests. This shall apply to all B&Bs established under the Beaufort Code.

g. **Operation:** B&Bs shall be operated by a resident manager living on the premises.

2. **Short Term Rental**

a. **Specific to T3-S, T3-N, T4-HN, and all boats regardless of zoning district:** Short term rentals, where the owner does not live on the premises, are limited to 6% of the lots in the neighborhood as shown on the City of Beaufort Neighborhoods Map zoned T3-S, T3-N, and/or T4-HN. Boats used for Short term rentals are limited to 6% of the slips in marina. The following exceptions apply:

i. Structures on the City's List of Vacant and Abandoned Structures being rehabilitated for use as a short term rental; and

ii. Short term rentals are prohibited in The Point neighborhood, as shown on the City of Beaufort Neighborhoods Map.

b. **Minimum Stay:** 2 nights

c. **Permitted Rental Types**

i. Rental of the primary dwelling

ii. Rental of an accessory dwelling

iii. Rental of a portion of a primary dwelling.

iv. Rental of a boat in an approved marina.

d. **Parking:** Parking shall be provided on-site and located to the side or rear of the dwelling. On-site parking shall be clearly delineated with an improved surface such as pavement, gravel, or another method approved by the administrator. If formalized parking is provided on the street(s) adjacent to the primary or accessory unit, this may be utilized in lieu of on-site parking.

e. **Rental Agreement:** The applicant shall provide a copy of the rental agreement that will be used. The rental agreement shall specify the following:

i. The minimum stay

ii. The maximum number of guests--which shall be based on the number of beds in the unit. For Primary house rentals, the number of adult guests is limited to 2 per bedroom. For Carriage House rentals, the total number of adult guests is limited to 4.

iii. The maximum number of vehicles permitted at the unit--which shall be based on the number of bedrooms and the design of the driveway. For Primary house rentals, the number of vehicles is limited to 1 per bedroom. For Carriage House rentals, the total number of adult guests is limited to 2.

iv. Where guests are to park. Where no formalized on-street parking is available, the agreement shall specify that guests are to park on-site and not in the street.

v. That the City's noise ordinance applies between 9:00 PM and 8:00 AM

vi. Prohibit large gatherings such as weddings and reunions unless specifically approved by the City

vii. Pets, if permitted, are not to be left outside unattended

f. **Property Management Plan:** A property management plan shall be developed and approved by the administrator. The property management plan shall identify a property manager. Where the property owner does not live on the premises, the property manager must be available to appear on the premises to respond a complaint within three hours of being notified by the administrator. Where the property owner lives on the premises, a back-up property manager must be identified unless the owner certifies the unit will not be rented when the owner is out of town. The administrator shall be notified when management of the unit changes. Failure to comply with the approved property management plan shall result in the revocation of the zoning permit (Section 9.4).

g. **Signs:** No on-site signs shall be permitted.

h. **Rental Rules:** Rental rules, including use of the sanitation and recycling roll-carts, and emergency contact information including the police non-emergency number, shall be posted in a conspicuous location in the unit.

i. **Monitored Fire Alarm:** A monitored fire alarm is required for all units except boats. Boats are required to provide documentation that a Coast Guard Auxiliary Safety Vessel Check has been performed is required. The Vessel Safety Check can be arranged through this link: http://www.cgaux.org/vsc. Existing facilities not meeting this requirement shall be brought into conformance within 6 months of the date of adoption of this code.

j. **Outside Approvals Required:** For properties located in a neighborhood with a property owners' association, written confirmation from the association president that short-term rentals are permitted in the neighborhood is required. In multifamily structures, written approval from the property management association is required. For boats in an approved marina, written permission from the marina manager is required.

k. **Safety Inspection and Licensing:** A Safety Inspection shall be conducted before the Business License for the facility is issued. The facility shall comply with all business license, revenue collection, and health laws of the City of Beaufort, Beaufort County and the state of South Carolina.

l. **Unlicensed Units:** For units that are found to be operating without approval of the City, the short term rental application fee shall be $1,000. If the property owner chooses not to submit a short term rental application within 60 days of being notified by the City of being in violation of the ordinance, a short term rental application shall not be approved for a period of 2 years.

3. **Inn/Hotel/Motel**

a. **Specific to T4-N**

i. Inns up to 10 rooms are permitted.

ii. Inns with 11-24 rooms are permitted in retail frontage overlay areas.

b. **Specific to T4-NA:** This use is prohibited.

D. **Retail & Restaurants**

1. **Specific to T4-N only:** Except for Animal Hospitals/Kennels, Restaurants and Retail

2. Spacing between Group Homes: Group Homes shall not be located within a radius of three thousand (3,000) feet of another Group Home (measured from the nearest point of the existing home to the nearest point of the proposed home)

G. Residential Care Facilities (N-MX, D-MX, UC-MX, MF-R, MH-R, N-B, G-B)

1. Multi-family dwelling standards apply: Such facilities are subject to the same standards as other multi-family dwellings including the provision of parks and open space and the alignment of buildings along streets.

3.4.3 LODGING

A. Home Stay Bed and Breakfast (Up to 5 guest rooms) (N-R, GR-2, GR-3, GR-5, MF-R)

1. Owner Residency Required: The bed and breakfast shall be owned and operated by at least fifty percent (50%) of the record ownership of the real property upon which the bed and breakfast is located and said owner(s) shall be a resident(s) of the subject property. For purposes of this Zoning Ordinance, to qualify as a resident(s) of a property, the person(s) shall use that property as their legal voting address, South Carolina driver's license address or South Carolina Identification Card address and four percent (4%) homeowners assessment ratio address, and shall actually reside on the property at least 183 days each year and be on site at any time guest are registered. If a bed and breakfast is owned by a Limited Liability Corporation (LLC), Corporation or any other type of business entity, at least fifty percent (50%) of the ownership of said LLC, corporation or other type of business entity shall be by the resident(s) as described above together with the same restrictions and qualifications set forth.
2. Maximum Number of Guest Rooms: 5
3. Peaceful Enjoyment by Neighbors: Such use shall create no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, unhealthy or unsightly condition, traffic, or parking problems.
4. Meals to Guests Only: No meals other than breakfast may be served by the resident owner to the paying guests.
5. Parking: One off-street parking place shall be provided for each guest room. Guest parking shall be in designated off-street parking areas consistent with neighborhood standards. No parking spaces, other than driveways, may be located in the required front yard setback.
6. Business License Required: A valid business license is required.
7. Insurance Required: Valid liability insurance is required for the Owner, Property management company/or any other entity. Valid insurance is required for each unit being licensed for short term rentals.
8. Safety Inspection: An initial safety inspection shall be conducted by the Town. Additional inspections for compliance with the regulations in this section may be performed by the Town if deemed necessary and with 24 hour notice to the permit holder/property manager.
9. Records Required: The Permanent Resident shall maintain records for two years demonstrating compliance with these provisions, including but not limited to information demonstrating Primary Residency, the number of days per calendar year he or she has occupied the residential unit, the number of days per calendar year the residential unit has been rented as a Short-Term Rental, and compliance with the insurance requirement in this section. These records shall be made available to the Town upon request.

B. Bed and Breakfast Inn (6-10 guest rooms) (N-R, N-MX, MF-R)

1. Owner-Occupancy Required: See the requirement for 3.4.3.A above for N-R and MF-R properties. For N-MX properties, owner-occupancy is dependent on the primary use of the structure and the primary use of the adjacent properties. If the primary use of the structure is residential and at least 50% of the adjacent properties have a primarily residential use, the requirement in 3.4.3.A above applies. Owner-occupancy is not required if the primary use of the structure is commercial and at least 50% of the adjacent properties have a primary commercial use.
2. Maximum Number of Guest Rooms: 10
3. Peaceful Enjoyment by Neighbors: See the requirement for 3.4.3.A above.
4. Meals to Guests Only: See the requirement for 3.4.3.A above.
5. Parking: See the requirement for 3.4.3.A above.
6. Business License Required: A valid business license is required.
7. Insurance Required: See the requirement for 3.4.3.A above.
8. Safety Inspection: See the requirement for 3.4.3.A above.
9. Records Required: See the requirement for 3.4.3.A above.

C. Inn (Up to 24 rooms) (N-MX)

1. Location: The facility shall be located at least fifty (50) feet from the boundary of any residential use or district, and only one Inn is permitted per block.
2. Manager's office: Inns with 11 or more units shall be required to have an on-site manager in the form of a resident manager or 24-hour desk service. An office for the manager shall be provided and shall be located near the entry to the residential hotel and have full view of the entry area.
3. Meals may be served to guests other than those registered with the bed and breakfast, provided the facility meets all other applicable town and state codes for food service. Cooking facilities are prohibited in individual guest rooms.
4. Leasing of common areas for social events shall be allowed, provided the facility meets all applicable off-street parking requirements and complies with the noise ordinance and all other provisions of the Town Code.
5. The proposed use will be compatible with the character of the adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
6. Screening: Such use must have existing or proposed screening or buffering, in terms of type, dimensions, and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

D. Hotel/Extended Stay (D-MX, UC-MX)

1. Access to all guest rooms shall be from an interior hallway (conditioned space) only.

E. Short Term Rental (N-R, N-MX, GR-2, GR-3, GR-5, MF-R, MH-R)

1. Determination of Short-Term Rental Offering: Any online advertisement posted by the owner or Permanent Resident is sufficient to determine that a unit is being offered as a short-term rental.
2. Owner-Occupancy Required: : See the requirement for 3.4.3.A above for N-R, GR-2, GR-3, GR-5, MF-R, and MH-R properties. For N-MX properties, owner-occupancy is dependent on

the primary use of the structure and the primary use of the adjacent properties. If the primary use of the structure is residential and at least 50% of the adjacent properties have a primarily residential use, the requirement in 3.4.3.A above applies. Owner-occupancy is not required if the primary use of the structure is commercial and at least 50% of the adjacent properties have a primarily commercial use.

3. Business License Required: See the requirement for 3.4.3.A above.
4. Peaceful Enjoyment by Neighbors: See the requirement for 3.4.3.A above.
5. Insurance Required: See the requirement for 3.4.3.A above.
6. Safety Inspection: See the requirement for 3.4.3.A above.
7. Records Required: See the requirement for 3.4.3.A above.

3.4.4 OFFICE/SERVICE

A. ATM (N-MX, D-MX, N-B)

1. Design review by the CDRB or BAR is required.

B. Home Occupation (N-R, N-MX, GR-2, GR-3, GR-5, MF-R, MH-R)

1. Residential Characteristics: There shall be no exterior indication, other than a sign permitted by Section 10.3, that the building is being used for any purpose other than a dwelling. There shall be no exterior indication of mechanical equipment in regular operation.
2. Peaceful Enjoyment by Neighbors: Such use shall create no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, unhealthy or unsightly condition, traffic, or parking problems.
3. On-Site Employees: The number of non-resident, regular, on-site employees shall be limited as follows:
   a. GR-2 District: 0
   b. N-R, GR-3, GR-5, MF-R, MH-R: 2
   c. N-MX: Not limited
4. Commercial Vehicles: Only vehicles used primarily as passenger vehicles will be permitted in connection with the conduct of the home occupation. Large vans, construction equipment, and similarly large-sized vehicles are not permitted.
5. Parking: Client parking shall be in designated off-street parking areas consistent with neighborhood standards. No parking spaces, other than driveways, may be located in the required front yard setback. Care shall be taken to ensure that on-street parking by clients does not disrupt normal neighborhood parking.
6. Signage: No more than one sign identifying, or in any way pertaining to, the home occupation shall be permitted, and all such signs shall meet the requirements of Chapter 10.
7. Typical home occupation businesses include, but are not limited to, professional services, personal services, small equipment repair, businesses support services, family day care homes, and studios.

C. Personal Services (G-B, L-I, H-I)

1. Tattoo and body piercing facilities as principal uses are only permitted in the G-B, L-I, and H-I.

ELECTRONICALLY FILED - 2023 Jan 27 9:42 AM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
FOLLY EAST INDIAN CO., LLC, Plaintiff, vs. CITY OF FOLLY BEACH, Defendant.	)	CASE NUMBER: 2023-CP-10-00264 MOTION TO INTERVENE

TO: COUNSEL FOR THE ABOVE-NAMED PARTIES

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 24(a) and (b) of the SCRCP, Proposed Intervener, Save Folly's Future (SFF) by and through its undersigned attorney, hereby moves to intervene in this action. [1]

Intervention as of right is controlled by Rule 24(a), which states:

> **(a) Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Permissive intervention is controlled by Rule 24(b), which states:

> **(b) Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute

[1] As required by Rule 11 of the SCRCP, counsel for Proposed Intervener has consulted with counsel for the parties to obtain their consent to allow SFF to intervene. While the City of Folly Beach consented, Folly East Indian Co., LLC, did not.

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> or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The South Carolina Supreme Court has stated, "Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected." *In Re Horry County State Bank*, 361 S.C. 503, 507-509, 604 S.E.2d 723 (2004). SFF is an unincorporated non-profit grassroots organization that has played a major role in the actions that led to the referendum vote and moratorium at issue in this matter. It represents the interests of Folly Beach citizens who favor limits being placed on the number of business licenses issued for Investment Short-Term Rentals. As Plaintiff's Complaint and Motion for Injunctive Relief were filed less than ten days ago and briefing on the motion will continue until the hearing scheduled for February 7, 2023, SFF's Motion to Intervene is timely and none of the parties will be prejudiced by SFF's intervention in this matter.

For the reasons set forth above and in more detail in SFF's accompanying Memorandum in Support of its Motion to Intervene, Plaintiff respectfully moves this Honorable Court for an order allowing SFF to intervene in this action.

Respectfully Submitted,

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January 26, 2023
Charleston, South Carolina

Attorney for Proposed Intervener
Save Folly's Future

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
FOLLY EAST INDIAN CO., LLC, Plaintiff, vs. CITY OF FOLLY BEACH, Defendant.	)	CASE NUMBER: 2023-CP-10-00264 MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Proposed intervenor, Save Folly's Future (SFF), by and through its attorney hereby moves under Rule 24(a) and (b) of the South Carolina Rules of Civil Procedure to intervene as of right or in the alternative for permissive intervention. As discussed below, SFF has represented the interests of the citizens of Folly Beach who wish for limits to be placed on the number of business licenses to be issued for Investment Short-Term Rentals (ISTRs), and has been directly and intricately involved in educating the public, and drafting the petition and bringing it to a referendum vote. SFF should be permitted to intervene in this case.

I. FACTUAL BACKGROUND

Save Folly's Future (SFF) is an unincorporated grassroots advocacy group founded in April 2021. It is composed of volunteers whose overriding goal is to reverse the declining residential population on Folly Beach. One of the leading causes of this decline has been the drastic increase in the number of Investment Short-Term Rentals (ISTR). *See* Attachment A, Affidavit of John

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McFarland, at ¶ 3. Since its creation, SFF has focused its efforts on regulating and limiting the number of ISTRs on behalf of the citizens of Folly Beach. *Id*. [1]

Notably, SFF has been intricately and proactively involved in attending public hearings, representing and keeping the citizens of Folly Beach informed, participating in the process, and advocating on the issue of ISTRs as follows:

- In the spring of 2021 Folly Beach Mayor Tim Goodwin appointed an ad hoc short-term rentals study committee. On June 28, 2022, based on the recommendations of that ad hoc committee, Mayor Goodwin introduced ordinance # 26-22 to limit investor-owned short-term rentals to 800 or 33% of the housing stock. Five members of Folly Beach City Council cut off all debate on his motion and it failed. SFF attended that meeting and spoke in favor of the proposed ordinance. McFarland Aff. at ¶ 5.

- SFF has attended other public meetings regarding the issue of ISTRs. *Id*. at ¶6a

- SFF created (since September 2021) and maintained a website with information and videos educating the public on ISTRs. (https://savefollysfuture.org/) *Id*. at ¶6b

- SFF has created and distributed (since September 2021) to all Folly Beach residents a monthly newsletter educating citizens about the impact of ISTRs. *Id*. at ¶6c

- SFF led the effort to put the issue to a vote of the citizens of Folly Beach by way of the initiative and referendum section of the Home Rule Act (SC Code, §5-17-10). SFF drafted the petition proposing an ordinance to limit the number of ISTR Businesses Licenses issued by the City of Folly Beach to 800. *Id*. at ¶6d[2]

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[1] ISTRs pose a long term existential and short-term nuisance threat to the heart and soul of Folly Beach as a residential beachfront community for many reasons, including:

a. ISTRs are changing the nature of Folly Beach from a residential beachfront community to a commercial short-term rental community;
b. ISTRs have lowered the quality of life in the city for a large number of residents;
c. Noise from ISTRs is a constant complaint from scores of residents; and
d. Based on U.S. Census data, from 2010 to 2020 the residential population of Folly Beach has decreased from 2,617 to 2,078, a 20.6% decrease. As residences are being sold off, a large number are being purchased and converted to ISTRs which has resulted in significant population loss, especially for such a small community. If this trend continues and the residential population of Folly Beach continues to decrease by 500 residents per decade, by 2060 the residential population would be down to 78.

McFarland Aff. at ¶ 4.

[2] A copy of the petition is appended as Exhibit 3 to the McFarland Affidavit

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- From August 22, 2022, to September 18, 2022, in a tent located across from the Folly Beach Post office, SFF collected the signatures of the voters necessary to allow the issue to be brought before the City council and to be put forth for a referendum vote. A photograph of SFF's founder and leader, John McFarland manning the tent is contained in Exhibit 2. *Id*. at ¶6e

- SFF was present at the October 11, 2022, city council meeting at which the petition was presented. At the same meeting a moratorium was placed on STR business licenses until January 15, 2023. *Id*. at ¶6f

- SFF attended the October 14, 2022 meeting of the Folly Beach Municipal Election Committee meeting at which they voted to ask Charleston County to certify the petition for a referendum vote. *Id*. at ¶6g

- SFF attended the December 13, 2022 Folly Beach City Council meeting at which the council failed to pass the proposed citizen's ordinance. This vote automatically triggered the petition for a referendum vote. *Id*. at ¶6h

While signatures of 15% (370) of registered voters were needed, SFF collected the signatures of 469 voters. This clearly demonstrates the citizens' desire for the petition to be adopted or put to a referendum vote. *Id*. at ¶ 7.

II. DISCUSSION

1. Proposed Intervenor is entitled to intervene as of right.

Intervention as of right is controlled by South Carolina Rule of Civil Procedure 24(a), which states:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The South Carolina Supreme Court described it as follows:

> Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *See Black's Law Dictionary* 826 (7th ed.1999). Intervention may be of right or permissive;

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> intervention of right is governed by Rule 24(a), SCRCP, which is modeled after the federal rule. Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected. *See Berkeley Electric* at 189, 394 S.E.2d at 714. However, this does not mean intervention should always be granted. Instead, "we must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2)." *Id.* "Each case will be examined in the context of its unique facts and circumstances." *Id.*
>
> . . .
>
> Thus, a party seeking intervention under Rule 24(a)(2) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. *Ex Parte Reichlyn,* 310 S.C. 495, 427 S.E.2d 661 (1993).

In Re Horry County State Bank, 361 S.C. 503, 507-509, 604S.E.2d 723 (2004)

a. SFF's Motion to Intervene was timely filed.

Timeliness is measured by the following three criteria: "how far the suit has progressed," "the prejudice that delay might cause other parties," and the reason for the delay (if any) in filing the motion. *Students for Fair Admissions Inc. v. Univ. of N.C.*, 319 F.R.D. 490, 494 (M.D.N.C. 2017) (*quoting R & G Morg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009).

SFF's Motion to Intervene is timely filed. The Complaint and Motion for Injunctive Relief were filed on January17, 2023 - more than one month after the petition was scheduled for a referendum vote. This motion to intervene is being filed less than ten days after the Complaint and Motion were filed. Moreover, briefing on the Motion will continue until the hearing currently scheduled for February 7, 2023. SFF has acted diligently and none of the parties will be prejudiced by SFF intervention in this case.

b. **SFF has an interest in the subject of this action.**

As a grass roots organization whose sole purpose is to limit the number of ISTRs, SFF has an

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interest in the subject matter of this action. SFF has taken the lead in educating the public and pro-actively advocating on behalf of the citizens who support its position. Notably, SFF drafted the petition that is scheduled to be voted on by way of referendum and obtained the signatures of 469 registered voters (over 15%) on Folly Beach. The number of signatures obtained confirms that SFF speaks for a significant percentage of the citizens of Folly Beach. SFF's leadership role and advocacy confirms that it has an interest (on behalf of the citizens of Folly Beach) in this litigation. SFF has shown its commitment not only to the interests raised by the filing by the Plaintiff , but also to the right of the voters to have a say in how their community is governed and the right of citizens to vote without interference or harassment. South Carolina law supports those interests by allowing voters the opportunity to initiate certain ordinances. See S.C. Code, §15-17-10.

c. SFF is well positioned to protect its interest.

As discussed above, SFF has demonstrated its expertise on the issues raised in the Complaint and Motion filed by the Plaintiff. SFF has also demonstrated its commitment to educating, representing, and advocating on behalf of the citizens of Folly Beach and putting the petition to a vote by referendum. As a result, SFF is well positioned to protect its interests on behalf of the citizens of Folly Beach who wish to limit the number of ISTRs.

d. A decision in this matter may negatively affect the Intervenor's ability to protect those interests and it is in the best position to defend those interests.

It is undeniable that a grant by this Court of any of the relief sought by the Plaintiff will negatively impact the interests of SFF and its many supporters. Because the Folly Beach City Council voted against the petition (which triggered the petition being put to a referendum vote), there's no guarantee that the City Council will pursue the case on appeal should it become necessary. SFF is committed to advocating to the end on behalf of the citizens of Folly Beach.

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2. **Alternatively, Proposed Intervenor satisfies the minimal requirements for Permissive Intervention.**

Under Rule 24(b) of the South Carolina Rules, the Court "may permit anyone to intervene who" files a timely motion and who "has a claim or defense that shares with the main action a common question of law or fact."

Timeliness is measured by the same three criteria used for intervention as of right: "how far the suit has progressed," "the prejudice that delay might cause other parties," and the reason for the delay (if any) in filing the motion. *Students for Fair Admissions Inc. v. Univ. of N.C.*, 319 F.R.D. 490, 494 (M.D.N.C. 2017) (*quoting R & G Morg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009). For the reasons discussed previously, SFF's motion is timely and intervention will not cause undue delay or prejudice to any existing parties. Moreover, SFF has continuously advocated for the petition and proposed ordinance and the subject Complaint and Motion involves common questions of fact and law.

III. Conclusion

For the foregoing reasons, the Proposed Intervenor respectfully requests the Court to grant its Motion to Intervene.

Respectfully Submitted,

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January 26, 2023
Charleston, South Carolina

Attorney for Proposed Intervener,
Save Folly's Future

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STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2023-CP-10-0264
FOLLY EAST INDIAN CO., LLC,)) Plaintiff,)) vs.)) CITY OF FOLLY BEACH,)) Defendant.))	DEFENDANT'S NOTICE OF MOTIONS AND MOTIONS TO DISMISS AND FOR JUDGMENT ON THE PLEADINGS

PLEASE TAKE NOTICE THAT Defendant City of Folly Beach hereby moves to dismiss pursuant to Rule 12(b)(6), SCRCP, and for judgment on the pleadings pursuant to Rule 12(c), SCRCP. The issues raised by Plaintiff Folly East Indian Co., LLC, are pure questions of law that should be decided in favor of the Defendant City of Folly Beach. Defendant incorporates herein its Memorandum in Opposition to Motion for Preliminary Injunction and would rely on the facts and arguments set forth therein in support of this motion.

Plaintiff's Complaint has two causes of action for a declaratory judgment and request for injunctive relief. The first seeks a declaratory judgment that the City's Moratorium on the issuance of business licenses for some short-term rentals is unconstitutional and constitutes a taking of property without just compensation. Complaint, Paragraph 25. The second cause of action attacks a Petition and Referendum to enact a cap on some short-term rental licenses primarily on the grounds that the Petition is purportedly a zoning ordinance that cannot be enacted by Petition. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). Complaint, Paragraph 35. The Complaint also makes some vague references to a possible takings claim as to the Petition and Referendum. Complaint, Paragraph 35(iv). Finally, the Complaint alleges that the Petition and Referendum somehow conflicts with S.C. Code § 27-50-250, which requires that any

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purchasers of property honor any outstanding agreements to a rent the property for 90 days. Complaint, Paragraph 35(v)-(vii).

First, the remedy for a takings challenge, whether facial or as-applied, is compensation not the declaratory and injunctive relief sought by Plaintiffs. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005) (holding the Takings Clause of the Fifth Amendment "is designed not to limit the governmental interference with property rights *per se*, but rather to secure compensation in the event of otherwise proper interference amounting to a taking.") (emphasis in original). As such, any effort to seek a declaratory judgment or injunction based on the Takings Clause fails as a matter of law and should be dismissed and judgment granted in favor of Defendant.

Second, with regards to the *I'On* holding, the Proposed Ordinance is plainly not a zoning ordinance. It proposes a change to City's existing short-term rental ordinance that is part of the City's business license regulations. The City, and its voters, are free to regulate the use of properties through the City's police powers, as it has done here, and such regulations need not be adopted in compliance with the South Carolina Comprehensive Planning Act. *Greenville Cnty. v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428, 432 (2003), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005) (local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . ."). See Defendant's Memorandum in Opposition to Motion for Preliminary Injunction, Pages 14-21. As such, Defendant is entitled to dismissal of this claim and judgment on the pleadings.

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Finally, with regards to Plaintiff's concerns about S.C. Code § 27-50-250, "[s]tatutes in apparent conflict should be construed, if possible, to allow both to stand and give effect to each." *Adoptive Parents v. Biological Parents,* 315 S.C. 535, 543, 446 S.E.2d 404, 409 (1994). Plaintiff can easily comply with S.C. Code § 27-50-250 by simply not accepting rental reservations after a scheduled closing on the property. In other words, this perceived conflict can be easily harmonized with Plaintiff's duties should the Petition and Referendum pass. Defendant' Memorandum in Opposition to Motion for Preliminary Injunction, Pages 31-32.

Based on the foregoing, Defendant would request judgment in its favor based on the pleadings.

Respectfully submitted,

/s/ Joseph C. Wilson, IV
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January 27, 2023
Folly Beach, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by electronic service in the manner prescribed by the applicable Rule of Civil Procedure.

This 27th day of January, 2023.

/s/ Joseph C. Wilson, IV

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-00264
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION**
vs.	)	
	)	
CITY OF FOLLY BEACH,	)	
	)	
DEFENDANT.	)	
	)	

Plaintiff Folly East Indian Co., LLC, through its undersigned counsel, pursuant to Rule 65, SCRCP, hereby files this memorandum in support of its Motion for Preliminary Injunction enjoining Defendant City of Folly Beach from taking any action in enforcing or implementing the Petition or any future Petition that attempts to invoke § 5-17-30 to rezone property to limit the amount of Short Term Rentals or to otherwise restrict Short Term Rentals within the City of Folly Beach.

FACTUAL BACKGROUND

Plaintiff owns real property located within the City of Folly Beach at 112 East Indian Ave. (units A & B), 114 East Indian Ave. (units A & B), 116 East Indian Ave., and 118 East Indian Ave. (units A & B), Folly Beach, South Carolina, 29439 (collectively referred to herein as the "STR Properties"). Compl., ¶ 1. Plaintiff has five Short Term Rental ("STR") licenses for the STR Properties. Compl., ¶ 5.

In 2020, Plaintiff began building two new buildings at 112 East Indian Avenue with the intent of using them as short term rental properties ("Anticipated STRs"). Due to supply chain shortages caused by COVID-19, the project took longer than expected and is still two months from

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completion. Defendant fully approved the development plans and permitted them accordingly. Compl., ¶ 6.

On October 11, 2022, Defendant's City Council received a petition asking Council to pass an ordinance limiting the issuance of STR licenses to 800 ("Petition"). Compl., ¶ 11. The Petition constitutes a citizen's initiative pursuant to South Carolina Code of Laws, § 5-17-10, *et. seq.* The Petition states there has been an "unrestricted growth of the number of investment short term rentals within the City of Folly Beach," and further states that the goals of the Petition relate to: quality of life for residents; stress on city infrastructure and environment; extraordinary burdens on public service; existential threat to the community. Compl., ¶ 12. In addition to limiting the cap on STR licenses to 800, the Petition seeks to eliminate the transferability of current STR licenses. *See* Compl, Exhibit A.

At the City Council meeting held October 11, 2022, the Council failed to pass an ordinance capping STR licenses to 800 and, instead, adopted an ordinance creating a Moratorium on the issuance of new STR licenses for a three-month period. On December 13, 2022, City Council again failed to adopt a new zoning ordinance that would set a cap of 800 STRs and, instead, gave first reading to Ordinance 34-22, which extended the previously imposed Moratorium for another three-month period effective upon its expiration on January 11, 2023. Compl., ¶¶ 15-16. On January 10, 2023, City Council gave second reading to Ordinance 34-22. *See* Compl., Exhibit B. Ordinance 34-22 extends the Moratorium to April 15, 2023, "or five business days after any special election called to adopt the ordinance proposed by the [P]etition, unless earlier repealed." Compl., Exhibit B.

Contrary to the claims and concerns raised in the Petition, STRs provide a significant benefit to the local economy. The Accommodations Taxes from STRs contribute over

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$1,500,000.00 to the Folly Beach re-nourishment program and another $1,500,000.00 to the City's General Fund. Recognizing the value that STRs provide to the local community and economy, state legislators have introduced a pending Bill, H. 4547[1], which would prohibit any municipality from enacting an ordinance that prohibits STRs. *See* Compl., Exhibit C.

Within this context, Plaintiff filed its Verified Complaint with the court on January 17, 2023, and concurrently filed its Motion for Preliminary Injunction. Plaintiff now submits this Memorandum in Support of the Motion for Preliminary Injunction.

LEGAL ANALYSIS

I. Standard for Granting Preliminary Injunctive Relief

The purpose of a temporary/preliminary injunction in a case involving property rights is to preserve the *status quo* pending litigation. *County Council of Charleston v. Felkel*, 244 S.C. 480, 137 S.E.2d 577 (1964). In determining whether to grant an injunction, this court must "take into consideration the relative inconvenience, hardship or injury which the parties will sustain by the granting or refusal of an injunction." *Wynock v. Carroll*, 289 S.C. 338, 345 S.E.2d 503, 504 (Ct. App. 1986). The trial court acts within its sound discretion in determining whether to grant preliminary injunctive relief. *Fuller-Ahrens Partnership v. South Carolina Dept. of Highways and Public Trans.*, 311 S.C. 177, 427 S.E.2d 920 (Ct. App. 1993).

To establish a basis for the requested relief, Plaintiff must demonstrate that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). A preliminary injunction should issue if (1) the complaint alleges facts which appear to be sufficient to constitute a cause of action

[1] Publicly available at https://www.scstatehouse.gov/sess124_2021-2022/bills/4547.htm.

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for injunction and (2) if on the entire showing from both sides it appears that the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation. *Columbia Broadcasting Systems, Inc. v. Custom Recording Co., Inc.*, 258 S.C. 465, 189 S.E.2d 305 (1972).

Here, Plaintiff is entitled to a preliminary injunction because it will suffer irreparable injury during the pendency of this litigation absent an injunction; it has asserted meritorious claims; and Defendant will not suffer serious harm if the injunction issues. These considerations notwithstanding, Plaintiff need not make a strong showing of irreparable injury if it demonstrates a strong likelihood of success on the merits. *Faulkner v. Jones*, 10 F.3d 226 (4th Cir. 1993).

II. The Balance of Factors Weighs In Favor of Plaintiff and Granting Preliminary Injunctive Relief

A. Plaintiff is Likely to Prevail on the Merits of One or More of Its Claims

Plaintiff is a landowner in the City of Folly Beach whose rights, status, or other legal relations are adversely affected by the Moratorium and Petition. The Verified Complaint asserts a claim for Declaratory Judgment as to the invalidity of the Moratorium and Petition and requests Temporary Injunctive Relief on the basis that the Moratorium and Petition are illegal, unconstitutional, and without force of law.

The Declaratory Judgments Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15–53–20 (1976). "Any person . . . whose rights, status or other legal relations are affected by a statute [or] municipal ordinance . . . may have determined any question of construction or validity arising under the . . . statute [or] ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15–53–30 (1976); see also Rule 57, SCRCP. To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Sunset Cay, LLC v. City of*

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Folly Beach, 357 S.C. 414, 593 S.E.2d 462 (S.C. 2004) (citing *Power v. McNair,* 255 S.C. 150 154, 177 S.E.2d 551 (S.C. 1970)). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Id.* (citations omitted). "The Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy." *Id.* Indeed, "[t]he basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights," and therefore courts should liberally construe the Act "to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship." *Id.* at 423-424.

The Moratorium, which was adopted for the purpose of suspending STR licenses until the referendum, is inextricably intertwined with the unconstitutional and unlawful Petition. When viewed altogether, the Moratorium, the Petition, and the attempt to pass an ordinance based on voter initiative constitute arbitrary governmental action in violation of Plaintiff's due process rights and amounts to impermissible zoning.

The Fifth Amendment to the United States Constitution provides that "private property shall not be taken for public use, without just compensation." U.S. Const. amend. V. The Fourteenth Amendment dictates that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1.[2] "[T]he Fifth Amendment is violated when land use regulation does not substantially advance legitimate state interests or denies an

[2] The Fifth Amendment is implicit in the due process clause of the Fourteenth Amendment and applicable to the states. *Sea Cabins on Ocean IV Homeowners Association, Inc. v. City of North Myrtle Beach*, 345 S.C. 418, 429 n.3, 548 S.E.2d 595 (S.C. 2001) (citation omitted).

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owner economically viable use of his land." *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 1016 (1992) (internal quotation marks and citation omitted). Our State Constitution similarly protects citizens' rights to due process, S.C. Const., art. I, § 3, and prohibits the taking of private property for private use without the consent of its owner and prohibits the taking for public use without just compensation paid, S.C. Const., art. I, § 13.

1. The proposed ordinance set forth in the petition is a zoning ordinance, and the legislature has adopted a statutory scheme for enacting zoning ordinances, including notice, public hearings, and adoption by both the local planning commission and the city council.

The "South Carolina Local Government Comprehensive Planning and Enabling Act of 1994" combined existing Code provisions governing zoning and planning provisions for municipalities "into a single, comprehensive set of provisions available to local governments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 720 (S.C. 2000). This comprehensive set of provisions is found in Title 6 of the South Carolina Code, which governs matters related to zoning, including the procedure that must be followed when a change in zoning is sought. Under Title 6, a municipality's local planning commission must "undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction." S.C. Code Ann. § 6-29-340(A). In the discharge of its responsibilities, the local planning commission has the power and duty to, among other things, "prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area . . . zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter." *Id.* at § 6-29-340(B). The Legislature specifies in Title 6 that "[z]oning ordinances must be for the general purposes of

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guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." *Id.* at § 6-29-710(A). Title 6 also includes the ***only*** procedure for enactment or amendment of zoning ordinances, § 6-29-760, and the process for appealing from the zoning board, § 6-29-820, among other forms of process, *see* §§ 6-29-825, 6-29-850. These are processes which must be followed.

Pursuant to the authority conferred under § 6-29-710, Defendant enacted the City of Folly Beach Zoning and Land Development Ordinance ("ZDO"), which contains a comprehensive scheme for planning, approving, and rezoning real estate parcels to ensure efficient, equitable, and reasoned land use decisions in the City of Folly Beach. Folly Beach, South Carolina Code of Ordinances (amlegal.com), Code § 160 *et seq.* The purpose and intent of the ZDO "is to guide development in accordance with the existing and future needs of the city and its Comprehensive Plan, and to promote the public health, safety, convenience, order, appearance, prosperity, and general welfare of the landowners and residents of the city, and other members of the public." *Id.* at § 160.03-01. In conjunction with the processes set forth in Title 6, the ZDO defines both the substantive and the procedural due process to which landowners are entitled prior to a zoning change and sets forth procedures which must be followed prior to changing a zoning classification. *See* Folly Beach, South Carolina Code of Ordinances (amlegal.com), §§ 160, 162, *supra*. Accordingly, both Title 6 and the ZDO set forth the standards by which a zoning amendment will be evaluated so as to comport with substantive due process and the steps to be followed so as to comport with procedural due process. Zoning by initiative, which is the activity currently underway with respect to the Moratorium and Petition, violates substantive due process because initiated ordinances may not "lessen congestion in the streets," "encourage the development of an economically sound and stable city," or address any of the other specific goals of Code § 160.03-

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01 or S.C. Code Ann. § 6-29-710(A). In other words, zoning by initiative may result in zoning changes that directly conflict with the goals and standards set forth in the ZDO and Title 6, and which are otherwise arbitrary and capricious. Additionally, if the City's residents are permitted to enact zoning changes by initiative, the landowner is denied the procedural process guaranteed to him or her by both the ZDO and Title 6.

The ZDO discusses "vacation rentals" and "short term rentals," which are permitted "uses" of property. The use of "Vacation Rental" is defined as "a residential unit rented for 29 days or less that typically is utilized by tourists." ZDO, *supra*, § 161.02. The ZDO further defines "Short Term Rentals" as "[r]esidential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling" and states that "[t]ourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered Short Term Rentals." *Id.* at § 117.02. Thus, an STR as the term is defined within the ZDO is a Vacation Rental and is referenced and included in the Table of Uses, *see* § 164.01, and is listed as a permitted use in every zoning district in that table. The proposed zoning ordinance by initiative would in fact result in spot zoning and subject specific properties to special zoning rules, developed outside of the normal procedures and reviews established by Title 6 and the ZDO and in disregard of the City's comprehensive zoning plan. Such ad hoc, individualized treatment of different parcels of land is entirely inconsistent with what the Legislature intended when it created and passed the comprehensive set of provisions found in Title 6 and is furthermore at odds with the ZDO.

Indeed, for these very reasons, the State Supreme Court held in *I'On, L.L.C. v. Town of Mt. Pleasant*, that municipalities cannot enact zoning provisions via the initiative and referendum process contained in S.C. Code Ann. §§ 5-17-10 and -30. 526 S.E.2d at 720-21. In so holding, the Supreme Court embraced the view that "the detailed nature of zoning acts indicates a

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legislative intent that zoning matters must be decided only in the manner specified in those acts," explaining that "[t]he obvious incompatibility between the initiative and referendum process and the comprehensive Title 6 provisions indicates the Legislature did not intend to allow voters to enact more complex zoning measures by initiative and referendum." *Id.* The Court further explained that by enacting Title 6, the Legislature recognized that the haphazard and potentially thoughtless decisions that might result from the initiative and referendum process are "the antithesis of meaningful zoning." *Id.* at 722. Indeed, the Court cautioned, permitting voters to circumvent the deliberative process "could nullify a carefully established zoning system or master plan developed after debate among many interested persons and entities, resulting in arbitrary decisions and patchwork zoning with little rhyme or reason." *Id.*

Accordingly, the Moratorium and any associated ordinance by initiative is inconsistent with the purpose and intent of Title 6, and in total contravention of the Supreme Court's holding in *I'On*.

To underscore the point, as of December 2022, according to information released by Defendant and posted by the organization Save Folly's Future, 1,021 investment STRs were operating within the City of Folly Beach. *See* (Exhibit A attached hereto). The proposed restrictions include capping the number of STRs for non-owner occupied residences to 800. Even if existing STRs are allowed to remain, no new STRs will be permitted until the number falls below 800. At this point, the ZDO permits STRs in every district without limitation, and there has been no zoning change. The Moratorium is a zoning change without following the necessary procedures. This is illegal.

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Finally, enactment of an ordinance as contemplated by Defendant would essentially amount to impermissible spot zoning. Over half a century ago, the State Supreme Court defined the term spot zoning and explained as follows:

> it has been held that where an ordinance establishes a small area within the limits of a zone in which are permitted uses different from or inconsistent with those permitted within the larger, such "spot zoning" is invalid where the ordinance does not form a part of a comprehensive plan of zoning or is for mere private gain as distinguished from the good of the common welfare.

Talbot v. Myrtle Beach Board of Adjustment, 222 S.C. 165, 72 S.E.2d 66 (1952).

2. The ordinance to restrict STRs is a zoning ordinance.

Defendant has taken the position that the proposed ordinance is a business license ordinance and not a zoning ordinance. It cites numerous South Carolina municipalities which have adopted caps on STRs. However, what the Defendant fails to mention is that each of these municipalities made these restrictions in properly adopted zoning ordinances. It is true that each of these municipalities require STR owners to obtain a business license for their STRs, but the use as an STR is governed by their zoning ordinances, just as Folly Beach's ZDO governs the use of STRs within its limits. STRs are permitted uses in every zoning district on Folly Beach, as set forth in its ZDO.

3. Because Plaintiff's property has not been rezoned to exclude STR uses, Plaintiff continues to have a vested right to STR designation.

South Carolina has long recognized the rule that "when a zoning or building permit has been properly issued and the owner has incurred expenses in reliance thereon, he acquires a vested property right therein of which he cannot be deprived without cause or in the absence of public necessity." *Pure Oil Division v. City of Columbia*, 254 S.C. 28, 173 S.E.2d 140 (1970). A landowner acquires a vested right to continue a use already in existence at the time his property is re-zoned in the absence of a factual showing that the continuance of the nonconforming use would

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be detrimental to the public's health, safety or welfare. *DeStefano v. City of Charleston*, 304 S.C. 250, 403 S.E.2d 648 (1991) (citing *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 349 S.E.2d 891, 893 (Ct. App. 1986) ("Generally, in American jurisdictions a landowner who uses his property for a lawful purpose before the enactment of zoning which subsequently prohibits that use may continue the nonconforming use after the enactment of zoning unless the use clearly constitutes a public nuisance. Otherwise, the landowner would be deprived of a constitutionally protected right")). "Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances." *Friarsgate*, 349 S.E.2d at 893. When a developer has in place a true comprehensive scheme for the entire property, vested rights in the project exist. *DeStefano*, 403 S.E.2d at 651. *Cf. Friarsgate*, 349 S.E.2d at 893 (finding that developer's failure to obtain a substantial number of building permits at one time indicated there was no firm commitment to building the project, and, therefore, no hardship to the developer resulting from the Town's actions).

As set forth in the Verified Complaint, Plaintiff established its property rights in the STR Properties and Anticipated STRs prior to Defendant imposing the Moratorium. Furthermore, Defendant approved and granted permits for the Anticipated STRs prior to imposing the Moratorium. Plaintiff is within months of completing the buildings for which construction began in 2020 and has without question demonstrated a firm commitment to the project. Yet, Defendant has now extended the Moratorium through April 15, 2023 and seeks to delegate to its residents in a Special Election the question of whether the restrictions presented in the Petition should be enacted in an ordinance. Defendant's actions deprive Plaintiff of the economically viable use of its property, infringe upon Plaintiff's vested rights, and interfere with Plaintiff's reasonable, investment-backed expectations.

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4. Regulatory Taking

Although the government typically takes property through an eminent-domain proceeding, in certain instances it may impose limitations on the use of private property, which results in a taking. This type of taking is known as "inverse condemnation," or regulatory taking. *Byrd v. City of Hartsvill*, 365 S.C. 650, 656, 620 S.E.2d 76 (S.C. 2005). The State Supreme Court has clarified that "there are only two elements to a regulatory inverse condemnation: affirmative conduct and a taking." *Id.* at 657. Regulatory-takings cases traditionally require "essentially ad hoc, factual inquiries," which balance "all relevant circumstances to determine whether the government has taken property." *Id.* at 658-59 (quoting *Penn Central Transportation Company v. City of New York,* 438 U.S. 104, 124 (1978)). "Two circumstances are especially important: (1) 'the economic impact on the claimant, and, particularly, the extent to which the [government] has interfered with distinct investment-backed expectations;' and (2) 'the character of the governmental action.'" *Id.* at 659.

At the time Plaintiff obtained approval and permits from Defendant to build the Anticipated STRs, the ZDO allowed for the licensing of STRs in every zoning district within the City of Folly Beach. Compl., ¶ 35. Defendant permitted and approved the construction of Plaintiff's property which were to be used as STRs in accordance with the ZDO. Plaintiff has relied on Defendant's approval in endeavoring to complete the construction of the Anticipated STRs.

The City of Folly Beach has taken affirmative action in imposing the Moratorium, which undeniably interferes in Plaintiff's reasonable, investment-backed expectations. Defendant has further effected a taking by delegating the question of rezoning to the residents by way of referendum. Moreover, the governmental action in this matter denies Plaintiff and other STR property owners substantive and procedural due process, as discussed above. Defendant's actions

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have caused and will continue to cause Plaintiff to suffer a denial of the economically viable use of his property, and they therefore amount to a regulatory taking.

5. The proposed ordinance set forth in the petition conflicts with S.C. Code § 27-50-250 and is therefore preempted.

The proposed ordinance is in direct conflict with a valid South Carolina statute. Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible. *See Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 530, 476 S.E.2d 477, 480 (1996) ("To determine whether the ordinance has been preempted by Federal or State law, we must determine whether there is a conflict between the ordinance and the statutes and whether the ordinance creates any obstacle to the fulfillment of Federal or State objectives."); *see also* Am.Jur.2d Municipal Corporations 392 ("[i]mplied conflict preemption occurs when an ordinance prohibits an act permitted by a statute, or permits an act prohibited by a statute").

South Carolina Code Section 27-50-250, known as the South Carolina Vacation Rental Act, requires property owners to honor rentals for ninety days after the sale of property. If a property owner knowingly violates or fails to perform any duty prescribed by the Act, said owner is liable for actual damages, court costs, and the court may award reasonable attorney fees. See S.C. Code Ann. § 27-50-250(B). If the proposed ordinance is passed, a STR business license will not be transferrable upon the sale of property, so a new owner will not be able to lawfully comply with the Vacation Rental Act. Because of the direct conflict between the proposed ordinance and the Act, the proposed ordinance puts Folly Beach property owners at risk and must fail.

B. Plaintiff Will Suffer Irreparable Harm Absent an Injunction

Plaintiff and the other property owners of the 1,021 investment STRs will suffer irreparable harm if the Moratorium is not lifted and if Defendant enacts the ordinance by initiative.

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Defendant's actions to date have caused confusion and uncertainty for landowners regarding whether they will be able to operate their property as STRs. *See* (Exhibit B hereto). This lack of predictability is compounded by the requirement that licenses are renewed each year and therefore a landowner may secure a license to operate an STR one year but not the next. The uncertainty and inability to plan for future uses of property will impact investment and property values within the City of Folly Beach and, as explained herein, has caused and will continue to cause Plaintiff harm. Moreover, Folly Beach property owners will be exposed to legal liability under the South Carolina Vacation Rental Act because they will be unable to comply with the proposed ordinance and the Act as explained above.

Finally, Defendant will not suffer any harm if enjoined from maintaining the Moratorium and enacting the proposed ordinance by initiative.

As discussed in detail throughout this memorandum and as will be further argued in a hearing before the court, Plaintiff is likely to prevail on the merits of its case against Defendant. If Defendant is allowed to proceed with its zoning measure by initiative and referendum in clear violation of *I'On, L.L.C. v. Town of Mt. Pleasant*, Plaintiff will suffer irreparable damages and has no adequate remedy at law.

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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
February 2, 2023

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Save Folly's Future

Council Meeting Summary
for Dec 13, 2022
savefollysfuture.com
savefollysfuture@gmail.com

Folly Beach City Council Meeting Summary For Tuesday - Dec 13th

City Council To Send Petition to Voters !

- - - - - - - - - - - - - - - - -

STR Moratorium Extended

- - - - - - - - - - - - - - - - -

Information Released by City During Work Session

As of Today

Number of Owner Occupied STRs(4%)	167	
Number of Investment STRs (6%)	1,021	
Total number of all Short Term Rentals	1,188	
Total number of Dwelling units in city		2,425

ISTRs represent 42% (1,021/2,425) of all dwelling units in City !

EXHIBIT B

Ordinance to cap short-term rental licenses on Folly Beach fails in city council

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The ordinance to cap the number of short-term rental licenses given out on Folly Beach has failed in city council.

By Melissa Rademaker
Published: Dec. 13, 2022 at 4:31 PM EST | Updated: Dec. 13, 2022 at 11:28 PM EST

FOLLY BEACH, S.C. (WCSC) - The ordinance to cap the number of short-term rental licenses given out on Folly Beach has failed in city council.

The motion was brought up after a petition was signed by more than 450 residents on the barrier island. The measure will now go to a referendum vote, in which the city will work with the Charleston County Board of Elections to decide when the special election will be.

The vote is now in the hands of permanent Folly Beach residents. For now, the council voted to approve the temporary pause on handing out short-term rental licenses.

> *"We, the Folly Beach Resident community, is pleased that the City Council heard our 478 voices via the petition and decided tonight to move the decision to CAP Investment Short Term Rentals to an Island wide referendum so all voting residents can have their voices heard on this very important decision. This is a crucial decision to ensure the fair balance between Residents, Long-Term Rentals and Investment Short-Term rentals and we are pleased it will be made by a direct vote by the voting residents on the island.*
> *Secondly, we are relieved that the Council voted to extend the Island wide Moratorium on issuing new short-term rental licenses from mid-January forward for 3 more months to allow enough time for the Referendum to be held.*
> *The Folly Beach Residents Association will continue being a source of verified facts and information for this issue on their Facebook page "Folly Beach Residents Association". We will continue doing all we can to ensure our residents can continue living their best lives on Folly in a fun, funky, vibrant, livable community. "*
>
> *— Ann Peets, Folly Beach Residents Association*

In June, the city council voted against the mayor's proposed 800 short-term rental cap. But a petition signed by more than 450 residents is bringing the topic back to the city council.

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Under South Carolina Law, a petition signed by 15% of the voting population and verified by the county has to be considered by city council. The signatures on the Save Folly's Future petition represent about 25% of the island. City Council can approve the ordinance in the petition or make amendments and put it to a city-wide citizen vote.

Ann Peets is one of the more than 450 residents who signed the petition.

"There are a whole pile of residents that are now seeing that the balance is being upset. Instead of leaving a place for long-term renters, short-term renters and residents and kind of keeping that equal - it's really started to tip the balance around investment, short-term rentals. People are knocking down homes, basically buying them as investment, short-term rentals and putting in so many people. So that got me really concerned and that's why I joined the Folly Beach Residents Association, as well as sign the petition," Peets says.

The petition seeks to limit investment in short-term rental properties, or second homes where people don't live full time, to 800 on the island at one time.

As of Oct. 18, Folly Beach confirmed the city issued 1,112 short term rentals for the 2022 business license year.

Peets is a member of the Folly Resident's Association group online where people share and discuss topics affecting the town.

"The reality of the petition is really that it's capping investment short-term rentals, not owner short-term rentals, to 800. And that's a third of the island. And that doesn't mean that it can't grow later there. There's the possibility to do amendments to the petition once it's passed, but it's really an attempt to cap the short-term rentals to a reasonable level. Start with that balance and then be able to figure out where we can go from there," Peets says.

People presented the citizen petition from Save Folly's Future on Oct. 12 to the city council. Since then, a group calling themselves Folly United has spoken out against the moratorium and a cap on short-term rentals.

Tom Powers has a second home on Folly and says he has been a resident on the island a few times in his life. He is opposed to officially capping how many investments short-term rentals are allowed.

"It does have good goals of livability and good community and I feel like our group - we're in alignment with 80 to 90% of those goals. Where we do feel like technically this is a bad step is it seeks to limit the number of licenses down to a cap of 800 licenses, and it's got some caveats for full-time people and things like that. But it will have the effect of making it harder for a second homeowner to know in the future if they would be able to have the ability to short-term rent their property," Powers says.

Powers, along with others including full-time Folly Resident and short-term rental owner Christy Bickle, are collecting signatures against the moratorium and cap.

In September, the council passed new policies short term rentals must meet before they are approved for a license. Items include presenting a parking plan, a limit of 25 people to a rental at a time and paying an application fee. There is also a three-strike system where if a property is found in violation of local laws or short-term rental requirements three times within one year they could lose their license. The city is planning to hire four enforcement officers to manage the department.

Powers says these rules haven't had enough time to take effect before discussing the need for a cap and that's why he opposes the moratorium and cap.

"It hasn't had a chance to really see how that's going to correct these livability problems. In a nutshell, our point would be let's let the laws that are now on the books have a chance to take effect and do their thing before we pass yet more sweeping and pretty dramatic new laws," Powers says.

Owners with a short-term rental license can renew it each year. But if ownership changes and the new owner is not primarily living at the property, they would have to apply for an investment short-term rental and potentially join the waiting list, if there is one.

"Where we very specifically feel and a lot of other we've had hundreds of people sign our petition, they don't like that overreach because what it effectively creates is a scenario where if you were to leave your property to your children, they wouldn't be guaranteed and have the ability to easily get a short term rental license as well in a timely manner," Powers says.

Brickle owns a home and a second property she rents short-term next door.

"If you are a homeowner in the city of Folly Beach or you are a business license holder in the city of Folly Beach, you need to get familiar with this issue. Because what becomes of the referendum vote will affect property values here. So, let's get out here citizens and figure out what's happening," Brickle says.

The Save Folly's Future petition does not have a stance on the moratorium and the writer has expressed support for a citizen vote on the matter.

Peets says it's important for people to read the ordinance and figure out how it will affect them.

"What we're trying to curb is not the fact that investors can make money on this island. We're all fine with that. What we feel like is if they're allowed to run rampant and they have a majority, 70-80% become short-term rentals, the sense of community is lost. It's not just the loss of residents, but it's actually no one here to do a Christmas parade to do the flip flop drop, to have events in the park and to really keep that community flow going," Peets says.

You can read the petition ordinance and definitions for it, here.

You can contact those with concerns gathering signatures, here.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-00264
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**PLAINTIFF'S MEMORANDUM**
vs.	)	**IN OPPOSITION TO**
	)	**MOTION TO INTERVENE**
CITY OF FOLLY BEACH,	)	
	)	
DEFENDANT.	)	
	)	
	)	
	)	

This matter is before the Court on the Motion to Intervene filed by Save Folly's Future ("SFF"), asking the Court to permit SFF to intervene in this action as a matter of right or by permission pursuant to Rule 24, SCRCP. Plaintiff Folly East Indian Co., LLC, through its undersigned counsel, opposes the request and respectfully asks the Court to deny the Motion to Intervene because SFF and Defendant City of Folly Beach share the exact same interest for the purpose of this action and the addition of SFF as a party would consume judicial resources unnecessarily, rather than promote judicial economy.

FACTUAL BACKGROUND

Plaintiff owns real property located within the City of Folly Beach at 112 East Indian Ave., 114 East Indian Ave., 116 East Indian Ave., and 118 East Indian Ave., Folly Beach, South Carolina, 29439 and holds five Short Term Rental ("STR") licenses for these properties. Compl., ¶¶ 1, 5.

In 2020, Plaintiff began building two new buildings at 112 East Indian Avenue with the intent of using them as STRs. Due to supply chain shortages caused by COVID-19, the project

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took longer than expected and is still two months from completion. Defendant City of Folly Beach fully approved the development plans and permitted them accordingly. Compl., ¶ 6.

On October 11, 2022, Defendant's City Council received a petition asking Council to pass an ordinance limiting the issuance of STR licenses to 800 ("Petition"). Compl., ¶ 11. The Petition constitutes a citizen's initiative pursuant to South Carolina Code of Laws, § 5-17-10, *et. seq.* The Petition states there has been an "unrestricted growth of the number of investment short term rentals within the City of Folly Beach," and further states that the goals of the Petition relate to: quality of life for residents; stress on city infrastructure and environment; extraordinary burdens on public service; existential threat to the community. Compl., ¶ 12.

At the City Council meeting held October 11, 2022, the Council failed to pass an ordinance capping STR licenses to 800 and, instead, adopted an ordinance creating a Moratorium on the issuance of new STR licenses for a three-month period. On December 13, 2022, City Council again failed to adopt a new zoning ordinance that would set a cap of 800 STRs and, instead, gave first reading to Ordinance 34-22, which extended the previously imposed Moratorium for another three-month period effective upon its expiration on January 11, 2023. Compl., ¶¶ 15-16. On January 10, 2023, City Council gave second reading to Ordinance 34-22. *See* Compl., Exhibit B. Ordinance 34-22 extends the Moratorium to April 15, 2023, "or five business days after any special election called to adopt the ordinance proposed by the [P]etition, unless earlier repealed." Compl., Exhibit B.

Contrary to the claims and concerns raised in the Petition, STRs provide a significant benefit to the local economy. The Accommodations Taxes from STRs contribute over $1,500,000.00 to the Folly Beach re-nourishment program and another $1,500,000.00 to the City's General Fund. Recognizing the value that STRs provide to the local community and economy,

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state legislators have introduced a pending Bill, H. 4547[1], which would prohibit any municipality from enacting an ordinance that prohibits STRs. *See* Compl., Exhibit C.

Within this context, Plaintiff filed its Verified Complaint with the court on January 17, 2023, and concurrently filed a Motion for Preliminary Injunction. Defendant promptly filed a 34-page brief in opposition to the Motion for Preliminary Injunction, vigorously challenging the requested injunction. SFF thereafter filed its Motion to Intervene.

ARGUMENT

SFF moves to intervene as a matter of right pursuant to Rule 24(a)(2) and by permission pursuant to Rule 24(b). Rule 24 provides for an individual or entity's intervention as a matter of right as follows:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

SCRCP 24(a). The Rule also allows for permissive intervention as follows:

> Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Id. at SCRCP 24(b). A party seeking intervention under Rule 24(a)(2) ***must***:

> (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its

[1] Publicly available at https://www.scstatehouse.gov/sess124_2021-2022/bills/4547.htm.

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> ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

In re Horry County State Bank, 361 S.C. 503, 604 S.E.2d 723, 725 (S.C. App. 2004) (quoting *Ex Parte Reichlyn,* 310 S.C. 495, 427 S.E.2d 661 (1993)). The court acts in its discretion in denying a motion to intervene. *S.C. Tax Comm'n v. Union County Treasurer,* 295 S.C. 257, 368 S.E.2d 72, 74 (Ct. App. 1988).

SFF describes itself as an unincorporated grassroots advocacy group "whose sole purpose is to limit the number of [investment Short Term Rentals]" operating within the City. Mem. in Supp. of Mot. to Intervene, 1, 4. SFF's efforts in pursuit of this goal culminated in its leadership drafting the Petition, which has prompted a referendum vote on the matter of rezoning property to limit the number of STRs. *Id.* at 2. SFF is clearly committed to ensuring the City of Folly Beach either adopts the Petition or puts it to a referendum vote. *Id.* at 3, 5. However, "[a] mere interest in the subject matter of the litigation is not sufficient," to form the basis for intervention. *South Carolina Tax Commission v. Union County Treasurer*, 295 S.C. 257, 368 S.E.2d 72, 74 (Ct. App. 1988).

First, and with respect to the third factor, SFF describes in detail the interest of its members in limiting the number of STRs and in ensuring a referendum vote in furtherance of that interest, but it does not demonstrate that absent intervention, the Court may dispose of the case in a way that could impair or impede SFF's ability to protect its interest. SFF states only that because City Council took prior action to vote against the Petition, there is no guarantee that City Council would appeal an adverse ruling in this matter. This is a point of speculation regarding an event that has not come to pass and which may never come to pass. This single concern is not sufficient to demonstrate the right to intervene, particularly in light of SFF's failure to show that Defendant cannot adequately represent its interests.

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Second, and to that end, South Carolina courts consider the following factors in determining adequacy of representation: "(1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent." *In re Horry County State Bank*, 604 S.E.2d at 726. SFF carries the burden of demonstrating inadequacy. *Berkeley Electric Co-op., Inc. v. Town of Mt. Pleasant,* 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990). Plaintiff raises two claims in this matter: Declaratory Judgment as to the Moratorium and Request for Temporary Injunctive Relief with respect to the Moratorium; and Declaratory Judgment as to the Petition and Request for Temporary Injunctive Relief with respect to enforcing and implementing the petition. As mentioned, Defendant has already demonstrated vigorous opposition to Plaintiff's request for injunctive relief and zealous advocacy for the right to proceed with a referendum vote. *See* Opp'n. to Mot. for Prelim. Inj. SFF's interest does not merely overlap with Defendant's interest—they are one and the same. Furthermore, SFF identifies no interest or legal objective that is contrary to or inconsistent with Defendant's position in this lawsuit, as evidenced by Defendant's efforts to defend against the claims. Finally, while SFF can speak firsthand to its members' concerns regarding STRs and the efforts underpinning the Petition, SFF has not shown that it offers "knowledge, experience, or perspective that would otherwise be absent." *See In re Horry County State Bank*, 604 S.E.2d at 726 ("Essentially, we look to whether the absentee is likely to have anything of his own to say that will be of value") (citation and internal quotation marks omitted). SFF is committed to a referendum vote going forward, as is Defendant. *See South Carolina Tax Commission*, 368 S.E.2d at 74 ("When an applicant for intervention and an existing party have the same interests or ultimate objective in the litigation a presumption arises that its interests are

adequately represented and the application should be denied unless a showing of inadequate representation is made by demonstration of adversity of interest, collusion, or nonfeasance"). SFF fails to provide any basis on which to find that Defendant's representation of its interest is inadequate.

SFF moves for intervention by permission on the basis that its motion is timely and that its position regarding the petition and proposed ordinance shares common questions of fact and law with the Complaint and Motion for Preliminary Injunction. However, as described above, the questions of fact and law are not just similar, they are identical. Moreover, SFF and Defendant seek the same outcome. *See In re Horry County State Bank*, 604 S.E.2d at 727 (treating as a critical consideration to the adequacy of representation analysis the fact that the movant sought the same outcome as one of the parties). Defendant City of Folly Beach more than adequately represents SFF's interests and, frankly, SFF's intervention in this case serves no practical purpose. Finally, rather than promote judicial economy, permitting SFF to intervene would needlessly complicate the discovery process and the parties' motion practice, and thereby create an unnecessary burden on both judicial resources and the parties' respective resources.

SFF cannot intervene by right and has not shown that it is entitled to permissive intervention. For the reasons stated, Plaintiff respectfully asks that the Court deny the Motion to Intervene.

[SIGNATURE ON FOLLOWING PAGE]

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Charleston, South Carolina
February 7, 2023

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
FOLLY EAST INDIAN CO., LLC, Plaintiff, vs. CITY OF FOLLY BEACH, Defendant.	)	CASE NUMBER: 2023-CP-10-00264 MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

I. INTRODUCTION

Pursuant to Rule 24 (c) of the South Carolina Rules of Civil Procedure, Intervenor, Save Folly's Future ("SFF") joins in the City of Folly Beach's Opposition to Plaintiff's Motion for a Preliminary Injunction and offers additional arguments which reinforce the fact that SFF's intervention is necessary for the Petition and the citizens of Folly Beach, who have affixed their names therein, to be adequately represented and that Plaintiff's Motion should be denied. [1]

II. FACTUAL MISTATEMENTS

Many of Plaintiff's Factual Claims are incorrect or misleading, including the following:[2]

1. Plaintiff has incorrectly claimed it has not been issued a business license for 112 East.

[1] "Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected." *In re Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723 (S.C. App. 2004), *citing, Berkeley Elec. Coop. v. Mount Pleasant,* 302 S.C. 186, 189, 394 S.E.2d 712 (1990). Courts also look at whether the intervening party's interest is adequately represented and if there is an adversity of interest. *In re Horry County State Bank,* 361 S.C. at 511. Looking at all the circumstances in this case, judicial economy will be promoted by SFF's involvement. Further, there is an adversity of interests and intervention is required to ensure that SSF's members' interests are adequately represented.

[2] While there are other misleading factual arguments, this section of the Memorandum deals with the most glaring.

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The Plaintiff claims it has been issued five business licenses for its short-term rentals ("STR") and that because 112 East Indian is still under construction, it has not been issued two STR business licenses for that address. This is incorrect – Plaintiff has in fact been issued **seven** STR business licenses, including two for 112 East Indian. *See* Exhibit 15 to Pope Affidavit, Appended to The City of Folly Beach's Opposition Memorandum. If the Plaintiff continues to hold these business licenses in good standing, nothing in the proposed Ordinance will impact those licenses at all. They won't be suspended or taken away and they can be renewed by email when they expire. In the same way nothing in the Petition or Moratorium will impact already issued licenses. Notably, the fact that Plaintiff has been issued STRs for all seven of its properties is by itself grounds for denial of Plaintiff's motion. [3]

2. Plaintiff incorrectly states that by the City Building Department granting a building permit, that Plaintiff is automatically entitled to a short-term rental business license

Plaintiff seems to claim that because the Building Department granted it building permits for its properties at 112 East Indian Avenue, 114 East Indian Avenue, 116 East Indian Avenue, and 118 East Indian Avenue, that the City of Folly Beach also has granted it STR business licenses because the Plaintiff intended to use the properties as short term rentals when they were completed.[4] Contrary to Plaintiff's claim, the Building Department does not issue Business Licenses. It is the Building Official who exercises the powers necessary to enforce the building code.[5] Business Licenses are issued by a separate department and a separate official.[6]

[3] If allowed to intervene, SFF will file a Motion to Dismiss Plaintiff's Complaint on the grounds that it lacks standing to seek injunctive relief.

[4] The Building Department issues Building Permits, which are required for "[a]ll construction (new and remodeling and repairs) Folly Beach Code, § 150.005(A).

[5] Folly Beach Code, § 150.105, sets forth that official's powers and obligations, none of these powers include the issuing of business licenses.

[6] Folly Beach Code, § 110.02, defines "License Official" as "A person designated to administer this chapter. Notwithstanding the designation of a primary License Official, the municipality may designate one or more alternate License Officials to administer particular types of business licenses, including without limitation

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Notably, there is no mention of STRs or the granting of any business licenses in the application or the building permits to build the modular home at 112 East Indian Avenue *See* Exhibit 16 to the Pope Affidavit, Appended to the City's Memorandum in Opposition.

3. The Proposed Ordinance is not a zoning ordinance.

Plaintiff claims that the proposed ordinance is a zoning ordinance.[7] **This is not correct.** The provisions of the ZDO is set forth in the official zoning map.[8] Pursuant to Folly Beach Code, "[t]he Zoning Administrator shall be responsible for applying the official zoning map, and interpretations of the official zoning map in accordance with the standards [which are set forth]." Therefore, Zoning, the Building Department, and Business Licenses are handled by three distinct departments with very different functions and powers.

South Carolina defines a business license as follows: "Business License" means a license issued to a taxpayer by a county or municipality for the privilege of doing business in that county or municipality. S.C. Code § 6-1-400 (A)(1). The State of South Carolina treats the issuance of business licenses as separate and apart from the City's power to zone. This definition was included in The South Carolina Business License Tax Standardization Act, passed on September 23, 2020, and signed by the Governor on September 30, 2020, which was intended to standardize the process of applying for and receiving a business license. A careful reading of this statute indicates that zoning is not at issue in the granting of a business license and that a business license has finite life, that is, one year from May first to April thirtieth. §6-1-400(B)(1). Folly

for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code."

[7] Folly Beach Code, § 160.01, states, "These regulations shall be officially known as the "Zoning and Land Development Ordinance of the City of Folly Beach," and may be referred to as the "ZDO", being Chapters 160 through 169 of this Code of Ordinances.

[8] Folly Beach Code, § 160.06-02, states, "The official zoning map and all the notations thereon are hereby incorporated by reference and made part of this ZDO."

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Beach incorporated this State statute into the Folly Beach Code at §110.[9] Business Licenses do not run with the land but are granted to the "taxpayer". Further, business licenses are non-transferable.[10] The Proposed Ordinance focuses wholly and completely on the issuance of business licenses by the City. It does not seek to rezone any area of the City of Folly Beach or any parcel therein. The Ordinance, passed by the voters on February 7, will apply to each and every area of the City.

4. The regulation of Short-Term Rentals does not fall under Folly Beach's ZDO zoning scheme.

Contrary to Plaintiff's claim, the regulation of STRs does not fall under Folly Beach's ZDO zoning scheme.[11] Instead, STRs fall within a comprehensive regulatory scheme under Folly Beach Code, §117 et seq. Notably, zoning is not mentioned in any way under Folly Beach Code, §117. The definition of STRs appears under Folly Beach Code, § 117.01.[12] The regulatory scheme for STRs sets forth a comprehensive set of rules and requirements to be followed to ensure that residents comply with a host of safety, enforcement, licensing, registration, and tax

[9] Folly Beach Code, § 110.01, states, "[e]very person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in/with the object of gain, benefit or advantage, in whole or in part within the limits of The City of Folly Beach, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided."

[10] Folly Beach Code, § 110.08(B) , states, "[a] business license shall not be transferable, and a transfer of a controlling interest shall be a termination of the old business and the establishment of a new business requiring a new business license, based on old business income."

[11] As discussed previously, the City's zoning regulations are set forth under Folly Beach Code, §160, et seq.

[12] Under Folly Beach Code, §117.01, Short Term Rentals are defined as***, "***Residential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling. Tourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered ***SHORT TERM RENTALS***."

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requirements.[13] Consistent with Folly Beach's regulatory scheme, the proposed ordinance will be inserted under §117.[14]

5. City Council did not refer to the proposed ordinance as a "zoning" ordinance.

Referencing discussions of the proposed ordinance at the Folly Beach City Council's December 13, 2022 meeting, the Plaintiff refers to it as a new "zoning ordinance." *See e.g.* Verified Complaint, at §16, and Plaintiff's Memorandum in Support of its Motion for Preliminary Injunction, at p. 2. This is misleading since the proposed ordinance was not referred to as a "zoning ordinance" at that meeting. *See* Exhibit 2, Affidavit of Dr. Richard Beck, DMD, at ¶ 11. At that meeting, the City Council discussed whether or not to approve Ordinance 033-22: "An Ordinance Amending the Folly Beach Code of Ordinances Chapter 117 (Short Term Rentals) By Including Language Proposed by Citizen Petition to Define Owner Occupied and Investment Short Term Rental Licenses and Limit the Number of Investment Short Term Rental Licenses to Eight Hundred." No motion was made, and no discussion was had, and the Ordnance failed. The Council then took up Ordinance 034-22: "An Ordinance to Extend a Moratorium on The Issuance of New Business Licenses for Short Term Rentals Within the City of Folly Beach Due to the Verification of a Citizen Initiative Petition to Establish a Cap on Short

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[13] Folly Beach Code, § 117.02 LICENSE, REGISTRATION, AND TAX REQUIREMENTS.
Any owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.

[14] The Citizen's Petition states:

> Whereas the requisite number of voters have affixed their names to this PETITION TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800, pursuant to South Carolina Code of Laws, section 5-17-10 et seq; NOW THEREFORE:
>
> We the undersigned request that the following additions be inserted into Chapter 117 of the Folly Beach Code of Ordinances:

A copy of the Petition is attached as Exhibit 1.

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Term Rentals (First Reading). The Moratorium sought to be extended by this Ordinance passed. The Minutes of that December 13, 2022, Meeting is attached as Exhibit 3.

6. Folly Beach's Zoning Ordinance specifically allows other more restrictive ordinances to take precedence.

Folly Beach Code, § 160.05-01, entitled, "Conflicts with Other City Codes or Laws,' states, "[i]f the provisions of this ZDO are inconsistent with one another or if the provisions of this ZDO conflict with provisions found in other adopted codes or ordinances of the city, the more restrictive provision shall govern unless the terms of the provisions specify otherwise." While SFF does not believe the Petition or the Ordinance contained therein conflicts with the Zoning Ordinance (as it does not seek to rezone any area or parcel in the City), even if it did, the Folly Beach Code specifically provides that ordinances like the Business License Ordinance proposed in the SFF Petition shall govern.

III. DISCUSSION

a. The Plaintiff is not entitled to the issuance by this Court of a Preliminary Injunction.

The Plaintiff has asked this Court to issue a Preliminary Injunction. While it has properly laid out the elements for the issuance of a Preliminary Injunction, the Plaintiff has failed to carry its burden to establish each of the elements. For a preliminary injunction to be granted the plaintiff must establish that: (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 904 (Ct. App. 2002).

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The sole purpose of a temporary injunction is to avoid irreparable injury to the plaintiff pending final adjudication of the case. *Powell v. Immanuel Baptist Church,* 261 S.C. 219, 221, 199 S.E.2d. 60, 61 (1973). When a court is requested to issue a temporary injunction, it may consider the merits of the case to the extent necessary to determine whether a temporary injunction is appropriate. *Roberts v. Union County Board of School Trustees*, 284 S.C. 299, 301, 326 S.E.2d 163, 163, 164 (Ct. App. 1985).

The Ordinance if enacted, will not prohibit STRs or Investment Short-Term Rentals ("ISTRs") and it will not suspend any licenses that have already been issued and are in good standing. As discussed previously, the Plaintiff has been issued ISTR business licenses for all seven of its units and therefore has not and will not suffer an injury of any kind.

b. The Moratorium does not impact the Plaintiffs at all.

A careful reading of the Moratorium Ordinance 034-22 makes it clear that It applies only to the "issuance of new business licenses". *See* Exhibit 4. The Plaintiff's licenses expire at the end of April. By its own terms, the Moratorium will expire 5 days after the Special Election held on February 7, 2023. Plaintiff will be able to renew those licenses as long as it remains in good standing. This is true because even though the current business licenses expire at the end of April they can be renewed. [15] Neither the Moratorium nor the Proposed Ordinance will interfere with these renewals.

c. The Petition and the Ordinance contained therein does not and will not impact the status of the Plaintiff's currently held business licenses.

[15] *See* https://cityoffollybeach.com/fb-business-licences
"LICENSE RENEWALS
You can also renew your license in person at City Hall or email licenses@follybeach.gov"

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The Plaintiff in its Complaint and Memorandum claims irreparable damage if this court does not enter a Preliminary Injunction because it will impact the status of its currently held business licenses. The language of the proposed Ordinance reads in pertinent part as follows and negates Plaintiff's claims:

> (2) No **new** Investment Short Term Rentals shall be permitted unless the total number of Investment Short Term Rentals is below the CAP.
> (A) Exception: After enactment, all existing Investment Short term business License holders in good standing may continue to renew annually, even if the initial number of Investment Short Term Rentals exceeds the CAP.

Neither the Petition, the Ordinance contained therein, nor the Moratorium will have any impact on the ISTR business licenses that Plaintiff already has. As a result, it will suffer no damage, irreparable or otherwise.

d. Neither the Petition nor the Moratorium is unconstitutional.

The Plaintiff also claims that the Petition and the Ordinance contained therein, as well as the Moratorium should all be deemed unconstitutional and enjoined because it supposedly deprives Plaintiff of the economically viable use of its property. The Plaintiff further claims it will suffer irreparable damage because the Petition and the Ordinance contained therein, as well as the Moratorium, will harm or negatively impact its property rights and because both are in conflict with South Carolina law. Plaintiff is wrong both on the law and the facts.

The Moratorium of which the Plaintiff complains has a finite life. It will end by its own language on "April 15, 2023, or five business days after any Special Election [February 7] called to adopt the Ordinance proposed by petition, unless earlier repealed." City of Folly Beach Ordinance 034-22. Adopted December 13, 2022. Originally enacted on October 18, 2022, and extended by Ordinance 034-22 enacted on December 13, 2022. *See* Exhibit 3.

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e. The Plaintiff bears a heavy Burden when it attacks an Ordinance as unconstitutional.

The Supreme Court has made it very clear that, "An ordinance is a legislative enactment and is presumed to be constitutional. The burden is upon the [the plaintiff] to prove unconstitutionality beyond a reasonable doubt. The burden requires the attacker to…'negate every conceivable basis that might support it.'" *Lehnhausen v. Lake Shore Auto Parts Company*, 410 U.S. 356, 364, 93 S.CT. 1001, 1006, 35 L.Ed. 2d 351 (1973) (*quoting Madden v. Kentucky*, 309 U.S. 83, 88, 60 S.Ct. 406, 408, 84 L.Ed.590 (1940). The Plaintiff has failed to meet this burden of proof. Neither the Ordinance contained in the petition nor the Ordinance establishing the moratorium is unconstitutional.

There is no constitutionally protected property right in engaging in a business activity or the activity of making a profit. *College Savings Bank V. Floridian prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 675 (1999). As discussed previously, both the State statute and the Folly Beach ordinance regarding Business Licenses deal with engaging in business activity. As a result, there is no interference or damage done to a constitutionally protected property right.

f. The Plaintiff has not been nor will it be deprived of "all economically viable use" of its property

As previously discussed, neither the proposed Ordinance nor the Moratorium will have any impact on the Plaintiff's currently held business licenses. Nothing in the Ordinance or the Moratorium will deprive the Plaintiff of all economically beneficial use of its land. The

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Constitution does not guarantee a property owner the right to obtain the maximum return on its property. What it does prohibit is regulation that deprives the landowner of "all feasible economically beneficial interest". *Lucas v. SC Coastal Council*, 505 U.S. 1003 (1992). This standard remains as viable today as it was in 1992. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planing Agency Tahoe-Sierra Preservation Council, In v. Tahoe Regional Panning Agency*, 535 U.S. 305, 122 S.Ct. 1465 (2002). Even if the Ordinance contained in the Petition is enacted, the Plaintiff may still operate under the businesses licenses it has. Further, nothing in either the Moratorium or the Proposed Ordinance will deprive the Plaintiff of all feasible economically beneficial interest. Even if the Plaintiff could not obtain ISTR business licenses, significant economic value would remain. As discussed previously, Plaintiff has seven ISTR business Licenses and those licenses are not impacted in any way. As a result, the Plaintiff has not and will not suffer irreparable damage as a result of the Moratorium and enactment of the proposed Ordinance contained in the Petition.

g. The Petition does not violate SC Code 15-17-10 or the holding in I'On, LLC v. Town of Mount Pleasant.

The Plaintiff claims that the Petition violates S.C. Code 15-17-10 and the holding in *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 526 S.E.2d 716, 720 (S.C. 2000). It does not. As discussed previously, the Ordinance contained in the Petition does not involve any attempt to change the zoning status of any area or parcel in the jurisdiction of the City of Folly Beach. The issuance of a Business License is not an issue of Zoning. Business Licenses are not issued by the Department of Zoning. Applications for Business Licenses are made to the Business Licensing Official and if the applicant qualifies, the Business License is issued by the Business License official. Notably, the Business Licenses issued for ISTRs do not rely on the zoning status of the parcel of land in which the ISTR sits.

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h. The Petition does not conflict with section 27-50-250.

The Plaintiff claims that compliance with S.C. Code, § 27-50-250 will be made impossible if it has to comply with the proposed ordinance. The statute cited by the Plaintiff is first and foremost a statute that both encourages and requires certain disclosures when certain types of vacation rental accommodations change hands. § 27-50-250 (B). It says nothing about business licenses. The Intervenor disagrees that 27-50-250 applies in this case at all. S.C. Code, § 27-50-250 provides as follows:

> (A) The grantee of residential property subject to a vacation rental shall take title subject to the vacation rental agreement and the vacation rental management agreement for all vacation rental periods that begin no later than ninety days after the date the grantee's interest is recorded in the office of the register of deeds. If the vacation rental begins more than ninety days after the recording of the grantee's interest, then no party has the right to enforce the terms of the vacation rental agreement or occupancy provided for in the agreement, but the tenant is due a refund of any payments towards the agreement within forty-five days of the recording of the transfer of interest.
>
> (B) Before the ratification of any contract of sale, the grantor shall disclose to the grantee in writing all future time periods that the property is subject to a vacation rental. Not later than consecutive fourteen days after the transfer of interest the grantor shall disclose in writing to the rental management agency the grantee's name, address and the date the transfer of interest was recorded. A grantor or grantee who knowingly violates or fails to perform any duty prescribed by any provision of this article is liable for actual damages proximately caused to the tenant and court costs. The court may award reasonable attorney's fees incurred by the prevailing party. No action may be brought against a owner or the rental management company by a tenant for damages or injuries that occur as the result of property defects of which an owner or rental management company had not actual knowledge.

It would seem from Plaintiff's argument that it is concerned about a future transferee's interest in an ISTR Business License. Any "conflict" that might occur would not be the fault of the operation of either the Moratorium or the operation of the proposed ordinance but would be caused by the Plaintiff's own decision to enter into such agreements that come within the 90-day

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period described in § 27-50-250(A) knowing that any new owner would have to apply for a new business license which may or may not be available to the grantee.

Additionally, the Plaintiff alleges that it purchased property at 112, 114, 116 and 118 East Indian Avenue with the intent of using them as STR properties. Intent is not a license and obtaining a STR Business License is not a matter of zoning. Business Licenses are not issued by the Zoning Administrator of Folly Beach

Plaintiff also alleges that the ordinance proposed by the Petition would run afoul of the allegedly pending legislation that would prohibit municipalities from banning Short Term Rentals. This is the second time this legislation has been proposed. It was first filed in 2021-2022 term, but it was not enacted. SFF suggests that there is no guarantee that it will be enacted in its current form this time around.

i. The Petition does not seek to eliminate the transferability of ISTR Business licenses.

Plaintiff claims that the Petition seeks to eliminate the transferability of ISTR Business Licenses. This is simply not true. The current Folly Business License Ordinance states very clearly at §110.08(B) that , "[a] business license shall not be transferable, and that a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on the old business income." This Ordinance was enacted in 2021.

Folly Beach has a strong history of citizen referendums being used to invoke the will of the people in the face of commercial friendly City Council

The Plaintiff's arguments all focus ultimately on what it claims is its right to make as much money as it can regardless of the community's concerns or the impact on Folly Beach

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residents and their rights to enjoy and use their property as full time residences free from the burdens presented by ISTRs. The burdens of ISTRs are not borne by the owners of those properties who profit from them but by the residents who live near them and around them. No one is seeking to prohibit short term rentals in or on Folly Beach, rather the residents are seeking to create a balance between ISTRs and full-time residents' quality of life and their legitimate investment expectations when they purchased their homes. Owner Occupied STRs have not and will not be affected by the Moratorium or the Proposed Ordinance.

SFF has spoken with many Folly Beach residents who have voiced their desire for a cap on ISTRs. Frankly they have "investment" expectations too. Those expectations are simple; they do not want to be priced out of their community by the ISTR bubble. They do not want to lose the networks they have established with their neighbors who leave because their residential community has become a commercial community. Those networks are valuable in terms of support and the stability that a long-term residential community provides. Quality of life and its impact on mental and physical health is an important value and represents a key component of the values that deserve protection. For the residents it is not only about money, it is about their homes and their community. The SFF represents over 450 registered voters who signed the Petition that initiated the Moratorium and the Special Election and they have a right to be represented here.

As Dr. Richard Beck, former mayor and one of the organizers of SFF, states, "The citizens of Folly Beach have a history of fighting to maintain the character of Folly as a visitor friendly, family oriented, beachfront residential community with a compact commercial district. In other words, a place where families can raise children. It is Folly's heritage." Beck Affidavit, at ¶ 3. In addition, Folly Beach has a strong history of utilizing citizen referendums to invoke the

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will of the people in the face of a pro-development City Council. He points out that this referendum is no exception. *Id*. at ¶ 4. With the referendum vote in favor of the Ordinance, Plaintiff will no doubt appeal this litigation to the end. As Dr. Beck notes in his affidavit, the City Council controls the City Attorney. Id. at ¶ 13. Based on how this City Council has been nonresponsive to the citizens by opposing the Proposed Ordinance, 469 voters signed the Petition for a referendum vote, in which the citizens voted in favor of the Ordinance. *Id*. at ¶ 10. Alarmingly, in a Charleston Trident Association of REALTORs (CTAR) 2022 Year in Review Residential Market Update video, the CTAR official stated that it has gotten nearly 85% of its candidates elected and that a big issue on their radar for 2023 is Folly Beach's short-term rental fight. The official states, "we have defeated this three separate times at council, we have pushed back against the cap and the restrictive forces they propose. The mayor and a group of Folly residents, they will not let this go and we are heavily invested in this fight." Because this isn't an isolated incident on Folly. All of our municipalities are looking at Folly, and if Folly can do it, the rest of them can do it".....We will continue to be that wrecking ball." *Id*. at ¶ 14. *See* Video

below, at 22:40 to 26:05.

Dr. Beck believes there are powerful forces at work that are "heavily invested," spending Fifty-six million dollars spent in 2022 lobbying for pro development officials and laws. He states:

> With this nationwide PAC at work and a pro-development City Council that previously opposed the Ordinance three separate times, including failure to discuss the initiative generated ordinance after the initiative was certified, I believe there is a strong

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> likelihood that City Council will continue to oppose the ordinance and do everything it can to have the City Attorney abandon the case. In that situation, who will protect the citizens?

Beck Affidavit, at ¶ 16. Dr. Beck concludes, "SFF has retained counsel to represent it and is committed to taking this fight to the end. I believe that the only way to ensure that the citizens will be adequately protected is for the court to allow SFF to intervene. *Id*. at ¶ 17 Looking at the totality of the circumstances, judicial economy will be promoted by SFF's involvement. Further, there is an adversity of interests and intervention is required to ensure that SSF's interested are adequately represented. *See In re Horry County State Bank, 361 S.C. at 511.*

As discussed above and in the City's memorandum, nothing in the Petition, the Moratorium Ordinance, or the proposed Ordinance is unconstitutional or conflicts with any law of the State. The citizens have spoken; the voters have approved the Proposed Ordinance, which should be enacted upon certification of the election. That is as it should be.

IV. CONCLUSION

As has been shown above and in the City's memorandum in opposition, the Plaintiff has failed to carry its burden with regard to the issuance of a Preliminary Injunction. As a result, its request for such extraordinary relief should be rejected.

Respectfully Submitted,

Law Office of Robert M. Turkewitz, LLC

s/Robert M. Turkewitz
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www.rmtlegal.com

February 8, 2023
Charleston, South Carolina

Attorney for Proposed Intervener,
Save Folly's Future

Exhibit 1

ELECTRONICALLY FILED - 2023 Jan 17 4:20 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

EXHIBIT A

(Resized from Legal to Letter)

STATE OF SOUTH CAROLINA) **Petition**
) **To Limit Investment Short Term Rental**
CITY OF FOLLY BEACH) **Business Licenses to a maximum of 800**

To the Mayor and City Council of Folly Beach:

We the undersigned voters of the City of Folly Beach request that the City adopt the following ordinance: TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800. This Petition is submitted pursuant to the South Carolina Code of Laws, section 5-17-10, *et seq*.

Whereas the unrestricted growth of the number of *investment short term rentals* within the City of Folly Beach:

- lowers the quality of life for its residents
- stresses the city's infrastructure & environment
- places extra ordinary burdens on the city's public services sector and
- poses an existential threat to the community.

Whereas the requisite number of voters have affixed their names to this PETITION TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800, pursuant to South Carolina Code of Laws, section 5-17-10 et seq;

NOW THEREFORE:

We the undersigned request that the following additions be inserted into Chapter 117 of the Folly Beach Code of Ordinances:

DEFINITIONS:

1. ***Investment Short Term Rental (ISTR)*** - A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.

2. ***Owner-Occupied Short Term Rental (OSTR)*** – A property and/or dwelling unit, in whole or part, licensed for short term rentals whose owner claims the licensed property to be the owner's primary residence as evidenced by: (a) current S.C. drivers license or S.C. identification card, (b) the address where they are, or may be, enrolled and registered to vote in local, state and federal elections and (c) the physical address used for the purpose of filing local, state and federal income taxes.

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SHORT TERM RENTAL BUSINESS LICENSES:

(A) The City is authorized to issue two classes of short term rental business licenses:
(1) Investment Short Term Rental business license, and
(2) Owner-Occupied Short Term Rental business license.

(B) Owner Occupied Short Term Rental Business License:
There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.

(C) Investment Short Term Rental CAP
(1) The maximum number of permitted Investment Short Term Rental business licenses, city wide, shall be no more than 800, henceforth referred to as the CAP.
(a) Upon enactment the CAP shall be set at 800.

(2) No New Investment Short Term Rentals shall be permitted unless the total number of Investment Short Term Rentals is below the CAP.
(a) Exception : After enactment, all existing Investment Short Term Rental business License holders in good standing may continue to renew annually, even if the initial number of Investment Short Term Rentals exceeds the CAP.

(3) Investment Short Term Rental Wait List: If demand for Investment Short Term Rental business licenses exceeds the CAP a wait list will be established and maintained by the City of Folly Beach.
(a) When the number of allowable Investment Short Term Rental business licenses falls below the CAP, a license shall be offered by US Mail to the next qualified applicant on the wait list.
(b) If the applicant fails or neglects to complete an application for an Investment Short Term Rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.

(D) Non- transferable
(1) Investment Short Term Rental wait list status terminates upon transfer of property and is non-transferable.
(2) Investment Short Term Rental business licenses terminate upon transfer of property and are non-transferable.
(3) Owner Occupied Short Term Rental business licenses terminate upon transfer of property and are non- transferable.

Exhibit 2

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
FOLLY EAST INDIAN CO., LLC, Plaintiff, vs. CITY OF FOLLY BEACH, Defendant.	)	CASE NUMBER: 2023-CP-10-00264 AFFIDAVIT OF DR. RICHARD BECK

Now comes affiant, Dr. Richard Beck, being first duly sworn, deposes and says he is over the age of eighteen and is competent to testify as to the matters herein as follows:

1. My address is 1613 Folly Creek Way, Charleston, SC 29412

2. I have lived on Folly Beach for 47 years and served as a city councilman from 1978 – 1982, and its mayor from 1982 – 1989.

1. I am one of the founders and organizers of Save Folly's Future (SFF), which is an unincorporated grassroots advocacy group founded in April 2021, and composed of volunteers whose overriding goal is to reverse the declining residential population on Folly Beach. One of the leading causes of this decline has been the drastic increase in the number of Investment Short-Term Rentals (ISTR). Since its creation, SFF has led the effort to regulate and limit the number of ISTRs on behalf of the citizens of Folly Beach.

3. The citizens of Folly Beach have a history of fighting to maintain the character of Folly as a visitor friendly, family oriented, beachfront residential community with a compact commercial district. In other words, a place where families can raise children. It is Folly's heritage.

4. The current binding referendum will be the fourth time that the citizens of this community have successfully used a binding referendum to preserve the essential character of the community when a city council would not. During my time as councilman and mayor (11years), commercial interests and a pro-development City Council tried to develop Folly Beach in a manner that would have changed its character. As is the case today, City Council would not act to protect the citizens from having their community deeply commercialized. A grass roots citizen organization called the Folly Island Resident's Association (FIRA) was formed and through its efforts, Folly was prevented from over development through the use of the Initiative and referendum section of the Home Rule Act (5-17-10).

5. In 1984, because of the hostility of the existing City Council and the likelihood that the city government would not pursue the lawsuit aggressively, FIRA asked and was granted

standing by the court in Continental Southeastern Group v. City of Folly Beach. We ask the same today to help ensure that we have a hand in protecting the result that we have put so much work into achieving.

6. On Folly Beach, there is a clear separation between the two types of people that inhabit Folly. There are visitors and there are residents. We are welcoming to visitors, always have been, always will. But we understand that while visitors may love the community, they can never *be* the community. The community is the people who make up the civic club, the garden club, the senior citizens club, the exchange club; who run the Halloween carnival, the Christmas tree lighting, the Christmas parade, the turkey shoot at Thanksgiving, the Flip Flop Drop, the festivals, the community outreach – all of the elements necessary that make a place home. Historically, Folly has acted time and time again to preserve the resident's right to the peaceful enjoyment of their homes. We love visitors but we believe that if we don't preserve an adequate quality of life, we will lose our residents.

7. While we have always had a significant number of short-term rental units, they have traditionally had a compatible relationship to that quiet enjoyment. Recent changes in the way property is rented, the size of the dwellings built to accommodate short term (as little as two days) and the number of short term visitors per property has changed the character of rentals from a compatible use to an incompatible use. Folly is no longer a place that is safe to call home. As a result, the number of full-time residents (including long term rentals) has, according to the last census, decreased. Our resident community is literally shrinking and is being replaced with a short-term rental population (now five visitors to one resident at full occupancy) not counting day visitors.

8. City Council could solve the problem, but they have refused to limit the rapid growth and incompatibility of this type of rental, *hence the initiative and referendum component of the Home Rule Act. and our actions.*

2. In the Spring of 2021 Folly Beach Mayor Tim Goodwin appointed an ad hoc short-term rentals study committee. On June 28, 2022, based on the recommendations of that ad hoc committee, Mayor Goodwin introduced ordinance # 26-22 to limit investor-owned short-term rentals to 800 or 33% of the housing stock. Five members of Folly Beach City Council cut off all debate on his motion and it failed. SFF attended the meeting and spoke in favor of its passage.

9. With its long history of fighting to preserve its character as a residential beachfront community, the citizens of Folly Beach took action to put the issue to a vote of the citizens of Folly Beach by way of the initiative and referendum section of the Home Rule Act (SC Code, §5-17-10). SFF drafted the petition proposing the ordinance to limit the number of ISTR Businesses Licenses issued by the City of Folly Beach (FB) to match Mayor Goodwins June, 2022 proposal.

10. While only 15% of the number of electors registered at the time of the last election (370) was needed, SFF collected the signatures of 469 voters or almost 20%. This is clear

evidence that the citizens of Folly Beach wished for this issue to be enacted by City Council and if not, put to a vote by the community.

11. I attended the December 13, 2022 City Council meeting at which the proposed ordinance was discussed. To my recollection, at no time was the proposed ordinance referred to as a new "zoning ordinance." The Minutes of that meeting is appended as Attachment A. At that meeting, the City Council discussed whether or not to approve Ordinance 033-22: "An Ordinance Amending the Folly Beach Code of Ordinances Chapter 117 (Short Term Rentals) By Including Language Proposed by Citizen Petition to Define Owner Occupied and Investment Short Term Rental Licenses and Limit the Number of Investment Short Term Rental Licenses to Eight Hundred." No motion was made and no discussion was had and the Ordnance failed. The Council then took up Ordinance 034-22: "An Ordinance to Extend a Moratorium on The Issuance of New Business Licenses for Short Term Rentals Within the City of Folly Beach Due to the Verification of a Citizen Initiative Petition to Establish a Cap on Short Term Rentals (First Reading). The Moratorium sought to be extended by this Ordinance passed.

12. With the February 7, 2023 referendum vote in favor of the Ordinance, Plaintiff will no doubt appeal this litigation to the bitter end.

13. The City Council controls the work assigned to the City Attorney.

14. In a Charleston Trident Association of REALTORs (CTAR) 2022 Year in Review Residential Market Update video, the CTAR official stated that it has gotten nearly 85% of its candidates elected and that it's big issue on their radar for 2023 is Folly Beach's short-term rental fight. The official states, "we have defeated this three separate times at council, we have pushed back against the cap and the restrictive forces they propose. The mayor and a group of Folly residents, they will not let this go and we are heavily invested in this fight." "Because this isn't an isolated incident on Folly. All of our municipalities are looking at Folly, and if Folly can do it, the rest of them can do it"….."We will continue to be that wrecking ball." *See* Video below, at 22:40 to 26:05.

15. As seen in the above referenced video, there are powerful forces at work that are "heavily invested" (*Fifty-six million spent in 2022 lobbying for pro development officials and laws*). With this nationwide PAC at work and a pro-development City Council that previously opposed the Ordinance three separate times, including failure to discuss the initiative generated ordinance after the initiative was certified, I believe there is a strong likelihood that City Council will continue to oppose the ordinance and do everything it

can to have the City Attorney abandon the case. In that situation, who will protect the citizens?

16. SFF has retained counsel to represent it and is committed to taking this fight to the end. I believe that the only way to ensure that the citizens will be adequately protected is for the court to allow SFF to intervene.

Dr. Richard Beck
Save Folly's Future

Signed and Sworn before me this
8th day of February, 2023.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2-20-2023

ROBERT M. TURKEWITZ NOTARY My Comm. Exp. 02/20/2023 PUBLIC SOUTH CAROLINA

Attachment A

City Council Meeting 7:00 PM
Tuesday, December 13, 2022

1. **CALL TO ORDER/ROLL CALL**
Councilmember Farley was not present.

2. **INVOCATION & PLEDGE OF ALLEGIANCE**
Councilmember Barker lead the invocation.

3. **MAYOR'S COMMENTS**
Mayor Goodwin stated that there are still appointments for the Folly Beach blood drive on December 15th. Mayor Goodwin thanked the Clerk of Council Wes Graham and Community Coordinator Lacey Deeds for an excellent job with the Christmas parade.

4. **STAFF REPORTS**
Aaron Pope, City Administrator. Mr. Pope stated that the city sponsored yoga program has become pretty informal with no contract, no set agreement, nor a bid process. He proposed a remedy by formalizing the sponsorship by granting Community Yoga as a franchise.
Councilmember Rich stated that council received an email from Community Yoga stating they would rather keep it how it is and not become a franchise.
Councilmember Grooms asked if there was any money being exchanged.
Mr. Pope stated that there is no outright fee, however, there are donations which makes it a commercial activity. He asked council for some direction on this topic.
Council rejected the idea of Community Yoga becoming a franchise and will move forward as a true private community group.

5. **APPROVAL OF AGENDA**
Councilmember Grooms moved for approval. Councilmember Rich seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

6. **APPROVAL OF MINUTES**
Councilmember Barker moved for approval. Councilmember Rich seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

7. **PERSONAL APPEARANCES**

a. Paula Hinton requesting special usage of the Community Center. Ms. Hinton said that she wants to bring Ageless Grace which is a dance exercise class for the local seniors. She added that there is a cost associated with the class since the trainer will be coming from North Carolina.
Councilmember Rich moved for approval. Councilmember Ellis seconded.
Councilmember Rich asked if there is a club associated with this so individuals have to pay to attend the class. He explained that if not this goes against the no commercial activities

ordinance.

Ms. Hinton stated that they would charge the participants.

Councilmember Barker, No; Councilmember Grooms, Yes; Councilmember Houghton, No; Councilmember Ellis, Yes; Councilmember Rich, No; Mayor Goodwin, No.

Motion Fails, 2-4

b. Kelly Travers with FAB updated City Council on upcoming annual events Polar Plunge, Taste of Folly, and Sea and Sand. Ms. Travers outlined the timeline and impacts on the community for each event. She explained that each event is very similar to years past.

Councilmember Barker asked if Ms. Traver can confirm that Taste of Folly and Sea and Sand will be free for Folly residents with ID.

Ms. Traver stated that is true. No charge for residents with Folly ID and kids under 12.

c. Vince Perna and Ms. Travers requested approval for an Ice Rink to be placed on E. Arctic. Mr. Perna gave a quick overview of the rink and timeline. He stated that this year's impact will be small and more of a test run for next year.

Councilmember Houghton moved for approval. Councilmember Barker seconded.

Mayor Goodwin asked how many vendors will be operating.

Ms. Travers stated that there will be three a night.

Councilmember Grooms asked if the bathrooms across the street will be open.

Ms. Travers said they will reach out to Park Folly and the City to coordinate that.

Councilmember Barker stated that in the future please get City Council's approval before the advertisement starts.

Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.

All in Favor. Motion Passes.

d. Guy Vorster with Rugby CHS. Mr. Vorster wanted to start the conversation about Folly hosting a touch rugby tournament in the fall of 2023. He explained this is a fun tournament for high schoolers to introduce them to the sport.

Mayor Goodwin asked when he is expecting to hold this event.

Mr. Vorster stated in the fall October or November. He said he would gather more information and come back to council closer to the date.

Councilmember Barker suggested looking at November dates since the beach is still busy during the month of October.

e. Timothy McKevlin Commercial District Signage Request. Mr. McKevlin asked City Council to consider an ordinance change to the commercial district sign rules. He explained they intend to remove all current signs and have one larger sign on the sign to make the building look cleaner and professional.

Councilmember Rich stated that he recalls a meeting years ago where council gave special permission to the Tides hotel to go over the sign allotment. He explained that he likes what Mr. McKevlin is requesting and the look is much better.

Mayor Goodwin stated that they will need to speak with the City Attorney when he returns to discuss the proper path this request needs to take.

8. **CITIZENS' COMMENTS**
   a. Sam Meader 318 E. Arctic. Mr. Meader requested a city or civic club sponsored event to hear both sides of the STR discussion before the special election.
   b. Omar C. asked if the city is participating in information persuasion about the referendum.
   c. Star Aitchison. Ms. Aitchison stated that she opposes the STR cap.
   d. Nadine Vogel 1611 E Ashley. Ms. Vogel asked if the city could work with the County to clean up the graffiti on the lighthouse inlet preserve.
   e. Richard Beck, 1613 Folly Creek Way. Mr. Beck asked City Council to pass the moratorium.
   f. Mary C. quoted Thomas Paine about government overreach in reference to the STR conversation.
   g. Tom Powers Summerville. Mr. Powers opposed the moratorium.
   h. Mary Catoe 1636 E Ashley Ave. Ms. Catoe asked for the moratorium to be left in place.
   i. Ann Peets 606 W Beach Ct. Ms. Peets thanked everyone who is working on this extremely tough conversation. She spoke in favor of the moratorium.

9. **COMMISSION, BOARD, COMMITTEE REPORTS**

10. **OLD BUSINESS**

11. **NEW BUSINESS**

a. **ORDINANCE 033-22:** An Ordinance Amending the Folly Beach Code of Ordinances Chapter 117 (Short Term Rentals) By Including Language Proposed by Citizen Petition to Define Owner Occupied and Investment Short Term Rental Licenses and Limit the Number of Investment Short Term Rental Licenses to Eight Hundred. **(FIRST READING)**

No motion was given. Ordinance Fails.

ORDINANCE 034-22: An Ordinance to Extend a Moratorium on The Issuance of New Business Licenses for Short Term Rentals Within the City of Folly Beach Due to Verification of a Citizen Initiative Petition to Establish a Cap on Short Term Rentals.**(FIRST READING)**

Councilmember Rich moved for approval. Councilmember Barker seconded.

Councilmember Rich asked what about the group of license holders appealing.

Mayor Goodwin stated that the individuals have been instructed by staff to contact Joe Wilson the City Attorney and he will arrange a hearing.

Councilmember Houghton asked if the question is answered before the 3 month expiration then the moratorium will end then.

Mayor Goodwin stated that is correct.

Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, No; Councilmember Rich, Yes; Mayor Goodwin, Yes.

Motion Passes 6-1.

b. **ORDINANCE 035-22:** An Ordinance Rezoning the High Ground of Long Island and The Associated Small Marsh Islands Including Palm Island from Residential Single Family to Marsh Island Residential and Amending the Official Zoning Map to Reflect Said Change in Order to Implement the Goals of the 2020 Comprehensive Plan.**(REMAND TO PLANNING COMMISSION)**
Councilmember Rich motioned to remand to the Planning Commission. Councilmember Grooms seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

c. **RESOLUTION 48-22:** A Resolution by The Folly Beach City Council Adopting The 2023 Regular Meeting Calendars for Folly Beach City Council, Planning Commission, Design Review Board, Parks And Recreation Board, And The Official Holiday Calendar.
Councilmember Grooms moved for approval. Councilmember Ellis seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

d. **RESOLUTION 49-22:** A Resolution by The Folly Beach City Council Authorizing the Administration to Pay Weston and Sampson an Additional $10,000 For Grant Writing and RFP Development Related to Water Main Replacement and Stormwater Improvement Grant Applications.
Councilmember Ellis moved for approval. Councilmember Grooms seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

e. **RESOLUTION 50-22:** A Resolution by The Folly Beach City Council Authorizing the Payment Of $1,200.00 From the Council Discretionary Account to The Folly Beach Exchange Club for Sponsorship of the 2023 Folly Beach Exchange Club/Fab Golf Tournament.
Councilmember Ellis moved for approval. Councilmember Houghton seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

12. COUNCIL COMMENTS

a. Councilmember Grooms wished everyone a Merry Christmas. He reminded everyone that the Exchange Club will be hosting a Christmas party at Planet Follywood.

b. Councilmember Houghton stated that she loved her time as the Civic Club President and will be around to help the new President Amy Ray.

c. Councilmember Barker wished everyone a Merry Christmas and Happy Hanukkah and Happy New Year.

d. Councilmember Rich wished everyone Happy Holidays.

13. ADJOURNMENT

Exhibit 3

City Council Meeting 7:00 PM
Tuesday, December 13, 2022

1. **CALL TO ORDER/ROLL CALL**
Councilmember Farley was not present.

2. **INVOCATION & PLEDGE OF ALLEGIANCE**
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3. **MAYOR'S COMMENTS**
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Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.

All in Favor. Motion Passes.

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   h. Mary Catoe 1636 E Ashley Ave. Ms. Catoe asked for the moratorium to be left in place.
   i. Ann Peets 606 W Beach Ct. Ms. Peets thanked everyone who is working on this extremely tough conversation. She spoke in favor of the moratorium.

9. **COMMISSION, BOARD, COMMITTEE REPORTS**

10. **OLD BUSINESS**

11. **NEW BUSINESS**

a. **ORDINANCE 033-22:** An Ordinance Amending the Folly Beach Code of Ordinances Chapter 117 (Short Term Rentals) By Including Language Proposed by Citizen Petition to Define Owner Occupied and Investment Short Term Rental Licenses and Limit the Number of Investment Short Term Rental Licenses to Eight Hundred. **(FIRST READING)**

No motion was given. Ordinance Fails.

ORDINANCE 034-22: An Ordinance to Extend a Moratorium on The Issuance of New Business Licenses for Short Term Rentals Within the City of Folly Beach Due to Verification of a Citizen Initiative Petition to Establish a Cap on Short Term Rentals.**(FIRST READING)**

Councilmember Rich moved for approval. Councilmember Barker seconded.

Councilmember Rich asked what about the group of license holders appealing.

Mayor Goodwin stated that the individuals have been instructed by staff to contact Joe Wilson the City Attorney and he will arrange a hearing.

Councilmember Houghton asked if the question is answered before the 3 month expiration then the moratorium will end then.

Mayor Goodwin stated that is correct.

Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, No; Councilmember Rich, Yes; Mayor Goodwin, Yes.

Motion Passes 6-1.

b. **ORDINANCE 035-22:** An Ordinance Rezoning the High Ground of Long Island and The Associated Small Marsh Islands Including Palm Island from Residential Single Family to Marsh Island Residential and Amending the Official Zoning Map to Reflect Said Change in Order to Implement the Goals of the 2020 Comprehensive Plan.**(REMAND TO PLANNING COMMISSION)**
Councilmember Rich motioned to remand to the Planning Commission. Councilmember Grooms seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

c. **RESOLUTION 48-22:** A Resolution by The Folly Beach City Council Adopting The 2023 Regular Meeting Calendars for Folly Beach City Council, Planning Commission, Design Review Board, Parks And Recreation Board, And The Official Holiday Calendar.
Councilmember Grooms moved for approval. Councilmember Ellis seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

d. **RESOLUTION 49-22:** A Resolution by The Folly Beach City Council Authorizing the Administration to Pay Weston and Sampson an Additional $10,000 For Grant Writing and RFP Development Related to Water Main Replacement and Stormwater Improvement Grant Applications.
Councilmember Ellis moved for approval. Councilmember Grooms seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

e. **RESOLUTION 50-22:** A Resolution by The Folly Beach City Council Authorizing the Payment Of $1,200.00 From the Council Discretionary Account to The Folly Beach Exchange Club for Sponsorship of the 2023 Folly Beach Exchange Club/Fab Golf Tournament.
Councilmember Ellis moved for approval. Councilmember Houghton seconded.
Councilmember Barker, Yes; Councilmember Grooms, Yes; Councilmember Houghton, Yes; Councilmember Ellis, Yes; Councilmember Rich, Yes; Mayor Goodwin, Yes.
All in Favor. Motion Passes.

12. COUNCIL COMMENTS

a. Councilmember Grooms wished everyone a Merry Christmas. He reminded everyone that the Exchange Club will be hosting a Christmas party at Planet Follywood.

b. Councilmember Houghton stated that she loved her time as the Civic Club President and will be around to help the new President Amy Ray.

c. Councilmember Barker wished everyone a Merry Christmas and Happy Hanukkah and Happy New Year.

d. Councilmember Rich wished everyone Happy Holidays.

13. ADJOURNMENT

Exhibit 4

EXHIBIT B

ELECTRONICALLY FILED - 2023 Jan 17 4:20 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

CITY OF FOLLY BEACH

1st Reading: December 13th, 2022
2nd Reading:

Introduced by: Mayor Goodwin
Date: December 13th, 2022

ORDINANCE 034-22

AN ORDINANCE TO EXTEND A MORATORIUM ON THE ISSUANCE OF NEW BUSINESS LICENSES FOR SHORT TERM RENTALS WITHIN THE CITY OF FOLLY BEACH DUE TO VERIFICATION OF A CITIZEN INITIATIVE PETITION TO ESTABLISH A CAP ON SHORT TERM RENTALS.

WHEREAS, The City has received a citizen petition to limit the number of short-term rental licenses for the rental non primary residences to 800; and

WHEREAS, The Charleston County Board of Elections has verified that the petition contains the required number of signatures to trigger Council action; and

WHEREAS, The City has issued approximately 1,210 short term rental licenses for the 2022/2023 business license year as of December 9, 2022 with approximately 1,058 of those licenses issued for the rental of non primary residences; and

WHEREAS, The City desires to limit further increase in the number of short term rental licenses issued for the rental of non primary residences until the question posed by the petition is settled by vote of Council or general referendum; and

WHEREAS, The City approved a moratorium on the issuance of new rental licenses for non primary residences on 10/18/22 that expires on January 11, 2023.

NOW BE IT THEREFORE ORDAINED:

1. The City of Folly Beach imposes a moratorium, to be effective immediately upon ratification of this Ordinance, on the issuance of new business licenses for short term rentals of non primary residences within the City:
    a. Subject to Section (b) hereof, no application shall be approved for a business license to for any residential dwelling taxed at a 6% property tax rate.
    b. Subject to the limitations set forth in Section (c) excepted from the provisions of Section 1 (a) are each of the following:
        i. Renewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022.
        ii. New licenses resulting from the transfer of ownership of properties that were legally licensed as short term rentals as of October 18th, 2022.
        iii. New licenses for a short term rental for which an application, deemed sufficient

for approval, has been filed with the City of Folly Beach prior to October 18th, 2022.

iv. New licenses for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to the ratification of this ordinance.

c. In order to be excepted from this moratorium under Section 1.(b)(iv), all applications must comply with the following requirements:
   i. Applications must be deemed sufficient for approval by City staff; and
   ii. Applications must be for a license to rent:
      1. An existing residential unit that is currently available to rent or will be within thirty days of ratification of this Ordinance; or
      2. A planned residential unit for which an application for a building permit, sufficient for approval by City staff, has been submitted within thirty days of ratification of this Ordinance and which shall be available to rent within twelve months of the ratification of this Ordinance.
      3. A residential unit for which a building permit has been issued within thirty days of ratification of this Ordinance and for which a certificate of occupancy shall be issued and the unit made available to rent within twelve months of the ratification of this Ordinance.

2. This ordinance shall take effect immediately upon adoption and shall expire automatically on April 15th, 2023, or five business days after any special election called to adopt the ordinance proposed by petition, unless earlier repealed.

ADOPTED this 13h day of December 2022, at Folly Beach, South Carolina.

Ayes: _____ **Nays:** _____ **Abstains:** _____

_____ _____

Municipal Clerk **Tim Goodwin, Mayor**

ELECTRONICALLY FILED - 2023 Jan 17 4:20 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

ELECTRONICALLY FILED - 2023 Feb 15 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-00264
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**AMENDED SUMMONS**
vs.	)	
	)	
CITY OF FOLLY BEACH,	)	
	)	
	)	
DEFENDANT.	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers, Saxton & Stump, LLC, at their offices at 151 Meeting Street, Suite 400, Charleston, South Carolina 29401, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

SAXTON & STUMP, LLC

s/Alice F. Paylor

Alice F. Paylor
Bijan Ghom
151 Meeting Street, Suite 400
Charleston, SC 29401
afp@saxtonstump.com
bkg@saxtonstump.com
(843) 414-5080
ATTORNEYS FOR PLAINTIFF

ELECTRONICALLY FILED - 2023 Feb 15 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-00264
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**AMENDED COMPLAINT**
vs.	)	**(NON-JURY)**
	)	
CITY OF FOLLY BEACH,	)	
	)	
DEFENDANT.	)	
	)	
	)	
	)	

The Plaintiff Folly East Indian Co., LLC, by and through its undersigned counsel, files this Complaint which alleges as follows:

1. Plaintiff is a limited liability company organized and existing under the laws of State of South Carolina, and owns real property located within the City of Folly Beach at 112 East Indian Ave. (units A & B), 114 East Indian Ave. (units A & B), 116 East Indian Ave., and 118 East Indian Ave. (units A & B), Folly Beach, South Carolina, 29439 (collectively referred to herein as the "Approved STR Property").

2. Defendant City of Folly Beach ("Folly Beach" or "City") is a municipality located within County of Charleston and organized under the laws of the State of South Carolina.

3. This Court has jurisdiction over the parties and subject matter hereto because the actions and omissions giving rise to this case took place in Charleston County, South Carolina.

FACTS

4. Plaintiff is a real estate development company wholly owned by Richard D. Brendel and Michael J. Riffert. Both Mr. Brendel and Mr. Riffert are full-time residents of Folly Beach and active members of the Folly Beach community.

ELECTRONICALLY FILED - 2023 Feb 15 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

5. Both in-state and out-of-state vacationers visit Folly Beach properties on a short term basis. Plaintiff's Short Term Rental ("STR") properties earn income by hosting tourists that want to visit Folly Beach.

6. In 2020, the Plaintiff began building two new buildings at 112 East Indian Avenue with the intent of using them as STR properties. Due to supply chain shortages caused by COVID-19, the project took longer than expected and is still not completed. The development plans were fully approved and permitted by the Defendant.

7. In October of 2022, the Plaintiff applied for STR licenses for its two new buildings at 112 East Indian Avenue. Based on the Plaintiff's discussions with City officials, Plaintiff believed that these two licenses were not approved because the properties did not receive certificates of occupancy prior to the Petition and Moratorium (defined below). The City confirmed the Plaintiff's understanding in its brief in opposition to our motion for preliminary injunction. *See* Defendant's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction, p. 2 ("The Moratorium and Petition will only limit Plaintiff's ability to obtain a business license on its one property that has two unfinished houses that have never been rented or even occupied."). On February 8, 2023, counsel for the City informed Plaintiff's counsel that the City was mistaken and that the two licenses at issue were approved in October of 2022. Therefore, Plaintiff has seven STR licenses in the City.

8. The Zoning Ordinance of Folly Beach defines short term rentals as a zoning use and provides that said use is permitted in every zoning district of the City of Folly Beach.

9. On October 11, 2022, a Petition was submitted to Defendant's City Council to request that it pass an ordinance capping short term rental licenses issued to 800. Said petition

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purports to be a citizen's initiative pursuant to South Carolina Code of Laws, Title 5, Chapter 17, Section 10, *et. seq.*

10. The Petition states there has been an "unrestricted growth of the number of investment short term rentals within the City of Folly Beach" and further states that the goals of the Petition relate to:

i. quality of life for residents

ii. stress on city infrastructure and environment

iii. extraordinary burdens on public service

iv. existential threat to the community.

11. Contrary to the claims in the petition, STRs provide a significant benefit to the local economy. The Accommodations Taxes from STRs contribute over $1,500,000.00 to the Folly Beach re-nourishment program and another $1,500,000.00 to the City's General Fund.

12. In addition to limiting the cap on STR licenses to 800, the Petition seeks to eliminate the transferability of current STR licenses. *See* Petition attached hereto as Exhibit A.

13. At the October 11, 2022, City Council meeting, the Council failed to pass an Ordinance capping short term rental licenses to 800 and, instead, adopted an Ordinance creating a moratorium on the issuance of new STR licenses for a three (3) month period.

14. On December 13, 2022, the City Council of Folly Beach failed to adopt an ordinance that would set a cap of 800 Short Term Rentals and, instead, gave first reading to Ordinance 34-22 which would extend the previously imposed moratorium for another three (3) month period after it expired on January 11, 2023.

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15. On January 10, 2023, City Council gave second reading to the moratorium ordinance, which extended the moratorium to April of 2023 or five (5) days after an election on the initiative. *See* Ordinance 34-22, attached hereto as Exhibit B.

16. Due to the importance of STRs to the local community and economy, state legislators have introduced a pending Bill, H. 4547[1], which would prohibit any municipality from enacting an ordinance that prohibits STRs. *See* Exhibit C.

17. The City held a special election on February 7, 2023, and the Folly Beach residents who voted, voted in favor of the ordinance that purported to restrict the number of STR licenses as sought in the petition but did not amend the Zoning Ordinance which slows STR uses allowed in all areas of the City of Folly Beach.

18. The Folly Beach Code of Ordinances, in its Zoning section at §161.02, defines "Vacation Rental" as "a residential unit rented for 29 days or less that typically is utilized by tourists."

19. The Folly Beach Code of Ordinances, at §117.02, defines Short Term Rentals as "[r]esidential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling" and states that "[t]ourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered Short Term Rentals."

20. Thus, a Short Term Rental is a Vacation Rental under the Zoning ordinances and is referenced and included in the Table of Uses, §164.01, and is listed as a permitted use in every zoning district in that table.

21. In Zoning Ordinance, §164.03-01, which is entitled "Residential Uses," Paragraph (C) states that "[s]hort term rentals shall have a maximum overnight occupancy of two persons per

[1] Publicly available at https://www.scstatehouse.gov/sess124_2021-2022/bills/4547.htm.

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bedroom, plus two persons per rental dwelling" and "[t]he maximum occupancy may be increased by the Building Official upon demonstration by the owner of DHEC compliance with allowable septic capacity."

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to the Adoption of the Ordinance as a result of the Special Election and Request for Permanent Injunctive Relief)

22. The paragraphs above are realleged as if set forth herein verbatim.

23. Pursuant to the authority conferred by the South Carolina Code of Laws, Title 6, Chapter 29, Section 710, the Defendant has enacted a zoning code which contains a comprehensive scheme for planning, approving, and rezoning real estate parcels to ensure efficient, equitable, and reasoned land use decisions in the City.

24. The Defendant's Zoning Code was enacted in accordance with Title 6.

25. Under Title 6, "[z]oning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." S.C. Code Ann. § 6-29-710(A). Goals include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents. *Id.*

26. Zoning consists of the municipal laws or regulations that govern how real property can and cannot be used in certain geographic areas.

27. Zoning is subject to specific treatment found in Title 6 of the South Carolina Code (i.e., specific laws), while citizen petitions for initiatives or referenda are treated generally under S.C. Code Section 5-17-30 (i.e., general laws).

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28. Use of the Petition to change the zoning of a particular tract of land without regard to the zoning laws, zoning code, procedure, or impact assessment is impermissible zoning.

29. As the South Carolina Supreme Court has held, "zoning provisions may not be enacted by the initiative and referendum process contained in Sections 5-17-10 and -30." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 725 (2000).

30. Plaintiff seeks a declaration that the Petition is illegal, unconstitutional, and without force of law in the following respects, among others:

i. The Petition seeks to change the zoning of particular tracts of land in which the Plaintiff owns real property and this zoning would disallow the use of STRs on Plaintiff's property if Plaintiff should transfer its property;

ii. As held in *I'On, L.L.C. v. Town of Mt. Pleasant*, zoning cannot be accomplished by referendum, and instead, the City must follow the zoning procedure.

iii. Defendant permitted and approved the construction of Plaintiff's property intended for use as a STR without any restriction on obtaining or transferring STR licenses, and the Zoning Code specifically states that STRs are allowed in every zoning district of the Defendant.

iv. The Ordinance by special election deprives Plaintiff of the economically viable use of its property, infringes upon its vested rights, and interferes with Plaintiff's reasonable, investment-backed expectations.

v. The Ordinance by special election further prevents property owners from complying with § 27-50-250, which requires property owners to honor vacation rentals after the sale and/or transfer of real property.

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vi. The inability to comply with § 27-50-250 under the Ordinance by special election would subject property owners, including Plaintiff, to unfair legal action and penalties.

vii. Because the Ordinance by special election seeks to impose a restriction on property that conflicts with § 27-50-250, the Ordinance must be struck down as the proposed ordinance is preempted by a South Carolina statute.

31. The harm which the Plaintiff will incur cannot be rectified solely upon an award of monetary damages.

32. Plaintiff is likely to prevail on the legal merits as set forth in this Complaint based on the applicable state law and the terms of the Ordinance and the Petition.

33. Plaintiff prays that this court declare that the legislative process initiated by the citizens under the general authority of S.C. Code § 5-17-30 may not be invoked to limit the amount of STRs or otherwise restrict STRs which are uses allowed by Defendant's Zoning Ordinance.

34. Plaintiff seeks a Court Order in the form of a permanent injunction restraining and enjoining the Defendant from taking any action in enforcing any ordinance which attempts to invoke § 5-17-30 to rezone property, to limit the amount of STRs or to otherwise restrict STRs.

WHEREFORE, the Plaintiff prays for the following relief:

a) That this court declare that the Ordinance by special election is substantively defective for failure to comply with local, state, and constitutional law, and as such, is null and void;

b) That this court permanently enjoin the Defendant from enforcing any Ordinance which attempts to rezone property or to limit the amount of STRs or otherwise restrict STRs without going through the zoning process;

c) For the costs of this action; and

d) For such other and further relief as the Court may determine.

SAXTON & STUMP, LLC

s/Alice F. Paylor
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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
February 15, 2023

ELECTRONICALLY FILED - 2023 Feb 15 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

ELECTRONICALLY FILED - 2023 Mar 15 2:30 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-00264
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**MOTION AND MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT**
vs.	)	
	)	
CITY OF FOLLY BEACH,	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff Folly East Indian Co., LLC, by and through its undersigned counsel, submits this Motion for Summary Judgment. As demonstrated herein, Defendant City of Folly Beach ("Defendant" or "the City") has improperly enacted a zoning ordinance to regulate and restrict the right of property owners to rent their real property on a short term basis. The ordinance is in clear conflict with the City's own regulations, as well as state law, and exceeds the City's powers conferred by the General Assembly.

INTRODUCTION

Municipalities are not sovereign bodies with inherent powers. They are political subdivisions of the state with those powers delegated by state law. The City defends the Ordinance as a police power ordinance as if that resolves the question. **There is no question that every zoning ordinance is also a police power ordinance.** Municipalities do not have the inherent power to restrict the use of real property or to zone property within its boundaries; they possess that power, which is an exercise of the police power, only insofar as it is delegated to them by the General Assembly. S.C. Const. art. I, § 1; *see* statutes *infra*. The Legislature gave to municipal corporations police powers, which are powers to make rules promoting the health, safety, and welfare of people. A zoning ordinance fits this description (and is defined that way) and is

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therefore a police power ordinance. However, our Legislature identified zoning ordinances as *unique* among police power ordinances. A statutory framework for regulating land use and planning was created by the Legislature and given to the municipalities, not merely for guidance, but for control.

The real issue in the pending action is whether the Ordinance adopted by referendum, because of its subject matter, must be enacted through the zoning process. The City has already answered that question by expressly recognizing the use of STRs and permitting that use in every zoning district. The City cannot sidestep the zoning process through a citizen's initiated referendum. The Supreme Court has already rejected such circumvention as a nullification of the carefully developed zoning rules in *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 720 (S.C. 2000). In the pending action, the City contends that it can zone or restrict the STR use under its "general police power."[1] The City's position is untenable as it would allow the City to ignore Title 6 of South Carolina's Code of Laws setting forth the procedures to be followed when restricting or zoning property for specific uses.[2]

---

[1] In a prior filing, the City cited a string of cases which hold that a license is a privilege and confers no property right. While it is true that a license does not bestow a property right, the citizens of Folly Beach have **always** possessed the property right to rent property on a short term basis. Thus, the City is using its "license" to take away an already existing property right, a property right that is listed as a permitted use under its zoning ordinance. Calling it a "license" does not change the fact that eliminating a permitted use (outside of the zoning process) is a violation of due process.

[2] It is difficult to understand how the city can restrict the leasing of property under its "general police powers." Why have Title 6 at all? Under the City's interpretation of its police power, the City could cap the number of homes permitting virtual work (work-from-home) and/or eliminate the ability of a purchaser of property from doing the same merely by limiting the number of homeowners who can get a "license" for it. For obvious reasons, our Legislature intends for such decisions to be made through the zoning process. *See, e.g.*, S.C. Code Ann. § 6-7-15 (exempting church-related activities in a single-family residence from zoning). Why would the Legislature enact § 6-7-15 to exempt this type of land use from zoning if it granted municipalities the power to restrict the same use under its general police power (the exercise of which allows for less oversight, planning, and due process)? In *Whaley v. Dorchester County Zoning Bd. of Appeals*, as another example, Dorchester County resorted to its zoning procedure to prohibit long-term parking in residential neighborhoods. 337 S.C. 568 (1999). Our Supreme Court analyzed this case as a zoning matter. Under the City's interpretation of its police power, a political subdivision can sidestep this

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Regardless of whether this kind of ordinance must be enacted by zoning because of its subject matter, where the City has already permitted a use through zoning, as in this case, the City can only restrict the use through its zoning procedure (i.e., an amendment to zoning).

BACKGROUND

Plaintiff is a real estate development company wholly owned by Richard D. Brendel and Michael J. Riffert. Both Mr. Brendel and Mr. Riffert are full-time residents of Folly Beach and active members of the Folly Beach community. Plaintiff currently owns real property located within the City of Folly Beach at 112 East Indian Ave. (units A & B), 114 East Indian Ave. (units A & B), 116 East Indian Ave., and 118 East Indian Ave. (units A & B), Folly Beach, South Carolina, 29439.

Plaintiff develops property on Folly Beach for the purpose of providing both in-state and out-of-state vacationers residential space on a short term basis, usually for a period of less than 28 days. Plaintiff currently has licenses for seven Short Term Rentals (STRs) located at the above-mentioned properties.[3]

Pursuant to a citizen's initiated referendum (§ 5-17-10, *et seq.*), the Defendant City of Folly Beach held a special election on February 7, 2023. As a result of the special election, Defendant has enacted an ordinance that restricts the number of STR licenses and eliminates the

entire analysis merely by calling it a license. Surely our Supreme Court did not overlook this. *See 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…property consists not merely in its ownership and possession but an unrestricted right of use, enjoyment, and disposal. Anything which destroys one or more of these elements to that extent, destroys the property itself. It must be conceded that the substantial value of property lies in its use.").

[3] Plaintiff has two properties currently in development at 112 East Indian Ave. When Plaintiff initially applied for two licenses for this location in October of 2022, the City initially told Plaintiff that, if the citizen's initiated referendum passed, no STR license would be issued for those locations unless the certificates of occupancy were completed prior to the vote. *See* Exhibit A, Affidavits of Brendel and Riffert. On February 8, 2023, just one day before a scheduled hearing, Plaintiff learned through counsel that Defendant made an error and that these two license applications were, in fact, granted. *See* Exhibit A.

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transferability of current STR licenses to subsequent purchasers of licensed properties. There are currently more STR licenses than the allowed amount so no new licenses will be issued until the number falls below the 800 cap (effectively eliminating the use for many).

The Folly Beach Code of Ordinances, at §117.02, defines Short Term Rentals ("STR") as "[r]esidential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling" and states that "[t]ourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered Short Term Rentals." The Folly Beach Code of Ordinances, in its Zoning section at §161.02, defines "Vacation Rental" as "a residential unit rented for 29 days or less that typically is utilized by tourists." Thus, a Short Term Rental ("STR") is a Vacation Rental under the Zoning ordinances and is referenced and included in the Tables of Uses, §164.01, and is listed as a permitted use in every zoning district in that table.

Additionally, the South Carolina Vacation Rental Act, which was enacted prior to the Ordinance at issue, requires property owners to honor rentals for ninety days after the sale of property. The Ordinance, if upheld, would prevent any person who purchases property from complying with the Act because the STR license is not transferable, and a new property owner will not be able to obtain a new one.

LEGAL STANDARD

The Declaratory Judgments Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15–53–20 (1976). "Any person . . . whose rights, status or other legal relations are affected by a statute [or] municipal ordinance . . . may have determined any question of construction or validity arising under the . . . statute [or] ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann.

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§ 15–53–30 (1976); *see also* Rule 57, SCRCP. To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (S.C. 2004) (citing *Power v. McNair,* 255 S.C. 150 154, 177 S.E.2d 551 (S.C. 1970)). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Id.* (citations omitted). "The Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy." *Id.* Indeed, "[t]he basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights," and therefore courts should liberally construe the Act "to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship." *Id.* at 423-424.

It is well-settled law that a trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991).

Once the party seeking summary judgment has demonstrated the absence of a genuine issue of material fact the opponent cannot simply rest on mere allegations or denials contained in the pleadings but must come forward with specific facts showing there is a genuine issue for trial. Rule

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56(c), SCRCP; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990). If there is no evidence from which a reasonable fact-finder could find for the non-moving party then summary judgment must be granted. *Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 217 (1991).

LEGAL ARGUMENT

Plaintiff hereby incorporates by this reference each and every paragraph of the affidavits of Richard Brendel and Michael Riffert, attached hereto as exhibits, as if the same were set forth herein verbatim.

I. Plaintiff is entitled to a declaratory judgment declaring that the Ordinance enacted by referendum is null and void because it is a zoning ordinance and not enacted in accordance with Title 6 of the South Carolina Code of Laws.

As a preliminary matter, whether property can be rented on a short or long term basis is a zoning matter according to the majority of states that have addressed the matter.[4] *See*, *e.g.*, *Keen v. City of Manhattan Beach*, 77 Cal.App.5th 142 (2022) (determining that the City must amend its zoning ordinance in order to ban short term rentals); *South Weber City v. Cobblestone Resort LLC*, 511 P.3d 1207 (Utah 2022) (South Weber enacted a permit and business license for a property to be used as an STR pursuant to its zoning rules and procedure); *Chaumont v. City of New Orleans*, 302 So.3d 39 (2020) (the City of New Orleans regulates short term rentals as part of its zoning code); *Zaatari v. City of Austin*, 615 S.W.3d 172 (2019) (finding a zoning ordinance banning short term rentals to be unconstitutional) .

As further proof, one needs to only look at the City's filings in this matter. The City cites to other municipalities that have banned or regulated short term rentals. **All of these**

[4] As discussed, *infra*, even the City believes it is a matter for zoning as it is listed as a permitted use in every zoning district.

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municipalities did so pursuant to their respective zoning ordinance, rules, and procedure.

See Exhibit B (collecting zoning ordinances cited by Defendant).

A. Because of the subject matter of the Ordinance, it must be enacted as a zoning ordinance and the City has not followed the proper procedure to do so.

The "South Carolina Local Government Comprehensive Planning and Enabling Act of 1994" combined existing Code provisions governing zoning and planning provisions for municipalities "into a single, comprehensive set of provisions available to local governments" contained in Title 5 and 6. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 720 (S.C. 2000). Title 6 of the South Carolina Code governs matters related to zoning, including the procedure that must be followed when a change in zoning is sought. As discussed above, this is a delegated power from the state, not an inherent right of the City. Restatement (Fourth) of Property § 1.1 (Vol. 7) TD No 3 (2022).

Under Title 6, a municipality's local planning commission must "undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction." S.C. Code Ann. § 6-29-340(A). In the discharge of its responsibilities, the local planning commission has the power and duty to, among other things, "prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area . . . zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter." *Id.* at § 6-29-340(B). The Legislature specifies in Title 6 that "[z]oning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." *Id.* at §

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6-29-710(A). Title 6 also includes the ***only*** procedure for enactment or amendment of zoning ordinances, § 6-29-760, and the process for appealing from the zoning board, § 6-29-820, among other forms of process, *see* §§ 6-29-825, 6-29-850. These are processes which must be followed.

Pursuant to the authority conferred under § 6-29-710, Defendant enacted the City of Folly Beach Zoning and Land Development Ordinance ("ZDO"), which contains a comprehensive scheme for planning, approving, and rezoning real estate parcels to ensure efficient, equitable, and reasoned land use decisions in the City of Folly Beach. Folly Beach, South Carolina Code of Ordinances (amlegal.com), Code § 160 *et seq.* The purpose and intent of the ZDO "is to guide development in accordance with the existing and future needs of the city and its Comprehensive Plan, and to promote the public health, safety, convenience, order, appearance, prosperity, and general welfare of the landowners and residents of the city, and other members of the public." *Id.* at § 160.03-01. In conjunction with the processes set forth in Title 6, the ZDO defines both the substantive and the procedural due process to which landowners are entitled prior to a zoning change and sets forth procedures which must be followed prior to changing a zoning classification. *See* Folly Beach, South Carolina Code of Ordinances (amlegal.com), §§ 160, 162, *supra*. Accordingly, both Title 6 and the ZDO set forth the standards by which a zoning amendment will be evaluated so as to comport with substantive due process and the steps to be followed so as to comport with procedural due process.

The ZDO discusses "vacation rentals" and "short term rentals," which are permitted "uses" of property. The use of "Vacation Rental" is defined as "a residential unit rented for 29 days or less that typically is utilized by tourists." ZDO, *supra*, § 161.02. The ZDO further defines "Short Term Rentals" as "[r]esidential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling" and states that "[t]ourist accommodations, including

hotels, motels, inns, and bed and breakfasts, are not considered Short Term Rentals." *Id.* at § 117.02. Thus, an STR as the term is defined within the ZDO, is referenced and included in the Table of Uses, *see* § 164.01, and is listed as a permitted use in every zoning district in that table.

Once a municipality adopts a zoning ordinance to help implement its comprehensive plan (as Folly Beach has done), all its "regulations must be uniform for each class or kind of building, structure, or use throughout each district." S.C. Code Ann. § 6-29-720(B). The goal here, as the section's title indicates, is to provide for uniformity within each district (i.e., uniformity within a geographic area in accordance with the comprehensive plan).

Here, the City has permitted all real property to be rented on a short term basis through its zoning ordinance. It is undisputed that no amendment has been made to restrict this use through the zoning procedure. However, the City, through its "general police power," has accepted an Ordinance by referendum which will prevent certain property owners from using their properties in the very way that is permitted by zoning. Moreover, it strips property owners of the procedural and substantive due process conferred by statute and affirmed by the Supreme Court *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 725 (2000); *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…property consists not merely in its ownership and possession but an unrestricted right of use, enjoyment, and disposal. Anything which destroys one or more of these elements to that extent, destroys the property itself. It must be conceded that the substantial value of property lies in its use.").

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B. Zoning cannot be accomplished by the citizen initiative procedure.

As the South Carolina Supreme Court has held, "zoning provisions may not be enacted by the initiative and referendum process contained in Sections 5-17-10 and -30." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 725 (2000).

The Ordinance at question in this litigation would in fact result in spot zoning and subject specific properties to special zoning rules, developed outside of the normal procedures and reviews established by Title 6 and the ZDO and in disregard of the City's comprehensive zoning plan. Such *ad hoc*, individualized treatment of different parcels of land is entirely inconsistent with what the Legislature intended when it created and passed the comprehensive set of provisions found in Title 6 and is furthermore at odds with the ZDO.

Indeed, for these very reasons, the State Supreme Court held in *I'On, L.L.C. v. Town of Mt. Pleasant*, that municipalities cannot enact zoning provisions via the initiative and referendum process contained in S.C. Code Ann. §§ 5-17-10 and -30. 526 S.E.2d at 720-21. In so holding, the Supreme Court embraced the view that "the detailed nature of zoning acts indicates a legislative intent that zoning matters must be decided only in the manner specified in those acts," explaining that "[t]he obvious incompatibility between the initiative and referendum process and the comprehensive Title 6 provisions indicates the Legislature did not intend to allow voters to enact more complex zoning measures by initiative and referendum." *Id.* The Court further explained that by enacting Title 6, the Legislature recognized that the haphazard and potentially thoughtless decisions that might result from the initiative and referendum process are "the antithesis of meaningful zoning." *Id.* at 722. Indeed, the Court cautioned, permitting voters to circumvent the deliberative process "could nullify a carefully established zoning system or master

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plan developed after debate among many interested persons and entities, resulting in arbitrary decisions and patchwork zoning with little rhyme or reason." *Id.*

The Ordinance, which was accomplished by initiative, is inconsistent with the purpose and intent of Title 6, and in total contravention of the Supreme Court's holding in *I'On*. Additionally, the Ordinance has and will further amount to impermissible spot zoning. Over half a century ago, the State Supreme Court defined the term spot zoning and explained as follows:

> [I]t has been held that where an ordinance establishes a small area within the limits of a zone in which are permitted uses different from or inconsistent with those permitted within the larger, such "spot zoning" is invalid where the ordinance does not form a part of a comprehensive plan of zoning or is for mere private gain as distinguished from the good of the common welfare.

Talbot v. Myrtle Beach Board of Adjustment, 222 S.C. 165, 72 S.E.2d 66 (1952).

Not only is the ordinance not a part of the comprehensive plan, it conflicts with it and was enacted by citizen's for mere private gain. Because Plaintiff's property has not been properly rezoned to exclude STR uses, Plaintiff is entitled to a declaration from the Court that Plaintiff's property can be utilized as an STR unless the zoning use is changed in accordance with the established zoning procedure and rules.

III. Even if the City can use its general police power to take away an established property right, once the City employed the zoning rules and procedure, the City could not arbitrarily fail to meet the zoning requirements.

As our Supreme Court stated in *I'On*, "[z]oning is one of the most controversial activities undertaken by a local government. Some citizens view zoning as a requisite in today's world, necessary to control disparate uses of land, promote orderly development, and conserve valuable resources. To others, zoning raises the specter of an overbearing government bent on destroying individual property rights and independent spirits." *I'On*, 338 S.C. 406, 416. As such, it is imperative that the City follows this deliberative process by deciding zoning matters within the

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established zoning system or master plan. *Id.* If the City can "nullify a carefully established zoning system or master plan developed after debate among many interested persons and entities, resulting in arbitrary decisions and patchwork zoning with little rhyme or reason" under its "general police power," property owners will be stripped away of their due process rights given to them by the state.[5]

Once the City chose to employ the zoning process for the STR use, it could not arbitrarily fail to meet the requirements for zoning. *Sinkler v. Cnty. of Charleston*, 387 S.C. 67, 78, 690 S.E.2d 777, 782 (2010) ("We agree with the circuit court that County Council clearly chose to employ the [planned development] process for the Walpoles' property and, once having invoked that technique, it could not arbitrarily fail to meet the requirements for a [planned development]."); *see also Keen v. City of Manhattan Beach*, 77 Cal.App.5th 142 (2022). In fact, the City has been delegated power to enact the regulations it seeks to impose through Title 6. The City may enact zoning and planning techniques for implementation of its goals, including "conditional uses" that "impose conditions, restrictions, or limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning district." S.C. Code Ann. § 6-29-720(C)(6). However, the "conditions, restrictions, or limitations **must be set forth in the text of the zoning ordinance.**" *Id.* (emphasis added)

[5] In a very recent case, California's Supreme Court found that the city of Manhattan Beach could only ban short-term rentals by amending its "old residential zoning ordinances" which had always permitted both short and long term rentals. *Keen v. City of Manhattan Beach*, 77 Cal.App.5th 142 (2022) ("The trial court rightly ruled the City's old ordinances did permit short-term rentals. This means the City's recent laws against platforms like Airbnb indeed are amendments requiring Commission approval, which the City never got.").

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IV. Pursuant to § 6-29-1560, Plaintiff is entitled to an order from the Court declaring that it has a vested use which is freely transferable.

The Vested Rights Act defines a "vested right" as "the right to undertake and complete the development of property under the terms and conditions of a site specific development plan." S.C. Code Ann. § 6-29-1520(10). "Site specific development plan" "means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. The plan may be in the form of, **but is not limited to**, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or **other land-use approval designations as are used by a county or municipality.**" S.C. Code Ann. § 6-29-1520(9) (emphasis added). Section 6-29-1560(A) provides that a landowner's property is considered vested when he either "obtains, or is the beneficiary of, a significant affirmative government act that remains in effect allowing development of a specific project." S.C. Code Ann. § 6-29-1560(A) (emphasis added). Section 6-29-1550 provides that "[a] vested right pursuant to this section is not a personal right, but attaches to and runs with the applicable real property." S.C. Code Ann. § 6-29-1550 (emphasis added). Plaintiff must also show that it incurred "significant obligations and expenses in diligent pursuit of the specific project" in good faith reliance on some "significant affirmative government act." S.C. Code Ann. § 6-29-1560(A).

As addressed hereinabove, Plaintiff develops real property for the purpose of renting on a short-term basis and in reliance on the City's zoning ordinance, which permits such use of its property. The City required that Plaintiff obtain rental registration permits, which Plaintiff obtained. The City has now enacted a new ordinance, outside of the zoning procedure, which imposes new restrictions on Plaintiff's ability to use its property, including a limitation on the

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transferability of the right to rent the property on a short term basis when Plaintiff sells its property. In reliance on this approval, Plaintiff has invested in the development of its properties for this purpose (short term renting) and stands to lose income, and will be subject to a devaluation of its property if and when this existing use is terminated.

The City again misstates the issue as one of licensing. The vested right here is the ability to rent the property on a short-term basis, which is permitted through zoning. Because this investment was geared towards this specific use, Plaintiff will be unable to recoup this value because Plaintiff will be unable to transfer its license and a buyer of the property will not be able to obtain a new license due to the new Ordinance.

V. Separately, Plaintiff is entitled to a declaration that the Ordinance is null and void because it is preempted by the South Carolina Vacation Rental Act, § 27-50-250.

The Ordinance is in direct conflict with a valid South Carolina statute. Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible. *See Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 530, 476 S.E.2d 477, 480 (1996) ("To determine whether the ordinance has been preempted by Federal or State law, we must determine whether there is a conflict between the ordinance and the statutes and whether the ordinance creates any obstacle to the fulfillment of Federal or State objectives."); *see also* Am.Jur.2d Municipal Corporations 392 ("[i]mplied conflict preemption occurs when an ordinance prohibits an act permitted by a statute, or permits an act prohibited by a statute").

South Carolina Code Section 27-50-250, known as the South Carolina Vacation Rental Act, requires property owners to honor rentals for ninety days after the sale of property. If a property owner knowingly violates or fails to perform any duty prescribed by the Act, said owner is liable for actual damages, court costs, and the court may award reasonable attorney fees. *See*

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S.C. Code Ann. § 27-50-250(B). The Ordinance eliminates the transferability of an STR license which prevents a new owner from continuing the STR use. As the owners of Plaintiff explain in their affidavits, STRs are booked several months in advance, so a buyer of a STR property will not be able to lawfully comply with the Vacation Rental Act due to the new restriction imposed by the Ordinance. Because of the direct conflict between the Ordinance and the Act, the Ordinance puts Plaintiff, and other similarly situated Folly Beach property owners at risk, and therefore must fail.

CONCLUSION

For the reasons stated herein, and in consideration of such arguments and additional materials as the Court may hear and accept, Plaintiff prays this Court will grant its Motion seeking summary judgment against the Defendant, together with reasonable attorneys' fees and costs of this action and such other and further relief as this Court finds just, equitable, and proper, all in the manner prayed for herein. The undersigned hereby certifies and affirms, pursuant to Rule 11, SCRCP, that his dispositive motion does not require consultation prior to filing.

SAXTON & STUMP, LLC

s/Alice F. Paylor

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bkg@saxtonstump.com
(843) 414-5080

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
March 14, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-00264
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**RICHARD D. BRENDEL'S**
vs.	)	**AFFIDAVIT IN SUPPORT OF**
	)	**SUMMARY JUDGMENT**
CITY OF FOLLY BEACH,	)	
	)	
DEFENDANT.	)	
	)	

PERSONALLY APPEARED before me, Richard D. Brendel, who being duly sworn, states as follows:

1. My name is Richard D. Brendel. I am one of the owners of Plaintiff Folly East Indian Co., LLC ("Plaintiff" or my "company"). My partner, Michael J. Riffert, and I, are both full-time residents of Folly Beach and active members of the Folly Beach community.

2. Plaintiff is a real estate development company focused on short-term rentals ("STR") and organized in the State of South Carolina and it owns real property located within the City of Folly Beach at 112 East Indian Ave. (units A & B), 114 East Indian Ave. (units A & B), 116 East Indian Ave., and 118 East Indian Ave. (units A & B), Folly Beach, South Carolina.

3. My company provides both in-state and out-of-state vacationers an affordable option to visit Folly Beach on a short term basis, usually for a period of one to three nights, with a max stay of seven nights. These guests book their trips several months in advance.

4. In 2020, we began development for two new buildings at 112 East Indian Avenue with the intent of using them as STR properties. The development plans were fully approved and permitted by the Defendant.

5. On October 11, 2022, a citizen's petition (the "Petition") was submitted to Folly Beach's City Council to request that it pass an ordinance capping short term rental licenses issued to 800. *See* Petition attached hereto as Exhibit A. In addition to limiting the cap on STR licenses to 800, the Petition eliminates the transferability of current STR licenses.

6. In October of 2022, my company applied for STR licenses for its two new buildings at 112 East Indian Avenue. These two new buildings are designed to be STRs. Based on our discussions with City officials, we were told that we could not get our STR license unless we received certificates of occupancy prior to the special election.

7. On February 7, 2023, City Council held a special election, and the Folly Beach residents who voted, voted in favor of the ordinance that restricts the number of STR licenses and eliminates the transferability of current STR licenses.

8. On February 8, 2023, we learned (through this lawsuit) that the City of Folly Beach granted us two licenses for our 112 East Indian Ave properties. According to counsel for the City, the City's prior statement that we would not be able to receive licenses for these two properties was an error.

9. Due to my experience as a real estate owner and developer, I am familiar with the zoning process for the City of Folly Beach.

10. The City of Folly Beach defines short term rentals as a zoning use and provides that said use is permitted in every zoning district of the City of Folly Beach.

11. City Council for Folly Beach has repeatedly been asked to amend the zoning code to provide caps on STRs and/or eliminate the transferability of existing STRs. City Council denied opportunities to amend the zoning code accordingly.

12. My understanding now, and at the time development began, is that the City could only change its restrictions regarding STRs through the zoning process.

13. The inability to transfer the STR license will prevent me (and other residents) from selling real property at fair market value. Because the two new properties at 112 East Indian Ave. are specifically designed to be STRs, the City restricting the transferability of STRs will cause my company significant financial harm as it will eliminate the income generated by the property and decrease the value by taking away an existing (and profitable) use.

14. I believe my rights were violated by the City's failure to follow its own zoning process and further, by failing to require a change to the zoning rules prior to enforcing the Petition.

15. In addition, I believe the City has created a situation where I, along with my business partner and similarly situated STR owners, could be subject to liability under our state's Vacation Rental Act. In the tourism business, we book our guests months in advance. When I sell one of our properties, if my license cannot transfer, the buyer of the property will not be able to honor the rental and we will therefore be in violation of the Vacation Rental Act.

FURTHER AFFIANT SAYETH NOT.

Richard D. Brendel

SWORN to before me this
14 day of March, 2023

Notary Public for South Carolina

My commission expires: 9/21/32

BIJAN GHOM NOTARY PUBLIC MY COMM. EXP. 9/21/2032 SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-00264
	)	
FOLLY EAST INDIAN CO., LLC,	)	
	)	
PLAINTIFF,	)	
	)	**MICHAEL J. RIFFERT'S**
vs.	)	**AFFIDAVIT IN SUPPORT OF**
	)	**SUMMARY JUDGMENT**
CITY OF FOLLY BEACH,	)	
	)	
DEFENDANT.	)	
	)	

PERSONALLY APPEARED before me, Michael J. Riffert, who being duly sworn, states as follows:

1. My name is Michael J. Riffert. I am one of the owners of Plaintiff Folly East Indian Co., LLC ("Plaintiff" or my "company"). My partner, Richard D. Brendel, and I, are both full-time residents of Folly Beach and active members of the Folly Beach community.

2. Plaintiff is a real estate development company focused on short-term rentals ("STR") and organized in the State of South Carolina and it owns real property located within the City of Folly Beach at 112 East Indian Ave. (units A & B), 114 East Indian Ave. (units A & B), 116 East Indian Ave., and 118 East Indian Ave. (units A & B), Folly Beach, South Carolina.

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FURTHER AFFIANT SAYETH NOT.

Michael J. Riffert

SWORN to before me this
15 day of March, 2023

Notary Public for South Carolina

My commission expires: 9/21/32

BIJAN GHOM NOTARY PUBLIC MY COMM. EXP. 09/21/2032 SOUTH CAROLINA

Sec. 54-227. - Short Term Rental, ST Overlay Zone.

EXHIBIT NO. 17

a. Intent. The Short Term Rental, ST Overlay Zone is intended to identify those areas within the City limits where Commercial short term rental uses and bed and breakfast uses, as herein defined, are allowed as a conditional use. Commercial short term rentals are prohibited except on commercially zoned properties within the ST Overlay Zone. Bed and breakfast uses are prohibited except on properties within the ST Overlay Zone. The City places a high value on the preservation of the character of its residential neighborhoods. Potential negative impacts affecting residential neighborhoods shall be avoided or minimized to the greatest extent possible.

b. Commercial Short Term Rental Use.

1. Accommodations Use. Subject to the conditions inSection 54-227, b. 2, a dwelling unit converted into a commercial short term rental may be rented to not more than four (4) unrelated people pursuant to the definition for family for a period of between one (1) and twenty-nine (29) days; provided, however, only one (1) family at a time may occupy and use a dwelling unit converted into a commercial short term rental.

2. Conditions. A conforming or legal nonconforming dwelling unit may be converted into a commercial short term rental only when all of the following conditions are satisfied, as evidenced by an application, a site plan, and floor plans:

(a) The lot is located entirely within one or more of the following base zoning districts: CT, LB, GB, UC, MU-1, MU-1/WH, MU-2, or MU-2/WH; and

(b) The lot is commercially zoned and located entirely within the Short Term, ST Overlay Zone, as shown on the Zoning Map; and

(c) The dwelling unit being converted to a commercial short term rental is not designated as an affordable housing unit or a workforce housing unit; and

(d) The owner of the dwelling unit being converted into a commercial short term rental complies with all business license and revenue collections laws of the City of Charleston, Charleston County and the State of South Carolina; and

(e) Any commercial uses on the lot must be completely separate and independent operations, unrelated to the Commercial Short Term Rental; and

(f) There are no common areas or other areas serving more than one dwelling unit and/or commercial short term rental on the lot, except driveways; and

(g) There are no exterior signs for the commercial short term Rental use of the lot; and

(h) Existing parking spaces on the lot, if any, that satisfy the off-street parking requirements of this Chapter for the existing dwelling units being converted to short term rentals and all other uses on the lot shall be shown on the site plan submitted with the application.

No additional parking spaces shall be required for the dwelling units being converted to short term rentals; and

(i) No more than nine (9) dwelling units may be converted to short term rentals on any one (1) lot. Ten (10) or more short term rental units on one (1) lot shall require approval as an accommodations use pursuant to Section 54-220 of the Zoning Ordinance. This provision shall not be interpreted to permit an increase in the maximum density permitted under the base zoning district for dwelling units on the lot; and

3. Except as expressly stated otherwise in this Section 54-227, a dwelling unit converted into a commercial short term rental shall continue to be subject to the regulations for such a dwelling unit in the base zoning district, including without limitation the site regulations in Article 3 of the Zoning Ordinance.
4. Impact on Nonconforming Uses. For the purposes of applying Section 54-110 concerning nonconforming uses, a commercial short term rental is considered a continuation of the nonconforming use of a legal nonconforming dwelling unit.
5. Prohibition on Construction of Commercial Short Term Rentals. Nothing in this Section 54-227 shall be construed to permit a property owner to construct a commercial short term rental. A property owner seeking a conditional use for a commercial short term rental must construct a dwelling unit in accordance with applicable standards for the dwelling unit under the base zoning district for the subject property and then apply for the conversion of the conforming dwelling unit to a commercial short term rental use.
6. Approved Short Term Rentals Within the ST Overlay Zone. All STR uses within the ST Overlay Zone that have City approval to operate on the effective date of this ordinance shall be issued a commercial STR permit, which shall be valid for one (1) year from the date of issuance and shall be renewable annually unless revoked. Permit holders shall adhere to the requirements of this Chapter.
7. New Short Term Rentals Within the ST Overlay Zone, Permit. New STR uses within the ST Overlay Zone that receive City approval to operate shall be issued a commercial STR permit, which shall be valid for one (1) year from the date of issuance, and shall be renewable annually unless revoked. Permit holders shall adhere to the requirements of this Chapter.
8. Annual Renewal. For renewal of a commercial STR permit, a property owner shall be required to recertify compliance with this section with the zoning administrator. An application for annual recertification of the commercial STR permit must include the application fee, an affirmation by the applicant that the nature of the STR use at the property has not changed, and must be notarized, filed with, and approved by the zoning administrator to continue the STR use.

c. Bed and Breakfast Use.

1. Accessory Use . Subject to the conditions in Section 54-227, c., 2, a bed and breakfast use may be established in a dwelling unit as an accessory to the principal residential use, on any property located within the ST Overlay Zone, and each approved bed and breakfast unit may be rented to one (1) family for a period of between one (1) and twenty-nine (29) consecutive days.
2. Conditions : A bed and breakfast may be approved only when all of the following conditions are satisfied, as evidenced by an application, a site plan, and floor plans:
   (a) The number of bed and breakfast units shall not exceed four (4) units; except that a lot may have between four (4) and ten (10) bed and breakfast units if the total square footage of conditioned floor area in the building or buildings containing the bed and breakfast units is equal to or greater than the sum of the number of bed and breakfast units multiplied by 560, and all other requirements of this section are met. Each unit shall consist of one (1) or more rooms arranged for the purpose of providing sleeping accommodations for one (1) family for a period of between one (1) and twenty-nine (29) consecutive days; and
   (b) The subject property is located entirely within the ST Overlay Zone; and
   (c) The bed and breakfast shall be operated by the record owner of the subject property who also resides at the subject property at least 183 days each year; and
   (d) The principal building on the property on which the bed and breakfast use will be located shall have been constructed 50 or more years ago although the bed and breakfast unit(s) may be located in a building that was not constructed 50 or more years ago; and
   (e) Bed and breakfast unit(s) located in buildings constructed 50 or more years ago shall provide one (1) off street, maneuverable parking space on the subject property for each two (2) bed and breakfast units, or fraction thereof. Bed and breakfast unit(s) located in buildings not constructed 50 or more years ago shall provide one (1) off street, maneuverable parking space on the subject property for each bed and breakfast unit. Spaces required for the bed and breakfast unit(s) shall be in addition to providing, on the subject property, required off street parking for existing uses on the property; and
   (f) The property shall be permitted to have one sign advertising the Bed and Breakfast. The permitted sign may have a maximum of two sides and no side shall exceed four (4) square feet in total sign face area; and
   (g) The bed and breakfast shall be located on property which is in compliance with allowed uses for the zone district in which the property is located; and
   (h) The bed and breakfast shall be operated by someone who has not had a bed and breakfast permit revoked within the previous twelve (12) months.
3.

Operational Requirements. In all cases, bed and breakfast use shall meet the following operational requirements:

(a) No meals other than breakfast may be served by the resident owner to the paying guests.

(b) The resident owner shall keep a guest register including names, addresses, telephone numbers and dates of occupancy of all guests for three (3) years and shall make this available to the City upon request.

(c) The resident owner shall comply with all business license and revenue collection laws of the City of Charleston, Charleston County and State of South Carolina.

4. Application Process.

(a) New applications for bed and breakfast uses shall be notarized and include the location of the property and resident owner of record of the property, an application fee, floor plans drawn to scale of the habitable structures on the property, a site plan of the lot showing the location of the proposed bed and breakfast units, the location of any existing bed and breakfast units, and the location of the required off-street parking spaces and driveways, and photographs of the current principal views of the structure where the proposed bed and breakfast units are to be located. The floor plans shall clearly note all rooms to be used by bed and breakfast guests, with the room or rooms to be used by bed and breakfast guests for sleeping designated. The application shall also include a statement which the resident-owner must sign acknowledging that he or she has reviewed and understands the requirements of this section.

Upon receiving a complete application and prior to the issuance of a zoning permit, the lot upon which the proposed use is to be located shall be posted for fifteen (15) consecutive days, advising that the resident-owner of the property has applied for a zoning permit to establish a bed and breakfast use at the location and supplying a phone number to call for further information. During this fifteen (15) calendar day period, the zoning administrator shall determine if the application meets the requirements as set forth above. If, at the end of the fifteen (15) day posting period, the zoning administrator determines that the application meets the requirements, the zoning administrator shall notify the applicant that the application is approved and shall, after waiting an additional five business days to allow for appeals, issue the zoning permit, which shall be valid for one (1) year from the date of issuance and shall be renewable annually unless revoked. Any appeals filed within the five-day period shall cause the issuance of the zoning permit to be stayed pending resolution of the appeal.

(b) Renewal application.

(1)

For renewal of a bed and breakfast permit, a property owner shall be required to recertify compliance with this section with the zoning administrator. An application for annual recertification of the bed and breakfast permit must include the application fee, an affirmation by the applicant that the nature of the bed and breakfast use at the property has not changed, and must be notarized, filed with, and approved by the zoning administrator to continue the bed and breakfast use.

(2) Upon a change in ownership of a property, and prior to the issuance of a new business license to allow continuation of an existing, permitted bed and breakfast use upon said property, the new property owner shall be required to recertify compliance of the bed and breakfast use with the zoning administrator by having an application for recertification of the bed and breakfast use notarized, filed with, and approved by the zoning administrator.

5. The bed and breakfast use shall not be expanded in any respect throughout the structure or structures, or elsewhere on the property nor shall the use be changed to any other use not permitted by the Zoning Ordinance without reapplication to and approval by the zoning administrator.
6. All operators of bed and breakfast uses permitted under this section shall cooperate fully with the zoning administrator and his designees, including, but not limited to, providing pertinent information upon request and affording access to that portion of the premises which is used for the bed and breakfast use for reasonable site inspections.
7. Existing Approved and Bed and Breakfast Uses . All approved, legal bed and breakfast uses that are operating on the effective date of the ordinance from which this section derives or that are entitled to be in operation on the effective date of this ordinance shall be issued a bed and breakfast permit which shall be valid for one (1) year of issuance and shall be renewable annually unless revoked and shall adhere to the requirements of this Chapter.

d. Violations and Penalties .

1. Violations . It shall be a violation of this Chapter for an owner, his agent or manager to:
   (a) Operate an STR use, a bed and breakfast use or other accommodations use without complying with the requirements of this Chapter and the Code of the City of Charleston; or
   (b) Expand an STR use or bed and breakfast use without obtaining a new permit; or
   (c) Advertise a property as being available for an STR use, bed and breakfast use or other accommodations use without first complying with the requirements of this Chapter; or
   (d) Represent or submit for advertising or marketing, or to otherwise hold out an STR unit, bed and breakfast unit or other accommodations unit as being available for use or occupancy unless the STR or bed and breakfast has been permitted pursuant to this

Chapter and the permit number is displayed in the materials used to represent, advertise, market or otherwise hold out the property as available for STR or bed and breakfast use or occupancy; or

(e) Represent or submit for advertising or marketing, or otherwise to hold out the availability of an STR or bed and breakfast for use or occupancy by more than the number of occupants that are permitted pursuant to this Chapter; or

(f) Represent or submit for advertising, or marketing, or to otherwise hold out more STR or bed and breakfast units or other accommodations type units on a property than are permitted pursuant to this Chapter.

2. Penalties. A violation of this Chapter is a misdemeanor punishable by a fine and/or incarceration. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use, or other violation under this Chapter continues is considered a separate offense.

   Should the STR or bed and breakfast use fail to continue to meet the requirements under which it was authorized or be discontinued for a period of twelve (12) months or more, the operating permit issued pursuant to this Chapter shall be revoked.

(Ord. No. 2012-41, § 4, 1-24-12; Ord. No. 2018-043, § 13, 4-10-18)

Sec. 21-117. Prohibition and nonconformity.

Vacation Rentals are prohibited uses on Sullivan's Island. Nothing in this Ordinance shall be construed to permit any Principal Building or other structure to be used as a Vacation Rental. All legally established Vacation Rentals are interpreted to be Nonconforming Uses.

Sec. 21-118. Certificate of zoning compliance and business license required.

In order for the owner of a Principal Building that has been lawfully used as a Vacation Rental during the twelve (12) months prior to November 21, 2000 to continue to use the property as a Vacation Rental, the owner shall apply for, and if approved by the Zoning Administrator upon meeting the requirements of this Article, be issued a Certificate of Zoning Compliance and shall secure a Vacation Rental Business License.

A. A Certificate of Zoning Compliance shall be obtained for each calendar year the property is used for a Vacation Rental.

B. A Certificate of Zoning Compliance shall be obtained for each Principal Building.

C. A Certificate of Zoning Compliance shall not be granted, even if the Principal Building otherwise qualifies for a Certificate of Zoning Compliance, if subsequent to the ratification of this Ordinance, that Principal Building has been enlarged or razed or otherwise destroyed.

D. If a lot has more than one legally existing Principal Building, a Certificate of Zoning Compliance shall be obtained for each Principal Building that is being used for a Vacation Rental.

Sec. 21-119. Certificate of zoning compliance application.

A. An applicant for a Certificate of Zoning Compliance shall provide the following information to the Town Clerk in the application for a Certificate of Zoning Compliance for a Vacation Rental:

(1) The complete street address, lot and block number and the tax map number as used by Charleston County;

(2) Proof of ownership, including the name, address and phone number of each person or entity with an ownership interest in the property;

(3) If the applicant is someone other that an owner, the applicant shall provide proof in writing of the owner's (or owners') authorization of the applicant to apply for the Certificate of Zoning Compliance and a Vacation Rental Business License;

(4) The applicant shall provide a letter signed by all of the owners of the property acknowledging that a violation of the Town's Vacation Rental Ordinance by the applicant, any manager of the property, or tenant shall be considered a violation by the owner(s);

(5) The owner's valid and current federal employer tax identification number or the social security number which is used for reporting of state and federal income tax for income derived from the Vacation Rental property;

(6) The name, address and twenty-four (24) hour phone number of the person who will be operating the Vacation Rental;

(7) The name and signature of all owners, authorized agents and authorized property managers; and,

(8) Agreement to comply with all of the rules and regulations set out in Sec. 21-122.

B. No Certificate of Zoning Compliance shall be granted until sufficient written evidence is provided to show that:

(1) A Sullivan's Island Vacation Rental Business License was issued for the Vacation Rental for the previous calendar year;

(2) The property was not assessed under the State, County and Town Municipal ad valorem tax laws as a qualified assessment for owner occupied property but rather assessed at the six percent (6%) rate and paid at the six percent (6%) rate for the previous calendar year. If a property has previously or is presently being assessed with a qualified assessment as owner occupied property four percent (4%), then the owner shall present sufficient proof satisfactory to the Town Clerk that the property has lawfully met and continues to meet the requirements for the four percent (4%) assessment under the criteria set out in Section 12-43-220 of the Code of laws of South Carolina, as amended;

(3) Personal rental residential property taxes were assessed and paid for the previous calendar year;

(4) State accommodation taxes were collected and paid for the rental of the property for the previous calendar year;

(5) Sales taxes were collected and paid for the rental of the property for the previous calendar year;

(6) Local option sales taxes were collected and paid for the rental of the property for the previous calendar year;

(7) County accommodation taxes were collected and paid for the rental of the property for the previous calendar year;

(8) Water and sewer fees have been paid in full;

(9) The property was actually held out and used as a Vacation Rental during the previous calendar year and was so

used as a Vacation Rental for a period of more than two (2) weeks during the previous calendar year;

(10) The owner consents to an inspection of the property by the Fire Chief of the Town of Sullivan's Island and the Building Official for the Town of Sullivan's Island to determine if the property complies with all Town of Sullivan's Island fire and building ordinances; and,

(11) The Zoning Administrator confirms that the property has not been used in an unlawful manner in the prior twelve (12) months and that the owner(s) has not violated any laws of the Town of Sullivan's Island.

C. Except in cases involving the initial receipt of a Certificate of Zoning Compliance, the owner shall have complied with all of the rules and regulations set out in Sec. 21-122 during the previous twelve (12) months and there has been a determination by the Zoning Administrator that the owner has not violated the said rules and regulations on more than two (2) occasions in the previous twelve (12) months.

Sec. 21-120. Standards for denial.

(A) If the Zoning Administrator finds substantial and credible evidence that one or more of the requirements of Sec. 21-119 have not been met, then the Zoning Administrator shall deny the applicant a Certificate of Zoning Compliance.

(B) If the Certificate of Zoning Compliance is denied, the applicant may request a review and re-inspection by the Zoning Administrator. If the review and re-inspection is denied or if, after review and re-inspection, there is no change in the denial of the license, the owner/applicant may appeal the decision by petition to the Board of Zoning Appeals.

Sec. 21-121. Transferability.

The Certificate of Zoning Compliance and the Vacation Rental Business License may not be assigned or transferred, pledged, sold, or otherwise transferred by the license holder to any other person, business, or entity. The license belongs solely to the owner and shall remain in the owner's name until such time that the owner ceases to use the property for a short-term rental purpose or sells the property. If a new owner wishes to continue to use the property for a Vacation Rental, an application shall be made to the Town within thirty (30) days of the transfer of the property or thirty days before the first Vacation Rental of the property.

Sec. 21-122. Operational requirements.

A. Any owner of a Vacation Rental who obtains a Certificate of Zoning Compliance and a Vacation Rental Business License shall comply with the following:

(1) All Vacation Rentals shall comply with the terms of the current Sullivan's Island Waste Hauler contract associated with excessive garbage and charges for containment and collection of the same;

(2) Except as provided herein, each residential property where transient lodging use is in effect shall prominently display so as to be visible from the outside of the property the Vacation Rental Business License;

(3) A contact person shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of responding promptly to complaints regarding the conduct of the occupants of the Vacation Rental. The name and phone number of the contact person shall be registered with the Police Department;

(4) The occupancy of a Vacation Rental shall conform to the occupancy limits of the Town of Sullivan's Island and Fire and Building Ordinances and total occupancy in all cases shall be subject to the following:

(a) No more than two (2) occupants for each one hundred twenty (120) square feet of bedroom area, plus one (1) additional occupant for each additional sixty (60) square feet of bedroom area in bedrooms shared by more than two (2) occupants;

(b) No more then twelve (12) occupants and no more than twenty-four (24) people (including both occupants and temporary guests) gathered at the Vacation Rental or otherwise on the property at any time; and,

(c) There shall be no weddings, parties, or other social events where more than twenty-four (24) people would congregate or gather on the property at one time.

(5) The owner or manager shall maintain a tenant and vehicle registration which shall include the name and address of each unit's tenant(s), and the make, year and tag number of the tenant's (s') vehicle(s). This information shall be readily available upon request of any officer of the Town responsible for the enforcement of this Ordinance;

(6) The owner shall provide off-street parking on the Vacation Rental property for all vehicles, watercraft and trailers to be used by the tenants during any occupancy;

(7) There shall be a written lease between a Vacation Rental owner and the tenant and it shall contain the tenant's agreements to the regulations contained in this subsection; and,

(8) There shall be neither overnight leases nor any conversion from providing Vacation Rentals to operating an inn or motel. All leases, rentals or uses by a tenant shall be for a minimum of three (3) continuous nights.

B. Nothing in this subsection is intended to exclude the application of any other ordinance for the Town of Sullivan's Island to the property or to the related parties.

Sec. 21-123. Suspension, revocation or abandonment.

A. A Certificate of Zoning Compliance and/or a Vacation Rental Business License may be suspended or revoked upon a determination by the Zoning Administrator of the existence of two (2) or more instances of failure to satisfy the conditions that are required to be shown as set out in Sec. 21-119 or in violation of the conditions and regulations set out in Sec. 21-122. An appeal of such determination of the Zoning Administrator may be made by petition to the Board of Zoning Appeals in accordance with the provisions of this Zoning Ordinance.

B. The abandonment or failure to use a property as a Vacation Rental for a period of twelve (12) consecutive months for any period shall be deemed an abandonment of the Vacation Rental use and the property shall no longer be used as a Vacation Rental and the owner of the property shall no longer be entitled to obtain a Certificate of Zoning Compliance nor a Vacation Rental Business License. Furthermore, the owner of the property and any broker, real estate agent or authorized agent of the owner shall be prohibited from using the property as a Vacation Rental.

Sec. 21-124. Violations.

A. It shall be a violation of these regulations to enter into a long-term lease with a mutual intent to subvert the regulatory goals of this Article. It shall be a violation of these regulations to sublease or allow the subleasing of a Principal Building for less than twenty-eight (28) days with intent to subvert the regulatory goals of this Ordinance. It shall also be a violation of these regulations for a property owner to lease space to “roommates” for a period of less than twenty-eight (28) days when not licensed as provided hereunder. For the purposes of enforcement, a reputable presumption that “roommates” are involved shall exist if the persons use a common entrance to the Principal Building.

B. It shall be unlawful for any person, owner, tenant, broker, real estate agent, other agent or other representative of the owner to hold out or advertise a residential dwelling for a Vacation Rental if the property has not been issued a Certificate of Zoning Compliance and a Vacation Rental Business License. It shall further be unlawful to hold out and/or advertise a residential dwelling for occupancy or uses not permitted by these regulations. A broker or real estate agent who is found in violation of this regulation shall be subject to having his/her business license revoked.

C. Any violation of the regulations provided in this Article by any person, owner, tenant, agent, broker real estate agent or other representative of an owner shall be punishable as a misdemeanor and by a fine of up to Five Hundred Dollars ($500) per day per violation and/or a sentence of thirty (30) days in jail. Each day the violation continues or occurs shall constitute a separate offense. In addition to any other remedy available to the Town of Sullivan’s Island, the Town or any adversely affected party may enforce these regulations or the terms of this Ordinance in law or in equity. The Town of Sullivan’s Island or any party adversely affected by any violation may seek injunctive relief from a Court of competent jurisdiction to prevent a violation of this Article.

Sec. 21-125. Reserved.

§ 156.340 PURPOSE, DEFINITIONS AND APPLICABILITY. EXHIBIT NO. 19

(A) *Purpose.* The purpose of this subchapter is to regulate the use of residential dwelling units as short term rentals (STR) in order to:

(1) Protect the integrity of the residential character of the town's existing neighborhoods and the quality of life of its citizens;

(2) Establish a system to track and manage STR inventory in the town; and

(3) To protect the health and safety of occupants of STR units.

(B) *Definitions.* For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RESIDENTIAL DWELLING UNIT. Building or portion of a building arranged or designed to provide complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

SHORT-TERM RENTAL, or STR.

(a) The rental or lease for valuable consideration of a residential dwelling unit, or portion thereof, for a duration of less than 30 consecutive days is considered an STR and is subject to this subchapter;

(b) This subchapter and its requirements shall apply to any, and all, businesses that were previously defined as a bed and breakfast under earlier town ordinances; and

(c) Home-based businesses and tourist accommodations, including hotels (includes motel and extended stay), boutique hotels (includes inn), and similar accommodations located on property in a commercial zoning district are not defined as ***SHORT TERM RENTALS*** and thus are not subject to this subchapter.

STR OPERATOR. Any property owner who receives payment for operating a residential dwelling unit, or portion thereof, as a short-term rental. For the purposes of this subchapter, ***OPERATOR*** may be interpreted to mean property owner.

(C) *Maximum number allowed.* At no time shall the maximum number of residential dwelling units used as STRs exceed 400, (the “Cap”), except as otherwise set forth in § 156.341(A)(2).

(Ord. 19048, passed 8-13-19; Am. Ord. 21019, passed 4-13-21; Am. Ord. 22052, passed 12-8-22)

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2023-CP-10-0264
FOLLY EAST INDIAN CO., LLC, Plaintiff, vs. CITY OF FOLLY BEACH, Defendant. and SAVE FOLLY'S FUTURE, Intervenor.	)	DEFENDANT FOLLY BEACH'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF SAME

TO: PLAINTIFF FOLLY EAST INDIAN CO., LLC

PLEASE TAKE NOTICE THAT Defendant City of Folly Beach hereby moves for summary judgment pursuant to Rule 56, SCRCP, and requests judgment in favor of Defendant Folly Beach on all claims and causes of action in this matter. Defendant Folly Beach submits this memorandum and exhibits in support of its motion for summary judgment and in opposition to the motion for summary judgment filed by Plaintiff Folly East Indian Co., LLC.

SUMMARY

This declaratory judgment action is a challenge to an Amendment to Folly Beach's Short-Term Rental Business License Ordinance (hereinafter the "Amendment") that was adopted by way of a citizens Petition and Referendum procedure, as set out in South Carolina Code § 5-17-10, *et. seq.* The Petition and the resulting Amendment capped the number of Short-Term Business Licenses that could be issued by the City at 800. It only changed the City's Business License Ordinance. It made no changes to the City's Zoning Code and did not rezone any properties.

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Plaintiff seeks a declaratory judgment that the Amendment to the City's Short-Term Rental Business License Ordinance cannot be adopted by the Petition and Referendum procedure, as set out in South Carolina Code § 5-17-10, *et. seq.* Plaintiff contends that this Amendment is in fact an amendment to the City's Zoning Code. The distinction is relevant because the South Carolina Supreme Court has ruled that the Petition and Referendum procedure cannot be used to amend a local government's zoning code. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). According to *I'On*, all changes to a local zoning code must follow the procedures set forth in the South Carolina Comprehensive Planning Act, including public hearings and review of the Planning Commission.

So, the core issue before the Court is whether the Amendment and cap adopted by Petition and Referendum is an amendment to the City's Business License Code or the City's Zoning Code. The Petition and Amendment that created the cap on **Short-Term Rental Business Licenses** was a change to the City's **Business License Ordinance**, not the City's Zoning Code. The City has always regulated short-term rentals through its **Business License Ordinance**, not its Zoning Code. The Petition and Referendum simply amended the **Short-Term Rental Business License Ordinance** to restrict the number of **Short-Term Rental Business Licenses** the City may issue. The Petition and Amendment made no change to the zoning of any property in the City. The Amendment is clearly a business regulation, not a zoning ordinance.

Critically, after the decision in *I'On*, the South Carolina Supreme Court held that local governments have the option to regulate the use of land through either their general police powers, including the business license ordinance, as Folly Beach has done, or through the zoning code. *Greenville Cnty. v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428, 432

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(2003), *overruled by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005) (local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . ."). In other words, the Comprehensive Planning Act did not preempt the entire field of business regulations or "completely prohibit any other local enactments from touching upon zoning or land use." *Id.* at 432 (citing *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (2000)). Rather, local governments are entitled to regulate businesses through their general police powers granted under the Home Rule Act. South Carolina Code § 5-7-30.

Since the Petition actually amended the City's Business License Ordinance, not the Zoning Code, the holding in *I'On*, which only addresses changes to a zoning code, has no application to this Petition and Amendment.

FACTS

Plaintiff owns and operates seven fully licensed short-term rentals located in the City of Folly Beach. Amended Complaint, Paragraphs 1, 7. In October 2022, Intervenor Save Folly's Future submitted a Petition to the City to Amend the City's Short-Term Rental Business License Ordinance (hereinafter the "Amendment") to limit the number of short-term rental licenses issued to Investment Short Term Rentals to 800. Petition for Proposed Ordinance, Exhibit No. 1. "Investment Short Term Rentals" are dwelling units that are not claimed as legal residences. Owner-Occupied Short Term Rentals are claimed as a legal residence and limited to a set number of rental nights per year and are not subject to the cap. Notably, the Petition "grandfathered" in existing licenses, so it allows Plaintiff to keep its existing licenses for as long as Plaintiff owns the properties.

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The Petition was adopted by the residents of Folly Beach by referendum vote pursuant to South Carolina Code Section 5-17-10, *et seq.*, on February 7, 2023. By force of State law, the Amendment is now part of the City's Business License Code. City of Folly Beach Ordinance, Title XI: Business Regulations, Chapter 117: Short Term Rentals, Sections 117.01 and 117.02, Exhibit No. 2.[1] The City had no choice in this matter. Once the Referendum was successful, the Amendment and cap become part of the City's Business License Code.

To be clear, the Petition and the Amendment changed the City's Business License Code, Title XI, not the City's Zoning Code, Title XV. The Amendment made no changes to the Zoning Code. Folly Beach has always regulated short-term rentals through its Business License Ordinance, not its Zoning Code. Affidavit of Aaron Pope, Folly Beach City Administrator, Paragraphs 4-7, Exhibit No. 4. Folly Beach's Business License Ordinance and Short-Term Rental Ordinance have never been a part of the City's Zoning Code and have never been adopted or amended in accord with the South Carolina Comprehensive Planning Act, as is required for zoning code amendments.

The Petition and the City's Business License Code allow all current holders to keep and reapply for their business licenses but do not allow the transfer of short-term rental business licenses. So, when Plaintiff sells its properties, the new owners must apply for a new license. Of course, the City's Business License Code, and State law, have always recognized that 1) business licenses only last one year, and 2) business licenses are not transferable, so this is not really a change in the law at all. S.C. Code Ann. § 6-1-400(B)(1) ("A business license must be issued to

[1] As of the filing of this motion, the City is considering some technical and clarifying amendments to the Short-Term Rental Business License Code, Amended Short-Term Rental Ordinance, Exhibit No. 3, which has passed first reading and is expected to be adopted by second reading on April 11, 2023. These changes only clarify some language, and do not change the underlying intent: to cap Investment Short-Term Rental Business Licenses at 800. The City is permitted to make changes to Ordinances adopted by the Petition and Referendum procedure. *Townsend v. City of Dillon*, 326 S.C. 244, 486 S.E.2d 95 (1997); *In re Aaron Pope*, 2006 WL 2593086 (S.C.A.G. Aug. 29, 2006).

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a taxpayer for a twelve-month period beginning May first and ending April thirtieth."); Folly Beach Code of Ordinance, § 110.03 ("each yearly license shall be issued for the 12-month period of May 1 to April 30"), attached as Exhibit No. 5; Pope Affidavit, Paragraph 26, Exhibit No. 4.

In short, the City's new Short-Term Rental Business License Code has no impact on Plaintiff at all. Plaintiff holds Short-Term Rental Business Licenses for all seven of its properties. Plaintiff can continue to hold those licenses and rent those properties for as long as it owns the properties. Plaintiff cannot transfer its business licenses to a buyer of the properties, but Plaintiff has never had the right to transfer its business licenses. As such, the Petition and the new cap have absolutely no impact on Plaintiff's legal rights.

In addition, the Petition did not rezone Plaintiff's properties or any other properties. It did not create any zoning districts or change the City's Zoning Code, contained in Title 15 of the City's Code of Ordinances. Specifically, short-term rentals remain an allowable use in all of the zoning districts in the City which allow residential uses. The Petition and resulting Amendment solely changed the City's Short-Term Rental Business License Ordinance, contained in Title 11 of the City's Code or Ordinances to set a cap on the number of licenses issued within the City. City of Folly Beach Ordinance, Title XI: Business Regulations, Chapter 117: Short Term Rentals, Exhibit No. 2. The City regulates short-term rentals, and has always regulated short-term rentals, through the use of the City's Business License Code. Affidavit of Aaron Pope, Folly Beach City Administrator, Paragraphs 4-7, Exhibit No. 4.

STANDARDS FOR REVIEW

I. STANDARD OF REVIEW FOR SUMMARY JUDGMENT

"[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact[, then] the

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moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006) (citations omitted). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (quoting *Middleborough Horizontal Prop. Regime Council of Co–Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995)).

II. STANDARD OF REVIEW FOR CHALLENGES TO ORDINANCES

"A municipal ordinance is a legislative enactment and is presumed to be constitutional." *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999). The burden of proving the invalidity of an ordinance is on the party attacking it. *Id.* Determining whether an ordinance is valid is a two-step process. First, the Court must determine whether a municipality has the power to adopt the ordinance. If no power exists, the ordinance is invalid. Second, the Court must determine whether the ordinance is consistent with the Constitution and general laws of this state. *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 384, 563 S.E.2d 651, 654 (2002); *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000); *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 425, 593 S.E.2d 462, 467 (2004).

The court has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid. *Curtis v. State*, 345 S.C. 557, 569–70, 549 S.E.2d 591, 597 (2001); *Davis v. County of Greenville,* 322 S.C. 73, 470 S.E.2d 94 (1996). A legislative act will not be declared

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unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt. *Westvaco Corp. v. South Carolina Dep't of Revenue,* 321 S.C. 59, 467 S.E.2d 739, 741 (1995); *University of South Carolina v. Mehlman*, 245 S.C. 180, 139 S.E.2d 771 (1964). A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the constitution. *Id.; Rothschild v. Richland Cnty. Bd. of Adjustment,* 309 S.C. 194, 198, 420 S.E.2d 853, 856 (1992) (ordinance's "unconstitutionality must be proven beyond a reasonable doubt."). "A possible constitutional construction must prevail over an unconstitutional interpretation." *Curtis*, 549 S.E.2d at 597.

III. STANDARD OF REVIEW FOR FACIAL CHALLENGE TO ORDINANCE

Plaintiff has not applied for or been denied a business license or exhausted its administrative remedies, including the procedures available to appeal the denial of a business license. As such, this Complaint should be reviewed as a facial challenge to the Moratorium and Petition, as opposed to an "as applied" challenge.

"A facial challenge is an attack on a statute itself as opposed to a particular application." *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) (citing *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409, 135 S.Ct. 2443, 192 L.Ed.2d 435 (2015)). Consequently, in analyzing a facial challenge to the constitutional validity of a statute, a court "considers only the text of the measure itself and not its application to the particular circumstances of an individual." *Doe v. State*, 421 S.C. 490, 502–03, 808 S.E.2d 807, 813 (2017) (quoting 16 C.J.S. *Constitutional Law* § 163, at 161 (2015)).

One asserting a facial challenge claims that the law is "invalid *in toto*—and therefore incapable of any valid application." *Id.* (quoting *Steffel v. Thompson*, 415 U.S. 452, 474, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974)). This type of challenge is "the most difficult challenge to mount

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successfully, since the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *Id.* (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)). Thus, "[u]nless the statute is unconstitutional in all its applications, an as-applied challenge must be used to attack its constitutionality." *Travelscape, L.L.C. v. S.C. Dep't of Revenue*, 391 S.C. 89, 109 n.11, 705 S.E.2d 28, 39 n.11 (2011) (quoting *Williams v. Pryor*, 240 F.3d 944, 953 (11th Cir. 2001)); *Renne v. Geary*, 501 U.S. 312, 323-24, 111 S.Ct. 2331, 115 L.Ed.2d 288 (1991) (recognizing that a facial challenge should generally not be entertained when an "as-applied" challenge could resolve the case). *See also Richardson on behalf of 15th Cir. Drug Enf't Unit v. Twenty Thousand Seven Hundred Seventy-One & 00/100 Dollars*, 437 S.C. 290, 297–98, 878 S.E.2d 868, 871–72 (2022).

LEGAL ARGUMENT

I. PLAINTIFF HAS NO STANDING TO BRING THIS ACTION.

Standing is "a personal stake in the subject matter of the lawsuit." *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). A plaintiff has standing to challenge legislation when he sustained, or is in immediate danger of sustaining, actual prejudice or injury from the legislative action. *Id.* To meet the "stringent" test for standing, "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.' " *Id.* (*quoting Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed. 2d 351, 364 (1992)); *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353–54, 815 S.E.2d 446, 451 (2018).

At this time, Plaintiff has not suffered an injury in fact. Plaintiff is not facing an actual or imminent loss of a legally protected interest. Plaintiff can continue to rent all the houses it owns.

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Plaintiff has contended that it may suffer an injury in the future when it sells its property and cannot transfer the short-term rental business license with it. This is the quintessential "conjectural" damage that cannot support standing.

Further, Plaintiff's argument ignores the fact that, by State law, business licenses are issued to *taxpayers*, not businesses, and only last one year. South Carolina Code § 6-1-400(B)(1) ("A business license must be issued to a taxpayer for a twelve-month period . . ."). *See also* Folly Beach Code of Ordinances, Section 110.08(B) ("A business license shall not be transferable, and that a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on the old business income."), Exhibit No. 5. In other words, anyone purchasing an ongoing business (or the property on which that business is conducted) must obtain its own business license.

So, Plaintiff has never held the right to "transfer" a business license. Since Plaintiff never held the right to transfer a business license, it cannot use this non-existent right to manufacture standing.

Claims that depend on contingent, future harm are simply not justiciable. *Jowers*, 815 S.E.2d at 456. When a damage theory depends on there being no changes to the law between now and the occurrence of some unknown future circumstances, there is no justiciable loss. *Id.* at 457; *Thompson v. State,* 415 S.C. 560, 566-67, 785 S.E.2d 189, 192 (2016) (declining to address the defendant's request for a declaratory judgment "because there is no way to determine whether the General Assembly will amend [the law in the future]," and therefore a declaration would be "purely advisory"). So, for instance, in this case the City could easily amend the Amendment to add some relief for future property sales with existing Short-Term Rental Business Licenses. Pope Affidavit, Paragraph 27, Exhibit No. 4.

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Put simply, Plaintiff has suffered no loss and is in no risk of imminent loss due to the Amendment. As such, Plaintiff has no standing to bring this action, and the City is entitled to dismissal.

II. FOLLY BEACH'S BUSINESS LICENSE CODE IS NOT A ZONING ORDINANCE.

Plaintiff seeks a declaratory judgment that the Save Folly's Future's Petition "seeks to change the zoning of particular tracts of land in which Plaintiff owns real property and this zoning would disallow the use of STRs on Plaintiff' property if Plaintiff should transfer its property." Amended Complaint, Paragraph 30(i). This allegation is demonstrably and unequivocally false.

In summary, the amendment to the City's Business License Code is a business regulation, not a zoning provision, because 1) the Petition amended the City's Business License Code, not the City's Zoning Code, 2) the Amendment adopted by Petition regulates businesses, not property or zoning, 3) Folly Beach is entitled to regulate businesses, including short-term rentals, as part of its police powers granted under the Home Rule Act, South Carolina Code § 5-7-30, and 4) the Amendment did not rezone Plaintiff's property, which can still be used as a short-term rental both now and in the future.

Thus, even though the Amendment and the City's Business License Code that it amended touch upon the use of land (as does any regulation of a "bricks and mortar" business), Folly Beach has always regulated short-term rentals through the issuance of business licenses and the exercise of its police power, as it is entitled to do by law. *Kenwood Enterprises, Inc*., 577 S.E.2d at 432 (local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . ."); Pope Affidavit, Paragraphs 4-7, Exhibit No. 4.

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Because the City regulates short-term rentals through its Business License Code and because the Amendment only changed that Business License Code, the Amendment did not have to be adopted pursuant to the Comprehensive Planning Act, and the holding in *I'On* has no applicability.

A. THE PETITION AMENDED THE CITY'S A BUSINESS LICENSE CODE, NOT ITS ZONING CODE.

The Petition amended Folly Beach's Business License Code, codified at City of Folly Beach Ordinance, Title XI: Business Regulations, Chapter 117: Short Term Rentals, Exhibit No. 2. The City regulates short-term rentals, and has always regulated short-term rentals, through the use of the City's Business License Code. Affidavit of Aaron Pope, Folly Beach City Administrator, Paragraphs 4-7, Exhibit No. 4.

The City's first ordinance addressing short-term rentals was adopted on September 28, 2010. Ordinance 19-10 established requirements for obtaining a business license to rent property on a short term basis. Ordinance 19-10 Establishing Requirements for Obtaining a Business License to Rent Property on a Short Term Basis, Exhibit No. 6. As such, the ordinance was codified as a business license regulation, not a zoning ordinance. It was codified as Chapter 116: Short Term Rentals and is now codified as Chapter 117: Short Term Rentals, both of which are part of Title XI: Business Regulations. Pope Affidavit, Paragraphs 4-7, Exhibit No. 4.

Since 2010, the City has amended the Short-Term Rental Business License Chapter by amendments in 2018 and 2022, consistently regulating short-term rentals through its business license ordinances and not as a zoning ordinance. Ordinance 26-17 Amending Licensing and Registration Requirements for Short Term Rentals, Exhibit No. 7 (also re-numbering ordinance to

Chapter 117: Short Term Rentals); Ordinance 27-22 Changing the Requirements for Business Licenses and Rental Registration Permits for Short Term Rentals, Exhibit No. 8.[2]

None of these amendments to Folly Beach's Business License Code have ever been adopted in compliance with the South Carolina Comprehensive Planning Act. No one has ever complained to the City that it should have been adopting these business regulations as part of its zoning code. Pope Affidavit, Paragraphs 4-7, Exhibit No. 4.

The Petition and Amendment changed Title XI: Business Regulations. Petition, Exhibit No. 1; City of Folly Beach Ordinance, Title XI: Business Regulations, Chapter 117: Short Term Rentals, Exhibit No. 2. The Petition and Amendment solely addressed the issuance of business licenses. Pope Affidavit, Paragraph 11, Exhibit No. 4. The Petition and Amendment did not rezone any property (as happened in *I'On*) or change any part of the City's zoning ordinance, contained in Title XV: Land Usage of the City's Code of Ordinances. Pope Affidavit, Paragraph 11, Exhibit No. 4. As such, it is appropriately placed in and part of Chapter 117: Short Term Rentals, contained in the City's Business Regulations.

No state law requires that the City follow the South Carolina Comprehensive Planning Act to amend its Business License Code. Indeed, if the Court rules that the City must follow the South Carolina Comprehensive Planning Act to amend its Business License Code, this would call into question the entire Business License Code.

Thus, on its face, the Amendment changed the City's Business License Code, not the City's Zoning Code.

[2] A more detailed history of Folly Beach's history of regulating short-term rental licenses, including the City's consideration of a cap on such licenses in 2022, can be found in Mr. Pope's Affidavit, Paragraphs 4-10, Exhibit No. 4.

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B. THE AMENDMENT IN FACT REGULATES BUSINESSES, NOT LAND.

The Petition and Amendment were codified in the City's Business License Code because that was clearly the proper place to put them. The Petition, Amendment, and the City's Short-Term Rental Business License Ordinance are undoubtedly regulations of businesses, not land. The Amendment to the Short-Term Business License Ordinance limits the number of business licenses issued for short-term rentals. The Amendment applies the regulation to the entire City. It does not limit the operation of short-term rentals to any particular district, but instead regulates the operation of short-term rentals uniformly throughout the entire City.

The Amendment does not restrict Plaintiff's use of the property. All properties in the City, including Plaintiff's properties, remain zoned for short-term rentals. Owners can operate a short-term rental on any property in the City. Plaintiff currently rents its properties as short-term rentals and can continue to do so. If Plaintiff purchases other properties, it can apply for licenses for short-term rentals for those other properties and operate short-term rentals on the properties, so long as the cap has not been met.

In other words, the amendment to the Short-Term Business License Ordinance simply places additional conditions on the issuance of licenses to operate a short-term rental. It places no restriction on any property in the City. Pope Affidavit, Paragraph 4, Exhibit No. 4.

The regulation of business through the issuance of business licenses is not the same thing as a zoning ordinance. Licenses confer no property right. Rather, they are permits to operate a business issued pursuant to the government's general police power. *Army Navy Bingo, Garrison No. 2196 v. Plowde*n, 281 S.C. 226, 314 S.E.2d 339 (1984)*; Feldman v. South Carolina Tax Comm'n,* 203 S.C. 49, 26 S.E.2d 22 (1943) (liquor licenses). Ordinances that regulate businesses, even those that control where a business may be operated, are considered business regulations

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adopted pursuant to the municipality's general police powers, not part of the zoning ordinance. *Kenwood Enterprises,* 577 S.E.2d at 428. In short, business license ordinances control how a business is operated.

The goals of a zoning ordinance are entirely different. Zoning ordinances are concerned with the *development* of a piece of property, that is the structures that are to be built on the property. Zoning ordinances "must be for the general purposes of guiding *development* in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." S.C. Code § 6-29-710(A). The goals of a zoning ordinance "include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents." *I'On*, 526 S.E.2d at 720. Zoning ordinances address building size, density of development, parking, and buffer areas. *Id.*

The Amendment to the Short-Term Rental Business License Code does none of these things. It simply limits the number of short-term rental business licenses city-wide. It regulates the business of short-term rentals. It does not regulate the development of any lots. Plaintiff has already obtained the permits necessary to develop its lots, and the Amendment does not interfere with that development. It simply regulates existing and potential businesses on the Plaintiff's lots. It does not rezone the lots or even exclude short term rentals as a use on those lots. The Plaintiff's properties are and remain zoned residential. Regulating the uses within the broad category of "residential" can be done by zoning ordinance or by business license. *Kenwood Enterprises,* 577 S.E.2d at 432. Since the Amendment is a business regulation, not a zoning ordinance, it is not barred by the ruling in *I'On*.

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C. THE CITY CAN REGULATE BUSINESSES AS PART OF ITS BUSINESS LICENSING POWERS.

Under State law, Folly Beach has the legal right to regulate short-term rental business licenses in its Business License Code, as opposed to its Zoning Code. The Home Rule Act specifically grants municipalities the right to "levy a business license tax on gross income." S.C. Code § 5-7-30. *See also Olds v. City of Goose Creek*, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018) ("One such power possessed by a municipality is the power to 'levy a business license tax on gross income.'"); *Town of Hilton Head Island v. Kigre, Inc.,* 408 S.C. 647, 649, 760 S.E.2d 103, 103 (2014) ("The legislature has specifically granted municipalities the authority to enact ordinances and 'levy a business license tax on gross income.'"). Thus, business regulations arise from the local government's powers granted by the Home Rule Act. This is sometimes referred to as the City's "general police powers." *Kenwood Enterprises*, 577 S.E.2d at 431 ("The trial court ruled that the Ordinance was properly enacted pursuant to the police powers granted to the County by S.C. Code Ann. § 4–9–25 (Supp.2001).").

In contrast, the South Carolina Comprehensive Planning Act governs the adoption of zoning codes by local governments. The Comprehensive Planning Act makes no reference to business licenses. It is solely concerned with zoning land and planning for the development of land. No court has ever suggested that municipalities must follow the procedures set out in the Comprehensive Planning Act for business license ordinances or the regulation of businesses.

The central question in this matter is whether the City has the option to use its business license powers under the Home Rule Act to control the operation of businesses or, as argued by Plaintiff, can the City *only* use its zoning powers under the Comprehensive Planning Act to regulate the use of land. Fortunately, the South Carolina Supreme Court has ruled on this very question. In *Kenwood Enterprises*, the South Carolina Supreme Court ruled that local

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governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, . . . **and** two, pursuant to their police powers . . ." *Kenwood Enterprises,* 577 S.E.2d at 432.

An examination of the facts in *Kenwood Enterprises* amply demonstrates that both the City and Petitioners are plainly entitled to regulate short-term rentals pursuant to the City's Business License Code, as opposed to its Zoning Code, and, therefore, the ruling in *I'On* does not apply to the Petition and Amendment. In *Kenwood Enterprises*, the plaintiffs, owners of a sexually oriented business, presented the exact same argument that Plaintiff presents in this case, and they were soundly rejected. The plaintiffs argued that Greenville County's ordinance regulating sexually oriented businesses was a zoning ordinance that "should be struck down as an illegal land use control act because the County cannot enact such ordinances unless it complies with the Comprehensive Planning Act." *Id.* at 431-32.

The Greenville County Ordinance "established both a licensing scheme and location restrictions for sexually oriented businesses." *Kenwood Enterprises*, 577 S.E.2d at 429. The licensing scheme required the business to obtain a permit from the County's zoning administrator. *Harkins v. Greenville Cnty.*, 340 S.C. 606, 533 S.E.2d 886 (2000) (considering the same ordinance). This licensing scheme was held to be unconstitutional by the Supreme Court in *Harkins*, so the only issue before the Court in *Kenwood Enterprises* were the remaining regulations governing the location of sexually oriented businesses. *Kenwood Enterprises*, 577 S.E.2d at 429-30. In fact, the Greenville Ordinance was initially proposed and drafted as an amendment to the County's Zoning Ordinance but was ultimately not passed as a zoning ordinance in part because it was applied county-wide. *Id.* Importantly, the ordinance was not passed pursuant to the Comprehensive Plan Act. The plaintiff sought to invalidate the ordinance claiming that it was a

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zoning rule that had to be passed pursuant to the Comprehensive Planning Act, just like Plaintiff is claiming in this case.

The Supreme Court recognized that the ordinance "could fairly be characterized, **in general terms,** as a zoning ordinance." *Id.* at 432 (emphasis in original). The Greenville County Ordinance was, after all, solely concerned with the placement of sexual oriented businesses and was originally proposed as part of the County's zoning ordinance. Nevertheless, the Supreme Court agreed with the trial court's conclusion "that this type of ordinance may be adopted pursuant to the County's general police powers and that the Comprehensive Planning Act does not, in effect, preempt this particular type of legislation." *Id.* In other words, the Comprehensive Planning Act did not preempt the entire field of business regulations or "completely prohibit any other local enactments from touching upon zoning or land use." *Id.* at 432 (citing *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (2000)). "[W]hile the Comprehensive Planning Act governs zoning, it simply does not evince a legislative intent to completely prohibit any other local enactments from touching upon zoning or land use. *Id.* As such, "this type of ordinance may be properly enacted pursuant to the County's police powers." *Id.*

Finally, the Supreme Court summarized that local governments "may enact ordinances regulating land use in two fashions: one, pursuant to a comprehensive zoning plan, ... and two, pursuant to their police powers ..." *Id.* (quoting *Onslow County v. Moore,* 129 N.C.App. 376, 499 S.E.2d 780, review denied, 525 S.E.2d 453 (1998)) (internal citations omitted). In short, Folly Beach, like Greenville County, has the clear right to regulate businesses and land use outside of the Comprehensive Planning Act. And, by extension, the Amendment to the City's Business License Ordinance was validly adopted by Petition and Referendum.

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Folly Beach's Business License Ordinance has never been a part of the City's Zoning Code and has never been adopted or amended in accord with the South Carolina Comprehensive Planning Act. Pope Affidavit, Paragraphs 4-7, Exhibit No. 4. No one has ever suggested that the City has to comply with the South Carolina Comprehensive Planning Act to adopt or amend the City's Business License Ordinance. Indeed, South Carolina recently passed the Business License Tax Standardization Act, which required all municipalities in the State to adopt standardized provisions to their business license ordinances. Neither the State nor the Municipal Association of South Carolina, which prepared the model business license ordinance based on the Standardization Act, has ever suggested that cities must comply with the Comprehensive Planning Act in adopting the standardized business license ordinances required by State law. Pope Affidavit, Paragraph 4, Exhibit No. 4.

As Plaintiff has pointed out, other cities have opted to regulate short-term rentals by way of zoning regulations, including restricting their use in some zoning districts but not others. This does not mean that all Cities must follow that path. The Supreme Court's opinion in *Kenwood Enterprises* makes clear that local governments can regulate such uses as part of its Business License Code or Building Code or any other area of general police powers, which is exactly what Folly Beach and other municipalities have done. *See, e.g.*, Kiawah Short-Term Rental Ordinance, Exhibit No. 9 (business license code); City of Columbia Short-Term Rental Ordinance, Exhibit No. 10 (proposed addition to building code, first reading passed 3/21/23); City of Rock Hill Short-Term Rental Ordinance, Exhibit No. 11 (business code); City of Hilton Head Short-Term Rental Ordinance, Exhibit No. 12 (business license code).

The Petition and Referendum adopted an Amendment to the City's Short-Term Rental Business License Ordinance. Cities, and by extension the Petitioners, are entitled to regulate short-

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term rentals pursuant to their general police powers. They are not limited to regulating short-term rentals in the zoning code. *Kenwood Enterprises*, 577 S.E.2d at 432. As such, the holding in *I'On* has no relevance to the Amendment.

D. THE PETITION CONSIDERED IN *I'ON* REZONED A PROPERTY AND WAS CLEARLY NOT A BUSINESS LICENSE REGULATION.

Like the Plaintiff in this case, the plaintiff in *Kenwood Enterprises* cited *I'On* as supporting its argument that any business regulation that touched upon land use is a zoning act governed by the Comprehensive Planning Act. *Kenwood Enterprises*, 577 S.E.2d at 433. The Supreme Court unequivocally rejected this argument. "To accept [plaintiffs'] expansive reading of *I'On* would necessarily eviscerate a County's ability to exercise its police power if that exercise in any way impacted land use." *Id.*

The challenged petition in *I'On* proposed to rezone a 243 acre tract from Planned Development to R-1 (residential), quite obviously a zoning measure. *Id.* at 717-18. The tract had already been through the lengthy zoning regulatory process dictated by the South Carolina Comprehensive Planning Act to change the zoning from R-1 to Planned Development. This included review and approval by the Town's Zoning Board and adoption by Town Council. It was undoubtedly a zoning measure adopted in accord with the state's zoning laws. After the rezoning, a referendum and petition then sought to directly undo this zoning process by reverting the property back to R-1. It was clearly a zoning ordinance.

In *I'On,* the Supreme Court was concerned that the initiative and referendum process could result "in arbitrary decisions and patchwork zoning with little rhyme or reason," and would nullify carefully developed rules for adoption of zoning provisions. *I'On*, 526 S.E.2d at 721. There is no such concern in the adoption of a cap on business licenses. The cap applies to the entire City, and all zoning districts within the City. The Amendment is nearly identical to a cap earlier proposed

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and considered by City Council (that did not go through the Comprehensive Plan Act process). There is no danger of the creation of patchwork zoning. There is no danger of nullifying the rules of the Comprehensive Planning Act or the City's existing zoning ordinance. Rather, the initiative and referendum process simply allowed residents to decide if the City should limit short-term rentals to 30% of all dwelling units in the City.

Because the Amendment is a business regulation, it is not prohibited by the decision in *I'On*.

E. PLAINTIFF STUDIOUSLY IGNORES THE HOLDING IN *KENWOOD ENTERPRISES* THAT LOCAL GOVERNMENTS ARE FREE TO USE GENERAL POLICE POWERS *OR* THE ZONING CODE TO REGULATE SHORT-TERM RENTALS.

Plaintiff fails to address the South Carolina Supreme Court's ruling in *Kenwood Enterprises* that local governments can regulate land uses through their business license codes or through zoning ordinances. Plaintiff lists and cites to other governments that have used zoning rules to regulate short-term rentals. The fact that other governments use their zoning ordinances to regulate short-term rentals does not change the fact that all South Carolina cities have the option of using zoning ordinances or business license ordinances for such regulation. In other words, the fact that the City of Charleston or South Weber, Utah, *South Weber City v. Cobblestone Resort, LLC*, 511 P.3d 1207 (2022), or New Orleans, *Chaumont v. City of New Orleans*, 302 So.3d 39 (2020),[3] use zoning ordinances to regulate short-term rentals does not mean that Folly Beach must use zoning ordinances to regulate short-term rentals.

Similarly, Plaintiff repeatedly cites *Keen v. City of Manhattan Beach*, 77 Cal.App.5th 142 (2022). In *Keen* the California Court of Appeals simply enforced a California state rule requiring

[3] It is worth noting that the regulations in *Chaumont* were contained in both the zoning code and in the business license code, and the Court concluded that the ordinances were constitutional. *Chaumont*, 302 So.3d at 14-15.

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that coastal cities in California must seek approval for amendments to its ordinances from the California Coastal Commission. The dispute was whether there was an amendment at all. *Id.* at 146 ("But the City has stoutly maintained there has been no amendment, because its *old* ordinances always prohibited short-term rentals."). The Court did not rule that regulations of short-term rentals can only be created by zoning amendments. Obviously, this holding has no applicability to South Carolina, and certainly in no way contradicts the holding in *Kenwood Enterprises* that cities are free to use business license ordinances to regulate short-term rentals.

III. THE AMENDMENT DOES NOT CONFLICT WITH SOUTH CAROLINA CODE § 27-50-250.

Next, Plaintiff argues that the Amendment to the Short-Term Rental Business License Code conflicts with and is preempted by South Carolina Code § 27-50-250(A). South Carolina Code § 27-50-250(A) requires purchasers of residential property to honor post-sale vacation rentals for ninety days after the transfer of the property. In its Complaint, Plaintiff has claimed that the Amendment would prevent property owners from complying with this State law because short-term business licenses are not transferable to the purchasers. Amended Complaint, Paragraph 30(v) & (vi). Plaintiff further asserts that Section 27-50-250(A) amounts to a preemption of the Amendment. Complaint, Paragraph 30(vii). These arguments are both premature and legally and factually wrong.

A. THE CITY CURRENTLY ALLOWS PURCHASERS TO COMPLY WITH SECTION 27-50-250(A).

As an initial matter, the City has administratively decided to allow purchasers of property with short-term rentals in place to comply with Section 27-50-250(A). Pope Affidavit, Paragraphs 16-17, Exhibit No. 4. A new purchaser merely needs to inform the City of the rental dates for ninety days following the purchase, and they can honor those rentals. *Id.* This policy is in place

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as a temporary measure until May 8, 2023. A more permanent fix will be considered by City Council in the coming months. *Id.* So, it is increasingly unlikely anyone will be caught in this imagined conflict between the cap and Section 27-50-250(A).

This is why Plaintiff is legally required to exhaust its administrative remedies before bringing a challenge to this ordinance. If Plaintiff wishes to sell one of its properties with pending rentals, it can 1) request relief from the City to allow the rentals to go forward, and 2) appeal any denial of that relief. Currently, the relief will be granted administratively. In the future, it is possible that Council will create an exception to the cap allowing for compliance with Section 27-50-250(A).

The granting of a license is an administrative function and comes within the doctrine of exhaustion of administrative remedies. *City of Columbia v. Abbott,* 269 S.C. 504, 508, 238 S.E.2d 177, 179 (1977). Plaintiff has not exhausted its administrative remedies. This failure alone supports dismissal of Plaintiff's claim that the Amendment and cap somehow conflict with Section 27-50-250(A) in some potential sale in the future.

At best, Plaintiff is asserting a facial challenge to the Amendment and cap. As a facial challenge, Plaintiff must show that the law is "invalid *in toto*—and therefore incapable of any valid application." *Doe v. State*, 421 S.C. 490, 502–03, 808 S.E.2d 807, 813 (2017) (quoting *Steffel v. Thompson*, 415 U.S. 452, 474, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974)). This type of challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

The Amendment and cap do not preclude the City from creating administrative relief for purchasers of property subject to short-term rentals, and that is exactly what the City has done.

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Any purchaser of a property subject to short-term rentals can claim this administrative relief or can pursue administrative remedies if the administrative relief is withdrawn. In short, Plaintiff's argument is an "as-applied" challenge in that it is only an issue in very narrow circumstances which are not currently faced by Plaintiff. As such, it does not support Plaintiff's demand that the entire Amendment and cap be declared unconstitutional.

B. PLAINTIFF CAN EASILY COMPLY WITH BOTH THE AMENDMENT AND SECTION 27-50-250(A) IF IT DECIDES TO SELL ITS PROPERTY.

Even if the Court wishes to consider this premature argument, Section 27-50-250(A) does not in fact conflict with the Amendment. Plaintiff can still sell its property and comply with Section 27-50-250(A) simply by not booking rentals after the anticipated sale date when the property is put on the market. Similarly, Plaintiff could easily delay any closing until all such rentals have been completed. In short, the Proposed Ordinance and Section 27-50-250(A) are easily reconciled and both can be complied with. There is certainly no language in Section 27-50-250(A) preempting the Proposed Ordinance. This is obvious from the fact that many local governments that have adopted short-term rental caps and outright bans without complaint.

Where, as here, a local ordinance and a state law can both be followed, they are not in conflict. Nothing in Section 27-50-250(A) explicitly claims to preempt any local law. Since there is no express preemption, Plaintiff can only rely on implied preemption to advance its argument. In other words, Plaintiff is arguing that there is an "implied conflict preemption." Implied conflict preemption occurs when a local ordinance conflicts with a state statute such that compliance with both is impossible. *S.C. State Ports Authority v. Jasper Cty.*, 368 S.C. 388, 629 S.E.2d 624, 630 (2006). *See* 56 Am.Jur.2d *Municipal Corporations* 392 ("[i]mplied conflict preemption occurs when an ordinance prohibits an act permitted by a statute, or permits an act prohibited by a statute") (quoted in *Jasper City*).

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"[I]n order for there to be a conflict between a state statute and a municipal ordinance both must contain either express or implied conditions which are inconsistent or irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand." *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662, 664 (1990) (*quoting McAbee v. Southern Ry. Co.,* 166 S.C. 166, 164 S.E. 444, 445 (1932) (internal quotations omitted).

The Amendment is neither inconsistent nor irreconcilable with Section 27-50-250(A). It is entirely possible to comply with both laws. *Jasper County*, 629 S.E.2d at 630 (no implied conflict preemption when compliance with both laws is possible). If Plaintiff wishes to sell its property, it merely needs to schedule the closing after all rentals have been completed. This is how the two laws are easily reconciled. Nothing in Section 27-50-250(A) requires rentals to be pending at the time of sale. It only requires that those rentals be honored *if they are pending*.

Since the two laws are easily reconciled and can both be complied with, the Amendment is not in conflict with the State law, and there is no implied conflict preemption. This is an entirely fictional argument that ignores that the City has already fashioned a remedy, and there is no conflict between the Amendment and Section 27-50-250(A) in any case.

IV. THE AMENDMENT TO THE BUSINESS LICENSE ORDINANCE DOES NOT INTERFERE WITH PLAINTIFF'S VESTED RIGHTS.

Plaintiff next claims that the Amendment to Folly Beach's Short-Term Rental Business License Ordinance infringes upon Plaintiff's vested rights under South Carolina's Vested Rights Act, South Carolina Code § 6-29-1510, *et. seq*. Amended Complaint, Paragraph 30(iv); Plaintiff's Motion for Summary Judgment, Pages 13-14. Relatedly, throughout its Motion for Summary Judgment, Plaintiff argues that it enjoys some established property right arising from the Short-

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Term Rental Business Licenses, including the right to transfer the Business License in a potential future sale. Plaintiff's Motion for Summary Judgment, Pages 11-14.

These arguments ignore the clear law governing business licenses. In short, business licenses 1) create no property rights, 2) cannot be transferred, and 3) are not governed by the Vested Rights Act in any case. The Amendment to the City's Business License Code simply does not interfere with any cognizable right held by Plaintiff.

A. THE AMENDMENT DOES NOT INTERFERE WITH ANY RIGHT HELD BY PLAINTIFF.

Factually, as noted above, all of Plaintiff's properties are currently licensed as short-term rentals. The Amendment to Folly Beach's Short-Term Rental Business License Ordinance does not interfere in any way with those existing licenses. Plaintiff is entitled to renew those licenses and continue renting on those properties for as long as Plaintiff owns them. As such, the City has not interfered with any rights that could conceivably arise out of the issuance of a business license.

B. BUSINESS LICENSES DO NOT CONFER PROPERTY RIGHTS

Legally, Plaintiff has no vested or property right in having a license renewed without additional restrictions, much less demanding that a hypothetical future purchaser receives a brand new business license. Put simply, business licenses do not create rights. They create obligations, and those obligations are subject to change by the City.

"No person can acquire a vested right to continue, when once licensed, in a business, trade or profession which is subject to legislative control and regulation under the police power, as regulations prescribed for such may be changed or modified by the legislature, in the public interest, without subjecting the action to the charge of interfering with contract or vested rights." *Dantzler v. Callison*, 230 S.C. 75, 94–95, 94 S.E.2d 177, 188 (1956).

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A business license is "a license issued to a taxpayer by a county or municipality *for the privilege of doing business* in that county or municipality." S.C. Code Ann. § 6-1-400 (emphasis added). It is the granting of a privilege, not the granting of a right.

> Licenses confer no property right, but are permits issued pursuant to the State's police power. [*Army Navy Bingo, Garrison No. 2196 v. Plowde*n, 281 S.C. 226, 314 S.E.2d 339 (1984)]*; Feldman v. South Carolina Tax Comm'n,* 203 S.C. 49, 26 S.E.2d 22 (1943) (liquor licenses). A license is a special privilege and not a contract. *Heslep v. State Hwy. Dep't,* 171 S.C. 186, 171 S.E. 913 (1933). As such, it creates neither a vested nor a permanent right. *Id.* It is a creature of statute, and the rights of the licensee are only as the statute confers. *See State ex rel. Pollard v. Superior Court of Marion County,* 233 Ind. 667, 122 N.E.2d 612 (1954) (liquor licenses). The license is to be enjoyed only so long as the licensee complies with the restrictions and conditions governing its continuance. *Feldman v. South Carolina Tax Comm'n,* 203 S.C. 49, 26 S.E.2d 22 (1943).
> . . .
> Because the license is issued pursuant to the police power, the licensee takes it subject to the right of the State, at any time, for the public good, to make further restrictions and regulations.

S.C. Dep't of Revenue & Tax'n v. Rosemary Coin Machines, Inc., 331 S.C. 234, 243-44, 500 S.E.2d 176, 180-81 (Ct. App. 1998), *rev'd sub nom. S.C. Dep't of Revenue v. Rosemary Coin Machines, Inc.*, 339 S.C. 25, 528 S.E.2d 416 (2000).

Where, as here, a license or similar benefit may be withdrawn at will, the holder of the license or benefit has no property interest because he has no legitimate claim of entitlement to something that can be withdrawn at the whim of the grantor. *Richardson v. Town of Eastover*, 922 F.2d 1152, 1157 (4th Cir. 1991); *Bannum v. Town of Ashland,* 922 F.2d 197 (4th Cir.1990) (a city's approval for operation of a halfway house, which could be withdrawn at will, did not create a property interest). *See also* 9 McQuillin Mun. Corp. § 26:2, *Definitions; nature of municipal license* (3d ed.) ("The municipal license is essentially a governmental *restriction* upon private rights, since it is valid only if based upon an exercise by the municipality of its police or taxing

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powers, *out of which can arise no private rights, but only duties*, such as the duty to pay taxes or to obey police regulations.") (emphasis added).

"[T]his is the general rule notwithstanding the expenditure of money by the licensee in reliance thereon, and regardless of whether the term for which the license was given has expired." *Id.* (quoting *Heslep v. State Hwy. Dep't,* 171 S.C. 186, 189, 171 S.E. 913, 916 (1933)).

Put simply, Plaintiff has no property right arising from the issuance of its Short-Term Rental Business Licenses. Business Licenses are always subject to further regulation, and that is all the Amendment does: attach additional regulations to Plaintiff's Business Licenses, regulations that, in fact, have no impact on Plaintiff's Business Licenses in any case.

C. PLAINTIFF HAS NO RIGHT TO TRANSFER ITS BUSINESS LICENSE.

Plaintiff attempts to circumvent this clear law by claiming that it has a right to transfer its Short-Term Rental Business License to a potential purchaser of one of its properties. Plaintiff's Motion for Summary Judgment, Pages 13-14. While the Amendment to the Short-Term Rental Business License Code does include an explicit ban on the transfer of Short-Term Rental Licenses, Plaintiff has never had the right to transfer its Business Licenses. Indeed, South Carolina law mandates that business licenses *must* be issued to a single taxpayer and *must* last for one year and one year only:

> A business license *must* be issued to a *taxpayer* for a twelve-month period beginning May first and ending April thirtieth. Each business license issued *must* expire April thirtieth or, if issued on a construction contract, at the completion of the construction project. The business license must be renewed before May first of the year in which it expires.

S.C. Code Ann. § 6-1-400(B)(1) (emphasis added).

Plaintiff points to no law allowing it to transfer a business license to a third party, much less setting out that it has an inviolable right to such transfer. Rather, the law is quite clear that the

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City has unlimited rights to prohibit or condition the transfer of licenses. *Troy Iron & Nail Factory v. Corning*, 55 U.S. 193, 194, 14 L. Ed. 383 (1852) ("A mere license to a party without words showing that it was meant to be assignable is only the grant of a personal power to the license fee and is not transferrable by him to another."); *City of Columbia v. Abbott*, 269 S.C. 504, 508, 238 S.E.2d 177, 179 (1977) (disallowing book store to transfer business license to another location); S.C. Code Ann. § 12-21-690 ("No license issued permitting the sale and distribution of tobacco products shall be transferable . . .").

This is hardly surprising. The point of licensing businesses is to regulate those businesses, not facilitate the owner in selling those businesses. *State v. Reeves*, 112 S.C. 383, 99 S.E. 841, 842 (1919) ("If [a governmental entity] undertakes to regulate such an act by requiring a license, the object is the protection of the public, and it is not intended for the benefit of the licensee. The defendant, therefore, has no right to complain, even though the statute may be regarded as prohibitory in its effect.").

So, as dictated by South Carolina law and the City's own Business License Code, business licenses are personal to the business operator and cannot be transferred. Since Plaintiff never held the right to transfer its Business Licenses, the Amendment's bar on the transfer of Short-Term Rental Business Licenses does not interfere with any established right held by Plaintiff.

D. THE VESTED RIGHTS ACT DOES NOT APPLY TO BUSINESS LICENSES OR BUILDING PERMITS.

Likewise, South Carolina's Vested Rights Act does not provide vested rights to business license holders, much less future hypothetical applicants for business licenses. First, the Vested Rights Act confirms that "vested right" means "the right to undertake and complete the *development of property* under the terms and conditions of site specific development plan . . ." S.C. Code § 6-29-1520(9) (emphasis added). The Amendment to the City's Short-Term Rental

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Business License Ordinance does not interfere with the development of Plaintiff's property. *See also* S.C. Code § 6-29-1550 ("A vested right pursuant to this section is not a person right, but attaches to and runs with the applicable real property."). The structural developments on Plaintiff's properties are already built or are in the process of being constructed, and the Amendment does not interfere with that development in any way.

Second, the Vested Rights Act only provides a two-year vested right for the "*approval* of site specific development plans." S.C. Code § 6-29-1530(A)(1) (emphasis added). While the City has issued a building permit for Plaintiff's property, it has not *approved* the operation of a short-term rental on that property. Nothing in the Plaintiff's submissions for the building permits seeks such approval. Pope Affidavit, Paragraph 25, Exhibit No. 4. A building permit is not approval of the use of the property. It is an approval of the development on that property. The City's approval of a building permit is simply not the same thing as approving any particular use of the Property. Since the City never approved any particular use of Plaintiff's properties, Plaintiff holds no vested right in the use of the properties.

This is amply demonstrated by the fact that all building permits have expiration dates that are not related to the two-year vested rights granted under the Vested Rights Act. Building Permits for 112 East Indian Avenue, Exhibit No. 13. According to the very terms of those Building Permits, they expired in 2022. Any right derived from those Building Permits expired last year. The Building Permits for Plaintiff's other dwellings have long since expired. Even if the Vested Rights Act applied, it would only have given Plaintiff a vested right for two years.

Third, the Vested Rights Act only protects "site specific development plans," and neither a business license nor a building permit is a site specific development plan:

> (9) "Site specific development plan" means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and

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> density or intensity of uses for a specific property or properties. The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land-use approval designations as are used by a county or municipality.

S.C. Code Ann. § 6-29-1520.

Neither a building permit nor a business license is a development plan describing with reasonable certainty the types and density or intensity of uses. A business license is a license to operate a particular business, not an approval of the types and density or intensity of use for a property. A building permit grants a right to construct a building, not an approval for of the types and density or intensity of use for a property. As such, neither the issuance of a business license or a building permit is governed by the Vested Rights Act. The Vested Rights Act has never been applied to a business license or building permit, which are not development plans setting forth the density or intensity of uses of a property under development. In short, Plaintiff is comparing apples and oranges here.

E. MUNICIPALITIES ACROSS THE STATE HAVE ADOPTED CAPS AND OUTRIGHT BANS ON INVESTMENT SHORT TERM RENTALS, NONE OF WHICH HAVE BEEN RULED UNCONSTITUTIONAL OR INVALID.

Local governments across the State and across the nation have adopted caps and complete bans on short-term rental licenses to address the explosive growth of short-term rentals in residential neighborhoods. The following is a short list of municipalities along the South Carolina coast that have adopted such caps. Like the Amendment, most of these cities separately regulate 1) owner-occupied properties, which are typically not subject to the cap, and 2) whole-house rentals, referenced as "Investment Short-Term Rentals" in the Proposed Ordinance, which are subject to the cap. Also, like the Amendment, most municipalities grandfather in existing licenses and allow existing short-term rentals to continue and renew until the property is sold.

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The only unusual thing about the Amendment is that it allows for over 30% of all properties in the City to be used as short-term rentals. Pope Affidavit, Paragraph 11, Exhibit No. 4. Most caps are well below that number, and many local governments ban all Investment Short-Term Rentals in residential districts.

The City of Charleston only allows commercial short-term rentals (the equivalent of Investment Short Term Rentals) in commercially zoned properties in a very limited number of zoning districts reflected in a Short Term Rental Overlay Zone. City of Charleston, Code of Ordinances, Section 54-227, Exhibit No. 14. In short, City of Charleston completely bans Investment Short Term Rentals on any residential property.

The Town of Sullivan's Island prohibits all vacation rentals and strictly regulates rentals that existed when the ban was passed, including not allowing transfer of licenses. Town of Sullivan's Island, Code of Ordinances, Section 21-117, *et seq.*, Exhibit No. 15.

The Town of Mt. Pleasant caps all short-term rentals at 400, which is approximately 1% of all dwelling units in the Town. Town of Mt. Pleasant, Code of Ordinances, Section 156.340(C), Exhibit No. 16.

The Town of Kiawah Island has capped all short-term rentals in single-family and two-family residential districts to 20% of all developed lots. Town of Kiawah Island, Code of Ordinances, Section 14-505, Exhibit No. 9.

The Town of Myrtle Beach considers short term rentals, referenced as "visitor accommodations," as a commercial use, and does not allow any short-term rentals in residential districts. City of Myrtle Beach, Code of Ordinances, Sections 203 (Definitions) and 1714.B, Exhibit No. 17.

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The City of Beaufort considers Investor Short Term Rentals as a commercial use and has set a cap of 6% for all Investor Short Term Rentals. City of Beaufort, Code of Ordinances, Section 3.6.2.c.2, Exhibit No. 18.

The Town of Summerville only allows owner-occupied short-term rentals in its residential districts. So, it has a complete ban on whole house rentals in residential districts. Town of Summerville, Code of Ordinances, Sections 3.4.3.A.1 and 3.4.3.E.2, Exhibit No. 19.

None of these measures have been overturned as violating owners' vested rights or for creating a regulatory taking.

V. THE AMENDMENT TO THE BUSINESS LICENSE CODE DOES NOT IMPLICATE AN INTEREST PROTECTED BY THE TAKINGS CLAUSE.

Plaintiff makes passing reference to a takings claim in its Amended Complaint, Paragraph 30(iv), and Motion for Summary Judgment, Pages 6, 9. Takings claims cannot be asserted in a declaratory judgment action. Even if Plaintiff could assert such a claim in this suit, it is clear that no taking has occurred.

A. TAKINGS CLAIMS CANNOT BE ASSERTED IN A DECLARATORY JUDGMENT ACTION.

Plaintiff's extremely vague allegations relating to a takings claim cannot be heard by declaratory judgment. The remedy for a takings challenge, whether facial or as-applied, is compensation not the declaratory and injunctive relief sought by Plaintiffs. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005) (holding the Takings Clause of the Fifth Amendment "is designed not to limit the governmental interference with property rights *per se*, but rather to secure compensation in the event of otherwise proper interference amounting to a taking.") (emphasis in original). As such, the Court cannot hear any takings claims in this declaratory judgment action.

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B. THE AMENDMENT'S BAN ON TRANSFERRING LICENSES DOES NOT TAKE AWAY A RIGHT THAT PLAINTIFF EVER HAD.

All of Plaintiff's properties are currently licensed for use as short-term rentals, and the Amendment exempts Plaintiff, as a current license holder, from the cap. Plaintiff's Business Licenses, Exhibit No. 20. Accordingly, Plaintiff can continue to short-term rent its properties for as long as it owns the properties.

Nevertheless, Plaintiff implies that the Amendment interferes with a hypothetical future sale of the property because the business licenses cannot be transferred. As pointed out above, Plaintiff has never held the right to transfer business licenses, because they are not transferable and expire in a year. A regulation does not constitute a taking if the party's interests "were not part of his title to begin with." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027, 112 S.Ct. 2886 (1992); *see Wyatt v. United States*, 271 F.3d 1090, 1097 (Fed. Cir. 2001) ("[T]he existence of a valid property interest is necessary in all takings claims."); *Moskovic v. City of New Buffalo*, No. 1:21-CV-144, 2022 WL 16548948, at *21 (W.D. Mich. Oct. 31, 2022) (Plaintiffs never possessed a vested right to a permit, so a moratorium on short-term rental licenses did not create a taking.). Since Plaintiff never had the right to transfer its Short-Term Rental Business License, it cannot base a taking claim, or any claim, on the loss of this right that it never held.

C. THE TAKINGS CLAUSE DOES NOT PROTECT A SPECULATIVE LOSS OF PROFITS FROM A FUTURE HYPOTHETICAL SALE.

Analysis of the Takings Clause makes clear that a reasonable investment-backed expectation must be more than a speculative hope or an abstract need. *Ruckelshaus v. Monsanto Co.,* 467 U.S. 986, 1005, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984); *Quinn v. Bd. of Cty. Commissioners for Queen Anne's Cty., Maryland*, 862 F.3d 433, 442-43 (4th Cir. 2017); *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 737 S.E.2d 601, 618-22 (2013).

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In order to receive protection, a landowner's actions in the development of his land should rise beyond mere contemplated use or preparation. *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct.App. 2000). An anticipated development or use without concrete steps and an actual investment of funds into that anticipated development is a unilateral expectation, not an investment-backed expectation. *Dunes West*, 737 S.E.2d at 622-23.

A contemplated use of property by a landowner, such as a potential future sale, on the date an ordinance becomes effective precluding such use is not protected as a nonconforming use. *Daniels v. City of Goose Creek,* 314 S.C. 494, 497, 431 S.E.2d 256, 258 (Ct.App.1993); *F.B.R. Invs. v. Cty. of Charleston*, 303 S.C. 524, 527, 402 S.E.2d 189, 191 (Ct. App. 1991); *Friarsgate,* 349 S.E.2d at 893; R. Anderson, *American Law of Zoning 3d* Section 6.23 (1986).

Moreover, United States Supreme Court decisions sustaining land-use regulations "uniformly reject the proposition that diminution in property value, standing alone, can establish a taking." *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 131, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978) (citations omitted). "[L]oss of future profits - unaccompanied by any physical property restriction - provides a slender reed upon which to rest a takings claim." *Andrus v. Allard*, 444 U.S. 51, 66, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979). Courts have repeatedly found that losses in excess of 50% do not support a taking. *See, e.g.*, *Agins v. City of Tiburon*, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980) (no taking with an eighty-five percent reduction in value).

In short, the speculative future loss of profits from a hypothetical future sale cannot support a takings claim.

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D. SHORT-TERM RENTAL REGULATIONS ARE NOT TAKINGS.

The Takings Clause of the Fifth Amendment does not protect businesses from business regulations, and certainly not future businesses. The Takings Clause protects the assets of a business from a taking by the government, but it does not protect regulations on the activity of a business. The general right to do business is not a property interest cognizable under the Takings Clause. *Nekrilov v. City of Jersey City*, 45 F.4th 662, 669-70 (3d Cir. 2022) (ruling that short term rental regulations do not effectuate a taking). "The plaintiff's forward-looking right to pursue their short-term rental business is not cognizable under the Takings Clause." *Id.*

As the U.S. Supreme Court held in *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, while "[t]he *assets* of a business (including its good will) unquestionably are property, and any state taking of those *assets* is unquestionably a 'deprivation' under the Fourteenth Amendment .... business in the sense of *the activity of doing business*, or *the activity of making a profit* is not property in the ordinary sense." 527 U.S. 666, 675, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999); *see also Nekrilov v. City of Jersey City*, 528 F. Supp. 3d 252 (D.N.J. 2021), aff'd, 45 F.4th 662 (3d Cir. 2022) (dismissing takings claim based on short-term rental regulations); *Antietam Battlefield KOA v. Hogan*, 2020 WL 6777590, 2020 U.S. Dist. LEXIS 215250 (D. Md. Nov. 18, 2020) (inability to conduct business is not a taking); *AJE Enter. LLC v. Justice*, 2020 WL 6940381 at *5, 2020 U.S. Dist. LEXIS 222186 at *20 (N.D. W. Va. Oct. 27, 2020); *Savage v. Mills*, 478 F. Supp. 3d 16, 31 (D. Me. Aug. 7, 2020) ("To state a taking claim, it is not enough to allege that government conduct frustrated a business enterprise .... Takings jurisprudence is directed at government conduct that denies beneficial use of *property*, meaning things like legal interests in real or personal property, not the liberty interest to engage in business activity."); *Talleywhacker, Inc. v. Cooper*, 465 F. Supp. 3d 523, 541 (E.D. N.C. 2020) ("[T]he

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assertion of a 'general right to do business' has not been recognized as a constitutionally protected right."); *Tuchman v. Connecticut*, 185 F. Supp. 2d 169, 174–75 (D. Conn. 2002) (ability to engage in a business is not a federally protected property interest).

Recognizing a sweeping right to bring a takings claim for interference with a hypothetical future sale of a business would unreasonably broaden the scope of the Takings Clause so that it applied to any instance of business regulation, which the courts have steadfastly refused to do. *See In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 283 (4th Cir. 2007) ("The recognition of such a broad 'right to do business' would be akin to that recognized in *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905) and its progeny, which the Supreme Court has long since refused to recognize."); *Nekrilov*, 528 F. Supp.3d at 268 (applying to short-term rental regulation). Put another way, the activity of operating a short-term rental business is not a "stick" in the Plaintiff's bundle of property rights protecting by the Takings Clause of the Fifth Amendment. *Rick's Amusement, Inc. v. State*, 351 S.C. 352, 570 S.E.2d 155, 158 (2001).

Plaintiff hints at the same claims made by the landowners and potential renters in *Nekrilov*, who were seeking compensation for short-term rental regulations. The Court of Appeals disposed of all of those claims in a thorough analysis.

Plaintiff has alleged that it lost all beneficial use of its properties. This is demonstrably false. Plaintiff can continue using all of its properties as it has in the past: as a short-term rental. Plaintiff can also 1) occupy the property, 2) rent it long term, 3) rent it short-term as an owner occupied property, or 5) sell the property. Since the property retains significant value, no taking has occurred. *Nekrilov*, 45 F.4th at 670-71.

Any claim by Plaintiff that it cannot make as much money on the future rental of its properties is completely irrelevant. The central question for a total taking is not whether the

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regulation allows operation of the property as 'a profitable enterprise' for the owners, but whether others 'might be interested in purchasing all or part of the land' for permitted uses. *Id.* (quoting *Park Ave. Tower Assocs. v. City of New York*, 746 F.2d 135, 139 (2d Cir. 1984). Because the purchased properties may still be put to multiple economically viable uses, there has been no total taking of the purchased properties.

Put another way, any interest to operate a business on Plaintiff's property is, at best, just one of the bundle of property rights that the plaintiffs hold in their property. *Andrus v. Allard*, 444 U.S. 51, 65–66, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979) (no taking where government seizes only one "strand" in the bundle of property rights; prohibition on business of selling artifacts not a total taking where owners "retain the rights to possess and transport their property, and to donate or devise" it); *see also Penn Cent.*, 438 U.S. at 130–31, 98 S.Ct. 2646 (" 'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated .... [t]his Court focuses rather both on the character of the action and the nature and extent of the interference with rights in the parcel as a whole ...."). "There is no total taking where the government seizes only one strand in the "bundle" of property rights." *Nekrilov*, 45 F.4th at 671 (citing *Andrus*, 444 U.S. at 66). Here the single strand is the use of the properties as short-term rentals. The loss of that single strand is not a compensable taking.

The Third Circuit in *Nekrilov* also examined the landowner complaints pursuant to a regulatory takings analysis under *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978), concluding that no regulatory taking had occurred. One whose property has not been deprived of all economically beneficial use may still be entitled to compensation if the government action constitutes a partial taking under the *Penn Central* factors. The factors are: "(1) the economic impact of the regulation on the claimant; (2) the extent to which

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the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action." *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943, 198 L. Ed. 2d 497 (2017). Although the test is flexible, the *Penn Central* "inquiry turns in large part, albeit not exclusively, upon the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests." *Lingle*, 544 U.S. at 540. The *Penn Central* takings test serves to "identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539.

Applying these factors, the Court in *Nekrilov* concluded that no regulatory taking arose from the short-term rental regulations. Again, lost future profits is a slender reed upon which to rest a takings claim and are not an appropriate measure of economic impact under *Penn Central*. This is particularly true when owners fail to account for other potentially profitable uses. Compensation is typically only required in cases where the value of the property has been drastically reduced. "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 67 L.Ed. 322 (1922). The inability to sell a short-term rental business does not equate to such a drastic reduction in value. *Nekrilov*, 45 F.4th at 673-74.

Investment-backed expectations are reasonable only if they take into account the power of the state to regulate in the public interest. *Id.* The plaintiffs do not suffer a taking requiring compensation merely because "they have been denied the ability to exploit a property interest that they heretofore had believed was available for development." *Penn Cent.*, 438 U.S. at 130, 98 S.Ct. 2646. Nor does the Takings Clause mean that "once a property has been devoted to a

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particular use, the owner has a reasonable expectation of being able to continue with that use absent the payment of compensation." *Nekrilov*, 45 F.4th at 674-75.

Finally, with regards to the nature of the government action, a taking is more "readily ... found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn. Cent.,* 438 U.S. at 124, 98 S.Ct. 2646 (quotation marks omitted). This is especially true when the regulation concerns housing. The Supreme Court has "consistently affirmed that States have broad power to regulate housing conditions in general." *Yee v. City of Escondido*, 503 U.S. 519, 528, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992) (citation omitted). In particular, courts are more likely to uphold a regulation that "applies generally to a broad class of properties." *Nekrilov*, 45 F.4th at 677 (quoting *Rogin v. Bensalem Tp.*, 616 F.2d 680, 690 (3d Cir. 1980)).

Numerous other courts have ruled, like *Nekrilov*, that short-term rental regulations, particularly those that grandfather in existing licenses, do not amount to an unconstitutional taking. *See, e.g., Mogan v. City of Chicago*, No. 21 C 1846, 2022 WL 4181783 (N.D. Ill. Sept. 12, 2022); *Selvaggi v. Borough of Point Pleasant Beach*, No. CV 22-00708 (FLW), 2022 WL 1664623 (D.N.J. May 25, 2022); *Short Term Rental Owners Ass'n of Georgia, Inc. v. Cooper*, 515 F. Supp. 3d 1331 (N.D. Ga. 2021), *aff'd sub nom. Heyman v. Cooper*, 31 F.4th 1315 (11th Cir. 2022) (complete ban on short-term rentals not a taking); *Wallace v. Town of Grand Island*, 184 A.D.3d 1088, 126 N.Y.S.3d 270 (2020) (law banning all rentals of property not occupied by owner was not a taking); *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (Ct. App. 1991) (complete ban on short term rentals not a taking).

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E. THE CASES CITED BY PLAINTIFF DO NOT TAKE AWAY FOLLY BEACH'S RIGHT TO REGULATE SHORT-TERM RENTAL BUSINESSES.

Against this wealth of authority, Plaintiff cites to *Painter v. Town of Forest Acres*, 231 S.C. 56, 60, 97 S.E.2d 71, 73 (1957), to attempt to manufacture a right that does not exist. The Court in *Painter* was critical of extreme business regulations that destroyed all a business's value. Later cases interpreting *Painter* have made clear that the case does not limit or abrogate the right of government to regulate businesses:

> Despite appellants' arguments to the contrary, *Painter* does not stand for the proposition that City may never restrict the operating hours of a business within its jurisdiction. No one has an unfettered right to pursue a business detrimental to the public health, safety, and welfare. *See Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 170–71, 577 S.E.2d 428, 435 (2003) (county ordinance requiring a 1,500–foot setback for sexually oriented businesses based on the rationale of combating secondary effects of those businesses was constitutional); *Curtis v. State*, 345 S.C. 557, 573, 549 S.E.2d 591, 599 (2001) (statute making it unlawful to defraud a drug test furthers the public purpose of ensuring a drug-free workplace, which is a legitimate exercise of the State's police powers in regulating public safety and welfare, and outweighs any legitimate interest of the business); *Conway v. City of Greenville*, 254 S.C. 96, 101, 173 S.E.2d 648, 650 (1970) (while not unlimited, a municipality does have the authority in the exercise of the police power to enact zoning ordinances restricting the use of privately owned property).

Denene, Inc. v. City of Charleston, 359 S.C. 85, 97, 596 S.E.2d 917, 923 (2004).

Similarly, in *Zaarari v. City of Austin*, 615 S.W.3d 172 (Tx.Ct.App. 2019), the Texas Court of Appeals invalidated a complete and retroaction ban on non-owner occupied short-term rentals on the grounds that it violated Texas's ban on retroactive laws. *Id.* at 188-92. Obviously, Texas's retroactivity laws do not apply in South Carolina. More importantly, the Amendment 1) does not ban all non-owner occupied short-term rentals, and 2) grandfathers in all existing licenses. So, there is no question of retroactivity here. The Amendment only applies prospectively.

The law is clear that government has the right to regulate businesses, and such regulations do not effectuate a taking. The Amendment creating a cap on short-term rental licenses looks

nothing like a physical invasion of Plaintiff's land by the government. It is instead a public program adjusting the benefits and burdens of economic life for the public good. These interests far outweigh Plaintiff's perceived interest in profiting from a future sale of a short-term rental property. Certainly, the Amendment is not a compensable taking, either as a *per se* taking or a regulatory taking under *Penn Central*.

CONCLUSION

Although zoning ordinances cannot be adopted by referendum, no such ban applies to business license ordinances. The Petition and Amendment to the City's Business License Code are undoubtedly business license ordinances. The Amendment is codified in the City's Business License Code and makes no changes to the City's Zoning Code. The Amendment placed a cap on the number of Short-Term Rental Business Licenses that the City can issue.

This is a business regulation, not a zoning ordinance. It does not rezone Plaintiff's property or change the zoning rules for Plaintiff's property. Plaintiff (or any future buyers) can still operate a short-term rental on its properties, they are simply limited to Owner-Occupied Short-Term Rentals if the cap has been exceeded. In short, the Proposed Ordinance has no impact on Plaintiff's property. As such, it is not a zoning ordinance and is not barred by the ruling in *I'On*.

Based on the foregoing, Defendant would ask that the Court grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment.

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Respectfully submitted,

/s/ Joseph C. Wilson, IV

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March 31, 2023
Folly Beach, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by electronic service in the manner prescribed by the applicable Rule of Civil Procedure.

This 31st day of March, 2023.

/s/ Joseph C. Wilson, IV

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EXHIBIT NO. 1

STATE OF SOUTH CAROLINA	)	**Petition**
	)	**To Limit Investment Short Term Rental**
CITY OF FOLLY BEACH	)	**Business Licenses to a maximum of 800**

To the Mayor and City Council of Folly Beach:

We the undersigned voters of the City of Folly Beach request that the City adopt the following ordinance: TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800. This Petition is submitted pursuant to the South Carolina Code of Laws, section 5-17-10, *et seq*.

Whereas the unrestricted growth of the number of *investment short term rentals* within the City of Folly Beach:

- lowers the quality of life for its residents
- stresses the city's infrastructure & environment
- places extra ordinary burdens on the city's public services sector and
- poses an existential threat to the community.

Whereas the requisite number of voters have affixed their names to this PETITION TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800, pursuant to South Carolina Code of Laws, section 5-17-10 et seq;

NOW THEREFORE:

We the undersigned request that the following additions be inserted into Chapter 117 of the Folly Beach Code of Ordinances:

DEFINITIONS:

1. ***Investment Short Term Rental (ISTR)*** - A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.

2. ***Owner-Occupied Short Term Rental (OSTR)*** – A property and/or dwelling unit, in whole or part, licensed for short term rentals whose owner claims the licensed property to be the owner's primary residence as evidenced by: (a) current S.C. drivers license or S.C. identification card, (b) the address where they are, or may be, enrolled and registered to vote in local, state and federal elections and (c) the physical address used for the purpose of filing local, state and federal income taxes.

SHORT TERM RENTAL BUSINESS LICENSES:

(A) The City is authorized to issue two classes of short term rental business licenses:
(1) Investment Short Term Rental business license, and
(2) Owner-Occupied Short Term Rental business license.

(B) Owner Occupied Short Term Rental Business License:
There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.

(C) Investment Short Term Rental CAP

(1) The maximum number of permitted Investment Short Term Rental business licenses, city wide, shall be no more than 800, henceforth referred to as the CAP.
(a) Upon enactment the CAP shall be set at 800.

(2) No New Investment Short Term Rentals shall be permitted unless the total number of Investment Short Term Rentals is below the CAP.

(a) Exception : After enactment, all existing Investment Short Term Rental business License holders in good standing may continue to renew annually, even if the initial number of Investment Short Term Rentals exceeds the CAP.

(3) Investment Short Term Rental Wait List: If demand for Investment Short Term Rental business licenses exceeds the CAP a wait list will be established and maintained by the City of Folly Beach.
(a) When the number of allowable Investment Short Term Rental business licenses falls below the CAP, a license shall be offered by US Mail to the next qualified applicant on the wait list.
(b) If the applicant fails or neglects to complete an application for an Investment Short Term Rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.

(D) Non- transferable

(1) Investment Short Term Rental wait list status terminates upon transfer of property and is non-transferable.
(2) Investment Short Term Rental business licenses terminate upon transfer of property and are non-transferable.
(3) Owner Occupied Short Term Rental business licenses terminate upon transfer of property and are non- transferable.

EXHIBIT NO. 2

CHAPTER 117: SHORT TERM RENTALS

Section

117.01 Purpose, applicability, and definitions

117.02 Short term rental business licenses

117.03 License, registration, and tax requirements

117.04 Additional requirements for short term rentals

Cross-reference:

Noise from short term rental properties, see § 131.31

§ 117.01 PURPOSE, APPLICABILITY, AND DEFINITIONS.

(A) The purpose of this chapter is to regulate the use of residential units as short term rentals in order to:

(1) Protect the integrity of the city's neighborhoods and the quality of life of its citizens;

(2) Establish a system to track the short term rental inventory in the city;

(3) To protect the health and safety of occupants of short term rental units;

(4) To ensure a level playing field for individuals in the short term rental market; and

(5) To protect the residential character of the residential districts of the city.

(B) The following definitions apply:

DESTINATION CLUBS. Destination or private vacation clubs ("destination clubs") are classified as private and/or exclusive membership organizations or commercial businesses primarily engaged in providing short term overnight accommodations and related services for its club members with non-ownership interest who seek alternative options to standard vacation home rentals. ***DESTINATION CLUBS*** typically own or lease properties from the owners on a long term basis, provide those properties in a variety of locations to its members on a short term basis, and model a membership access structure where its members purchase membership levels granting access to properties and personalized services. Properties offered by destination clubs to a member for less than 30 days are considered short term rentals whether the destination club is an owner of record or a lessee. All references to "owners" in this chapter apply to destination clubs.

HOUSE EXCHANGE PROGRAMS. The occasional occupancy of a residential occupancy assessed by Charleston County at a 4% property tax rate by someone other than the owner of the residence while the owner is temporarily absent from the residence, and no monetary compensation is paid to the owners for such occupancy. ***HOUSE EXCHANGE PROGRAMS*** are not short term rentals.

INVESTMENT SHORT TERM RENTAL (ISTR). A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.

OWNER-OCCUPIED SHORT TERM RENTAL (OSTR). A property and/or dwelling unit, in whole or part, licensed for short term rentals, whose owner claims the licensed property to be the owner's primary residence as evidenced by:

(a) Current S.C. drivers license or S.C. identification card;

(b) The address where they are, or may be, enrolled and registered to vote in local, state and federal elections; and

(c) The physical address used for the purpose of filing local, state and federal income taxes.

TIME SHARES. "Vacation time sharing plans" as defined in S.C. Code § 27-32-10(9) are not short-term rentals. However, any "vacation time sharing lease plan" as defined in S.C. Code § 27-32-10(8) that is less than three years is considered a short term rental. "Vacation multiple ownership interests" as defined in S.C. Code § 27-32-250(1) are not short term rentals.

RENTAL OCCUPANT. Any person who, in exchange for compensation paid, occupies a dwelling unit for less than 30 days.

SHORT TERM RENTALS. Residential dwellings, or any portion thereof, rented for less than 30 days and used in a manner consistent with the residential character of the dwelling. Tourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered ***SHORT TERM RENTALS***.

(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 027-22, passed 9-13-22; Am. Ord. 033-22, passed - -)

§ 117.02 SHORT TERM RENTAL BUSINESS LICENSES.

(A) The city is authorized to issue two classes of short term rental business licenses:

(1) Investment short term rental business license; and

(2) Owner-occupied short term rental business license.

(B) *Owner-occupied short term rental business license.* There will be no limit on the number of owner-occupied short term rental business licenses issued.

(C) *Investment short term rental CAP.*

(1) (a) The maximum number of permitted investment short term rental business licenses city-wide shall be no more than 800, henceforth referred to as the CAP.

(b) Upon enactment the CAP shall be set at 800.

(2) (a) No new investment short term rentals shall be permitted unless the total number of investment short term rentals is below the CAP.

(b) *Exception.* After enactment, all existing investment short term rental business license holders in good standing may continue to renew annually, even if the initial number of investment short term rentals exceeds the CAP.

(3) *Investment short term rental wait list.* If demand for investment short term rental business licenses exceeds the CAP, a wait list will be established and maintained by the City of Folly Beach.

(a) When the number of allowable investment short term rental business licenses falls below the CAP, a license shall be offered by U.S. Mail to the next qualified applicant on the wait list.

(b) If the applicant fails or neglects to complete an application for an investment short term rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.

(D) *Non-transferable.*

(1) Investment short term rental wait list status terminates upon transfer of property and is non-transferable.

(2) Investment short term rental business licenses terminate upon transfer of property and are non-transferable.

(3) Owner-occupied short term rental business licenses terminate upon transfer of property and are non- transferable.

(Ord. 033-22, passed - -)

§ 117.03 LICENSE, REGISTRATION, AND TAX REQUIREMENTS.

Any owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.

(A) *Business license.* A business license must be obtained and renewed annually by the submittal of a form and fee as established by the city for each residential dwelling unit or portion thereof offered as a short term rental

(1) No business license shall be issued for the rental of a residential unit which is planned or under construction until a certificate of occupancy is issued for the unit.

(2) A business license shall only be issued to owners of a residential unit. Lessees of residential dwelling units may not apply for a business license to rent the unit.

(3) A designated agent may apply for a short term rental business license on behalf of an owner. An application for a business license submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner including name, address, phone number, email, and any other information as required on the application form.

(B) *Rental registration permit.* A rental registration permit must be obtained and renewed annually by the submittal of a form and fee as established by the city for each residential dwelling unit or portion thereof offered as a short term rental.

(1) *Annual registration.* The rental registration permit application shall be completed prior to June 1 of each year.

(a) No new business license to operate a short term rental shall be issued prior to the approval of a rental registration permit.

(b) Renewals of valid prior year business licenses shall be allowed prior to the approval of a rental registration permit. Failure to complete a rental registration permit application within 30 days of the business license renewal date shall be grounds for revocation of the license.

(2) *Annual fee.* The fee for a rental registration permit shall be set by City Council and shall be reviewed periodically.

(3) A rental registration permit shall only be issued to owners of a residential unit. Lessees of a residential dwelling unit may not apply for a rental registration permit.

(4) A designated agent may apply for a rental registration permit on behalf of an owner. An application for a rental registration permit submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner, including name, address, phone number, email, and any other information as required on the application form.

(5) *Change in registered information.* The owner or designated agent of a rental dwelling already registered with the city

shall re-register within 60 days after any change occurs in the registration information. There shall be no additional fee upon change of registration information except that a new owner of a registered dwelling, upon application for a new business license, shall re-register the dwelling and pay the appropriate fee within 60 days of assuming ownership.

(6) *Information required.* Application for rental registration permit shall contain the following information:

(a) The street address of the rental dwelling unit;

(b) The unit number if applicable;

(c) The number of bedrooms in each rental dwelling unit;

(d) The number of parking spaces provided on site as well as a site plan showing the location of all on site parking spaces. One on site parking space must be provided for each bedroom being rented. This requirement shall not apply to:

1. New and renewed permits issued to residential units located in a multi-family housing development.

2. New and renewed permits issued to residential units approved by the city for resident only parking signs in the right-of-way.

3. Renewed permits issued to residential units with a valid business license and rental registration permit before September 13, 2022. Rental registration permits for such properties may be renewed without the required parking until such time as the ownership of the property changes.

(e) The maximum overnight occupancy of each rental dwelling unit, which shall not exceed two persons per bedroom, plus two additional people per rental dwelling unit, except as allowed under an exception under § 164.03-01(C);

(f) The type of wastewater system (septic or sewer). If the property is serviced by a septic system, the owner must certify that the system is protected from parking;

(g) The name, mailing address, business phone number, personal phone number, and business address of the owner and local agent;

(h) The physical address and email address where the owner and local agent will accept notices and orders from the city and acknowledgment that service by U.S. Mail and/or transmission to the provided email addresses will constitute acceptable service of any notice, notice of violation, ordinance summons, or ticket;

(i) Certification that the owner has read applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts;

(j) Certification that a copy of the parking diagram provided to the city for the property as well as a summary of applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented;

(k) Certifications that tenants listed on any rental agreement shall receive a copy of the parking diagram provided to the city for the property as well as a summary of applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented. The summary of applicable ordinances shall be in a form determined by the city, and made available to all owners of rental property;

(l) Proof of payment from the owner or designated agent for payment of local, county, and state taxes due on short term rental accommodations;

(m) Certification that the owner is aware that short term rental licensees shall be subject to strikes issued against the license when the owner, agent, occupant, or guest has been convicted of any violation of the requirements of this chapter or other city ordinances related to the use of the property as a short term rental, and that three strikes during any rolling twelve-month period can result in suspension, revocation, or non-renewal of the license;

(n) Certification by the owner verifying the presence of smoke alarms, carbon monoxide monitors, fire extinguishers, the number of bedrooms, the number of parking spaces, the provision of trash receptacles, the posting of address and house numbers, and posting of rules and regulations, and, if present, that sprinklers are operational; and

(o) Documentation in the form of Charleston County property records or a certificate of occupancy confirming the number of bedrooms offered for rent.

(7) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be responsible for operating the rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner, and any notice served on the agent shall be deemed to have been served upon the owner of record.

(a) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

(b) Non owner agents must be licensed by the State of South Carolina as an attorney, real estate agent, broker in

charge, or property manager. Employees under the direct supervision of attorneys, real estate agents, brokers in charge, or property managers licensed by the State of South Carolina may be designated as local agents.

(c) The agent shall be required to be able to physically respond to the site upon notification from the city within 60 minutes in case of emergency or need by the city for entry into the property.

(8) *More than one owner or ownership by entity.* Where more than one person has an ownership interest in a short term rental, the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required shall be provided for the organization owning the rental dwelling, and for the president, general manager, or other chief executive officer of the organization.

(C) *Taxes.* Owners of short term rentals are subject to local, county, and state taxes, including, but not limited to, sales, use, and accommodations taxes, and are liable for the payment thereof as established by state law and the city code of ordinances.

(D) *Violations and penalties.*

(1) *Violations.* Violations of this chapter include but are not limited to:

(a) Operating a short term rental without complying with the requirements of this chapter and the city code of ordinances;

(b) Advertising a property as being available as a short term rental without first complying with the requirements of this chapter;

(c) Operating a short-term rental without a business license, registration permit, and accommodations tax account;

(d) Advertising a short-term rental without listing the business license number and rental registration permit number;

(e) Operating a short-term rental in such a manner that individual rooms are rented at the same time under separate rental contracts;

(f) Advertising a short term rental as being available for more overnight occupants than have been permitted pursuant to this chapter;

(g) Expanding the allowable occupancy of a short term rental without obtaining a new permit;

(h) Advertising more short term rental units on a property than have been permitted pursuant to this chapter. For example, advertising a single-family dwelling as accommodating multiple short term rentals is not permitted;

(i) Advertising a property as a short term rental or “event house” for events or parties with more than 25 people in attendance;

(j) Offering a short-term rental in any zoning district for fewer than two consecutive nights;

(k) Failure to post the business license number, rental registration permit number, allowable overnight occupancy, and city approved beach rules prominently within a rental unit;

(l) Failure to obtain a rental registration permit within 30 days of renewing a business license, failure to provide accurate information for the registration of rental dwellings, failure to provide information required by the application form;

(m) Failure to complete a new rental registration permit application within 60 days of a change in ownership;

(n) Failure of the designated agent listed on the rental registration permit to respond physically to the site within 60 minutes of notification from the city of an emergency;

(o) Failure to maintain, and provide to the city, any and all information required in §117.02(A);

(p) Failure to provide tenants listed on any rental agreement information as required under §117.02(B);

(q) Failure to inspect and repair a failed septic system as required under §55.07;

(r) Operating a business out of a short term rental or otherwise using a short term rental for non-residential use except for allowable home occupations, e-commerce, and remote work; and

(s) Operating a short term rental that has received three strikes within any twelve-month rolling period.

1. The number strikes shall be reset upon a change of ownership that results in no overlap with prior common ownership.

2. For the purpose of determining the total number of strikes, all convictions stemming from violations occurring within a single rental contract period shall be considered one instance. In no case shall strikes exceed one per rental contract period.

3. All strikes issued prior to the date of this section shall not be counted for the purposes of license revocation.

(2) *Penalties.* No permit may be issued or approved unless the requirements of this chapter, or any ordinance adopted pursuant to it, are complied with. A violation of this chapter may result in the following penalties:

(a) Any person violating any provision of this chapter shall be deemed guilty of a civil offense and shall be subject to a fine of up to $500 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violations shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this chapter.

(b) Denial, revocation, suspension, or non-renewal of a business license pursuant to §§110.14 or 110.15 and in accordance with the appeal procedures set forth in § 110.16.

(c) Revocation, suspension, or non-renewal of the short term rental business license, in accordance with the appeal procedures set forth in § 110.16, for three strikes during a rolling twelve-month period.

1. The license will be assessed a strike when the owner, agent, occupant, or guest of the property has been convicted of any violation of the requirements of this chapter or any other city ordinances related to the use of the property as a short-term rental, including but not limited to noise, trash, parking, litter, dune protection, animals at large, and sea turtle violations and when the registered agent of the property is given notice of the strike as set forth herein.

2. For the purpose of determining the total number of strikes, each strike issued upon conviction shall be considered in effect on the date of the original offense and all convictions related to offenses occurring within a single rental contract period shall be considered one strike. In no case shall strikes exceed one per rental contract period.

3. Strikes will re-set upon the transfer of the property.

4. The city will provide notice of each strike to the registered agent of the property as follows:

A. First strike: a description of the violationand resultant conviction, and a warning that progressive action shall be taken by the city in the case of further violations.

B. Second strike: a description of the violation and resultant conviction, and a warning that the city shall initiate revocation of the rental license in the case of further violations.

C. Third strike: a description of the violation and resultant conviction, and notice of the initiation of license revocation procedures.

(d) Any violation of a noise ordinance that occurs on the property will result in a notice that the owner is strongly encouraged to install noise monitoring.

(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 32-19, passed 11-12-19; Am. Ord. 033-21, passed 11-9-21; Am. Ord. 027-22, passed 9-13-22)

§ 117.04 ADDITIONAL REQUIREMENTS FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep the following for city inspection and copying for a period of one year:

(1) The name, address, and other contact information of each signatory on the rental agreement;

(2) A copy of the city approved rental regulations summary, signed by each signatory of the rental agreement.

(3) A document signed by the owner and/or agent responsible for renting the dwelling, certifying the number of persons intended to occupy the dwelling.

(4) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.

(B) The owner and/or agent shall provide the following for each person signing a rental agreement as a responsible party for a short term rental:

(1) The address of the short term rental and emergency contact numbers;

(2) The name and contact information for the owner or designated agent; and

(3) A copy of the parking diagram provided to the city for the property as well as a copy of the city's rules and regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts.

(C) Each residential dwelling unit may contain only one short term rental. Individual rooms in short term rentals may not be rented under separate contracts at the same time. For example, a single family home or individual multi-family unit may only be rented as a single short term rental under one contract.

(D) Any events held on the premises of a short term rental shall meet the following requirements:

(1) Must follow any applicable special event notification rules established by the city in §153.05 for events on private property;

(2) Shall be subject to all applicable provisions of the noise regulations in §§131.30 through 131.35; and

(3) May not feature mobile food trucks, carts, or other outdoor retailers offering products for sale or in exchange for donations. Caterers are allowed at events on the premises of short term rentals.

(E) All special events held after October 11, 2022, on the premises of a short term rental shall meet the following requirements:

(1) May not exceed 25 people; and

(2) May not include outdoor amplified music, including bands, deejays, music broadcast through speakers and electronic musical instruments.

(3) These requirements do not apply to events hosted by the owner of the property for which the owner is on site for the duration the event, the owner has completed the required special event notification, and for which no compensation has been paid for the event or the use of the house.

(Ord. 26-17, passed 1-9-18; Am. Ord. 027-22, passed 9-13-22)

EXHIBIT NO. 3

CITY OF FOLLY BEACH

1st Reading: March 14th, 2023
2nd Reading:

Introduced by: Mayor Goodwin
Date: March 14th, 2023

ORDINANCE 003-23

AN ORDINANCE AMENDING THE FOLLY BEACH CODE OF ORDINANCES CHAPTER 117 (SHORT TERM RENTALS) BY ADOPTING TECHNICAL AMENDMENTS TO THE LANGUAGE IMPLEMENTING THE SHORT-TERM RENTAL CAP AS APPROVED BY SPECIAL ELECTION

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that Folly Beach Code of Ordinance be amended as follows:

NOTE: ~~Deleted material struck through~~, new material shown in red,

§ 117.01 PURPOSE, APPLICABILITY, AND DEFINITIONS.

(A) The purpose of this chapter is to regulate the use of residential units as short term rentals in order to:

(1) Protect the integrity of the ~~c~~City's neighborhoods and the quality of life of its citizens;
(2) Establish a system to track the short term rental inventory in the ~~c~~City's;
(3) To protect the health and safety of occupants of short term rental units;
(4) To ensure a level playing field for individuals in the short term rental market; and
(5) To protect the residential character of the residential districts of the ~~c~~City's.

(B) The following definitions apply:

DESTINATION CLUBS. Destination or private vacation clubs ("destination clubs") are classified as private and/or exclusive membership organizations or commercial businesses primarily engaged in providing short term overnight accommodations and related services for its club members with non-ownership interest who seek alternative options to standard vacation home rentals. ***DESTINATION CLUBS*** typically own or lease properties from the owners on a long term basis, provide those properties in a variety of locations to its members on a short term basis, and model a membership access structure where its members purchase membership levels granting access to properties and personalized services. Properties offered by destination clubs to a member for less than 30 days are considered short term rentals whether the destination club is an owner of record or a lessee. All references to "owners" in this chapter apply to destination clubs.

DWELLING UNIT. A structure, or portion thereof, providing complete living facilities for a single family including a complete kitchen**.** One structure may contain multiple dwelling units with different property tax classifications.

HOUSE EXCHANGE PROGRAMS. The occasional occupancy of a residential occupancy assessed by Charleston County at a 4% property tax rate by someone other than the owner of the residence while the owner is temporarily absent from the residence, and no monetary compensation is paid to the owners for such occupancy. ***HOUSE EXCHANGE PROGRAMS*** are not short term rentals.

INVESTMENT SHORT TERM RENTAL BUSINESS LICENSE (ISTR) - A ~~dwelling unit~~ license~~d~~ issued ~~for short term rentals,~~ for a dwelling unit that is not the legal residence of the owner to be used as a short term rental. ~~whose owner does not claim the licensed property to be their primary residence.~~

LEGAL RESIDENCE. A dwelling unit assigned a four percent property tax ratio by the Charleston County Assessor's Office under the requirements of SC Code 12-43-220.

RENTAL OCCUPANT. Any person who, in exchange for compensation paid, occupies a dwelling unit for less than 30 days.

OWNER-OCCUPIED SHORT TERM RENTAL (OSTR) BUSINESS LICENSE – A ~~property and/or dwelling unit, in whole or part,~~ license~~d~~ issued ~~for short term rentals whose owner claims the licensed property to be the owner's primary residence as evidenced by: (a) current S.C. drivers license or S.C. identification card, (b) the address where they are, or may be, enrolled and registered to vote in local, state and federal elections and (c) the physical address used for the purpose of filing local, state and federal income taxes.~~ for a dwelling unit that is the legal residence of the owner to be a used as short term rental.

SHORT TERM RENTALS. Residential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling. Tourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered ***SHORT TERM RENTALS***.

TIME SHARES. "Vacation time sharing plans" as defined in S.C. Code § 27-32-10(9) are not short-term rentals. However, any "vacation time sharing lease plan" as defined in S.C. Code § 27-32-10(8) that is less than three years is considered a short term rental. "Vacation multiple ownership interests" as defined in S.C. Code § 27-32-250(1) are not short term rentals.

§ 117.02 SHORT TERM RENTAL BUSINESS LICENSES.

(A) The City ~~is authorized to~~ shall issue ~~two classes of short term rental business licenses: (1)~~ Investment Short Term Rental business license~~s~~, and ~~(2)~~ Owner-Occupied Short Term Rental business license~~s~~.

(B) ~~Owner Occupied Short Term Rental Business License:~~ There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.

(C) ~~Investment Short Term Rental CAP.~~ ~~(1)~~ The maximum number of ~~permitted~~ Investment Short Term Rental business licenses issued~~, city wide,~~ shall be ~~no more than~~ 800, henceforth referred to as the ~~CAP~~ cap.

~~(a) Upon enactment the CAP shall be set at 800.~~

~~(2)~~ (1) No New Investment Short Term Rental~~s~~ business license shall be ~~permitted~~ issued unless the total number of Investment Short Term Rental~~s~~ business licenses is below the ~~CAP~~ cap.

~~(a)~~ (2) ~~Exception: After enactment, all~~ Any existing Investment Short Term Rental business ~~L~~license issued prior to February 7, 2023 ~~holders~~ which remains in good standing may continue to be renewed annually, even if the ~~initial~~ number of Investment Short Term Rental~~s~~ business licenses exceeds the ~~CAP~~ cap.

(3) ~~Investment Short Term Rental Wait List: If demand for~~ When the number of Investment Short Term Rental business licenses ~~exceeds~~ falls below the ~~CAP~~ cap a wait list will be established and maintained by the City ~~of Folly Beach~~. ~~(a) When the number of allowable Investment Short Term Rental business licenses falls below the CAP, a~~ New license~~s~~ shall be offered ~~by US Mail to the next qualified applicant on the wait list~~ to applicants according to procedures adopted by City Council.

~~(b) If the applicant fails or neglects to complete an application for an Investment Short Term Rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.~~

(D) Non- transferable.

(1) Investment Short Term Rental license wait list status terminates upon transfer of property and is non-transferable.

(2) Investment Short Term Rental business licenses terminate upon transfer of property and are non-transferable.

(3) Owner Occupied Short Term Rental business licenses terminate upon transfer of property and are non- transferable.

(4) Owner Occupied Short Term Rental business licenses terminate upon loss of four percent property tax assessment status and are non- transferable.

RATIFIED this _____ day of _____ 2023, at Folly Beach, South Carolina, in City Council duly assigned.

ATTEST:

_____ _____

Municipal Clerk Tim Goodwin, Mayor

EXHIBIT NO. 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-0264
FOLLY EAST INDIAN CO., LLC,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF AARON POPE
vs.	)	
	)	
CITY OF FOLLY BEACH,	)	
	)	
Defendant.	)	
	)	

COMES NOW, Aaron Pope, and swears or affirms under the penalty of perjury that:

1. I am older than eighteen years of age and am competent to make this Supplemental Affidavit. The statements in this Supplemental Affidavit are based on my own personal knowledge.

2. I started working for the City of Folly Beach in 2002, and, as part of my employment, I have learned a great deal about the City's operations and the island in general. I am currently the City Administrator, having served in the role for over two years. Prior to serving in this capacity, I served at various times, sometimes concurrently, as Zoning Administrator (approximately 15 years), Business License Official (approximately 10 years), and Deputy Administrator (approximately 5 years).

3. In all these roles, I have been involved in issues related to the City's efforts to manage short-term rentals.

REGULATION OF SHORT-TERM RENTALS ON FOLLY BEACH

4. Folly Beach has always regulated the licensing of short-term rentals through its Business License Ordinance. Folly Beach's Business License Ordinance has never been a part of the City's Zoning Code and has never been adopted or amended in accord with the South Carolina

Comprehensive Planning Act. To my knowledge, no one has ever suggested that the City has to comply with the South Carolina Comprehensive Planning Act to adopt or amend the City's Business License Ordinance. Indeed, South Carolina recently passed the Business License Tax Standardization Act, which required all municipalities in the State to adopt standardized provisions to their business license ordinances. Neither the State nor the Municipal Association of South Carolina, which prepared the model business license ordinance based on the Standardization Act, has ever suggested that cities must comply with the Comprehensive Planning Act in adopting the standardized business license ordinances required by State law. Neither the Business License Code nor the Amendment adopted by Petition and Referendum amended the Zoning Code. The City's Zoning Code continues to allow short-term rentals as a permitted use in all zoning districts in the City where residential use is allowed. Only the number of rental licenses is regulated by the cap. Should any property become eligible for a license under the cap, the use remains allowable.

5. When I began work with business licenses (approximately 2007), the City required a business license for all owners who rented their property. On September 28 2010, Ordinance 19-10 established further requirements for obtaining a business license to rent property on a short term basis by requiring an additional rental registration in addition to requiring a business license. As such, the ordinance was codified as a business license regulation, not a zoning ordinance. It was originally codified as Chapter 116: Short Term Rentals, which is part of Title XI: Business Regulations. The City's Zoning Ordinance is codified as Title XV: Land Use.

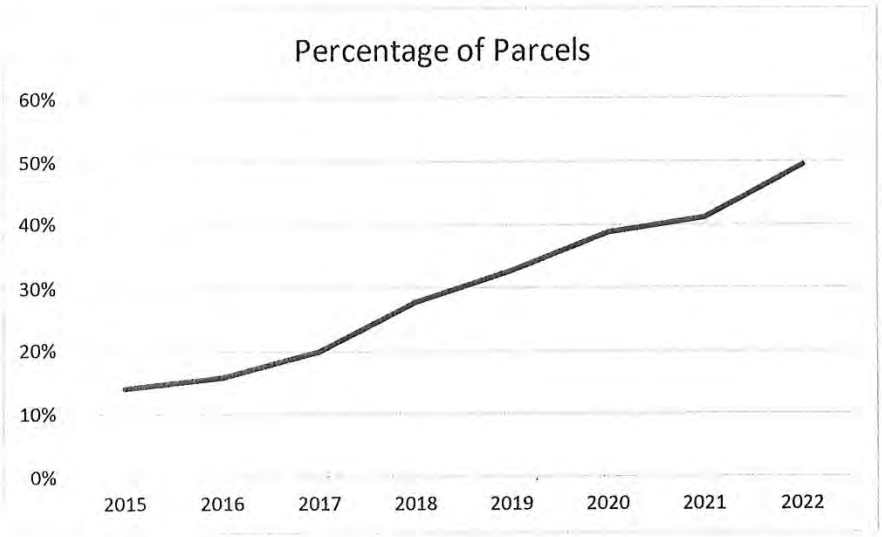
6. Since 2010, and through several amendments, the City has continued to regulate short-term rentals through its business license ordinances and not as a zoning ordinance. It was renumbered as Chapter 117: Short Term Rentals in 2017. The short-term rental ordinances have never been adopted in compliance with the South Carolina Comprehensive Planning Act, and, to

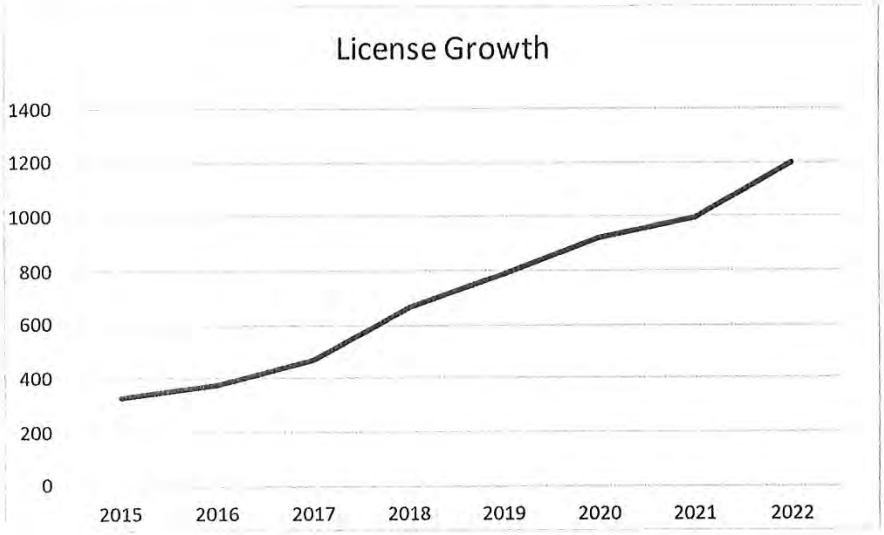
my knowledge, no one has ever complained to the City that we should have been adopting these business regulations as part of our zoning code.

7. In 2018, the City amended Chapter 117: Short Term Rentals to address various nuisance/quality of life issues including noise and special events as well as changes to licensing and registration requirements. Although the ordinance mitigated some of the community issues related to rentals, the number of rentals has continued to rise.

8. The City has generated a great deal of data on this growth. To summarize, short-term rental licenses grew from 329 in 2015 to 923 in 2020, nearly tripling over five years. From 2020 to 2022 the number of licenses continued to increase to 1,196. The number of short term rentals now represents 49% of all parcels taxed at the residential rate by Charleston County.

Year	License Count	Increase over Prior Year	Percent Increase	Residential Parcels	Percentage of Parcels
2015	329	N/A	N/A	2341	14%
2016	374	45	14%	2354	16%
2017	473	99	26%	2358	20%
2018	663	190	40%	2389	28%
2019	784	121	18%	2391	33%
2020	923	139	18%	2389	39%
2021	993	70	8%	2424	41%
2022	1196	203	20%	2425	49%
*2017/2018 STR software implementation - increase in compliance created large jump in licenses					





9. In May of 2021, the City of Folly Beach began to examine new amendments to Chapter 117: Short Term Rentals and established a Short Term Rental Committee made of staff, citizens, and City Board members. The Committee reviewed national case studies and other literature on short-term rental regulations, including caps on the issuance of short-term business licenses, which are commonly used throughout the country. Among other things, the Short Term Rental Committee recommended a cap on the number of short-term rental business licenses.

10. In June of 2022, the Mayor proposed amendments to Chapter 117 based on the committee's recommendations. The Mayor's proposal included limiting short-term rental business licenses for non-owner occupied properties to 800, referred to as "non-restricted rentals" and "Investment Short Term Rentals" in the pending Petition. Under the Mayor's proposal, there would be no limit on business licenses issued to owner-occupied properties, which are properties claimed as legal primary residences by owners and are referred to as "Owner-Occupied Short Term Rentals" in the Petition. In addition, under the Mayor's proposal, no existing short-term rental business licenses would have been revoked, and all licenses associated with legal primary residences could have been reissued to the next owner of the property. Ordinance 26-22 reflecting this cap was voted down by City Council on June 28, 2022.

PETITION TO AMEND SHORT-TERM RENTAL BUSINESS LICENSE ORDINANCE

11. On October 12, 2022, the City received the Petition that is the subject of this lawsuit. The Petition proposed a cap on short-term rental business licenses issued to Investment Short Term Rentals of 800. 800 licensed ISTR units represent approximately 30% of the total parcels on the island. Like the ordinance proposed by the Mayor and considered by the City, the Petition 1) exempts Owner-Occupied Short Term Rentals from the cap, and 2) allows current holders of Investment Short Term Rentals business licenses to keep those licenses until they sell their property. No business licenses are transferable under the Petition, but the City has never allowed businesses to transfer business licenses to other businesses. The Petition did not propose or enact any changes to the City's Zoning Code or rezone any property.

12. The Petition contained over 450 signatures, significantly more than the 15% of registered voters required. On November 29, 2022, the Petition was certified by the Charleston County Election Commission.

13. Pursuant to South Carolina Code § 5-17-30, the City can either adopt the ordinance proposed in the Petition or hold an election for all qualified electors to vote on the Petition. The Petition came before City Council on December 13, 2022, and City Council failed to enact the ordinance proposed by the Petition. Consequently, by State law, the City *must* hold an election on the Petition. S.C. Code § 5-17-30.

14. An election or vote on the Petition was held on February 7, 2023. It was the highest voter turnout I have ever seen on Folly Beach. The Charleston County Election Commission certified the results of the election on February 9, 2023. The citizens of Folly Beach voted in favor of the Petition by a vote of 656 to 579. Pursuant to South Carolina Code § 5-17-30, the Petition Amended the City's Short-Term Rental Business License Ordinance, Sections 117.01, *et seq.*, to create a cap of 800 for Investment Short-Term Rental Business Licenses.

15. City staff have fielded a great many questions regarding the Amendment and have worked on a set of administrative policies to address these questions and have also proposed to City Council a set of technical and clarifying amendments to the Petition's Amendment of the Short-Term Rental Business License Code. These clarifying amendments passed first reading on March 14, 2023 and are set for second (and final) reading on April 11, 2023. These clarifying amendments and administrative policies are meant to simply address some of the many questions presented and to clarify the underlying intent of the Petition and Amendment.

16. Among other policies, the City has adopted an administrative policy to allow the purchaser of a property subject to short-term rentals to honor outstanding short-term rentals for 90 days, so long as those outstanding rentals are identified by the seller and purchaser. This is a temporary policy that will expire on May 8, 2023. However, staff has recommended that Council consider making this a permanent exemption from the cap.

17. It is the City's position that Council has the legal right to amend the Amendment adopted by Petition and Referendum. Therefore, Council is, and may in the future, consider additional changes to the Short-Term Rental Business License Ordinance. This may include creating a permanent exemption from the cap for post-sale rentals.

PLAINTIFF'S SHORT-TERM RENTALS

18. As noted in the Complaint, Plaintiff owns two adjacent lots on East Indian Avenue containing multiple structures known variously as, 112 East Indian, 114 East Indian, 116 East Indian, and 118 East Indian. There are five completed dwellings on the lots, and two more dwellings under construction on 112 East Indian Avenue. Plaintiff currently has seven Short-Term Rental Business Licenses, one for each dwelling it owns. The Amendment adopted by the Petition "grandfathers" in existing Short-Term Rental Business Licenses, so, under the current Short-Term Rental Ordinance, Plaintiff can continue to renew its Short-Term Rental Business Licenses and offer all of its properties for short-term rentals for as long as Plaintiff owns those properties.

19. When this case was first filed, it was my belief that Plaintiff Folly East Indian Co. LLC had not obtained Short-Term Rental Business Licenses to operate short-term rentals at the two houses under construction at 112 East Indian Avenue. This belief arose from two facts: the City has not traditionally given business licenses to operate a rental for unfinished houses until a Certificate of Occupancy has been issued; and the properties do not currently have rental registration permits, which are required in addition to a business license.

20. However, there was a window when property owners could apply for business licenses for unfinished houses. On July 12, 2022, in an appeal of a denial of a business license, the City's Hearing Officer ruled that the City had to issue a business license to a property owner before the issuance of a Certificate of Occupancy. The basis of the ruling was that the City's

ordinance did not explicitly require a Certificate of Occupancy prior to issuance of a business license. Thus, starting in July of 2022, the City was compelled to issue Short-Term Rental Business Licenses on properties that were undeveloped or were still under construction. However, the ruling confirmed that the City was not required to issue a rental registration permit for unfinished buildings that had not received a Certificate of Occupancy.

21. On September 13, 2022, the City adopted a broad amendment to its Short-Term Rental Ordinance. Ordinance 27-22, among other things, amended the City's Short-Term Rental Ordinance to explicitly require a Certificate of Occupancy prior to the issuance of a short-term rental business license.

22. Thus, between July 12, 2022 and September of 2022 the City did issue Short-Term Rental Business Licenses to properties before the issuance of a Certificate of Occupancy. Plaintiff applied for Short-Term Rental Business Licenses for the houses at 112 East Indian Avenue on June 17, 2022, and those applications were pending in July when the Hearing Officer issued her ruling. Based on the Hearing Officer's ruling that the City's Ordinance, as it existed at that time, did not bar the issuance of licenses prior to the issuance of a Certificate of Occupancy, the City was compelled to issue two Short-Term Rental Business Licenses for Plaintiff's two unfinished houses at 112 East Indian Avenue. I was unaware that Plaintiff had obtained Short-Term Rental Business Licenses for 112 East Indian Avenue during this brief window at the time I made my initial Affidavit.

23. Even though I was unaware of the issuance of Short-Term Rental Business Licenses to the Plaintiff for 112 East Indian Avenue, the City's License Official, Stacee Ritchie, did in fact issue to the Plaintiff two Short-Term Rental Business Licenses for the dwellings under construction at 112 East Indian Avenue in accord with our Hearing Officer's ruling set forth above.

It is my belief that Ms. Ritchie did inform Mr. Richard Brendel that the licenses were issued, and provided copies of the licenses with a notation that the houses at 112 East Indian Avenue could not be rented until a Certificate of Occupancy was issued and rental registration was completed. I am not aware of anyone on staff informing Mr. Brendel that they could not receive their licenses.

24. Since Plaintiff has currently existing Short-Term Rental Business Licenses on all of its houses, including the houses at 112 East Indian Avenue, it can rent all of those houses as short-term rentals upon receipt of a Certificate of Occupancy and a subsequent rental registration permit.

PLAINTIFF'S ALLEGED VESTED RIGHTS

25. Plaintiff's Complaint implies that the City has approved the use of all of its houses licensed as short-term rentals as a vested right. This is not the case. Plaintiff did not submit any site specific development plans for its properties, and the City approved no such site specific development plans or otherwise issued any approval, other than the Short-Term Rental Business Licenses, related to the use of Plaintiff's properties. Plaintiff did apply for two building permits for the houses under construction at 112 East Indian Avenue, and the City did approve those permits. But nothing in those building permits references or approves any use for those houses. Certainly, neither the application nor the permits reference short-term rentals. In short, building permits approve the construction of the residences. They do not approve the use of those residences as short-term rentals.

FUTURE SALES OF SHORT-TERM RENTAL PROPERTIES

26. Plaintiff has complained that the Amendment adopted by Petition will not allow it to "transfer" its Short-Term Business Licenses to potential future purchaser. The City has never allowed business to transfer Business Licenses. Anyone who purchases the Plaintiff's properties

will have to apply for their own Business License if they want to continue renting the properties out. Under the cap system put in place by current Short-Term Rental Business License Ordinance, a future purchaser is eligible for a Business License to either rent the properties on a short-term basis if the purchaser claims the property as a legal residence or on a long-term basis (regardless of legal residence status). Additionally, a future purchaser who does not intend to claim the properties as a legal residence can also apply for a Short-Term Rental Business License and will receive one if the cap has not been met, and the purchaser meets all other requirements.

27. This analysis is only based on currently adopted codes. All of this can change before a purchase of Plaintiff's properties. For instance, Council could create an exemption allowing a future purchaser to obtain a Short-Term Rental Business Licenses if he or she is purchasing a property from an existing Short-Term Rental Business License holder, like Plaintiff.

FURTHER AFFIANT SAYETH NOT.

A-C K

Aaron Pope, AICP

March 30, 2023

Sworn and subscribed before me
this 30 day of March, 2023

Jenna Stephen

Notary Public for South Carolina.

My commission expires 07-27-25.

EXHIBIT NO. 5

CHAPTER 110: STANDARDIZED BUSINESS LICENSING PROVISIONS

Section

110.01 License required

110.02 Definitions

110.03 Purpose and duration

110.04 Business license tax, refund

110.05 Registration required

110.06 Deductions, exemptions and charitable organizations

110.07 False application unlawful

110.08 Display and transfer

110.09 Administration of chapter

110.10 Inspection and audits

110.11 Assessments, payment under protest, appeal

110.12 Delinquent license taxes, partial payment

110.13 Notices

110.14 Denial of license

110.15 Suspension or revocation of license

110.16 Appeals to Council or its designee

110.17 Consent, franchise or license required for use of streets

110.18 Confidentiality

110.19 Classification and rates

110.99 Penalty

Appendix A: Business license rate schedule

Appendix B: Business license class schedule by NAICS code

GENERAL PROVISIONS

§ 110.01 LICENSE REQUIRED.

Every person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in/with the object of gain, benefit or advantage, in whole or in part within the limits of The City of Folly Beach, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7- 12-16; Am. Ord. 36-21, passed 12-14-21)

§ 110.02 DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed herein:

BUSINESS. Any business, calling, occupation, profession, or activity engaged in/with the object of gain, benefit or advantage, either directly or indirectly.

CHARITABLE ORGANIZATION. An organization that is determined by the Internal Revenue Service to be exempt from federal income taxes under 26 U.S.C. Section 501(c)(3), (4), (6), (7),

(8), (10) or (19).

CHARITABLE PURPOSE. A benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization.

CLASSIFICATION. That division of businesses by NAICS codes subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by the Council.

COUNCIL. The City Council of The City of Folly Beach.

DOMICILE. A principal place from which the trade or business of a licensee is conducted, directed, or managed. For purposes of this chapter a licensee may be deemed to have more than one ***DOMICILE***.

GROSS INCOME. The gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the municipality. If the licensee has a domicile within the municipality, business done within the municipality shall include all gross receipts or revenue received or accrued by such licensee. If the licensee does not have a domicile within the municipality, business done within the municipality shall include only gross receipts or revenue received or accrued within the municipality. In all cases, if the licensee pays a business license tax to another county or municipality, then the licensee's gross income for the purpose of computing the tax within the municipality must be reduced by the amount of revenues or receipts taxed in the other county or municipality and fully reported to the municipality. ***GROSS INCOME*** for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in ***GROSS INCOME***. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies. In calculating ***GROSS INCOME*** for certain businesses, the following rules shall apply:

(1) ***GROSS INCOME*** for agents shall be calculated on gross commissions received or retained, unless otherwise specified. If commissions are divided with other brokers or agents, then only the amount retained by the broker or agent is considered ***GROSS INCOME***.

(2) Except as specifically required by S.C. Code § 38-7-20,***GROSS INCOME*** for insurance companies shall be calculated on gross premiums written.

(3) ***GROSS INCOME*** for manufacturers of goods or materials with a location in the municipality shall be calculated on the lesser of: (i) gross revenues or receipts received or accrued from business done at the location; (ii) the amount of income allocated and apportioned to that location by the business for purposes of the business's state income tax return; or (iii) the amount of expenses attributable to the location as a cost center of the business. Licensees reporting gross income under this provision shall have the burden to establish the amount and method of calculation by satisfactory records and proof. Manufacturers include those taxpayers reporting a manufacturing principal business activity code on their federal income tax returns.

LICENSEE. The business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

LICENSE OFFICIAL. A person designated to administer this chapter. Notwithstanding the designation of a primary License Official, the municipality may designate one or more alternate License Officials to administer particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code.

MUNICIPALITY. The City of Folly Beach, South Carolina.

NAICS. The North American Industry Classification System for the United States published under the auspices of the Federal Office of Management and Budget.

PERSON. Any individual, firm, partnership, limited liability partnership, limited liability company, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7- 12-16; Am. Ord. 36-21, passed 12-14-21)

§ 110.03 PURPOSE AND DURATION.

The business license required by this chapter is for the purpose of providing such regulation as may be required for the business subject thereto, and for the purpose of raising revenue for the General Fund through a privilege tax. The 2021 license year shall extend to end on April 30, 2022. Thereafter, the license periods shall be established as follows. Except as set forth below for business licenses issued to contractors with respect to specific construction projects, each yearly license shall be issued for the 12-month period of May 1 to April 30. A business license issued for a construction contract may, at the request of the licensee, be stated to expire at the completion of the construction project; provided, any such business license may require that the licensee file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount. The provisions of this chapter and the rates herein shall remain in effect from year to year as amended by the Council.

(Ord. 34-06, passed 9-26-06; Am. Ord. 36-21, passed 12-14-21)

§ 110.04 BUSINESS LICENSE TAX, REFUND.

(A) The required business license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified. Late payments shall be subject to penalties as set forth in § 110.99 hereof, except

that admitted insurance companies may pay before June 1 without penalty.

(B) A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the business license tax shall be computed on the combined gross income for the classification requiring the highest rate. The business license tax must be computed based on the licensee's gross income for the calendar year preceding the due date, for the licensee's 12-month fiscal year preceding the due date, or on a 12-month projected income based on the monthly average for a business in operation for less than one year. The business license tax for a new business must be computed on the estimated probable gross income for the balance of the license year. A business license related to construction contract projects may be issued on a per-project basis, at the option of the taxpayer. No refund shall be made for a business that is discontinued.

(C) A licensee that submits a payment greater than the amount owed may request a refund. To be considered, a refund request must be submitted in writing to the municipality before the June 1 immediately following the April 30 on which the payment was due, and must be supported by adequate documentation supporting the refund request. The municipality shall approve or deny the refund request, and if approved, shall issue the refund to the business within 30 days after receipt of the request.

(Ord. 36-21, passed 12-14-21)

§ 110.05 REGISTRATION REQUIRED.

(A) The owner, agent, or legal representative of every business subject to this chapter, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; provided, a new business shall be required to have a business license prior to operation within the municipality, and an annexed business shall be required to have a business license within 30 days of the annexation. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued the corresponding state alcohol, beer, or wine permit or license and will have actual control and management of the business.

(B) Application shall be on the then-current standard business license application as established and provided by the Director of the South Carolina Revenue and Fiscal Affairs Office and shall be accompanied by all information about the applicant, the licensee, and the business deemed appropriate to carry out the purpose of this chapter by the license official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures.

(C) The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported (or estimated for a new business) without any unauthorized deductions, and that all assessments, personal property taxes on business property, and other monies due and payable to the municipality have been paid.

(D) The municipality shall allow application, reporting, calculation, and payment of business license taxes through the business license tax portal hosted and managed by the South Carolina Revenue and Fiscal Affairs Office, subject to the availability and capability thereof. Any limitations in portal availability or capability do not relieve the applicant or licensee from existing business license or business license tax obligations.

(Ord. 34-06, passed 9-26-06; Am Ord. 26-17, passed 1-9-18; Am. Ord. 36-21, passed 12-14-21)

§ 110.06 DEDUCTIONS, EXEMPTIONS, AND CHARITABLE ORGANIZATIONS.

(A) No deductions from gross income shall be made except income earned outside of the municipality on which a license tax is paid by the business to some other municipality or county and fully reported to the municipality, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. Properly apportioned income from business in interstate commerce shall be included in the calculation of gross income and is not exempted. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.

(B) No person shall be exempt from the requirements of the chapter by reason of the lack of an established place of business within the municipality, unless exempted by state or federal law. The License Official shall determine the appropriate classification for each business in accordance with the latest issue of NAICS. No person shall be exempt from this chapter by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this chapter.

(C) Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the municipality. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer.

(D) A charitable organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A charitable organization, or any affiliate of a charitable organization, that reports income from for-profit activities or unrelated business income for federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.

(E) A charitable organization shall be deemed a business subject to a business license tax on its total gross income if: (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a charitable organization as defined in this chapter; or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a charitable purpose as defined in this chapter. Excess benefits or

compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

(Ord. 34-06, passed 9-26-06; Am. Ord. 36-21, passed 12-14-21)

§ 110.07 FALSE APPLICATION UNLAWFUL.

It shall be unlawful for any person subject to the provisions of this chapter to make a false application for a business license, or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this chapter.

(Ord. 34-06, passed 9-26-06; Am. Ord. 36-21, passed 12-14-21)

§ 110.08 DISPLAY AND TRANSFER.

(A) All persons shall display the license issued to them on the original form provided by the License Official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his or her person or in a vehicle used in the business readily available for inspection by any authorized agent of the municipality.

(B) A change of address must be reported to the License Official within ten days after removal of the business to a new location and the license will be valid at the new address upon written notification by the License Official and compliance with zoning and building codes. Failure to obtain the approval of the License Official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable, and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

(Ord. 34-06, passed 9-26-06; Am. Ord. 02-16, passed 2- 9-16; Am. Ord. 36-21, passed 12-14-21)

§ 110.09 ADMINISTRATION OF CHAPTER.

The License Official shall administer the provisions of this chapter, collect business license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or suspension and revocation procedures, report violations to the Municipal Attorney, assist in prosecution of violators, produce forms, undertake reasonable procedures relating to the administration of this chapter, and perform such other duties as may be duly assigned.

(Ord. 34-06, passed 9-26-06; Am. Ord. 36-21, passed 12-14-21)

§ 110.10 INSPECTION AND AUDITS.

(A) For the purpose of enforcing the provisions of this chapter, the License Official or other authorized agent of the municipality is empowered to enter upon the premises of any person subject to this chapter to make inspections and to examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct business license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of business license tax shall constitute a separate offense.

(B) The License Official shall have the authority to make inspections and conduct audits of businesses to ensure compliance with the chapter. Financial information obtained by inspections and audits shall not be deemed public records, and the License Official shall not release the amount of business license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this chapter, state or federal law, or proper judicial order. Statistics compiled by classifications are public records.

(Ord. 34-06, passed 9-26-06; Am. Ord. 36-21, passed 12-14-21)

§ 110.11 ASSESSMENTS, PAYMENT UNDER PROTEST, APPEAL.

(A) Assessments, payments under protest, and appeals of assessment shall be allowed and conducted by the municipality pursuant to the provisions of S.C. Code § 6-1-410, as amended. In preparing an assessment, the License Official may examine such records of the business or any other available records as may be appropriate and conduct such investigations and statistical surveys as the License Official may deem appropriate to assess a business license tax and penalties as provided herein.

(B) The License Official shall establish a uniform local procedure consistent with S.C. Code § 6-1-410 for hearing an application for adjustment of assessment and issuing a notice of final assessment; provided that for particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the municipality, by separate ordinance, may establish a different procedure and may delegate one or more rights, duties, and functions hereunder to the Municipal Association of South Carolina.

(Ord. 34-06, passed 9-26-06; Am. Ord. 02-18, passed 3-13-18; Am. Ord. 36-21, passed 12-14-21)

§ 110.12 DELINQUENT LICENSE TAXES, PARTIAL PAYMENT.

(A) For non-payment of all or any part of the correct business license tax, the License Official shall impose and collect a late penalty of 5% of the unpaid tax for each month or portion thereof after the due date until paid, not to exceed 100% of

original license fee. Penalties shall not be waived. If any business license tax remains unpaid for 60 days after its due date, the License Official shall report it to the Municipal Attorney for appropriate legal action.

(B) Partial payment may be accepted by the License Official to toll imposition of penalties on the portion paid; provided, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

(Ord. 34-06, passed 9-26-06; Am. Ord. 36-21, passed 12-14-21)

§ 110.13 NOTICES.

The License Official may, but shall not be required to, mail written notices that business license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the municipality three times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

(Ord. 34-06, passed 9-26-06; Am. Ord. 36-21, passed 12-14-21)

§ 110.14 DENIAL OF LICENSE.

(A) The License Official may deny a license to an applicant when the License Official determines:

(1) The application is incomplete or contains a misrepresentation, false or misleading statement, or evasion or suppression of a material fact;

(2) The activity for which a license is sought is unlawful or constitutes a public nuisance*per se* or *per accidens*;

(3) The applicant, licensee, prior licensee, or the person in control of the business has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;

(4) The applicant, licensee, prior licensee, or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the municipality or in another jurisdiction;

(5) The applicant, licensee, prior licensee, or the person in control of the business is delinquent in the payment to the municipality of any tax or fee;

(6) A licensee has actual knowledge or notice, or based on the circumstances reasonably should have knowledge or notice, that any person or employee of the licensee has committed a crime of moral turpitude on the business premises, or has permitted any person or employee of the licensee to engage in the unlawful sale of merchandise or prohibited goods on the business premises and has not taken remedial measures necessary to correct such activity; or

(7) The license for the business or for a similar business of the licensee in the municipality or another jurisdiction has been denied, suspended, or revoked in the previous license year.

(B) A decision of the License Official shall be subject to appeal as herein provided. Denial shall be written with reasons stated.

(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7- 12-16; Am Ord. 26-17, passed 1-9-18; Am. Ord. 02-18, passed 3-13-18; Am. Ord. 36-21, passed 12-14-21)

§ 110.15 SUSPENSION OR REVOCATION OF LICENSE.

(A) A license may be suspended or revoked when the License Official determines:

(1) A license has been mistakenly or improperly issued or issued contrary to law;

(2) A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this chapter;

(3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application;

(4) A licensee has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;

(5) A licensee has engaged in an unlawful activity or nuisance related to the business; or

(6) A licensee is delinquent in the payment to the municipality of any tax or fee.

(B) The License Official may give written notice to the licensee or the person in control of the business within the municipality by personal service or mail that the license is suspended pending a single hearing before Council or its designee for the purpose of determining whether the suspension should be upheld and the license should be revoked.

(C) The written notice of suspension and proposed revocation shall state the time and place at which the hearing is to be held, and shall contain a brief statement of the reasons for the suspension and proposed revocation and a copy of the applicable provisions of this chapter.

(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7-12-16; Am Ord. 26-17, passed 1-9-18; Am. Ord. 02-18, passed 3-13-18; Am. Ord. 36-21, passed 12-14-21)

§ 110.16 APPEALS TO COUNCIL OR ITS DESIGNEE.

(A) Except with respect to appeals of assessments under §110.11 hereof, which are governed by S.C. Code § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the License Official may appeal the decision to the Council or its designee by written request stating the reasons for appeal, filed with the License Official within ten days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation.

(B) A hearing on an appeal from a license denial or other determination of the License Official and a hearing on a suspension and proposed revocation shall be held by the Council or its designee within ten business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a regular or special meeting of the Council, or, if by designee of the Council, at a hearing to be scheduled by the designee. The hearing may be continued to another date by agreement of all parties. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the municipality.

(C) Timely appeal of a decision of Council or its designee does not effectuate a stay of that decision. The decision of the Council or its designee shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.

(D) For business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the municipality may establish a different procedure by ordinance.

(Ord. 36-21, passed 12-14-21)

§ 110.17 CONSENT, FRANCHISE, OR LICENSE REQUIRED FOR USE OF STREETS.

(A) It shall be unlawful for any person to construct, install, maintain, or operate in, on, above, or under any street or public place under control of the municipality any line, pipe, cable, pole, structure, or facility for utilities, communications, cablevision, or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees, and conditions for use.

(B) The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement, and shall be consistent with limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

(Ord. 36-21, passed 12-14-21)

§ 110.18 CONFIDENTIALITY.

Except in accordance with proper judicial order or as otherwise provided by law, no official or employee of the municipality may divulge or make known in any manner the amount of income or any financial particulars set forth or disclosed in any report or return required under this chapter. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this chapter.

(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7- 12-16; Am. Ord. 36-21, passed 12-14-21)

§ 110.19 CLASSIFICATION AND RATES.

(A) The business license tax for each class of businesses subject to this chapter shall be computed in accordance with the current business license rate schedule, designated as Appendix A to this chapter, which may be amended from time to time by the Council.

(B) The current business license class schedule is attached hereto as Appendix B. Hereafter, no later than December 31 of each odd year, the municipality shall adopt, by ordinance, the latest standardized business license class schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the South Carolina Revenue and Fiscal Affairs Office. Upon adoption by the municipality, the revised business license class schedule shall then be appended to this chapter as a replacement Appendix B.

(C) The classifications included in each rate class are listed with NAICS codes, by sector, sub-sector, group, or industry. The business license class schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a business license tax. The classification in the most recent version of the business license class schedule adopted by the Council that most specifically identifies the subject business shall be applied to the business. The License Official shall have the authority to make the determination of the classification most specifically applicable to a subject business.

(D) A copy of the class schedule and rate schedule shall be filed in the office of the Municipal Clerk.

(Ord. 36-21, passed 12-14-21)

§ 110.99 PENALTY.

Any person violating any provision of this chapter shall be deemed guilty of an offense and shall be subject to a fine of up to $500 or imprisonment for not more than 30 days, or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this chapter.

(Ord. 34-06, passed 9-26-06; Am. Ord. 36-21, passed 12-14-21)

APPENDIX A: BUSINESS LICENSE RATE SCHEDULE

Rate Class	***Income: $0 - $2,000.00 Base Rate***	***Income over $2,000.00 Rate per $1,000.00 or Fraction Thereof***
Rate Class	***Income: $0 - $2,000.00 Base Rate***	***Income over $2,000.00 Rate per $1,000.00 or Fraction Thereof***
1	$35.00	$2.00
2	$40.00	$2.25
3	$45.00	$2.50
4	$50.00	$2.75
5	$55.00	$3.00
6	$60.00	$3.25
7	$65.00	$3.50
8.1	$50.00	$1.50
8.2	Set by state statute	
8.3	MASC Telecommunications	
8.4	MASC Insurance	
8.51	$12.50 + $12.50 per machine	
8.52	$12.50 + $180.00 per machine	
8.6	Applicable class rate + $5.00 or $12.50 per table	
9.1	$24.00	$12.00
9.2	$200.00	$3.00
9.3	$300.00	$2.25
9.4	$45.00	$2.75
9.5	$245.00	$2.75

NON-RESIDENT RATES

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the municipality.

DECLINING RATES

Declining rates apply in all classes for gross income in excess of $1,000,000, unless otherwise specifically provided for in this chapter.

Gross Income in $ Millions	Percent of Class Rate for Each Additional $1,000.00
0-1	100%
1 - 2	90%
2 - 3	80%
3 - 4	70%
over 4	60%

CLASS 8 RATES

Each NAICS number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of state law, regulatory requirements, service burdens, tax equalization considerations, and other factors that are deemed sufficient to require individually determined rates. In accordance with state law, the municipality also may provide for reasonable subclassifications for rates, described by an NAICS sector, subsector, or industry, that are based on particularized considerations as needed for economic stimulus or for the enhanced or disproportionate demands on municipal services or infrastructure.

Non-resident rates do not apply except where indicated.

8.1 NAICS 230000 - Contractors, Construction, All Types [Non-resident rates apply].

Resident rates, for contractors having a permanent place of business within the municipality:

Minimum on first $2,000 $50.00 PLUS

Each additional 1,000 $1.50

Non-resident rates apply to contractors that do not have a permanent place of business within the municipality. A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this chapter.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official a list of sub-contractors furnishing labor or materials for each project.

For licenses issued on a per-job basis, the total tax for the full amount of the contract shall be paid prior to commencement of work, and shall entitle the contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job, and the appropriate additional license fee per $1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year. Licensees holding a per-job license shall file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount.

8.2 NAICS 482 - Railroad Companies (See S.C. Code § 12-23-210).

8.3 NAICS 517311, 517312 - Telephone Companies.

With respect to "retail telecommunications services" as defined in S. C. Code § 58-9-2200, the municipality participates in a collections program administered by the Municipal Association of South Carolina. The municipality has approved participation in the collections program by separate ordinance (the "Telecommunications Collections Ordinance"). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to retail telecommunications services are set forth in the Telecommunications Collections Ordinance.

8.4 NAICS 5241 - Insurance Companies:

Independent agents, brokers, their employees are subject to a business license tax based on their natural class. With respect to insurers subject to license fees and taxes under Chapter 7 of Title 38 and to brokers under Chapter 45 of Title 38, the municipality participates in a collections program administered by the Municipal Association of South Carolina. The municipality has approved participation in the collections program by separate ordinance (the "Insurers and Brokers Collections Ordinance"). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to insurers and brokers are set forth in the Insurers and Brokers Collections Ordinance.

8.51 NAICS 713120 - Amusement Machines, coin operated (except gambling).

Music machines, juke boxes, kiddy rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code § 12-21-2720(A)(1) and (A)(2) [Type I and Type II].

For operation of all machines (not on gross income), pursuant to S.C. Code § 12-21-2746:

Per machine $12.50 PLUS

Business license $12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to § 12-21-2728 are not

subject to Subclass 8.51.

8.52 NAICS 713290 - Amusement Machines, coin operated, non-payout.

Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code § 12-21-2720(A)(3) [Type III].

For operation of all machines (not on gross income), pursuant to S.C. Code § 12-21-2720(B):

Per machine $180.00 PLUS

Business license $12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to § 12-21-2728 are not subject to Subclass 8.52.

8.6 NAICS 713990 - Billiard or Pool Rooms, all types.

(A) Pursuant to S.C. Code § 12-21-2746, license tax of $5.00 per table measuring less than 3-1/2 feet wide and 7seven feet long, and $12.50 per table longer than that; PLUS, (B) with respect to gross income from the entire business in addition to the tax authorized by state law for each table per the rate for NAICS subsector 71 in Appendix A and the class schedule in Appendix B.

9.1 NAICS 454390 - Peddlers, Solicitors, Canvassers, PROHIBITED Door-to-Door Sales direct retail.

Minimum on first $2,000 $24.00 PLUS

Each additional 1,000 $12.00

9.2 NAICS 711310 - Promoters.

Minimum on first $2,000 $200.00 PLUS

Each additional 1,000 $3.00

9.3 NAICS 722410 - Drinking Places (alcoholic beverages, beer and wine).

Minimum on first $2,000 $300.00 PLUS

Each additional 1,000 $2.25

9.4 NAICS 53111 -Lessors of Residential Buildings and Dwellings (Long-Term Rentals).

Minimum on first $2,000 $45.00 PLUS

Each additional 1,000 $2.75

9.5 NAICS 721199 - All Other Traveler Accommodation.

All short term residential rentals in the city shall be classified under this code.

Minimum on first $2,000 $245.00 PLUS

Each additional 1,000 $2.75

(Ord. 36-21, passed 12-14-21)

APPENDIX B: BUSINESS LICENSE CLASS SCHEDULE BY NAICS CODE

NAICS Sector/ Subsector	*Industry Sector*	*Class*
NAICS Sector/ Subsector	*Industry Sector*	*Class*
11	Agriculture, forestry, hunting and fishing	2.00
21	Mining	4.00
31	Manufacturing	2.00
32	Manufacturing	2.00
33	Manufacturing	2.00
42	Wholesale trade	1.00
44	Retail trade	1.00
45	Retail trade	1.00
48	Transportation and warehousing	2.00
49	Transportation and warehousing	2.00
51	Information	4.00
52	Finance and insurance	7.00

53	Real estate and rental and leasing	7.00
54	Professional, scientific, and technical services	5.00
55	Management of companies	7.00
56	Administrative and support and waste management and remediation services	4.00
61	Educational services	4.00
62	Health care and social assistance	4.00
71	Arts, entertainment, and recreation	3.00
721	Accommodation	3.00
722	Food services and drinking places	1.00
81	Other services	5.00
Class 8		
23	Construction	8.10
482	Rail transportation	8.20
517311	Wired telecommunications carriers	8.30
517312	Wireless telecommunications carriers (except satellite)	8.30
5241	Insurance carriers	8.40
5242	Insurance brokers for non-admitted insurance carriers	8.40
713120	Amusement parks and arcades	8.51
713290	Nonpayout amusement machines	8.52
713990	All other amusement and recreational industries (pool tables)	8.60
Class 9		
454390	Peddlers, solicitors, canvassers, PROHIBITED door-to-door sales direct retail.	9.1
53111	Lessors of residential buildings and dwellings (long term rentals)	9.4
711310	Promoters	9.2
721199	All other traveler accommodation (short term rentals)	9.5
722410	Drinking places (alcoholic beverages)	9.3

Note: Class Schedule is based on 2017 IRS data.

(Ord. 36-21, passed 12-14-21)

EXHIBIT NO. 6

CITY OF FOLLY BEACH

CODIFY CITY OF FOLLY BEACH

Introduced by: Mayor Goodwin
Date: July 22, 2010

1st Reading: July 12, 2010
2nd Reading September 28, 2010

ORDINANCE NO. 19-10

AN ORDINANCE CREATING SECTION 116 OF THE FOLLY BEACH CODE OF ORDINANCES ESTABLISHING REQUIREMENTS FOR OBTAINING A BUSINESS LICENSE TO RENT PROPERTY ON A SHORT TERM BASIS.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains as follows:

SECTION 1. That the Folly Beach Code of Ordinances, Title XI: Business Regulations be amended by the creation of Chapter 116: Short Term Rentals:

§ 116.01 Registration of Short Term Rentals Required

In order to receive a business license for the rental of residential property all owners of rental dwellings shall register the rental property with the city on an application in a form provided by the city. At the time an application is filed a registration fee in an amount established from time to time by City Council shall be paid in full.

(A) Annual Registration

The annual registration date shall be January first of each year and all fees required by this article shall be paid on or before February fifteenth of each year.

(B) Registry of New Rental Dwellings

The owner of a new rental dwelling or of any dwelling newly converted to a rental dwelling shall register the rental dwelling prior to obtaining a business license to rent the property.

(C) Change in Registered Information

The owner of a rental dwellings already registered with the City shall re-register within sixty (60) days after any change occurs in the registration information. A new owner of a registered dwelling shall re-register the dwelling within sixty (60) days of assuming ownership.

(D) Information Required

Application for rental registration shall contain the following information:

1) The address of the rental dwelling.
2) The number or rental dwelling units.
3) The name, residence address, business phone, personal phone, and business address or the owner and local agent.
4) The address where the owner and/or local agent will accept notices and orders from the City.
5) Acknowledgement that the owner has read applicable Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts.
6) Acknowledgement that the owner has prominently posted within the property a summary of applicable Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts.
7) Acknowledgement that tenants listed on any rental agreements will receive a summary of Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts.

    a) The summary of applicable Codes shall be in a form determined by the City and made available to all owners of rental property.

(E) Inaccurate or incomplete register information

It shall be a violation of this article for an owner to provide inaccurate information for the register of rental dwellings or to fail to provide information required by the application.

(F) Designation of Local Agent

The owner of a rental dwelling shall designate a responsible agent who shall be legally responsible for operating such rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner and any notice served on the agent shall be deemed to have been served upon the owner of record.

1) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.
2) The agent shall be required to be able to physically respond to the site within thirty (30) minutes in case of emergency or need by the City for entry into the property.

(G) More Than one Owner or Ownership by Entity

Where more than one person has an ownership interest, the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required for the register shall be provided for the organization owning the rental dwelling and for the president, general manager, or other chief executive officer of the organization.

§ 116.02 Records Required for Short Term Rentals

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep for the purpose of City inspection and copying for a period of one (1) year the following:

(1) The name, address, and other contact information of each signatory on the rental agreement.
(2) A document signed by the person responsible for renting the dwelling certifying the number of persons intended to occupy the dwelling.

(B) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.
(C) Compliance with this section may be achieved through the inclusion of the required information into a rental agreement or lease signed by each occupant.

§ 116.03 Definitions

As used in this article, the following words and terms shall have the meanings respectively ascribed to them:

(1) "Occupant" means any person, other than a legal or equitable title holder, occupying or possessing all or part of a short term rental property.
(2) "Rental Dwelling" or "rental property" means any residential dwelling which is in whole or in part occupied by one or more person(s) pursuant to an oral or written agreement for monetary or any other consideration, but which person(s) is not acquiring an ownership interest in the dwelling. This shall include single-family, two family, and multi family properties and short term rentals.
(3) "Short term rentals" means any residential property providing transient accommodations for periods of less than one month.
(4) "Tenant" means any person, other than a legal or equitable title holder, occupying or possessing all or part of a rental dwelling.

(H) The annual registration date shall be January first of each year and all fees required by this article shall be paid on or before February fifteenth of each year.

ADOPTED this _28th_ day of September, 2010, at Folly Beach, South Carolina.

Ayes: 6 **Nays: 0** **Abstains:**

Timothy Goodwin, Mayor **Attest: Municipal Clerk**

Council Member Rich ***Council Member Ellis***

Council Member Beck ***Council Member Hume***

Council Member Clamp ***Council Member McCarty***

EXHIBIT NO. 7

CITY OF FOLLY BEACH

1st Reading: December 12, 2017
2nd Reading: January 9, 2018

Introduced by: Mayor Tim Goodwin
Date: August 8, 2017

ORDINANCE 26-17

AN ORDINANCE AMENDING CHAPTER 110 (GENERAL LICENSING PROVISIONS), CHAPTER 117 (SHORT TERM RENTALS), CHAPTER 163 (ZONING DISTRICTS), CHAPTER 164 (USE STANDARDS), OF THE FOLLY BEACH CODE OF ORDINANCES BY AMENDING LICENSING AND REGISTRATION REQUIREMENTS FOR SHORT TERM RENTALS, CREATING STANDARDS FOR EVENTS HELD ON PROPERTIES USED AS SHORT TERM RENTALS, DEFINING SHORT TERM RENTALS AS AN ALLOWABLE USE AND ALLOWING PENALTIES TO BE ASSESSED TO THE OWNERS OF SHORT TERM RENTALS FOR NUISANCE VIOLATIONS.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that the Folly Beach Code of Ordinance be amended as follows:

NOTE: ~~Deleted material struck through~~; new material in red.

CHAPTER 110, GENERAL LICENSING PROVISIONS

SECTION 110.05 REGISTRATION REQUIRED.

(A) The owner, agent or legal representative of every business subject to this chapter, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year. A new business shall be required to have a business license prior to operation within the city.

(B) Application shall be on a form provided by the License Official which shall contain the Social Security Number and/or the Federal Employer's Identification Number, the South Carolina Retail License Number (if applicable), the business name as reported on the South Carolina income tax return, and all information about the applicant and the business deemed appropriate to carry out the purpose of this chapter by the License Official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross income figures.

(C) The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments and personal property taxes on business property due and payable to the city have been paid.

(D) No business license shall be issued until the applicant first submits documents necessary to establish compliance with the Zoning Ordinance, Building Code, Electrical Code, Mechanical

Code, Plumbing Code, Roofing Code and other regulatory Codes as adopted by City Council and, if applicable, the Short Term Rental Ordinance, Chapter 117.

(E) Insurance agents and brokers shall report the name of each insurance company for which a policy was issued and the total premiums collected for each company for each type of insurance coverage on a form approved by the License Official. An insurance agent not employed by an insurance company or employed by more than one insurance company shall be licensed as a broker.

(Ord. 34-06, passed 9-26-06)

SECTION 110.16 DENIAL OF LICENSE.

(A) The License Official shall deny a license to an applicant when the License Official determines:

(1) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact;

(2) The activity for which a license is sought is unlawful or constitutes a public nuisance;

(3) The applicant, licensee or prior licensee or the person in control of the business has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude, or an unlawful sale of merchandise or prohibited goods;

(4) The applicant, licensee or prior licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the municipality or in another jurisdiction;

(5) The applicant, licensee or prior licensee or the person in control of the business is delinquent in the payment to the municipality of any tax or fee; ~~or~~

(6) The license for the business or for a similar business of the licensee in the municipality or another jurisdiction has been denied, suspended or revoked in the previous license year~~.~~, or

(7) The applicant, licensee, or a prior licensee for a Short Term Rental has failed to comply with the requirements of Chapter 117 or has received four or more notifications that an occupant or guest has received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period. The number of allowable notices and violations shall be reset upon a change of ownership where there is no overlap with previous ownership.

(B) A decision of the License Official shall be subject to appeal to City Council as herein provided. The ~~D~~denial shall be written with reasons stated.

(C) Licensees or businesses that begin or continue operations after the denial of a business license will be immediately subject to prosecution for doing business without a license. An appeal will not stay any prosecution.

SECTION 110.17 SUSPENSION OR REVOCATION OF LICENSE.

(A) ~~When the License Official determines that~~ A business license may be suspended or revoked when:

(1) A license has been mistakenly or improperly issued or issued contrary to law; or

(2) A licensee has breached any condition upon which the license was issued or has failed to comply with the provision of this chapter; or

(3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application, including any communications made by the licensee or its agent in the application process; or

(4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or

(5) A licensee has engaged in an unlawful business activity, including but not limited to a violation of City, County, State or Federal law, ordinance or regulation; or

(6) The licensee's operation of the business constitutes a public nuisance; or

(7) The applicant, licensee, or a prior licensee for a Short Term Rental has failed to comply with the requirements of Chapter 117 or has received four or more notifications that an occupant or guest has received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period. The number of allowable notices and violations shall be reset upon a change of ownership which results in no overlap with prior common ownership; or

(8) A licensee is delinquent in the payment to the City of any tax or fee.

(B) When the License Official determines that a violation of Section 110.17(A) has occurred, ~~The~~ the License Official shall give written notice to the licensee or the person in control of the business within the City by personal service or certified mail that the license is suspended pending a hearing before City Council for the purpose of determining whether the license should be revoked. In the case of Short Term Rental businesses, notice shall be given to the person listed as agent on the City of Folly Beach Rental Registration Form. The notice shall state the time and place at which the hearing is to be held, which shall be within 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter. A licensee may surrender the business license and cease doing business prior to the revocation hearing date. The License Official has the discretion to cancel the hearing after surrender of the business license.

(C) Licensees or businesses that continue operations after the revocation of a business license shall be subject to prosecution for doing business without a license the earlier of: (1) 45 days after notice of suspension; (2) ten days after issuance of the City Council's written decision after revocation hearing; or (3) immediately following the surrender of a license.
(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7-12-16)

CHAPTER 117, SHORT TERM RENTALS

~~117.01 REGISTRATION OF SHORT TERM RENTALS REQUIRED.~~

~~In order to receive a business license for the rental of residential property all owners of rental dwellings shall register the rental property with the city on an application in a form provided by the city. At the time an application is filed a registration fee in an amount established from time to time by City Council shall be paid in full.~~

~~(A) *Annual registration.* The annual registration date shall be January 1 of each year and all fees required by this chapter shall be paid on or before February 15 of each year.~~

(B) *Registry of new rental dwellings.* The owner of a new rental dwelling or of any dwelling newly converted to a rental dwelling shall register the rental dwelling prior to obtaining a business license to rent the property.

(C) *Change in registered information.* The owner of a rental dwellings already registered with the city shall re-register within 60 days after any change occurs in the registration information. A new owner of a registered dwelling shall re-register the dwelling within 60 days of assuming ownership.

(D) *Information required.* Application for rental registration shall contain the following information:

(1) The address of the rental dwelling;

(2) The number or rental dwelling units;

(3) The name, residence address, business phone, personal phone, and business address or the owner and local agent;

(4) The address where the owner and/or local agent will accept notices and orders from the city;

(5) Acknowledgment that the owner has read applicable Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts;

(6) Acknowledgment that the owner has prominently posted within the property a summary of applicable Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts;

(7) Acknowledgment that tenants listed on any rental agreements will receive a summary of Folly Beach Codes including, but not limited to, regulations regarding trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtle and golf carts.

(a) The summary of applicable codes shall be in a form determined by the city and made available to all owners of rental property.

(E) *Inaccurate or incomplete register information.* It shall be a violation of this article for an owner to provide inaccurate information for the register of rental dwellings or to fail to provide information required by the application.

(F) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be legally responsible for operating such rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner and any notice served on the agent shall be deemed to have been served upon the owner of record.

(1) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

(2) The agent shall be required to be able to physically respond to the site within 30 minutes in case of emergency or need by the city for entry into the property.

(G) *More than one owner or ownership by entity.* Where more than one person has an ownership interest, the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required for the register shall be provided for the organization owning the rental dwelling and for the president, general manager, or other chief executive officer of the organization.

(Ord. 19-10, passed 9-28-10)

SECTION 117.02 RECORDS REQUIRED FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep for the purpose of city inspection and copying for a period of one year the following:

~~(1) The name, address, and other contact information of each signatory on the rental agreement;~~
~~(2) A document signed by the person responsible for renting the dwelling certifying the number of persons intended to occupy the dwelling.~~
~~(B) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.~~
~~(C) Compliance with this section may be achieved through the inclusion of the required information into a rental agreement or lease signed by each occupant.~~
~~(Ord. 19-10, passed 9-28-10)~~
~~SECTION 117.03 DEFINITIONS.~~
~~For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~
~~***OCCUPANT.*** Any person, other than a legal or equitable title holder, occupying or possessing all or part of a short term rental property.~~
~~***RENTAL DWELLING or RENTAL PROPERTY.*** Any residential dwelling which is in whole or in part occupied by one or more person(s) pursuant to an oral or written agreement for monetary or any other consideration, but which person(s) is not acquiring an ownership interest in the dwelling. This shall include single-family, two-family, and multi-family properties and short term rentals.~~
~~***SHORT TERM RENTALS.*** Any residential property providing transient accommodations for periods of less than one month.~~
~~***TENANT.*** Any person, other than a legal or equitable title holder, occupying or possessing all or part of a rental dwelling.~~
~~(Ord. 19-10, passed 9-28-10)~~

SECTION 117.01 PURPOSE, APPLICABILITY AND DEFINITIONS

(A) The purpose of this Chapter is to regulate the use of residential units as short term rentals in order to:

1. Protect the integrity of the City's neighborhoods and the quality of life of its citizens;
2. Establish a system to track the short term rental inventory in the City;
3. To protect the health and safety of occupants of short term rental units;
4. To ensure a level playing field for individuals in the short term rental market; and
5. To protect the residential character of the Residential Districts of the City.

(B) The following definitions apply:

1. Short Term Rentals are residential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling. Tourist Accommodations including hotels, motels, inns, and bed and breakfasts are not considered Short Term Rentals.
2. Rental Occupant shall mean any person who, in exchange for compensation paid, occupies a dwelling unit for less than 30 days.

SECTION 117.02 LICENSE, REGISTRATION, AND TAX REQUIREMENTS

Any owner wishing to operate a Short Term Rental must maintain a current business license, comply with rental registration requirements, and make proper payment of local, county, and state taxes.

(A) *Business License*. Business licenses must be renewed annually by the submittal of a form and fee as established by the City. The business license account number and the maximum occupancy for each short term rental must be prominently displayed in the rental unit as well as in any advertisement for the rental of the unit excluding signs posted on the rental property.

(B) *Rental Registration*. Each new Short Term Rental license application must be accompanied by a rental registration application form provided by the City and must be renewed on an annual basis. At the time an application is filed or renewed a registration fee in an amount established from time to time by City Council shall be paid in full.

(1) *Annual registration.* The registration fee shall be paid prior to February 1st of each year. Any registration fee paid after this date as a renewal from the previous year shall be doubled.

(2) *Change in registered information.* The owner of a rental dwellings already registered with the City shall re-register within 60 days after any change occurs in the registration information. A new owner of a registered dwelling shall re-register the dwelling within 60 days of assuming ownership.

(3) *Information required.* Application for rental registration shall contain the following information:

(a) The address of the rental dwelling;

(b) The number of rental dwelling units;

(c) The number of bedrooms in each rental dwelling;

(d) The number of parking spaces provided on site for each rental dwelling;

(e) The maximum overnight occupancy of each rental dwelling which shall not exceed 2 persons per bedroom plus 2 additional people per rental dwelling except as allowed under an exception under Section 164.03-01(C);

(f) The type of wastewater system (septic or sewer);

(g) The names, mailing addresses, business phone numbers, personal phone numbers, and business addresses of the owner and local agent;

(h) The address where the owner and/or local agent will accept notices and orders from the City;

(i) Certification that the owner has read applicable Folly Beach Ordinances including (but not limited to regulations regarding noise, trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtles and golf carts;

(j) Certification that the owner has prominently posted within the property a summary of applicable Folly Beach Ordinances including (but not limited to) regulations regarding noise, trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtles and golf carts;

(k) Certifications that tenants listed on any rental agreement shall receive a summary of Folly Beach Ordinances including (but not limited to) regulations regarding noise, trash, parking, alcohol, animal, litter, surfing, dune protection, sea turtles and golf carts. The summary of applicable ordinances shall be in a form determined by the City and made available to all owners of rental property.

(1) Certification that the owner is aware that, upon receiving four or more notifications that occupants or guests have received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period, penalties may be assessed including business license revocation or nonrenewal.

(4) *Inaccurate or incomplete registration information.* It shall be a violation of this article for an owner to provide inaccurate information for the registration of rental dwellings or to fail to provide information required by the application form.

(5) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be responsible for operating such rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner and any notice served on the agent shall be deemed to have been served upon the owner of record.

(a) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

(b) The agent shall be required to be able to physically respond to the site within 30 minutes in case of emergency or need by the City for entry into the property.

(6) *More than one owner or ownership by entity.* Where more than one person has an ownership interest in a Short Term Rental the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required for the register shall be provided for the organization owning the rental dwelling and for the president, general manager, or other chief executive officer of the organization.
(Ord. 19-10, passed 9-28-10)

(C) *Taxes.* Owners of Short Term Rentals are subject to local, county, and state taxes including but not limited to sales, use, and accommodations taxes and are liable for the payment thereof as established by state law and the Folly Beach Code of Ordinances.

(D) *Violations and penalties.*

(1) *Violations.* It shall be a violation of this Chapter:

(a) to operate a Short Term Rental without complying with the requirements of this Chapter and the Code of the City of Folly Beach,

(b) to expand the allowable occupancy of a Short Term Rental without obtaining a new permit,

(c) to advertise a property as being available as a Short Term Rental without first complying with the requirements of this Chapter,

(d) to advertise a Short Term Rental as being available for more overnight occupants than have been permitted pursuant to this Chapter,

(e) to advertise more Short Term Rental units on a property than have permitted pursuant to this Chapter,

(f) to advertise a property as a Short Term Rental or "event house" for events or parties with more than 49 people in attendance, or

(g) to operate a Short Term Rental that has received four or more notifications of occupant or guest violations of noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period.

(i) The number of allowable notices and violations shall be reset upon a change of ownership which results in no overlap with prior common ownership

(ii) For the purpose of determining the total number of notifications to the owner, all written warnings and violations occurring within a single rental contract period shall be considered one instance. In no case shall notifications to the owner exceed one per rental contract period.

(2) *Penalties.* No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. A violation of this chapter can result in a civil penalty pursuant to Section 110.99, revocation or suspension of a business license pursuant to Section 110.17, or the non-renewal of the license.

Short Term Rental licensees shall be subject to graduated penalties as the licensee receives notifications that an occupant or guest has received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six month period. For the purpose of determining the total number of notifications to the owner, all written warnings and violations occurring within a single rental contract period shall be considered one instance. In no case shall notifications to the owner exceed one per rental contract period. The licensee may respond within 10 days of receiving the certified notice with evidence that demonstrates that the notice was issued in error. The graduated penalties are:

(a) First violation- a description of the violation committed by the tenant and a warning that progressive action shall be taken by the City in the case of further violations.

(b) Second violation- a description of the violation committed by the tenant and a second warning that progressive action shall be taken by the City in the case of further violations.

(c) Third violation- a description of the violation committed by the tenant, a civil penalty of $500.00 dollars, and a third warning that progressive action shall be taken by the City in the case of further violations.

(d) Fourth violation- a description of the violation committed by the tenant and initiation by the City of business license revocation procedures pursuant to Section 110.17 or notice that the license will not be renewed.

SECTION 117.03 ADDITIONAL REQUIREMENTS FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep for the purpose of City inspection and copying for a period of one year the following:

(1) The name, address, and other contact information of each signatory on the rental agreement;

(2) A document signed by the owner and/or agent responsible for renting the dwelling certifying the number of persons intended to occupy the dwelling.

(3) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.

(B) The owner and/or agent shall provide each person signing a rental agreement as a responsible party for a Short Term Rental the following:

(1) The address of the Short Term Rental and emergency contact numbers;

(2) The name and contact information for the owner or designated agent; and

(3) A copy of the City's rules and regarding noise, trash, parking, alcohol on the beach, litter, dune protection, sea turtles, requirements for special events, maximum occupancy, and golf carts.

(C) Individual rooms in Short Term Rentals may not be rented under separate contracts at the same time.

(D) Any events held on the premises of a Short Term Rental shall meet the following requirements:

(1) Must follow any applicable special event notification rules established by the City in Section 153.05 of the Folly Beach Code of Ordinances for events on private property;

(2) Shall be subject to all applicable provisions of the noise regulations in Sections 131.30 through 131.35 ; and

(3) May not feature mobile food trucks, carts, or other outdoor retailers offering products for sale or in exchange for donations. Caterers are allowed at events on the premises of Short Term Rentals.

(E) All Special Events held after August 1, 2018 on the premises of a Short Term Rental shall meet the following requirements:

(1) May not exceed 49 people; and

(2) May not include outdoor amplified music to include bands, deejays, music broadcast through speakers and electronic musical instruments.

(3) These requirements do not apply to events hosted by the owner of the property for which the owner is on site for the duration the event, the owner has completed the required special event notification, and for which no compensation has been paid for the event or the use of the house.

CHAPTER 163 ZONING DISTRICTS

SECTION 163.02-02 RESIDENTIAL DISTRICTS AND SPECIFIC PURPOSES

(A) *Single-Family Residential (RSF).* The RSF District is established as a district in which the principal use of land is single-family detached residential development at moderate densities. The regulations of this district are intended to prohibit any use that substantially interferes with the development of single-family detached dwellings and that is detrimental to the quiet residential nature of the district. Complementary uses customarily found in residential zoning districts, such as community centers, religious institutions under 3,500 square feet in area, private docks, parks, and playgrounds are permitted. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Accessory dwelling units are not permitted. The minimum lot area for development is 10,500 square feet and the maximum density allowed is four dwelling units per acre. Maximum lot coverage in the district is 35% of a lots high ground area.

(B) *Two-Family Residential (RTF).* The RTF District is established as a district in which the principal use of land is single-family detached and two-family residential development at moderate densities. The regulations of this district are intended to prohibit any use that interferes with the quiet residential nature of the district. Complementary uses customarily found in residential zoning districts, including religious institutions under 3,500 square feet in area, civic institutions less than 5,000 square feet in area, community centers, private docks, parks, and playgrounds are permitted. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Accessory dwelling units are not permitted. The minimum lot area for development is 10,500 square feet and the maximum density allowed is eight units per acre. Duplex dwellings located upon a single lot may be detached structures. Maximum lot coverage in the district is 35% of a lots high ground area.

(C) *Multi-Family Residential (RMF).* The RMF district is established and intended to encourage a wide range of medium and high density housing types, especially multiple family development, although single-family dwellings and two-family dwellings are also allowed. In addition to the range of complementary uses typically found in residential zoning districts, limited neighborhood-serving nonresidential uses (e.g., day cares, parking lots, and Type I retail uses) are permitted as special exception uses (See Table 164.01, Table of Allowed Uses), but accessory dwelling units are prohibited. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. The minimum lot area for all permitted uses (except townhouses) is 10,500 square feet. Individual townhouse units may be located on 3,500 square foot lots, provided the townhouse development includes the minimum open space set-aside required in § 166.03, Open Space Standards. Multi-family development shall include at least 3,500 square feet of lot area per dwelling unit, but in no instance shall multi-family development exceed 12 units per acre. Maximum lot coverage in the district is 35% of a sites total high ground.

SECTION 163.03-02 NONRESIDENTIAL DISTRICTS AND SPECIFIC PURPOSES.

(A) *Downtown Commercial (DC).*

(1) *Purpose and intent.* The DC District is established as a commercial focal point for Folly Beach characterized by a vibrant mix of retail, service, restaurant, entertainment, cultural, governmental, civic, residential, and visitor-service uses unique to the City. The district is intended to:

(a) Protect and enhance the unique aesthetic and architectural character of Folly Beach's downtown;

(b) Allow for a diverse mix of business, office, institutional, recreational, and residential uses above street-level;

(c) Encourage pedestrian-friendly development;

(d) Require new development that is consistent with the existing template of downtown development; and

(e) Promote the economic and development potential of Folly Beach while also protecting its unique character.

(2) *District-specific standards.* In addition to the other standards in this ZDO, development in the DC District shall comply with the following:

(a) Mixed-use structures in the DC District shall not include residential uses on the ground floor of the structure.

(b) Commercial uses on ground floor shall not be converted to a residential use.

(c) Nonconforming lots of record lawfully established on or before April 13, 1999 may be developed in accordance with the standards in § 168.04-01(C), Lots in the DC and IC Districts.

(d) Residential uses located above a nonresidential use in the DC District shall not exceed two stories or 35 feet above base flood elevation.

(e) Lot coverage is limited to a maximum of 50% of the lots high ground area.

(f) Except where exempted by the Design Review Board, new development on lots in the DC district fronting Center Street shall be built to the edge of the sidewalk or right-of-way edge.

(g) New development in the "A" Flood Zone shall be:

1. Elevated and enclose the entire perimeter of the structure below the base flood elevation with solid walls which are hydrostatically vented and aesthetically incorporated into the overall design of the structure; or

2. Floodproofed in lieu of elevating.

(h) New development on lots fronting Center Street located in the "V" Flood Zone shall be elevated and shall enclose the entire perimeter of the structure below the base flood elevation with solid breakaway walls which are aesthetically incorporated into the overall design of the structure.

(i) Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances.

(B) *Island Commercial (IC).*

(1) *Purpose and intent.* The IC district is established to provide for a "resort center" within the City that provides a variety of visitor-oriented business services, including visitor lodging, visitor attractions, and support facilities. The district is intended to accommodate visitor-oriented structures such as hotels, bed and breakfast inns, and time share units. Indoor and outdoor recreational facilities, parking, and low-intensity retail uses are also appropriate. This district is intended to foster pedestrian access particularly along the beachfront, in order to minimize traffic impacts to surrounding residential areas. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Multi-family dwellings, accessory dwelling units, and intense commercial uses are prohibited. The minimum lot area for residential uses is 10,500 square feet and 5,250 square feet for all other uses. Duplex dwellings located upon a single lot may be detached structures. Lot coverage is limited to 35% of the lots high ground area.

(2) *District-specific standards.*

(a) Mixed-use structures in the IC District shall not include residential uses on the ground floor of the structure.

(b) Commercial uses on ground floor shall not be converted to a residential use.

(c) Nonconforming lots of record lawfully established on or before April 13, 1999 may be developed in accordance with the standards in § 168.04-01(C), Lots in the DC and IC Districts.

(d) All development in the IC District shall not exceed two stories or 40 feet above base flood elevation.

(C) *Marine Commercial (MC).* The MC District is established to recognize areas within the City where, due to proximity to navigable waterways, commercial marine related-activity takes place. A full range of marine-related uses (e.g., docks and marinas), major and minor utilities, and outdoor storage facilities are appropriate uses in addition to limited residential uses,

institutional uses, and limited retail uses. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Applications to amend the official zoning map to establish or expand the MC District are prohibited.

(D) *Corridor Commercial (CC).* The CC District is established and intended to provide for a wide variety of general retail and high intensity residential and nonresidential uses located along the Folly Road corridor north of the Folly Creek Bridge, and to maintain scenic vistas along this corridor. The CC District is intended to accommodate the largest and most intense form of retail in the City (those uses greater than 10,000 square feet). Visitor-oriented services including hotels and indoor and outdoor recreational facilities are also permitted. Short Term Rentals are allowed subject to the requirements of Chapter 117 of the Folly Beach Code of Ordinances. Maximum lot coverage is limited to 35% of a lots high ground, and maximum building heights are limited to 35 feet above base flood elevation. Detached units may be located on individual lots, provided the newly created lots extend no more than five feet from the building envelope and the development includes the minimum open space set-aside required in § 166.03, Open Space Standards.

CHAPTER 164 USE STANDARDS

SECTION 164.01 TABLE OF USES

TABLE 164.01: TABLE OF ALLOWED USES

P = Permitted S = Special Exception A = Allowed in PD District Blank Cell = Prohibited

Use Category	Use Type	Zoning District									Additional Standards
		Residential			Nonresidential					PD (1)	
		RSF	RTF	RMF	DC	IC	MC	CC	CN		
RESIDENTIAL USE CLASSIFICATION											
Household Living	Multi-family dwelling			P	P			P		A	§ 164.03-01(A)(1)
	Single-family dwelling	P	P	P	P	P	P	P		A	§ 166.05-02
	Two-family dwelling		P	P	P	P	P	P		A	§ 164.03-01(A)(2)
	Townhouse			P				P		A	§ 166.05-03
	Residential unit over nonresidential use			P	P	P	P	P		A	
Group Living	Family day care home	P	P	P	P	P	P	P		A	§ 164.03-01(B)(1)

	Group day care home	P	P	P	P	P	P	P		A	§ 164.03-01(B)(2)
	Rooming house									A	§ 164.03-01(B)(3
Short Term Rentals		P	P	P	P	P	P	P		A	164.03-01(C)

SECTION 164.02-02 Residential Use Categories.

(A) *Household living.*

(1) *Characteristics.* Household living is characterized by the residential occupancy of a dwelling unit by a household. Accessory uses commonly associated with household living are recreational activities, raising of pets, hobbies, and parking of the occupants vehicles. Home occupations are accessory uses that are subject to additional regulations. (See § 164.04-05(C)) Owner occupied dwelling units in which the owner rents individual rooms to transient guests shall be subject to the use standards for Short Term Rentals.

(2) *Examples.* Examples include occupancy of single-family houses, two-family houses, and other multi-dwelling structures; some group home facilities, if the individual units meet the definition of "dwelling unit"; manufactured homes; and other structures with self-contained dwelling units. Mobile homes are prohibited.

~~(3) *Exceptions.* Lodging in a dwelling unit or where units are rented on a less than monthly basis is classified in the visitor accommodations category.~~

(B) *Group living.*

(1) *Characteristics.* Group living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of "household". The size of the group may be larger than the average size of a household. Generally, group living structures have a common eating area for residents. The residents may receive care, training, or treatment, as long as the caregivers also reside at the site. Common accessory uses include recreational facilities, dining facilities, and parking of vehicles for occupants and staff.

(2) *Examples.* Examples include group day care homes or rooming houses.

(3) *Exceptions.*

(a) Lodging where tenancy may be arranged for periods of less than 30 days and no care, training, or treatment is provided is classified as ~~visitor a~~ Short Term Rentals.

(b) Lodging where the residents meet the definition of "household" and where tenancy is arranged on a month-to-month basis or for a longer period is classified as household living.

(c) Most group home facilities are classified as institutions. However, group home facilities where individual units meet the definition of a "dwelling unit" in Chapter 161, Definitions, are classified as household living.

(4) *Exemptions.* In accordance with S.C. Code § 6-29-770(E), as amended, homes licensed by the state to provide 24-hour care to nine or fewer mentally or physically handicapped persons are exempt from the provisions of this ZDO. Such uses serving ten or more persons shall be considered as group home, nursing home, or assisted living facilities uses, as appropriate. (Ord. 05-10, passed 3-23-10)

(C) *Short Term Rentals.*

(1) *Characteristics*. Short Term Rentals are residential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling. Tourist Accommodations including hotels, motels, inns, and bed and breakfasts are not considered Short Term Rentals.

() *Examples.* Rental facilities where the owner does not live on site and no services are provided, non owner occupied units rented to either families or unrelated persons for any amount of time that is less than 30 consecutive days, or owner occupied units where individual rooms are rented to transient guests.

SECTION 164.02-04 Commercial Use Categories.

(J) *Tourist accommodations.*

(1) *Characteristics.* This category includes ~~dwelling units~~ buildings other than Short Term Rentals arranged for short-term stays of less than 30 days for rent, lease, or interval occupancy. This category ~~also~~ includes ~~convention~~ facilities primarily oriented for visitor use. Accessory uses may include pools and other recreational facilities, limited storage, restaurants, bars, meeting facilities, and offices.

(2) *Examples.* Examples include ~~vacation rentals, bed and breakfast inns, hotels~~, and hotels, motels, inns, bed and breakfasts and convention centers.

SECTION 164.03-01 Residential Uses.

(A) *Household living.*

(1) *Multi-family dwelling.* Multi-family dwellings shall comply with the following standards:

(a) Parking structures may be permitted as an accessory use to serve any multi-family development provided the structure does not exceed 35 feet in height (from base flood elevation) and provided its visual impact on adjacent lands is mitigated through building placement, screening, or architectural treatment.

(b) Multi-family structures shall be subject to the maximum height of the district where located, and shall not exceed two stories of heated floor area.

(2) *Two-family dwelling.*

(a) Two-family dwellings shall comply with the standards in § 166.05-03, Single- and Two-Family Design Standards.

(b) Nothing in this ZDO shall prevent a two-family dwelling on a lot in the RTF District from consisting of two detached structures.

(B) *Group living.*

(1) *Group day care home.* The number of children shall be limited to a maximum of eight children, including residents.

(2) *Family day care home.* The number of children shall be limited to a maximum of five children, including the residents.

(Ord. 05-10, passed 3-23-10)

(C) *Short Term Rentals.* Short Term Rentals shall have a maximum overnight occupancy of 2 persons per bedroom plus 2 persons per rental dwelling. The maximum occupancy may be

increased by the Building Official upon demonstration by the owner of DHEC compliance with allowable septic capacity.

CHAPTER 131 OFFENSES AGAINST PUBLIC PEACE

SECTION 131.31 ~~NOTICE TO RENTERS ABOUT NOISE ORDINANCE REQUIRED.~~ NOISE FROM SHORT TERM RENTAL PROPERTIES

A) Owners of ~~rental houses~~ Short Term Rentals shall ensure that a City-prepared notice about the noise ordinance is posted in houses that are rented for 30 days or less and is included in all ~~short and long term~~ rental contracts.

ADOPTED this 9th day of January 2018, at Folly Beach, South Carolina.

Ayes: 4 Nays: 3 Abstains: _____

Signature Attest

Tim Goodwin, Mayor

EXHIBIT NO. 8

CITY OF FOLLY BEACH

1st Reading: June 28th, 2022
2nd Reading: September 13th, 2022

Introduced by: Mayor Goodwin
Date: June 28th, 2022

ORDINANCE 027-22

AN ORDINANCE AMENDING THE FOLLY BEACH CODE OF ORDINANCES CHAPTER 117 (SHORT TERM RENTALS) BY CHANGING THE REQUIREMENTS FOR BUSINESS LICENSES AND RENTAL REGISTRATION PERMITS FOR SHORT TERM RENTALS, AMENDING THE VIOLATIONS SUBJECT TO RENTAL STRIKES, AND LOWERING THE NUMBER OF STRIKES REQUIRED PRIOR TO THE INITIATION OF LICENSE REVOCATION.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that Folly Beach Code of Ordinance be amended as follows:

NOTE: ~~Deleted material struck through~~, new material shown in red,

117.01 PURPOSE, APPLICABILITY, AND DEFINITIONS.

(A) The purpose of this chapter is to regulate the use of residential units as short-term rentals to:

(1) Protect the integrity of the eCity's neighborhoods and the quality of life of its citizens;

(2) Establish a system to track the short-term rental inventory in the eCity;

(3) To protect the health and safety of occupants of short-term rental units;

(4) To ensure a level playing field for individuals in the short-term rental market; and

(5) To protect the residential character of the residential districts of the eCity.

(B) The following definitions apply:

DESTINATION CLUBS. Destination or private vacation clubs ("destination clubs") are classified as private and/or exclusive membership organizations or commercial businesses primarily engaged in providing short-term overnight accommodations and related services for its club members with non-ownership interest who seek alternative options to standard vacation home rentals. Destination clubs typically own or lease properties from the owners on a long-term basis, provide those properties in a variety of locations to its members on a short-term basis, and model a membership access structure where its members purchase

membership levels granting access to properties and personalized services. Properties offered by destination clubs to a member for less than 30 days are considered **SHORT TERM RENTALS** whether the destination club is an owner of record or a lessee. All references to "owners" in this chapter apply to destination clubs.

TIME SHARES. "Vacation time sharing plans" as defined in South Carolina Code § 27-32-10(9) are not **SHORT-TERM RENTALS**. However, any "vacation time sharing lease plan" as defined in South Carolina Code § 27-32-10(8) that is less than three years is considered a **SHORT-TERM RENTAL**. "Vacation multiple ownership interests" as defined in South Carolina Code § 27-32-250(1) are not **SHORT-TERM RENTALS.**

HOUSE EXCHANGE PROGRAMS are the occasional occupancy of a residential occupancy assessed by Charleston County at a 4% property tax rate by someone other than the owner of the residence while the owner is temporarily absent from the residence, and no monetary compensation is paid to the owners for such occupancy. **HOUSE EXCHANGE PROGRAMS** are not **SHORT-TERM RENTALS.**

RENTAL OCCUPANT. Any person who, in exchange for compensation paid, occupies a dwelling unit for less than 30 days.

SHORT TERM RENTALS. Residential dwellings, or any portion thereof, rented for less than 30 days and used in a manner consistent with the residential character of the dwelling. Tourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered **SHORT TERM RENTALS**.

117.02 LICENSE, REGISTRATION, AND TAX REQUIREMENTS.

Any owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.

(A) *Business license.* A ~~B~~business licenses must be obtained and renewed annually by the submittal of a form and fee as established by the ~~e~~City for each residential dwelling unit or portion thereof offered as a short-term rental.

(1) No business license shall be issued for the rental of a residential unit which is planned or under construction until a Certificate of Occupancy is issued for the unit.

(2) A business license shall only be issued to owners of a residential unit. Lessees of residential dwelling units may not apply for a business license to rent the unit.

(3) A designated agent may apply for a short-term rental business license on behalf of an owner. An application for a business license submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner including name, address, phone number, email, and any other information as required on the application form.

~~The business license account number and the maximum occupancy for each short-term rental must be prominently displayed in the rental unit, as well as in any advertisement for the rental of the unit, excluding signs posted on the rental property.~~

(B) *Rental registration permit.* ~~Each new short term rental license application must be accompanied by an application form provided by the city and must be renewed on an annual basis.~~ A rental registration permit must be obtained and renewed annually by the submittal of a form and fee as established by the City for each residential dwelling unit or portion thereof offered as a short-term rental.

(1) *Annual registration.* The rental registration permit application shall be completed prior to June 1 of each year.

(a) No new business license to operate a short-term rental shall be issued prior to the approval of a rental registration permit.

(b) Renewals of valid prior year business licenses shall be allowed prior to the approval of a rental registration permit. Failure to complete a rental registration permit application within 30 days of the business license renewal date shall be grounds for revocation of the license.

(2) *Annual fee.* The fee for a rental registration permit shall be set by City Council and shall be reviewed periodically.

(3) A rental registration permit shall only be issued to owners of a residential unit. Lessees of a residential dwelling unit may not apply for a rental registration permit.

(4) A designated agent may apply for a rental registration permit on behalf of an owner. An application for a rental registration permit submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner including name, address, phone number, email, and any other information as required on the application form.

(~~2~~5) *Change in registered information.* The owner, or designated agent, of a rental dwelling already registered with the eCity shall re-register within 60 days after any change occurs in the registration information. There shall be no additional fee upon change of registration information except that ~~A~~a new owner of a registered dwelling, upon application for a new business license, shall re-register the dwelling and pay the appropriate fee within 60 days of assuming ownership.

(~~3~~6) *Information required.* Application for a rental registration permit shall contain the following information:

(a) The street address of the rental dwelling unit;

(b) The ~~number of rental dwelling units~~ unit number if applicable;

(c) The number of bedrooms in each rental dwelling unit;

(d) The number of parking spaces provided on site ~~for each rental dwelling~~ as well as a site plan showing the location of all onsite parking spaces. One onsite parking space must be

provided for each bedroom being rented. This requirement shall not apply to:

(i) New and renewed permits issued to residential units located in a multifamily housing development.

(ii) New and renewed permits issued to residential units approved by the City for resident only parking signs in the right of way.

(iii) Renewed permits issued to residential units with a valid business license and rental registration permit September 13th, 2022. Rental registration permits for such properties may be renewed without the required parking until such time as the ownership of the property changes.

(e) The maximum overnight occupancy of each rental dwelling unit, which shall not exceed two persons per bedroom, plus two additional people per rental dwelling unit, except as allowed under an exception under § 164.03-01(C);

(f) The type of wastewater system (septic or sewer). If the property is serviced by a septic system, the owner must certify that the system is protected from parking;

(g) The name~~s~~, mailing address~~es~~, business phone number~~s~~, personal phone number~~s~~, and business address~~es~~ of the owner and local agent;

(h) The physical address and email address where the owner and~~/or~~ local agent will accept notices and orders from the ~~e~~City and acknowledgement that service by U.S. Mail and/or transmission to the provided email addresses will constitute acceptable service of any notice, notice of violation, ordinance summons, or ticket;

(i) Certification that the owner has read applicable ~~e~~City ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts;

(j) Certification that ~~the owner has prominently posted within the property~~ a copy of the parking diagram provided to the City for the property as well as a summary of applicable ~~e~~City ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented;

(k) Certification that tenants listed on any rental agreement shall receive a copy of the parking diagram provided to the City for the property as well as a summary of applicable ~~e~~City ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented. The summary of applicable ordinances shall be in a form determined by the cCity, and made available to all owners of rental property;

(l) A ~~valid Charleston County Accommodations tax account number along with receipts for payment of prior year taxes due.~~ Proof of payment from the owner or designated agent for payment of local, County, and State taxes due on short term rental accommodations;

(~~l~~ m) Certification that the owner is aware that~~, upon receiving four or more notifications that occupants or guests have received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six-month period, penalties may be assessed, including business license revocation or non-renewal.~~ short term rental licensees shall be subject to strikes issued against the license when the owner, agent, occupant, or guest has been convicted of any violation of the requirements of this

Chapter or other City ordinances related to use of the property as a short-term rental, and that three strikes during any rolling twelve-month period can result in suspension, revocation, or non-renewal of the license;

(n) Certification by the owner verifying the presence of smoke alarms, carbon monoxide monitors, fire extinguishers, the number of bedrooms, the number of parking spaces, the provision of trash receptacles, the posting of address and house numbers, and posting of rules and regulations, and, if present, that sprinklers are operational; and

(o) Documentation in the form of Charleston County property records or a certificate of occupancy confirming the number of bedrooms offered for rent.

~~(4) *Inaccurate or incomplete registration information.* It shall be a violation of this chapter for an owner to provide inaccurate information for the registration of rental dwellings, or to fail to provide information required by the application form.~~

(~~5~~7) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be responsible for operating the rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner, and any notice served on the agent shall be deemed to have been served upon the owner of record.

(a) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

(b) Non owner agents must be licensed by the State of South Carolina as an attorney, real estate agent, broker in charge, or property manager. Employees under the direct supervision of attorneys, real estate agents, brokers in charge, or property managers licensed by the State of South Carolina may be designated as local agents.

(c) The agent shall be required to be able to physically respond to the site upon notification from the City within 60 minutes in case of emergency or need by the City for entry into the property.

(~~6~~8) *More than one owner or ownership by entity.* Where more than one person has an ownership interest in a short-term rental, the required information shall be provided for each owner. In those cases, in which the owner is not a person, the information required ~~for the register~~ shall be provided for the organization owning the rental dwelling, and for the president, general manager, or other chief executive officer of the organization.

(C) *Taxes.* Owners of short-term rentals are subject to local, county, and state taxes, including, but not limited to, sales, use, and accommodations taxes, and are liable for the payment thereof as established by state law and the ~~e~~City code of ordinances.

(D) *Violations and penalties.*

(1) *Violations.* ~~It shall be a violation of this chapter to~~Violations of this Chapter include but are not limited to:

(a) ~~Operate~~ Operating a short-term rental without complying with the requirements of this ~~e~~Chapter and the ~~e~~City code of ordinances;

(~~e~~ b) ~~Advertise~~ Advertising a property as being available as a short term rental without first complying with the requirements of this chapter;

(c) Operating a short-term rental without a business license, registration permit, accommodations tax account;

(d) Advertising a short-term rental without listing the business license number and rental registration permit number;

(e) Operating a short-term rental in such a manner that individual rooms are rented at the same time under separate rental contracts;

(~~d~~ f) ~~Advertise~~ Advertising a short term rental as being available for more overnight occupants than have been permitted pursuant to this chapter;

(~~b~~ g) ~~Expand~~ Expanding the allowable occupancy of a short term rental without obtaining a new permit;

(~~e~~ h) ~~Advertise~~ Advertising more short term rental units on a property than have been permitted pursuant to this ~~e~~Chapter. For example, advertising a single-family dwelling as accommodating multiple short term rentals is not permitted;

(~~f~~ i) ~~Advertise~~ Advertising a property as a short-term rental or "event house" for events or parties with more than ~~49~~ 25 people in attendance; ~~or~~

(j) Offering a short-term rental in any zoning district for fewer than two consecutive nights;

(k) Failure to post the business license number, rental registration permit number, allowable overnight occupancy, and City approved beach rules prominently within a rental unit;

(l) Failure to obtain a rental registration permit within 30 days of renewing a business license, failure to provide accurate information for the registration of rental dwellings, failure to provide information required by the application form;

(m) Failure to complete a new rental registration permit application within 60 days of a change in ownership;

(n) Failure of the designated agent listed on the rental registration permit to respond physically to the site within 60 minutes of notification from the City of an emergency;

(o) Failure to maintain, and provide to the City, any and all information required in 117.04.A;

(p) Failure to provide tenants listed on any rental agreement information as required under 117.04.B;

(q) Failure to inspect and repair a failed septic system as required under Section 55.07;

(r) Operating a business out of a short-term rental or otherwise using a short-term rental for non-residential use except for allowable home occupations, e-commerce, and remote work; and

(~~g~~ s) ~~Operate~~ Operating a short term rental ~~that has received four or more notifications of occupant or guest violations of noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six-month period.~~ that has received three strikes within any twelve month rolling period.

i. The number ~~of allowable notices and violations~~ strikes shall be reset upon a change of ownership that results in no overlap with prior common ownership.

ii. For the purpose of determining the total number ~~of notifications to the owner~~ strikes, all ~~written warnings and~~ convictions stemming from violations occurring within a single rental contract period shall be considered one instance. In no case shall ~~notifications to the owner~~ strikes exceed one per rental contract period.

iii. All strikes issued prior to the date of this ordinance, shall not be counted for the purposes of license revocation.

(2) *Penalties.*

~~(a)~~ No permit may be issued or approved unless the requirements of this chapter, or any ordinance adopted pursuant to it, are complied with. A violation of this chapter ~~can~~ may result in the following penalties:

(a) ~~a civil penalty pursuant to § 110.99~~, Any person violating any provision of this Chapter shall be deemed guilty of a civil offense and shall be subject to a fine of up to $500 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violations shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this Chapter.

(b) Denial, revocation, ~~or~~ suspension, or non-renewal of a business license pursuant to §§ 110.14 or 110.15 and in accord with the appeal procedures set forth in § 110.16. ~~110.17~~, ~~or the non-renewal of the license~~.

~~(b)~~(c) ~~Short term rental licensees shall be subject to graduated penalties as the licensee receives notifications that an occupant or guest has received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six-month period.~~ Revocation, suspension, or non-renewal of the short term rental business license, in accord with the appeal procedures set forth in § 110.16, for three strikes during a rolling twelve month period.

i. The license will be assessed a strike when the owner, agent, occupant, or guest of the property has been convicted of any violation of the requirements of this Chapter or any other City ordinances related to the use of the property as a short-term rental including but not limited to noise, trash, parking, litter, dune protection, animals at large, and sea turtle violations and when the registered agent of the property is given notice of the strike as set forth herein.

ii. For the purpose of determining the total number of strikes, each strike issued upon conviction shall be considered in effect on the date of the original offense and ~~notifications to the owner, all written warnings and~~ all convictions related to offenses ~~violations~~ occurring within a single rental contract period shall be considered one strike. ~~instance~~ In no case shall ~~notifications to the owner~~ strikes exceed one per rental contract period. ~~The licensee may respond within ten days of receiving the certified notice with evidence that demonstrates that the notice was issued in error.~~

iii. Strikes will re-set upon the transfer of the property.

iv. The City will provide notice of each strike to the registered agent of the property as follows~~The graduated penalties are~~:

1. First strike ~~violation~~: a description of the violation ~~committed by the tenant~~ and resultant conviction, and a warning that progressive action shall be taken by the eCity in the case of further violations.

2. Second strike ~~violation~~: a description of the violation ~~committed by the tenant~~ and resultant conviction, and a ~~second~~ warning that ~~progressive action shall be taken by the city~~ the City shall initiate revocation of the rental license in the case of further violations.

.....

3. Third strike ~~violation~~: a description of the violation ~~committed by the tenant~~ and resultant conviction, ~~a civil penalty of $500,~~ and ~~a third warning that progressive action shall be taken by the city in the case of further violations~~ ~~and~~ notice of the initiation of license revocation procedures.

(d) Any violation of a noise ordinance that occurs on the property will result in a notice that the owner is strongly encouraged to install noise monitoring.

(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 32-19, passed 11-12-19; Am. Ord. 033-21, passed 11-9-21)

§ 117.03 ADDITIONAL REQUIREMENTS FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep the following for ~~e~~City inspection and copying for a period of one year:

(1) The name, address, and other contact information of each signatory on the rental agreement;

(2) ~~A document signed by the owner and/or agent responsible for renting the dwelling, certifying the number of persons intended to occupy the dwelling~~.

(2) A copy of the City approved rental regulations summary, signed by each signatory of the rental agreement.

(3) A document signed by the owner and/or agent responsible for renting the dwelling, certifying the number of persons intended to occupy the dwelling.

(4) ~~(3)~~ The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.

(B) The owner and/or agent shall provide the following for each person signing a rental agreement as a responsible party for a short term rental:

(1) The address of the short term rental and emergency contact numbers;

(2) The name and contact information for the owner or designated agent; and

(3) A copy of the parking diagram provided to the City for the property as well as a copy of the city's rules and regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts.

(C) Each residential dwelling unit may contain only one short term rental. Individual rooms in short term rentals may not be rented under separate contracts at the same time. For example, a single family home or individual multifamily unit may only be rented as a single short term rental under one contract.

(D) Any events held on the premises of a short term rental shall meet the following requirements:

(1) Must follow any applicable special event notification rules established by the city in § 153.05 for events on private property;

(2) Shall be subject to all applicable provisions of the noise regulations in §§ 131.30 through 131.35; and

(3) May not feature mobile food trucks, carts, or other outdoor retailers offering products for sale or in exchange for donations. Caterers are allowed at events on the premises of short term rentals.

(E) All special events held after ~~August 1, 2018~~ October 11, 2022 on the premises of a short term rental shall meet the following requirements:

(1) May not exceed ~~49~~ 25 people; and

(2) May not include outdoor amplified music, including bands, deejays, music broadcast through speakers and electronic musical instruments.

(3) These requirements do not apply to events hosted by the owner of the property for which the owner is on site for the duration the event, the owner has completed the required special event notification, and for which no compensation has been paid for the event or the use of the house.

(Ord. 26-17, passed 1-9-18)

RATIFIED this 13 day of Sep 2022, at Folly Beach, South Carolina, in City Council duly assigned.

ATTEST:

Municipal Clerk

Tim Goodwin, Mayor

CHAPTER 5. RENTAL APPLICATIONS AND REGULATIONS

The intent of these regulations is to promote public health, safety, and welfare and to discourage nuisance and behavioral issues associated with short-term rental properties in residential zoning districts, R-1, R-2, and R-3.

Sec. 14-501. Definitions.

The following words and phrases, as used in this article, shall have the following meanings:

An authorized agent means an owner, the owner's agent, or the owner's designee who is normally available and authorized to respond to any issues arising from a short-term rental unit within two hours and who is authorized to receive written notice on behalf of the owner.

CAPS means the maximum number of properties that may be licensed for short-term rental use, calculated as a percentage of total developed dwelling units and developable lots within each zoning district. Total properties are based on the records of the county assessor's office as of December 31 of each preceding year.

Destination or private vacation clubs ("destination clubs") are classified as private and/or exclusive membership organizations or commercial businesses primarily engaged in providing short-term overnight acommodations and related services for its club members with non-ownership interest who seek alternative options to standard vacation home rentals. Destination clubs typically own or lease properties from the owners on a long-term basis, provide those properties in a variety of locations to its members on a short-term basis, and model a membership access structure where its members purchase membership levels granting access to properties and personalized services. Properties offered by destination clubs to a member for less than 30 days are considered STRs whether the destination club is an owner of record or a lessee. All references to "owners" in this chapter apply to destination clubs.

Non-conforming use means a use which was lawfully established and maintained, but which does not comply with the use regulations applicable to new uses in the zoning district in which it is located; the use any of any land, building, or structure which does not conform with currently applicable use regulations, but which complied with use regulations in effect at the time the use was established.

Owner, in the context of short-term rental, means the record owner of the property or any person or entity that leases from the record owner of the property, who engages in the business of furnishing for lease or for rent, either directly or through a third-party entity, a short-term rental unit and who must be licensed both as a business and under this chapter.

Provisional lot license (PLL) is a license that provides the owner of a vacant developable lot (hereafter referred to as "lot") the right to obtain a STR license. The PLL is valid for three years from issuance and guarantees the owner the right to obtain a rental business license upon issuance of a certificate of occupancy (CO). In the event construction is in the process, but a CO has not been issued, the PLL holder may appeal the expiration of the PLL to the town treasurer for an extension of up to 120 days.

Short-term rental (STR) property means an accommodation, rented or leased for less than 30 consecutive days, used in a manner consistent with the residential character of the dwelling, when the property on which the accommodation is located is assessed, for county property tax purposes, as residential property. Exceptions: Rental properties that are available for rent for a period not to exceed 14 calendar days in a calendar year are exempt from the provisions of this chapter. Hotels, motels, inns, and bed and breakfasts are not considered STRs.

Any property which is leased from its owner on a long-term lease basis (30 days or greater), then made available by the leasee for short-term rental or occupancy to a different party shall be considered a short-term

rental and both lessor and leasee are subject to this chapter. Vaction time-sharing plans are not short-term rentals and are not allowed pursuant to section 14-201 of this code.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019)

Sec. 14-502. Rental business license application.

The town shall not grant a rental business license for a STR until the following conditions are satisfied:

(1) An owner or the authorized agent on behalf of the owner is required to obtain an annual Class 7 rental business license from the town for each STR property prior to advertising or renting.

(2) A rental business license application shall be completed for each STR by the owner or its authorized agent. The signed rental business license application shall be a legal and binding agreement acknowledging that all town ordinances and rental regulations shall be adhered to for the duration of the rental business license. The rental business license application shall be submitted, and subject to review, annually.

An owner of a lot within the R1/R2* area (see Table 14-505.1) may apply for a rental business license. Upon receipt of a completed application, the town will issue, based on the availability of such licenses, a PLL.

(3) The annual application fee for the rental business license, including lot applicants, is $500.00 for any property in the R1 or R2 zoning districts subject to caps; $200.00 for all other properties. In the event a license is not granted due to licenses being capped, the application fee will be suspended until such time that the application is approved, and a license is awarded. A license is nontransferable between owners. A change in ownership of the STR property shall require the new owner or its authorized agent to apply for a new license for the dwelling unit or lot, subject to license availability. The previous owner is responsible for all charges prior to the change of ownership and is responsible for properly closing his/her license with the Town of Kiawah Island.

(4) If the applicant is someone other than an owner, the applicant shall submit a copy of the owner's written authorization of the applicant's right to apply for the rental business license. Where the property is leased to the applicant, the applicant must attach a copy of the lease.

(5) It is the responsibility of the STR owner to report all gross income generated by each STR property, including gross income generated through a property management company, home-share platforms (such as VRBO, HomeAway, or Airbnb by way of example and not limitation), or any other source, in accord with the requirements of sections 4-304 and 4-306 of the Town of Kiawah's Municipal Business License Ordinance. Reporting all gross income can be accomplished a) through the application submitted by a property management company reporting total gross income for the STR property, including income generated by home-share platforms and other sources, or b) if the property management company will only report gross income generated by the property management company, the STR owner must submit a separate business license application reporting gross income that has not been reported by the property management company, such as gross income generated by home-share platforms or other sources. An STR owner's failure to fully report all gross income, regardless of source, generated by a STR property is a violation of section 14-507(a)(2) of this chapter and section 4-307 of the Town of Kiawah's Municipal Business License Ordinance.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019; Ord. No. 2020-07 , § 2, 8-4-2020)

Sec. 14-503. Permit and operating requirements.

(a) It shall be the sole responsibility of the STR owner directly or through his or her authorized agent to notify and educate the guests of all applicable STR rules and regulations, including all rules encompassed in section 14-506.

(b) No owner or his or her agent may advertise a STR property in any manner that would constitute a violation of this chapter. The property owner and his/her authorized agent shall be jointly responsible for the accuracy of advertising of all STR properties as required in section 14-503(c).

(c) The advertisement of any STR properties must include the rental business license number, the maximum number of vehicles permitted for overnight parking, number of approved bedrooms, and the maximum allowable occupancy

(d) Prior to the issuance of a STR rental business license, all first-time STR's applying for a license or any property requesting a change in the number of bedrooms or a change in parking capacity are subject to and must pass a rental property inspection pursuant to section 14-503(e).

(e) All rental properties shall remain compliant with the current edition of the International Property Maintenance Code (IPMC). All STR properties are subject at any time, with notice, to inspection for compliance to the IPMC and/or town ordinances. Inspections will include, but not limited to:

(1) Smoke alarms. Smoke alarms are required in each bedroom and the hall leading to the bedroom.

(2) Carbon monoxide detector.

(3) Sprinkler system. If the residence has a fire sprinkler system, it shall be the owner's or their authorized agent responsibility to furnish documentation to the code enforcement officer that their sprinkler system received an annual inspection and is in proper working order.

(4) Fire extinguishers. A fire extinguisher meeting the requirements as a 1-A: 10-B:C shall be under the kitchen sink in all rental units.

(5) Vehicle parking spaces. Verification of the number of vehicle parking spaces permitted on site as set forth in section 14-506(d).

(6) Bedroom count. Verification of the number of bedrooms within each rental unit as set forth in section 14-506(c).

(7) Structural elements. Decks, stairs, handrails, and guardrails including boardwalks.

(8) Enclosed trash receptacles. Trash receptacles shall be enclosed in a garage or approved screened enclosure.

(9) Posted address and contact information and rules and regulations. Each rental unit shall furnish the property's address, and the owner's or authorized agent's contact information, including all other information required by section 14-506, inside the unit in a visible place to occupants in the event an emergency.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019)

Sec. 14-504. Rental business license.

(a) Article 4—Finance and Taxation, chapter 3—Municipal Business Licenses, regulates all business licenses. The following additional regulations apply specifically to STR business license.

(b) A short-term rental business license expires annually on April 30th. License holders must renew each year and have until April 30th to renew their license without penalty. As of May 1st, if the holder of an expired license submits a renewal request, one of the following conditions shall apply:

(1) If the property is in an R1 or R2 zoning district, and the license cap in Table 15-805.1 has not been reached, the license is renewable subject to a $1,000.00 late fee, plus all applicable fees.

(2) For properties in all other zones, the license is renewable subject to a $1,000.00 late fee, plus all applicable fees. If the property is in an R1 or R2 zoning district subject to caps, and the town is unable to issue a STR business license solely due to the percentage caps established herein, (see Table 14-505.1), a new application can still be filed, and the applicant will be placed on a waiting list. If a permit becomes available, the town will notify the applicant who has been on the waiting list the longest and allow him/her seven business days to provide the town with any and all information necessary to ensure the application is current and otherwise complies with the ordinance. If the applicant fails to respond and/or provide current information within seven business days, the town shall remove the applicant from the waiting list and repeat the process until a STR business license, or PLL, has been issued, or all of the applicants on the waiting list have been notified.

(3) Late renewals (after the close of business on April 30th), are not permitted for non-conforming use properties previously holding a valid STR business license, including destination or vacation clubs.

(c) A license holder shall provide proof of accommodation tax payments for the previous year at the time of license renewal. Failure to pay all required accommodation taxes constitutes grounds to not renew a rental business license.

(d) All fees related to STR business licenses must be paid in full at the time of application. Upon the closing of the license, the licensee is responsible for notifying the town and properly closing their account.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019; Ord. No. 2021-16 , §§ 1, 2, 12-7-2021)

Sec. 14-505. Short-term rental property caps.

Short term rental caps are established in the R1 zoning district and identified R2 zoning districts (see Table 14-505.1 for details). The limitations and requirements of this section apply to short- term rental properties in the town's R1 and R2* zoning districts.

(1) License caps. Licenses for rental properties shall be distributed on a first-come, first-serve basis. Active licenses expire annually on April 30th of each year. Applications received after April 30th are subject to late fees as defined in section 14-504(b)(1)(2).

a. Properties holding a rental business license will have first preference to renew by April 30th to maintain their license, as long as the license is in good standing with the town.

b. Available licenses are subject to the percentage of rental caps allowed within the zoning district, pursuant to Table 14-505.1, Rental Property Zoning Caps.

c. If a license cap is reached within the R1/R2* zoning district, the applicant will be placed on a waiting list until a license becomes available, consistent with provisions in section 14-504(b)(3).

d. STR or PLL licenses are not transferable. In the event of the transfer of property ownership, including the transfer of interests in corporations or partnerships that own a licensed property, the new owner may apply for a new STR or PLL license, subject to section 14-502 and all other provisions of this chapter. Exception: Intra-family transfers of property can include the transfer of a STR or PLL license.

e. A license may be subject to expiration or may not be renewed should an owner report <$3,000.00 of annual rental revenue. In the event of annual revenue below $3,000.00, an owner will need to demonstrate the short-term rental property was available and advertised for rental throughout the previous year.

(2) In calculating the number of rental business licenses available in any license year, the calculation will be based on the percentages defined in Table 14-505.1

Table 14-505.1: Rental Property Zoning Caps			
Zoning District	R-1 and R-2*	All other R-2	R-3
Maximum % of STR properties allowed	20%	No Limit	No Limit
Rental percentages are a ratio of rental licenses (including PLLs) to developed lots within the R1 zoning district, and the specific R2 zoned areas identified below. Developed lot numbers are defined from the county assessor's office as of December 31 of the prior calendar year. *R-2 districts include: Indigo Park, Ocean Oaks, Ocean Park, and Silver Moss, Osprey Point (Club Cottage Lane, Marsh Cottage Lane, and Shell Creek Landing)			

(3) Destination clubs and private vacation clubs are not permitted by the town's zoning regulations in residential zones R1, R2, and R3 unless the destination club complies with the following requirements:

a. The destination club obtains a STR business license;

b. The destination club pays all required state sales tax (eight percent), state (two percent), county (two percent) and local accommodation (one percent) taxes on gross receipts collected from STRs;

c. The destination club complies with all other rules and regulations applicable to STRs;

d. The destination club provides no commercial services on the subject property; and

e. The owner of the property obtains a business license.

Any applicable properties in R1, R2, or R3 holding a valid STR business license as of the effective date of the ordinance from which this section is derived shall be grandfathered and included in calculating the license cap, subject to the following conditions:

a. Residential business licenses expire as of April 30th of each year. The license holder has until April 30th to renew. Failure to renew by the close of business on April 30th will result in the expiration of the license. No late renewals will be permitted for non-conforming use properties, including destination clubs and vacation clubs.

b. All grandfathered properties shall remain subject to the requirements of this chapter as STRs.

c. Destination clubs and private vacations clubs are permitted in zones R2/Commercial, R3/Commercial, RST-1, RST-2, RST-1/R3, R-2(DA), R-3(DA), and RST-2(DA) are subject to the approval of uses prescribed in the Zoning Ordinance and the requirements of this chapter as STRs.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019; Ord. No. 2021-16 , §§ 1, 2, 12-7-2021)

Sec. 14-506. Notice of rental residence rules and regulations.

(a) The town shall promulgate and distribute rules and regulations applicable to the rental of residential property to all property management companies and/or the owners. An owner or authorized agent shall

furnish a copy of the rules and regulations to each rental guest. In addition, the owner (or authorized agent) shall post a copy of the rules and regulations in a visible location within each rental unit.

(b) Local contacts.

(1) The owner (or authorized agent) who does not reside within the Charleston Metro Area must identify an individual or individuals to serve as local contacts and be authorized and able to respond to emergency conditions or complaints affecting the property and to inquiries from all entities having jurisdiction over the rental property.

(2) The owner (or authorized agent) must have a 24-hour contact phone number posted in a visible location within each unit

(3) A local contact designated under subsection (1) must be present within the Charleston Metro Area and be accessible and available to respond within two hours after being notified of an emergency by a guest of the short-term rental, or by a town employee during any 24-hour period.

(4) If there is a change to a local contact, the owner or authorized agent must provide updated or new information to the Town of Kiawah Island business license department in writing within three business days.

(c) Maximum occupancy. The maximum occupancy for all short-term rental properties is two occupants per code-compliant bedroom. Two additional occupants are allowed per dwelling unit. As an example, a four-bedroom rental property shall have a maximum of ten occupants. Children under the age of two are not included in calculating maximum occupancy.

(1) The number of bedrooms for purposes of determining occupancy shall be based on Charleston County Property Tax records. Should a rental business license applicant seek to claim more bedrooms than shown on Charleston County records, the owner or its agent shall contact the town code enforcement office for review and determination prior to renting the unit. Such review will consider the additional bedrooms per the building code requirements.

(2) Temporary conversion of rooms such as dining rooms, living rooms, studies, etc., for use as bedrooms for rental purposes, is not permitted.

(d) Parking and driveways. The maximum number of vehicles permitted for overnight parking for each single-family dwelling unit shall be in accordance with the number of parking spaces as defined on the rental application.

(1) Vehicles may only be parked on permanent paved or gravel parking surfaces, as approved by the town or other entity having jurisdiction. Parking on grass or landscaped areas is prohibited at all times.

(2) Vehicles must be parked in a manner that permits the free passage of emergency vehicles. Overnight parking in driveways must allow emergency vehicles to within 25 feet of the residence.

(3) If a garage is utilized to determine allowable parking, access shall be provided at all times that the short-term rental is operational.

(4) Parking for villa units shall be in parking lots that are integral to the villa complex.

(5) Pickups greater than one-half ton, and cargo vans greater than 12 passengers, recreation vehicles (RVs), buses, trailers, boats, and other large vehicles are prohibited from parking overnight at residential dwellings. Vehicles shall not be used for sleeping or overnight accommodations.

(6) STR properties must comply with St. Johns Fire District requirements and applicable architectural review board regulations for residential zoning districts (R-1, R-2, and R-3) which require that driveway clearance for fire trucks be a minimum of ten feet wide for straight drives and have a height clearance of 13.6 feet.

(e) Trash collection.

(1) Rental dwelling units shall subscribe to back-door trash collection two times per week, including recycling service. Trash receptacles shall be stored in an enclosed garage or approved screened enclosure whereby the receptacles are not visible from the street.

(2) Villas shall use provided dumpsters for trash disposal. Dumpster pick-up service shall be sufficiently frequent to avoid trash overflow. Dumpsters shall be stored on an approved screened pad.

(f) Bicycles and beach gear shall not be visible from the street side or adjoining properties from dusk to dawn for all single-family dwellings and multi-family dwellings. These articles shall be placed in the appropriate storage location from dusk to dawn and shall not be left in a driveway, yard, or parking lot from dusk to dawn. No articles of clothing, beach towels, or other similar items shall be draped over railings or deck chairs or be visible beyond property lines at any time of day or night.

(g) All exterior lighting shall comply with article 16—beach management, chapter 1—beach lighting, which regulates beach lighting to protect sea turtle hatchlings.

(h) The provisions of subsections (d), (e), (f), and (g) herein shall apply to the STR property at all times, including when the property in use by the owners, guests, or renters.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019; Ord. No. 2020-07 , § 2, 8-4-2020)

Sec. 14-507. Violation of rental regulations.

(a) It shall be a violation of this chapter to:

(1) Operate a rental property without complying with the requirements of this chapter and the town code of ordinances;

(2) Make a misrepresentation on a short-term rental business license application;

(3) Advertise, offer, or otherwise make available, a property as being available as a rental without first complying with the requirements of this chapter; excluding properties exempt from these provisions of the rental program not exceeding 14 calendar days on an annual basis;

(4) Expand the allowable occupancy or parking of a rental unit without obtaining a new license;

(5) Advertise a rental property as being available for more overnight occupants than have been permitted pursuant to this chapter;

(6) Advertise or rent separate guest houses or pool houses as an independent rental unit. Such units can be included under a rental business license issued to a single address, but it cannot be rented as a stand-alone unit;

(7) Rent out a portion only of the rental or individual rooms of a property, to include detached homes, villas, cottages, and any other property designation. No rental business license will be issued unless the subject property is to be rented in its entirety. Owners are permitted to lock off closets or bedrooms from guest access;

(8) Operate a commercial business in a STR property. Examples include, but are not limited to catering, telemarketing, or distribution of goods; and

(9) Prune or otherwise alter vegetation and dunes without the required permits from the town or other applicable jurisdiction (Kiawah Island Community Association, or the Kiawah Island Architectural Review Board).

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019)

Sec. 14-508. Liability.

(a) Any person violating any provision of this chapter shall be subject to a fine of up to $500.00 plus required statutory assessments or imprisonment for not more than 30 days, or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for the violation shall not relieve the offender of liability for delinquent taxes, penalties, and any other costs.

(b) An owner may authorize an agent or property management firm to comply with the requirements of this chapter on behalf of the owner. However, the owner shall not be relieved from any personal responsibility and personal liability for noncompliance with any applicable law, rule or regulation pertaining to the use and rental of the STR property, regardless of whether such noncompliance was committed by the owner's authorized agent, local contact person, renter or guest of the short-term rental.

(c) A property management firm or authorized agent shall be jointly and severally liable for any violations occurring on any of its managed STRs in the town.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019)

Sec. 14-509. Revocation or suspension of a short-term rental business license.

In addition to applicable fines and penalties:

(1) The failure of the rental business licensee to comply with any sections of this chapter shall constitute grounds for the suspension or revocation of the license. Any action to suspend or revoke the license shall be conducted by the treasurer or designee in accordance with municipal code, chapter 3, municipal business license, section 4-315.

(2) Any property with three violations of this chapter during any 12-month rolling period and found guilty by admissions or by the municipal judge will be considered cause for license revocation. The owner or agent may reapply for a new STR license no sooner than 12 months after revocation, subject to all provisions contained herein.

On receipt of notice of revocation or suspension, the owner (or authorized agent) shall immediately stop the operation of the short-term rental establishment. All advertisements for future short-term rentals shall immediately cease. If such property is advertised or occupied by short-term renters after the revocation or suspension of the STR license, fines shall be levied against the owner and agent.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019)

Sec. 14-510. Appeals to town council.

(a) A person aggrieved by the town's decision to revoke, suspend, or deny a rental business license may appeal the decision to the town council. The appeal must be filed in writing within 30 calendar days with the town clerk after the revocation, suspension, or denial and it shall set forth a concise statement of the reasons for the appeal. Timely filing of an appeal shall stay the revocation, suspension, or denial, pending a decision on the appeal by the town council.

(b) The town council shall consider the appeal in an open hearing at a regular or special meeting within 30 calendar days after receipt of a request unless otherwise agreed to, in writing, by the town and the aggrieved party.

(Ord. No. 2019-08 , §§ 1, 2, 11-5-2019)

EXHIBIT NO. 10

We Are Columbia

MEETING DATE: **March 21, 2023**

DEPARTMENT: **Legal Department**

FROM: ***Teresa Knox, City Attorney***

SUBJECT: **Ordinance No.: 2023-037 - Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 5, Buildings and Buildings Regulations, to add Article IX, Short Term Rentals**

FUNDING SOURCE & ORIGINAL BUDGET:

FOCUS AREAS: **Planning Together**

ATTACHMENTS:

- **#a:** 2023-037 - Short Term Rental (PDF)

ORDINANCE NO.: 2023-037

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 5, Buildings and Buildings Regulations, to add Article IX, Short Term Rentals

WHEREAS, City Council finds that there is a growing national interest for short-term accommodations in traditional neighborhood settings and that the provision of such accommodations can be beneficial to the public if potential negative impacts are managed. Short-term rentals also serve to bolster the city's tourism industry by providing alternatives to traditional hotels and motels for the traveling public; and

WHEREAS, when properly regulated, City Council finds that short-term rentals provide a means of assisting property owners with keeping properties in good order and repair, which in turn, assists in stabilizing home ownership, and maintaining property values in neighborhoods; and

WHEREAS, City Council finds that it is necessary to protect the residential character of city neighborhoods. Absent appropriate controls on the manner of short-term rentals, neighborhoods stand to be harmed by undue commercialization and disruption to the primary and overarching purpose of a neighborhood being first and foremost a residential community.

BE IT ORDAINED by the Mayor and City Council of the City of Columbia, South Carolina this ___ day of _____, 2023, that the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 5 is hereby amended by adding Article IX to read as follows:

ARTICLE IX. SHORT TERM RENTALS

Sec. 5-400. Scope of Article.

Unless otherwise specified, the requirements and provisions of this Article shall apply to owner-occupied and non-owner-occupied short-term rentals (collectively called "short-term rentals") made available to occupants for periods of less than 30 consecutive days in the municipal limits of the City. This Article does not apply to hotels, motels, bed and breakfast establishments, or inns that are subject to and compliant with the City's business license and other applicable Code requirements. Unless otherwise specified, this Article does not apply to rentals that are rented for a period of 30 days or greater and that are subject to the City's rental housing regulations found in Chapter 5, Article VIII of the Code.

Sec. 5-401. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this Article, have the meanings shown in this section. Where terms are not defined, through the methods authorized by this section or Code, such terms shall have ordinarily accepted meaning such as the context implies.

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Citation means a charge or formal written accusation of violation of a City, state or federal law, regulation or ordinance.

Dwelling unit means any structure or portion of a structure arranged or designed to provide independent living facilities for living, sleeping, and personal hygiene and that may legally be used for habitation by humans.

Guest means any person who occupies a short-term rental.

Owner-occupied means a dwelling unit that is lawfully classified as owner-occupied by Richland County and is receiving the 4% special assessment ratio.

Non-owner-occupied means a dwelling unit that is not owner-occupied and is used and/or advertised for rent for transient occupancy by guests.

Residential district means residential base zoning district as defined by Section 17-3.2 of the Unified Development Ordinance

Responsible local representative means a person having his or her place of residence or business office within 45 miles of the short-term rental property and designated by the property owner as the agent responsible for operating such property in compliance with the City's ordinances and having been authorized by appointment to accept service of process on behalf of the owner pursuant to Rule 4(d)(1) of the South Carolina Rules of Civil Procedure.

Short-term rental (STR) means the use and enjoyment of a dwelling unit, or portion thereof, for a duration of less than 30 consecutive days in exchange for valuable consideration. Hotels, motels, bed and breakfast establishments, and inns are excluded from this definition.

SEC. 5-402. SHORT-TERM RENTAL REGULATIONS

The following regulations apply to all dwelling units being used as a short-term rental in the City:

(a) Determination of Short-Term Rental Offering: Any advertisement for an STR by the owner or responsible local representative is sufficient to determine that a dwelling unit is being offered as a short-term rental.

(b) Business License Required: The owner or responsible local representative offering a dwelling unit as a short-term rental shall obtain a business license and comply with all business license and revenue collection laws of the City of Columbia, Richland County, and State of South Carolina.

(c) Code Compliance Required: The owner of a permitted STR shall ensure the STR property and dwelling unit is in compliance with all City ordinances at all times, which include, but are not limited to:

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(1) Animal Control, Chapter 4;

(2) Building and Building Regulations, Chapter 5;

(3) Environmental Health and Sanitation, Chapter 8;

(4) Fire Prevention and Protection, Chapter 9;

(5) Unified Development Ordinance, Chapter 17; and

(6) Solid Waste Management, Chapter 19.

(d) Safety Inspection: A safety inspection to ensure compliance with the regulations in this Article may he performed by the City if deemed necessary and with 24-hour notice to the permit holder.

(e) Records Required: The property owner shall maintain the following which shall be made available to the City upon request:

(1) For a period of two years, records demonstrating compliance with these provisions, including but not limited to, information demonstrating residency, if required; the number of days per calendar year the residential unit has been rented as an STR; and compliance with the insurance requirement in this section; and
(2) The name and phone number of each short-term guest that booked the STR for the previous two years.

(f) Contact: The property owner must be willing to take phone calls at all times to address issues with the short-term rental; or the owner must provide the name, mailing address, and telephone number of a designated responsible local representative who is willing to take phone calls at all times if needed to address issues with the short-term rental use, and who is authorized to accept service of process on behalf of the owner.

(g) Permits are non-transferrable: If ownership of a permitted dwelling unit changes, the new owner must obtain a new permit before operating any part of the dwelling unit as an STR.

(h) Minimum Guest's Age: The guest making the booking or reservation for an STR shall be at least eighteen (18) years of age.

(i) Minimum Stay Duration: The short-term rental shall not be available for occupancy for a period of less than one night.

(j) Permit Number in Advertisement: Any online advertisement for an STR must include the current STR permit number, as issued by the City, within the description section of the advertisement.

(k) House Manual: At a minimum, the following shall be made available to each short-term guest:

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(1) Emergency contact numbers;

(2) The name and contact information for the owner or responsible local representative;

(3) Instructions or a diagram of the designated parking space(s); and

(4) The house rules imposed on guests by the owner.

(l) Parking Spaces Required: Two parking spaces per dwelling unit must be made available and designated on an STR property. Guests must be notified of the parking plan and the maximum number of vehicles allowed

(m) Maximum Occupancy: The maximum overnight occupancy of an STR shall not exceed two persons, excluding minor children, per bedroom, plus two additional people per dwelling unit.

(n) Identity Verification: The owner or responsible local representative shall be responsible for determining that any guest occupying the STR is listed in the booking or reservation for the STR.

(o) Neighbor Notification: The owner or responsible local representative of an STR shall notify each household immediately adjacent to the STR and any neighborhood association, if the STR is located in a neighborhood with such an association, that the property is being operated as an STR and must provide such households and association with the address of the STR and the phone number of the owner or responsible local representative.

SEC. 5-403. SHORT-TERM RENTAL PERMIT REQUIRED

(a) No dwelling unit in the City shall be operated as a short-term rental without a current STR permit issued by the City of Columbia. The permitting process shall begin 30 days after enactment of this Article. Current owners of a STR must obtain a permit within 120 days of the beginning of the permitting process. Permits are to be issued and renewed on an annual basis and will only be issued or renewed to an owner or responsible local representative having his or her place of residence or business office within 45 miles of the STR property. If residing outside of 45 miles of the STR property, the owner may only obtain a permit if he or she has a responsible local representative.

(b) An STR permit authorizes the permit holder to operate one dwelling unit as an STR. Any person seeking to operate multiple STR's shall be required to obtain a separate STR permit for each dwelling unit address sought to be operated as an STR.

(c) Applications for renewals of STR permits must be submitted by July 1, of each year, except that any holder of a permit issued before July 1, 2023, will have until July 1, 2024, to submit an application for renewal. Beginning in 2024, any application for a permit renewal not submitted by July 31, will result in the loss of the permit.

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(d) STR permits are non-transferable. A new owner or responsible local representative of a permitted STR shall be required to obtain a new and separate permit for the dwelling unit by submitting a new STR permit application.

(e) The permits required by this Article are regulated privileges, not rights, and can be revoked by the City in accordance with the provisions provided in this Article.

SEC. 5-404. SHORT-TERM RENTAL PERMIT APPLICATION & FEES

(a) An application is required for initial permit issuance and permit renewal and must be submitted on a form provided by the City. A separate application is required for each permit or renewal being sought. The STR application shall contain, at a minimum, the following information:

(1) The address of the dwelling unit;

(2) The number of bedrooms in the dwelling unit;

(3) The names, mailing addresses, and phone numbers, of the owner(s) and any responsible local representative;

(4) The address where the owner or responsible local representative will accept notices and orders;

(5) An affidavit signed by the property owner certifying the property complies with all fire and building code ordinances;

(6) Certification that the owner has read applicable city regulations, including, but not limited to, those found in Section 5-402(c) of this Article;

(7) Certification that the owner is aware that penalties may be assessed for violations by guests; and

(8) Copy of general liability insurance.

(b) The permit fees shall be paid at the time of application submission. These fees are established by City Council and may be changed from time to time. These fees include the following:

(1) A non-refundable application fee of $50; and

(2) For an owner-occupied STR, a non-refundable STR permit registration fee of $100.00; or

(3) For a non-owner-occupied STR, a non-refundable STR permit registration fee of $250.00 per dwelling unit.

(4) Any permit renewal application and associated fees submitted after July 1, will incur a late fee of $100.

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(c) An STR permit holder shall notify the City of any changes to the information submitted in the application within 30 days after any such change occurs.

SEC. 5-405. CRITERIA FOR PERMIT ISSUANCE

(a) Unless otherwise provided for by this Article, the City shall issue an STR permit, within 30 days from application submission, to an applicant if the following criteria are met:

(1) The City has determined that the STR application is complete and all permit fees have been paid;

(2) The dwelling unit listed in the application has been certified by the applicant that the dwelling unit complies with all applicable fire and building codes. If, however, the City has reason to believe a safety inspection is deemed necessary, the dwelling unit must pass a safety inspection;

(3) The City has determined that all requirements of this Article are satisfied; and

(4) Issuance of the permit will not violate any other provision of this Article.

SEC. 5-406. SHORT-TERM RENTAL PERMIT EQUIVALENCY

An STR permit issued pursuant to this Article shall be considered the equivalent of a rental permit for the purposes of Section 5-326. A holder of a current and valid STR permit may rent the dwelling unit for periods of 30 days or greater without obtaining a separate rental permit as required under Section 5-326 so long as all requirements of Chapter 5, Article VIII are satisfied and the permit holder notifies the City that the dwelling unit is being rented for periods of 30 days or greater

SEC. 5-407. VIOLATIONS

(a) STR owners or their responsible local representative are ultimately responsible for the conduct of their occupants and guests, regardless of whether the owners are present at the dwelling unit. Violations include, but are not limited to:

(1) Intentionally providing false or inaccurate information about a dwelling unit or short-term rental to the City;

(2) Failure to have a valid STR permit for any dwelling unit at a time when it is used in whole or in part as a short-term rental;

(3) Violation of any part of this article;

(4) Violation of any City or Richland County ordinance or state or federal law by owners, responsible local representatives, operators, lessors, agents,

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occupants, or guests of short-term rentals but any such violation must have a nexus to the dwelling unit subject to the violation.

(b) Violations shall apply as points towards revocation of the permit for as follows:

(1) *Single-household dwellings and townhouses.* Violations that occur anywhere on the premises shall apply to the permitted dwelling unit.

(2) *Multi-unit structures.*

a. Violations that occur within an individual unit shall apply to that unit.
b. Violations occurring outside of the units shall be assigned to the unit responsible as determined by the investigating party for the offense.

(c) In the event a citation or violation takes place at an STR or dwelling unit regulated by this article, such violation shall be grounds for the accumulation of points as follows:

(1) For one or more written warnings given in any 24-hour period for one or more of the violations listed above, points will be assessed on the permit for that STR or dwelling unit in accordance with following:

a. *First offense.* One point will be assessed for the first occurrence of a citation, violation, or offense.
b. *Second offense and each offense thereafter.* Five points will be assessed for a second occurrence and each occurrence thereafter of a citation, violation, or offense within the last 12 months.
c. *Serious offense.* Ten points will be assessed for any serious violation or offense that could result in serious bodily injury or death to occupants as determined by the chief of police. A serious offense includes failure to comply with any Emergency Order issued by the City of Columbia, any Executive Order issued by the Governor of the State of South Carolina, or any local, state or federal law, regulation or mandate to address a health or safety concern including but not limited to a public health outbreak (including a pandemic or wide-spread and/or infectious disease outbreak), natural disasters, war, terrorist act, strike, fire, release of nuclear material or dangerous substance into the environment or other catastrophic event.

(2) After points are assessed on a permit for a dwelling unit, the police chief or designee will send a written warning to the owner or responsible local representative. Each warning will specify which ordinance or law has been violated and will state that further warnings or violations could lead to a revocation of the permit. Each warning will be sent by regular mail to the address of the owner or responsible local representative, as identified on the permit application, as well as a copy of the warning mailed to the property address of the subject property.

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(3) A fee of $100.00 will be assessed per point for each point accumulated due within 30 days of assessment and no later than any renewal of the permit.

(4) If a person is found not guilty, or the case against them for a violation is dismissed, then the point shall be removed from the permit as if it had not been assessed.

SEC. 5-408. REVOCATION OF PERMIT

(a) Accumulation of 15 or more points on a STR permit within a 12 month period shall subject the owner to proceedings to revoke the permit and the following procedure shall be followed:

(1) The police chief or designee shall cause to be served written notice to show cause why the permit should not be revoked. Service shall be deemed complete if personally delivered upon the owner or responsible local representative by any officer authorized by law to serve process or a duly appointed law enforcement officer of the city police department. The person serving process shall make proof of service within the time during which the person served must respond to the process. If service cannot be personally made within the city, then service may be made by notice posted on the property and mailed certified return receipt to the last known address of record.

(2) The owner or responsible local representative shall have 15 days from the date of service to request a hearing to appeal the revocation of the permit. The request shall be sent to the police chief by certified mail, return receipt requested. If such request is not timely made, the revocation shall take effect on the 21st day after the date of service to show cause.

(3) Upon request for a hearing, the police chief or designee is authorized to schedule the appeal with the property maintenance board of appeals (PMBoA) at the next regularly scheduled meeting or special called meeting by the board.

(4) Once the hearing is scheduled, the property should be posted to announce the hearing date to the general public.

(5) In conducting the hearing, the PMBoA shall have the power to administer oaths, issue subpoenas, compel the production of books, paper, and other documents, and receive evidence. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the PMBoA's recommended order, and to be represented by counsel or other qualified representative. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The lack of actual knowledge of, acquiescence to, participation in, or responsibility for, a public nuisance at common law or a noxious use of private property on the part of the owner

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or responsible local representative shall not be a defense by such owner or responsible local representative.

(6) If the PMBoA finds that the violations resulting in the accumulation of 15 or more points did in fact occur and that 15 or more points have accumulated on the permit within a 12-month period, then PMBoA shall prepare a recommended order.

(7) If the PMBoA finds 15 or more points have not accumulated on the permit within a 12-month period, the PMBoA will prepare a recommended order to dismiss the revocation action and recommend which points, if any, should be rescinded from the permit based upon the actions taken by the owner to seek compliance with the City's ordinances.

(8) The PMBoA's recommended order shall consist of findings of fact, conclusions of law and recommended relief. The police chief or designee shall transmit the recommended order to the city manager and the owner or responsible local representative. The owner or responsible local representative shall have 15 days from the date of the hearing officer's order to submit written exceptions to the PMBoA's recommended order. The city manager shall review such order and any written exceptions by the owner and may set forth any deficiencies he/she finds with respect to the order. Said deficiencies shall be limited to determinations that the findings were not based upon competent, substantial evidence, or that the proceedings on which the findings were based did not comply with the essential requirements of law. In reviewing such recommended order, the city manager shall not have the power to receive or consider additional evidence and shall not have the power to reject or modify the findings of fact or conclusions of law contained in the recommended order. The city manager may remand the recommended order along with the delineated deficiencies back to the PMBoA for consideration of the deficiencies. The PMBoA shall address the deficiencies in an addendum to the recommended order. The city manager shall then either: (a) adopt the recommended order and addendum, if applicable, in its entirety; or (b) adopt the findings of fact and conclusions of law in the recommended order and addendum, if applicable, and reject or modify the recommended relief. The action of the city manager shall be the final order of the city.

(9) The city manager or designee shall provide notice of the final order within five days of the date of the final order.

(10) In addition to the above-described procedures, the city attorney is authorized to file for injunctive relief to abate the public nuisance at common law or noxious use of private property pursuant to law.

(11) The final order of the city is subject to certiorari review in a court of competent jurisdiction in Richland or Lexington County, South Carolina.

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SEC. 5-409. PERMIT APPLICATION AFTER REVOCATION

Upon revocation of an STR permit of a dwelling unit, the owner or responsible local representative of the dwelling unit will not be eligible to apply for a new permit for the dwelling unit subject to permit revocation until six months have passed from the date of revocation. The City shall not issue an STR permit for a dwelling unit that has been subject to a permit revocation more than once.

Requested by:

Councilman Duvall

Mayor

Approved by:

City Manager

Approved as to form:

City Attorney

ATTEST:

City Clerk

Introduced:
Final Reading:

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EXHIBIT NO. 11

ARTICLE XI. SHORT-TERM RENTALS[1]

Sec. 11-362. Purpose.

City council finds that there is a growing national interest for short-term accommodations in traditional neighborhood settings. City council finds that the provision of such accommodations can be beneficial to the public if potential negative impacts are managed.

When properly regulated, short-term rentals provide a means of assisting property owners with keeping properties in good order and repair, which in turn, assists in stabilizing home ownership, and maintaining property values in neighborhoods. Short-term rentals also serve to bolster the city's sports tourism industry by providing alternatives to traditional hotels and motels for the traveling public.

City council is mindful of the importance of maintaining the residential character of city neighborhoods. Absent appropriate controls on the manner of short-term rentals, neighborhoods stand to be harmed by undue commercialization and disruption to the primary and overarching purpose of a neighborhood being first and foremost a residential community, where people actually live, not a place of transient occupancy.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-363. Definitions.

The following definitions are hereby added to apply specifically to this article. Words not defined in this article shall have the meaning set forth in this chapter, in the zoning ordinance, or their ordinary accepted meaning such as the context implies.

Article or *article* means this Article XI ordinance.

City means the City of Rock Hill, South Carolina.

Planning and development director means the director of the city's planning and development department.

Host means the person offering a residential living unit, or portion thereof, for short-term rental.

Short-term rental means the rental of a property with five or fewer bedrooms in whole or in part for an overnight stay of less than 30 days at a time to one or more guest parties; breakfast or other meals may be served as with a traditional "bed and breakfast" model of this activity, but meals are not required to be served.

Short-term rental permit means a document issued by the planning and development department to the host upon meeting the conditions set forth in sections 11-364 through 11-373 herein. Such permit is required for lawful short-term rental of a residential living unit or portion thereof. This permit does not warrant the proper habitability, safety or condition of the residential living unit or portion thereof in any way.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

[1]Editor's note(s)—Ord. No. 2022-79, § 3(Exh. A), adopted January 23, 2023, amended Article XI in its entirety to read as herein set out. Former Article XI, §§ 11-362—11-367, pertained to similar subject matter, and derived from Ord. No. 2020-68 , § 4(Exh. B), October 12, 2020.

Sec. 11-364. Permit maximums and separations.

A. The total number of short-term rental permits in the city shall not exceed 150 at any time. If an application is submitted when 150 permits are active, staff will put the application on a waiting list to be considered when a permit becomes available. When a permit becomes available, applications on the waiting list shall be considered in the order in which they were placed on the waiting list.

B. Short-term rental uses are required to be located at least 300 feet away from each other. This required separation distance may be reduced by any amount (i.e., between 299 and 0 feet) by the zoning board of appeals through the separation reduction process set forth in zoning ordinance section 2.12.5.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-365. Short-term rental overlay district

Short-term rentals are allowed only in the areas shown on the short-term rental overlay district map. Subject to the other terms of this article, any holder of a short-term rental permit before December 12, 2022, shall not have to exhibit compliance with this requirement upon renewal thereof.

Using the definitions and processes set forth for "conditional uses" (C) and "special exception uses" (S) in Chapters 2 and 4 of the City of Rock Hill Zoning Ordinance, and the zoning districts as set forth in Chapter 3 of the City of Rock Hill Zoning Ordinance, short-term rentals are allowed within this short-term rental overlay district according to the following:

A. As a conditional use in the Mixed Use (MX), Neighborhood Office (NO), Neighborhood Commercial (NC), Office and Institutional (01), Limited Commercial (LC), General Commercial (GC), Community Commercial (CC), Downtown (DTWN), and Mixed Use Corridor (MUC) zoning districts., and portions of any Planned Unit Development, Planned Development or Master Plan that allow commercial uses.

B. As a special exception use in the Rural (RU), Single-Family 2 (SF-2), Single-Family 3 (SF-3), Single-Family 4 (SF-4), Single-Family 5 (SF-5), Single-Family 8 (SF-8), Single-Family Attached (SF-A), Multi-Family Residential (MFR), and Multi-Family 15 (MF-15) zoning districts, and portions of any planned unit development, planned development or master plan that allow only residential uses.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-366. Conditions precedent to application.

Before applying for a short-term rental permit in any allowed zoning district, the prospective host must show evidence of all the following that are relevant to the situation:

A. If the host is not the owner of the property, the property owner must provide a letter directly to the city stating that it has authorized the short-term rental use. This is required regardless of the primary land use—whether single-family detached or attached, or multi-family.

B. If the residence is located in a neighborhood that has a homeowners or property owners association formed under S.C. Code of Laws Section 27-30-110 et seq., the association president or other representative legally authorized to act on behalf of the association must provide a letter directly to the city stating that either the association has approved the use or does not regulate it.

C. If the short-term rental use is a special exception use in the subject zoning district, all property owners of contiguous property that is zoned residentially and is either used residentially or is undeveloped must indicate in writing on a form provided by the city that they are not opposed to the use. For the

purposes of this provision, "contiguous" includes all property with any portion of a shared property line with the subject property as well as all property that would have any portion of a shared property line with the subject property but for an intervening road if the road is three or fewer lanes.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-367. Short-term rental permit application.

After the city receives and reviews the documents required by section 11-366, the prospective host may apply for a short-term rental permit. The application must include the following information along with a $300.00 non-refundable application fee.

A. The application must demonstrate that parking spaces have been provided for the short-term rental according to the following:

1. If the property is located within the downtown parking management area, the host must have arranged with the city to pay into that system for one parking space for the short-term rental use in addition to having arranged with the city to pay into that system for any spaces required for other uses on the property.

2. If the property is located in any area of the city outside the downtown parking management area, the host must have provided one parking space if the property is used exclusively as a short-term rental and three parking spaces if the property is used as both a residence and a short-term rental.

a) The application must demonstrate that the spaces meet the following standards:

(i) They must be paved.

(ii) Each space must have dimensions of at least nine feet by 19 feet.

(iii) They must be contained completely on the property (not overhanging road or alley surfaces or sidewalks).

b) Alternatively, the host may provide the required number of parking spaces through either of the following, or a combination of the above and either of the following:

(i) If the property has immediately adjacent on-street parking that has been formalized through striping, those spaces will count towards the required number.

(ii) If another property owner within 500 feet with excess parking spaces for the land use of that property has given the host written permission for guests to use parking spaces at all hours, and that written permission has been provided to the city, those spaces will count towards the required number. Staff will determine whether excess parking spaces exist for the land use using the zoning ordinance's parking calculations.

B. The host must certify the following:

1. There are no recorded deed restrictions or restrictive covenants that apply to the property that would prohibit, conflict with, or be contrary to the activity.

2. That the unit will not be marketed nor used as an event location or a party house. This includes the marketing or use of the unit for "open invite" parties (which are open to anyone and are frequently advertised on social media), as well as for private parties including but not limited to

weddings, bachelor/bachelorette parties, birthday parties, holiday parties, and parties for other special events.

3. That rooms will not be rented to different guest groups at the same time unless the host is present on the property during the rental, and the guests are made aware of the situation prior to booking.

4. That if the property is not owner-occupied, either:

   a) The property owner lives within a 15-mile radius of the city limits and is willing to take phone calls at all times if needed to address issues with the short-term rental use; or

   b) The host provides the name, mailing address, and telephone number of a designated responsible agent who lives within a 15-mile radius of the city limits, who is willing to take phone calls at all times if needed to address issues with the short-term rental use, and who is authorized to accept service of process on behalf of the owner of said unit.

5. That the number of guests will be limited to two per bedroom, plus two.

6. That the residence and yard will be maintained to property maintenance code standards.

7. That the property will not contain any sign advertising the short-term rental use.

8. That the host will keep a current guest register including names, addresses, telephone numbers, and dates of occupancy of all guests.

9. That the host will provide a rental packet containing applicable city rules and restrictions specified in the short-term rental permit application, as well as pertinent safety information and contact information to guests when they book the short-term rental, and shall prominently display the short-term rental permit, rules, safety and contact information within the short-term rental unit.

10. That the host shall list the short-term rental permit number on all advertisements, listings with booking services, and marketing materials, including without limitation, Airbnb, VRBO/HomeAway, Flipkey, and any other online websites and listing or booking platforms or services.

11. That the host shall comply with all business license and revenue collection laws of the City of Rock Hill, York County, and the State of South Carolina.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-368. Review of short-term rental permit applications.

A. *Preliminary review:*

1. Upon receiving a complete application, staff will determine whether any remaining permits exist for the requested area according to section 11-364. As long as a permit remains available, staff will evaluate the application to determine whether it meets the standards specified in the section above.

2. If staff determines that the application meets the standards specified in the section above, staff will move the application to the next step of the review process, which will vary depending on whether the use is a conditional use or a special exception use.

3. If staff determines that the application does not meet the standards specified in the section above, the host will have 60 calendar days to correct all deficiencies in the application.

a) If the deficiencies are corrected within that timeframe, staff will move the application to the next step of the process, which will vary depending on whether the use is a conditional use or a special exception use.

b) If the deficiencies are not able to be corrected at all or are not corrected within that timeframe, staff will deny the application. The applicant will be allowed to reapply in accordance with all sections of this article, including being subject to a waiting list if one is in place.

B. *Next steps for conditional uses:*

1. Staff will inspect the proposed short-term rental unit and property grounds to ensure that they meet property maintenance code standards.

2. If staff determines that the proposed short-term rental unit and property grounds meet property maintenance code standards, staff will issue a short-term rental permit, which will remain valid for one year after issuance unless revoked.

3. If staff determines that the proposed short-term rental unit and property grounds do not meet property maintenance code standards, the host will have 60 calendar days to correct all deficiencies.

a) If the deficiencies are corrected within that timeframe, staff will issue a short-term rental permit, which will remain valid for one year after issuance unless revoked.

b) If the deficiencies are not able to be corrected at all or are not corrected within that timeframe, staff will deny the application. The applicant will be allowed to reapply in accordance with all sections of this article, including being subject to the waiting list if one is in place.

C. *Next steps for special exception uses:*

Staff will submit the application to the zoning board of appeals for consideration according to the processes set forth in chapter 2 of the Rock Hill Zoning Ordinance for special exception uses.

1. If the zoning board of appeals approves the special exception, staff will then inspect the proposed short-term rental unit and property grounds to ensure that they meet property maintenance code standards.

a) If staff determines that the proposed short-term rental unit and property grounds do not meet property maintenance code standards, the host will have 60 calendar days to correct all deficiencies.

b) If the deficiencies are corrected within that timeframe, staff will issue a short-term rental permit, which will remain valid for one year after issuance unless revoked.

c) If the deficiencies are not able to be corrected at all or are not corrected within that timeframe, staff will deny the application. The applicant will be allowed to reapply in accordance with all sections of this article, including being subject to a waiting list if one is in place.

2. If the zoning board of appeals denies the special exception request, reapplication will be subject to the waiting period that is set forth in chapter 2, section 2.5.5, of the Rock Hill Zoning Ordinance.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-369. Renewals.

A. Once a short-term rental permit has been issued, it shall remain valid for one year from the date of issuance unless revoked.

B. Between 60 and 30 days prior to the end of this annual period and all subsequent annual periods, the host must apply to renew the short-term rental permit if the host wishes to continue the short-term rental use after the end of the current permit period.

C. The host must complete a renewal application and must pay a $200.00 renewal application fee. The renewal application shall be an abbreviated version of the original application, to include the following:

1. Compliance with subsection 11-366(A);
2. Evidence of no changes as to matters provided under subsection 11-366(B) or subsection 11-367(B), as required by the city;
3. Indication of any change in the parking spaces required by subsection 11-367(A).

D. If staff becomes aware that any applicable restrictive covenants or deed restrictions have changed such that they no longer allow short-term rental uses, the use shall not be allowed to continue.

E. Inspections will not be performed as a matter of course for renewal applications, but the city reserves the right to inspect the short-term rental unit and property grounds at any time for compliance with property maintenance code standards.

F. No renewal application shall be approved if the host has a repeated history of violations of this article within the 12 months preceding the renewal application to include the violations set forth in section 11-370 of this article.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-370. Violations and penalties.

A. *Violations.* The following actions with respect to the operation of a short-term rental shall constitute a violation of this article if such action has been reported to the city's planning and development department's zoning division, neighborhood services' code enforcement division department, or law enforcement:

1. The advertisement or operation of a short-term rental unit without a short-term rental permit;
2. Falsity of any certified statement in the short-term rental application or renewal application;
3. Parking of vehicles by short-term rental guests or hosts on adjacent property without permission, or such as encumbers access to adjacent property or is in violation of signage;
4. Noise or lighting that disturbs a neighboring resident between the hours of 11:00 p.m. and 9:00 a.m.;
5. Arrival or departure of short-term rental guests between the hours of midnight and 5:00 a.m.;
6. The placement of trash or other refuse onto that of an adjacent property, in public areas, or outside of waste collection cans;
7. Failure to place waste collection cans onto the curb more than 24 hours before pickup, or to remove waste collection cans from the curb within 24 hours after pickup;
8. Noise at a level that constitutes a nuisance under this Code of Ordinances;
9. Either the host or the designated responsible agent is not able to be reached at any time;
10. Any activity (i) that is so disruptive or disturbing to a neighbor or to the neighborhood (ii) that it is justly reported to the city's planning and development department's zoning division, neighborhood services' code enforcement division department, or law enforcement.
11. A violation of any local, state, or federal ordinance, law, or regulation, including any other provision of this article.

B. *Penalties.*

1. *Revocation.* When the planning and development director determines:

   a) The short-term rental permit has been mistakenly or improperly issued, or issued contrary to law; or

   b) A host has obtained the license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or

   c) The host has breached any condition upon which the license was issued, has violated any of the certified statements on the short-term rental permit application, or has failed to comply with the provisions of this article; or

   d) The host has been convicted of an offense under a law or ordinance regulating business or a crime involving violence or moral turpitude; or

   e) The host has engaged or there exists on the property of the short term rental unit unlawful activity or nuisances, to include but not be limited to those as defined and provided in subsection 11-370(A) of this article, and as evidenced by three valid neighbor complaints or police calls per rolling 12 months at the property in question, or one incident from such subsection 11-370(A) at the property in question with widespread community impacts or substantial public safety concerns;

   The planning and development director shall give written notice to the host or designated responsible agent by personal service, certified mail, or the posting of the property that the short-term rental permit is revoked. The notice shall contain a brief statement of the reasons for the revocation.

   The host or designated responsible agent will have ten days from the date of the written notice to appeal the decision to the city manager, who will render a final decision within 30 days.

   If the city manager upholds the revocation, or if the host does not appeal the decision to the city manager, the host is subject to the waiting period that is set forth in chapter 2, section 2.5.5, of the Rock Hill Zoning Ordinance before the host may reapply for a short-term rental permit on the same property. The starting date for this period is the date of the final decision by the city.

   If the planning and development director has reason to believe that the issue that led to the revocation of a short-term rental permit has been resolved, the director may reinstate the short-term rental permit.

   All applications for short-term rentals after revocation will go through the special exception process before the zoning board of appeals as set forth in the Rock Hill Zoning Ordinance regardless of the original method of approval of the use.

   If the permit is revoked, the planning and development director may also undertake the process to revoke the associated business license such that the host may not operate short-term rentals on other properties either. The business license revocation would follow the processes set forth in section 11-46.

2. *Refusal to issue permits.*

   a) The planning and development director may refuse to issue a short-term rental permit to any host who has had a short-term rental permit revoked, even if for a different property than the one for which the short-term rental permit is being requested.

   b) The planning and development director may refuse to issue a short-term rental permit to any host who has any outstanding violations related to a short-term rental use until those violations have been remedied.

Appeals related to the refusal of a short-term permit under this section follow the process set forth in the Zoning Ordinance, chapter 2, section 2.12.6.

C. *Criminal penalties.* Whoever violates any provision of this article shall, upon a first offense, be subject to a fine of $500.00, or imprisoned not more than 30 days, or both. If, after any conviction for noncompliance with this article or any lawful order issued pursuant thereto, such person continues the noncompliance, then such person shall be liable for further prosecution, conviction, and punishment without any necessity of the code official to issue a new notice of violation or order, and until such noncompliance has been corrected.

D. *Civil remedies.* In addition to the remedies set out in section 11-370(B), the city manager or any duly authorized agent of the city may seek such civil or equitable remedies in any court having jurisdiction, against any person or property, available to effect the provisions of this Code.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-371. Continuance of short-term rentals with permits issued prior to December 12, 2022

Short-term rentals with permits in good standing on December 12, 2022, will be allowed to continue in operation subject to sections 11-369, 11-370, and 11-372.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-372. Property ownership transfers.

A. Short-term rental permits do not run with the land. Prospective or subsequent property owners are required to apply for a new short-term permit according to the processes and standards in place at the time of application. If a waiting list is in place at the time, the application will go at the end of the list.

B. This section does not apply to property ownership transfers between immediate family members related by blood, marriage, or adoption, nor to transfers between affiliated corporations. For the purposes of this provision, "immediate family members" are defined as parents, descendants, and spouses; however, if a property is in probate, this definition may be expanded by the court.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

Sec. 11-373. Annexation.

Short-term rentals that have a valid permit to operate from York County and are later being considered for annexation into the city must go through the city's review processes and meet the city's standards as set forth in this article prior to annexation. If the short-term rental use is approved by the city, it will be contingent upon annexation.

This section intentionally supersedes Zoning Ordinance section 2.12.2 (C)—*Effect of Rezoning on Special Exception Use* with respect to short-term rentals.

(Ord. No. 2022-79 , § 3(Exh. A), 1-23-2023)

EXHIBIT NO. 12

Chapter 2 SHORT-TERM RENTALS

Sec. 10-2-10. Purpose and intent.

It is the purpose and intent of this chapter to establish regulations for privately owned residential property used as vacation homes and rented to transient occupants for periods of less than thirty (30) days in the municipal limits of the Town of Hilton Head Island, South Carolina, so as to minimize the adverse effects of short-term rental uses on surrounding residential properties and neighborhoods, and to preserve the character, integrity, and stability of residential neighborhoods in which short-term rental properties are located. This chapter is not intended to regulate hotels, motels, hospitals or interval occupancy uses [as defined in section 16-10-103(D)(2), *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983)].

(Ord. No. 2022-08, § 1, 5-17-22)

Sec. 10-2-20. Definitions.

In this chapter, the following terms are defined terms and when capitalized in the text of this chapter, mean:

(1) *Owner* means any individual, firm, partnership, limited liability partnership, limited liability company, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, who or which owns one or more short-term rental properties.

(2) *Short-term lessee* means any person occupying all or any part of a short-term rental property or any other property under any lease or other form of agreement for a period of less than thirty (30) days.

(3) *Short-term rental* means the leasing of any short-term rental property or permitting the occupancy of any short-term rental property or any other property by a lease or any other form of agreement.

(4) *Short-term rental agent* means a person authorized by an owner to act on the owner's behalf in connection with any short-term rental property or short-term rental.

(5) *Short-term rental permit* means an annual permit that an owner must obtain from the Town of Hilton Head Island, South Carolina for each of an owner's short-term rental properties, described in section 10-2-20 below. It is a violation of this chapter to offer any short-term rental property or any other residential property in the municipal limits of the Town of Hilton Head Island, South Carolina, for short-term rental without first obtaining a short-term rental permit from the Town of Hilton Head Island, South Carolina for any such property.

(6) *Short-term rental property* means any residential property in the municipal limits of the Town of Hilton Head Island, South Carolina, that, in whole or in part, is offered for lease or occupancy under a lease or any other form of agreement, for periods of less than thirty (30) days.

The defined terms include the plural of any term set out in this section 10-2-20.

(Ord. No. 2022-08, § 2, 5-17-22)

Sec. 10-2-30. Short-term rental permit.

(a) Any owner who offers any short-term rental property for short-term rental must first obtain a short-term rental permit from the Town of Hilton Head Island, South Carolina.

(1) Short-term rental permits shall be valid from January 1 to December 31 of any calendar year and shall only be valid for the calendar year during which the short-term rental permit is issued, irrespective of the date on which the short-term rental permit is issued.

(2) A short-term rental permit must be obtained for each short-term rental property that is offered for short-term rental.

(3) Short-term rental permits are non-transferrable and are only valid for the short-term rental property described in the short-term rental permit.

(4) It is the duty of the owner to notify the Town of Hilton Head Island, South Carolina, of any changes to the contact information of the owner and any short-term rental agent employed or engaged by the owner for each short-term rental permit issued to the owner.

(5) The application fee for a short-term rental permit shall be set each year by the town council in the annual budget ordinance.

(6) The application for a short-term rental permit shall be made on a form published by the Town of Hilton Head Island, South Carolina, and must be delivered with the application fee.

a. Any application for a short-term rental permit for a single-family detached residence must include a site plan showing compliance with the requirements of section 10-2-50(c) and 10-2-50(d).

(7) Review of an application for a short-term rental permit shall be conducted by the Town of Hilton Head Island, South Carolina, and the short-term rental permit shall be granted unless the owner fails to meet the conditions and requirements of this chapter, or otherwise fails to demonstrate:

a. Compliance with this chapter; or

b. There are no outstanding citations for any activities occurring at or connected with the short-term rental property; or

c. Any other town ordinance or any relevant state or federal law regarding activities at the short-term rental property.

Any false statements or inaccurate or untrue information in the application are grounds for revocation or suspension of the short-term rental permit and/or imposition of penalties, including denial of future applications.

(b) Every person or business entity which:

(1) Acts as a short-term rental agent, and

(2) Submits an application for short-term rental permit on behalf of any owner, must submit a complete application that includes all the information required in the form of the application and which has been signed by the owner.

(Ord. No. 2022-08, § 3, 5-17-22)

Sec. 10-2-40. Licenses, permits, payment of fees and taxes fees required.

No owner may offer any short-term rental property for short-term rental without initially and on a continuing basis:

(1) Obtaining a valid and current short-term rental permit from the Town of Hilton Head Island, South Carolina; and

(2) Obtaining a valid and current business license for short-term rental of property from the Town of Hilton Head Island, South Carolina; and

(3) Paying all applicable fees and taxes associated with any application for a short-term rental permit or business license, and all sales or other similar taxes in connection with any short-term rental, paying all *ad valorem* taxes for any short-term rental property.

(Ord. No. 2022-08, § 4, 5-17-22)

Sec. 10-2-50. Regulations for short-term rentals and short-term rental properties.

(a) *General regulations.* During any lease of any short-term rental property, the owner, or the short-term rental agent:

(1) Shall be available during any short-term rental period to respond to a complaint or other matter related to the operation or behavior of any short-term lessee of the short-term rental property; and

(2) Shall be available by telephone at all times during the short-term rental period and capable of being physically present at the short-term rental property, or taking other responsive action, within one (1) hour of notification of a complaint or other matter related to the short-term rental property; and

(3) Shall prominently display in the short-term rental unit contact information for the owner or short-term rental agent responsible for responding to complaints; and

(4) Shall maintain fully operable and building and fire code compliant smoke and carbon monoxide detectors in the short-term rental property as required by law; and

(5) Shall maintain at least one (1), or such other number as is required by any applicable building, fire or other applicable code, fully operable and charged fire extinguisher; and

(6) Shall maintain unobstructed escape routes from the short-term rental property in the event of fire; and

(7) Shall notify all prospective short-term lessees in writing of the existence of any swimming pool or hot tub at the short-term rental property and any safety equipment related to the swimming pool or hot tub prior to making any agreement for any short-term rental.

(b) *Noise regulations.* During any lease of any short-term rental property, the owner, or the short-term rental agent:

(1) Shall display the following information in a prominent location in the short-term rental property:

a. In the Town of Hilton Head Island, South Carolina, it is unlawful to unreasonably disturb the peace and quiet of those in their homes and public places (Title 17, Chapter 4, Town Code); and

b. Quiet hours are between 10:00 p.m. and 7:00 a.m., though town noise regulations are in force twenty-four (24) hours each day (Title 17, Chapter 4, Town Code).

(2) Shall notify all prospective short-term lessees in writing of the provisions of subsection (b)(1)(a)(b) above to the short-term lessee prior to making any agreement for any short-term rental.

(c) *Trash regulations.* During any lease of any short-term rental property, the owner, or the short-term rental agent:

(1) Shall maintain a designated trash storage area for use of short-term lessees at the short-term rental property.

a. The designated trash storage area shall be fenced or screened so that trash containers are not seen from public streets and neighboring property, except during designated pick-up times; and

b. The owner shall prominently display instructions for managing trash disposal, including designated pick-up times and, if applicable, relevant property owner association requirements in the short-term rental property.

c. The owner shall ensure any outdoor trash containers remain secured to avoid spills and pests.

d. The owner shall ensure that trash containers are not placed curbside more than twenty-four (24) hours prior to scheduled pick-up times and will be removed no more than twenty-four (24) hours after pick-up.

(d) *Parking regulations.* During any lease of any short-term rental property:

(1) The owner must designate the number of vehicles allowed to be parked on the premises during any short-term rental and designate the on-site areas available for parking of vehicles. The areas for parking of vehicles must be improved with either a pervious or impervious surface. Parking areas must include a space at least nine (9) feet by eighteen (18) feet for each vehicle allowed to be parked on the premises and improved with an impermeable or semi-impermeable surface. Areas for parking must comply with all applicable requirements of section 16-1-101, et seq., Municipal Code of the Town of Hilton Head Island, South Carolina (1983).

(2) The owner must notify all prospective short-term lessees in writing of the maximum number of vehicles permitted at the short-term rental property prior to making any agreement for any short-term rental.

(3) The owner must ensure that no vehicles associated with the short-term lessee will park off-site, including in adjacent rights-of-way, during the short-term rental lease.

(e) *Miscellaneous regulations.* During any short-term rental lease of any short-term rental property:

(1) The owner shall prominently display in any short-term rental property any town-provided outreach and awareness materials related to applicable town requirements.

(2) Short-term rental properties must be properly maintained and regularly inspected by the owner or short-term rental agent to ensure continued compliance with this chapter and all other applicable zoning, building, health and life-safety code requirements.

(f) In addition to the requirements of this chapter, any short-term rental property must also comply with all other statutes, ordinances, regulations or private covenants applicable to the short-term rental property. Nothing in this chapter is intended to authorize waiver of or limitations on compliance with any such requirements.

(Ord. No. 2022-08, § 5, 5-17-22)

Sec. 10-2-60. Violations.

(a) *Violations.* It shall be a violation of this chapter to:

(1) Lease any short-term rental property for a short-term rental without complying with the requirements of this chapter.

(2) Advertise any residential property for a short-term rental without first complying with the requirements of this chapter.

(3) Fail to comply with any requirement of this chapter.

(b) Violations of this chapter are subject to the penalties and remedies available under section 1-5-10, General penalty; continuing violation, section 10-1-150, Business and professional licenses; suspension or revocation of license, section 9-1-111, Public nuisance; prohibition, *et seq.* These remedies are in addition to any other remedies available at law or in equity for a violation.

(Ord. No. 2022-08, § 6, 5-17-22)

Sec. 10-2-70. Suspension or revocation of short-term rental permit.

(a) When the town determines:

(1) A short-term rental permit has been mistakenly or improperly issued or issued contrary to law; or,

(2) An owner has breached any condition upon which the short-term rental permit was issued; or,

(3) An owner has obtained a short-term rental permit through any fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the short-term rental permit application; or,

(4) An owner is delinquent in the payment to the municipality of any tax or fee; or,

(5) The operation of a short-term rental property has been declared a nuisance; or,

(6) More than two (2) convictions for violations of the Municipal Code of the Town of Hilton Head Island, South Carolina, arising from any activities at, or connected with, a short-term rental property occur within any twelve-month period.

Then the town may give written notice to the owner that the short-term rental permit is suspended and may be revoked, pending a single hearing before town council for the purpose of determining whether the suspension should be upheld and whether the short-term rental permit should be revoked.

(b) The written notice of suspension and proposed revocation shall state the time and place at which the hearing before town council is to be held and shall contain a brief statement of the reasons for the suspension and proposed revocation and a copy of the applicable provisions of this chapter. The written notice shall be delivered by personal service to the owner or short-term rental agent, or by certified mail, return receipt requested, addressed to the owner or short-term rental agent at the address for the owner or short-term rental agent shown on the application for the short-term rental permit. The written notice will be deemed to have been delivered on the date of personal service of the written notice as documented on an affidavit of service, or on the date that the certified mail return receipt is signed for by, or on behalf of, the owner or short-term rental agent.

(c) The hearing before town council on the suspension and proposed revocation of any short-term rental permit shall be held by town council within thirty (30) days after delivery of the written notice described in this section 10-2-60. The hearing shall be held upon written notice at a regular or special meeting of town council. The hearing may be continued to another date by agreement of all parties. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by town council shall govern the hearing. Following the hearing, town council by majority vote of its members present, shall render a written decision setting out its findings of fact and conclusions. The written decision shall constitute the final decision of town council. The written

decision shall be delivered to the owner unless a different person and method of delivery is requested by the owner at the hearing.

(d) The written decision of town council may be appealed in the same manner as appeals are made from the decisions of other administrative bodies of the Town of Hilton Head Island, South Carolina. An appeal, in and of itself, does not stay the effect of town council's decision.

(Ord. No. 2022-08, § 7, 5-17-22)

EXHIBIT NO. 13

City of Folly Beach

21 Center Street
PO Box 48
Folly Beach, SC 29439

Permit Application

Please fill out completely the application and contractors licenses information, print, sign, and date. Any information that if found to be missing or fraudulent shall result in voiding the Permit. Permits are not transferable, and fees paid to this department will only be refunded with-in 20 days after written request by the applicant. Dumpster and toilet must be onsite.
NOTE: Please submit two (2) sets of plans drawn to scale and a site plan with this application. See checklist for permitting.

PID/Tax Map # 328-10-00-054 Folly Beach Business License #

Job Address Lot 6 112 East Indian Ave Unit A (REAR OF PROPERTY) Property Owner Name & Address Folly East Indian Co LLC

State License # (SCLLR) 12254 Expiration Date 6/30/22

Company/Owner Construction Consultants Address PO Box 1922

City Folly Beach State SC Zip Code 29439 Phone 843-452-5291 Mike 843-834-5898 Allison

Fax Email

Type of permit : New Const [X] Remodel [ ] Elec [X] Mech [X] Plumbing [X] Gas [ ] Sign [ ] Tree [ ] Encroach [ ] Other [ ]

Brief Description work Build modular home A ~~the exact same house~~

Square Footage 1951 Total Cost of Job 425,000 Base Flood Elevation(BFE) Certificate attached

Roofing- submit material specifications with permit application. Must be tested to 130 MPH. Shingles must meet ASTM D-7158 H or ASTM D-3161 F

Office Use Only

Zoning Administrator 10/14/21 Date

Building Official 10-28-21 Date

Public Safety Fire Official Date

By signing this application, I attest that all information is accurate and I will abide by all local ordinances, County, and State regulations in effect at time of application. I also understand that as long as this permit is valid, City officials and Inspectors (City employees and 3rd party inspectors) have the right to inspect the property at any time.

Print Name Allison Burbage

Signature Allison Burbage

Date 10.4.21

BLDG W/ PLANS

City of Folly Beach

21 Center Street
PO Box 48
Folly Beach, SC 29439

Permit Application

Please fill out completely the application and contractors licenses information, print, sign, and date. Any information that if found to be missing or fraudulent shall result in voiding the Permit. Permits are not transferable, and fees paid to this department will only be refunded with-in 20 days after written request by the applicant. Dumpster and toilet must be onsite.
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Company/Owner Construction Consultants Address PO Box 1922

City Folly Beach State SC Zip Code 29439 Phone 843-452-5491 Mike 843-834-5898 Allison

Fax _____ Email _____

Type of permit : New Const [X] Remodel [ ] Elec [X] Mech [X] Plumbing [X] Gas [ ] Sign [ ] Tree [ ] Encroach [ ] Other [ ]

Brief Description work Build modular home B one exact same house IAW MODULAR PLANS & STRUCTURALS BY CURRY ENGINEERING

Square Footage 1951 Total Cost of Job 425,000 Base Flood Elevation(BFE) Certificate attached

Roofing- submit material specifications with permit application. Must be tested to 130 MPH. Shingles must meet ASTM D-7158 H or ASTM D-3161 F

Office Use Only

Zoning Administrator — Date 10/14/21

Building Official — Date 10-15-21

Public Safety Fire Official — Date

By signing this application, I attest that all information is accurate and I will abide by all local ordinances, County, and State regulations in effect at time of application. I also understand that as long as this permit is valid, City officials and Inspectors (City employees and 3rd party inspectors) have the right to inspect the property at any time.

Print Name Allison Burbage

Signature Allison Burbage

Date 10-4-21

City of Folly Beach
21 Center Street | PO Box 48
Folly Beach, SC 29439

Permit

Permit NO. **BLDR-3624-2021**
Permit Type: **Building (Residential)**
Work Classification: **Modular Home**
Permit Status: **Issued**

Issue Date: 10/28/2021

Expiration: 08/22/2022

Location Address | **Parcel Number**

112 E INDIAN AVE A, FOLLY BEACH, SC 29439 | **3281000054**

Contacts

Folly East Indian Co., LLC **Owner** 112 E INDIAN AVE, FOLLY BEACH, SC 29439	Construction Consultants **Contractor** PO Box 1922, Folly Beach, SC 29439 (843)452-5291 mmikrif@aol.com

Description: Build modular home - unit A IAW modular plans and specs by Curry Engineering

Valuation: **$425,000.00**

Total Sq Feet: **1,951.00**

Inspection Requests:
Please email:
inspect@cityoffollybeach.com

Fees	Amount
Building Permit Fee	$2,497.50
Flood Plain Management Fee	$50.00
Permit Application Fee	$100.00
Plan Review Fee	$1,373.75
Zoning Permit Fee	$100.00
Total:	**$4,121.25**

Payments	Amt Paid
Total Fees	**$4,121.25**
Check # 2031	$4,121.25
Amount Due:	**$0.00**

Available Inspections:	
Inspection Type	
Footing	
Footing	
Foundation Wall/Pier Pre-Pour	
Foundation Wall/Pier Final	
Concrete Slab	
Framing	
Weather Resitive Barrier	
Flashing	
Pre-Insulation	
Insulation	
Roof	
Septic	
Final Building	
Final Planning/Zoning	

Permit must be displayed on job site and visible from the street frontage.
Toilet and dumpster must be provided on-site by Contractor.
Work hours are Monday-Friday only from 8:00am-6:00pm. Saturday and Sunday work is subject to noise ordinance.
All contractors must be State Licensed. A copy of State Contractors license is required when permit is applied for.
Contractor must visibly display Folly Beach Business License or decal on job site."
It is the responsibility of the Permit Holder to schedule all inspections and see that work has passed inspection prior to concealment.
All requests for required inspections should be made at least 24 hours in advance.

Issued By: Amber Watts — October 28, 2021

Date

Authorized City Official — Date

City of Folly Beach
21 Center Street | PO Box 48
Folly Beach, SC 29439

Permit

Permit NO. **BLDR-3625-2021**
Permit Type: **Building (Residential)**
Work Classification: **Modular Home**
Permit Status: **Issued**

Issue Date: 10/29/2021

Expiration: 10/27/2022

Location Address	Parcel Number
112 E INDIAN AVE B, FOLLY BEACH, SC 29439	**3281000054**

Contacts

Folly East Indian Co., LLC **Owner** 112 E INDIAN AVE, FOLLY BEACH, SC 29439	Construction Consultants **Contractor** PO Box 1922, Folly Beach, SC 29439 (843)452-5291 mmikrif@aol.com

Description: Build modular home - unit B IAW modular plans and specs by Curry Engineering

Valuation: **$425,000.00**

Total Sq Feet: **1,951.00**

Inspection Requests:
Please email:
inspect@cityoffollybeach.com

Fees	Amount
Building Permit Fee	$2,497.50
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Total:	**$4,121.25**

Payments	Amt Paid
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Check # 2031	$4,121.25
Amount Due:	**$0.00**

Available Inspections:	
Inspection Type	
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Foundation Wall/Pier Pre-Pour	
Foundation Wall/Pier Final	
Concrete Slab	
Framing	
Weather Resitive Barrier	
Flashing	
Pre-Insulation	
Insulation	
Roof	
Septic	
Final Building	
Final Planning/Zoning	

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All contractors must be State Licensed. A copy of State Contractors license is required when permit is applied for.
Contractor must visibly display Folly Beach Business License or decal on job site."
It is the responsibility of the Permit Holder to schedule all inspections and see that work has passed inspection prior to concealment.
All requests for required inspections should be made at least 24 hours in advance.

October 29, 2021

Issued By: Amber Watts — Date

Authorized City Official — Date

Sec. 54-227. - Short Term Rental, ST Overlay Zone.

EXHIBIT NO. 14

a. Intent . The Short Term Rental, ST Overlay Zone is intended to identify those areas within the City limits where Commercial short term rental uses and bed and breakfast uses, as herein defined, are allowed as a conditional use. Commercial short term rentals are prohibited except on commercially zoned properties within the ST Overlay Zone. Bed and breakfast uses are prohibited except on properties within the ST Overlay Zone. The City places a high value on the preservation of the character of its residential neighborhoods. Potential negative impacts affecting residential neighborhoods shall be avoided or minimized to the greatest extent possible.

b. Commercial Short Term Rental Use .

1. Accommodations Use . Subject to the conditions in Section 54-227, b. 2, a dwelling unit converted into a commercial short term rental may be rented to not more than four (4) unrelated people pursuant to the definition for family for a period of between one (1) and twenty-nine (29) days; provided, however, only one (1) family at a time may occupy and use a dwelling unit converted into a commercial short term rental.
2. Conditions . A conforming or legal nonconforming dwelling unit may be converted into a commercial short term rental only when all of the following conditions are satisfied, as evidenced by an application, a site plan, and floor plans:
   (a) The lot is located entirely within one or more of the following base zoning districts: CT, LB, GB, UC, MU-1, MU-1/WH, MU-2, or MU-2/WH; and
   (b) The lot is commercially zoned and located entirely within the Short Term, ST Overlay Zone, as shown on the Zoning Map; and
   (c) The dwelling unit being converted to a commercial short term rental is not designated as an affordable housing unit or a workforce housing unit; and
   (d) The owner of the dwelling unit being converted into a commercial short term rental complies with all business license and revenue collections laws of the City of Charleston, Charleston County and the State of South Carolina; and
   (e) Any commercial uses on the lot must be completely separate and independent operations, unrelated to the Commercial Short Term Rental; and
   (f) There are no common areas or other areas serving more than one dwelling unit and/or commercial short term rental on the lot, except driveways; and
   (g) There are no exterior signs for the commercial short term Rental use of the lot; and
   (h) Existing parking spaces on the lot, if any, that satisfy the off-street parking requirements of this Chapter for the existing dwelling units being converted to short term rentals and all other uses on the lot shall be shown on the site plan submitted with the application.

No additional parking spaces shall be required for the dwelling units being converted to short term rentals; and

(i) No more than nine (9) dwelling units may be converted to short term rentals on any one (1) lot. Ten (10) or more short term rental units on one (1) lot shall require approval as an accommodations use pursuant to Section 54-220 of the Zoning Ordinance. This provision shall not be interpreted to permit an increase in the maximum density permitted under the base zoning district for dwelling units on the lot; and

3. Except as expressly stated otherwise in this Section 54-227, a dwelling unit converted into a commercial short term rental shall continue to be subject to the regulations for such a dwelling unit in the base zoning district, including without limitation the site regulations in Article 3 of the Zoning Ordinance.
4. Impact on Nonconforming Uses . For the purposes of applying Section 54-110 concerning nonconforming uses, a commercial short term rental is considered a continuation of the nonconforming use of a legal nonconforming dwelling unit.
5. Prohibition on Construction of Commercial Short Term Rentals . Nothing in this Section 54-227 shall be construed to permit a property owner to construct a commercial short term rental. A property owner seeking a conditional use for a commercial short term rental must construct a dwelling unit in accordance with applicable standards for the dwelling unit under the base zoning district for the subject property and then apply for the conversion of the conforming dwelling unit to a commercial short term rental use.
6. Approved Short Term Rentals Within the ST Overlay Zone . All STR uses within the ST Overlay Zone that have City approval to operate on the effective date of this ordinance shall be issued a commercial STR permit, which shall be valid for one (1) year from the date of issuance and shall be renewable annually unless revoked. Permit holders shall adhere to the requirements of this Chapter.
7. New Short Term Rentals Within the ST Overlay Zone, Permit . New STR uses within the ST Overlay Zone that receive City approval to operate shall be issued a commercial STR permit, which shall be valid for one (1) year from the date of issuance, and shall be renewable annually unless revoked. Permit holders shall adhere to the requirements of this Chapter.
8. Annual Renewal . For renewal of a commercial STR permit, a property owner shall be required to recertify compliance with this section with the zoning administrator. An application for annual recertification of the commercial STR permit must include the application fee, an affirmation by the applicant that the nature of the STR use at the property has not changed, and must be notarized, filed with, and approved by the zoning administrator to continue the STR use.

c. Bed and Breakfast Use .

1. Accessory Use . Subject to the conditions in Section 54-227, c., 2, a bed and breakfast use may be established in a dwelling unit as an accessory to the principal residential use, on any property located within the ST Overlay Zone, and each approved bed and breakfast unit may be rented to one (1) family for a period of between one (1) and twenty-nine (29) consecutive days.
2. Conditions : A bed and breakfast may be approved only when all of the following conditions are satisfied, as evidenced by an application, a site plan, and floor plans:
   (a) The number of bed and breakfast units shall not exceed four (4) units; except that a lot may have between four (4) and ten (10) bed and breakfast units if the total square footage of conditioned floor area in the building or buildings containing the bed and breakfast units is equal to or greater than the sum of the number of bed and breakfast units multiplied by 560, and all other requirements of this section are met. Each unit shall consist of one (1) or more rooms arranged for the purpose of providing sleeping accommodations for one (1) family for a period of between one (1) and twenty-nine (29) consecutive days; and
   (b) The subject property is located entirely within the ST Overlay Zone; and
   (c) The bed and breakfast shall be operated by the record owner of the subject property who also resides at the subject property at least 183 days each year; and
   (d) The principal building on the property on which the bed and breakfast use will be located shall have been constructed 50 or more years ago although the bed and breakfast unit(s) may be located in a building that was not constructed 50 or more years ago; and
   (e) Bed and breakfast unit(s) located in buildings constructed 50 or more years ago shall provide one (1) off street, maneuverable parking space on the subject property for each two (2) bed and breakfast units, or fraction thereof. Bed and breakfast unit(s) located in buildings not constructed 50 or more years ago shall provide one (1) off street, maneuverable parking space on the subject property for each bed and breakfast unit. Spaces required for the bed and breakfast unit(s) shall be in addition to providing, on the subject property, required off street parking for existing uses on the property; and
   (f) The property shall be permitted to have one sign advertising the Bed and Breakfast. The permitted sign may have a maximum of two sides and no side shall exceed four (4) square feet in total sign face area; and
   (g) The bed and breakfast shall be located on property which is in compliance with allowed uses for the zone district in which the property is located; and
   (h) The bed and breakfast shall be operated by someone who has not had a bed and breakfast permit revoked within the previous twelve (12) months.
3.

Operational Requirements. In all cases, bed and breakfast use shall meet the following operational requirements:

(a) No meals other than breakfast may be served by the resident owner to the paying guests.

(b) The resident owner shall keep a guest register including names, addresses, telephone numbers and dates of occupancy of all guests for three (3) years and shall make this available to the City upon request.

(c) The resident owner shall comply with all business license and revenue collection laws of the City of Charleston, Charleston County and State of South Carolina.

4. Application Process.

(a) New applications for bed and breakfast uses shall be notarized and include the location of the property and resident owner of record of the property, an application fee, floor plans drawn to scale of the habitable structures on the property, a site plan of the lot showing the location of the proposed bed and breakfast units, the location of any existing bed and breakfast units, and the location of the required off-street parking spaces and driveways, and photographs of the current principal views of the structure where the proposed bed and breakfast units are to be located. The floor plans shall clearly note all rooms to be used by bed and breakfast guests, with the room or rooms to be used by bed and breakfast guests for sleeping designated. The application shall also include a statement which the resident-owner must sign acknowledging that he or she has reviewed and understands the requirements of this section.

Upon receiving a complete application and prior to the issuance of a zoning permit, the lot upon which the proposed use is to be located shall be posted for fifteen (15) consecutive days, advising that the resident-owner of the property has applied for a zoning permit to establish a bed and breakfast use at the location and supplying a phone number to call for further information. During this fifteen (15) calendar day period, the zoning administrator shall determine if the application meets the requirements as set forth above. If, at the end of the fifteen (15) day posting period, the zoning administrator determines that the application meets the requirements, the zoning administrator shall notify the applicant that the application is approved and shall, after waiting an additional five business days to allow for appeals, issue the zoning permit, which shall be valid for one (1) year from the date of issuance and shall be renewable annually unless revoked. Any appeals filed within the five-day period shall cause the issuance of the zoning permit to be stayed pending resolution of the appeal.

(b) Renewal application.

(1)

For renewal of a bed and breakfast permit, a property owner shall be required to recertify compliance with this section with the zoning administrator. An application for annual recertification of the bed and breakfast permit must include the application fee, an affirmation by the applicant that the nature of the bed and breakfast use at the property has not changed, and must be notarized, filed with, and approved by the zoning administrator to continue the bed and breakfast use.

(2) Upon a change in ownership of a property, and prior to the issuance of a new business license to allow continuation of an existing, permitted bed and breakfast use upon said property, the new property owner shall be required to recertify compliance of the bed and breakfast use with the zoning administrator by having an application for recertification of the bed and breakfast use notarized, filed with, and approved by the zoning administrator.

5. The bed and breakfast use shall not be expanded in any respect throughout the structure or structures, or elsewhere on the property nor shall the use be changed to any other use not permitted by the Zoning Ordinance without reapplication to and approval by the zoning administrator.
6. All operators of bed and breakfast uses permitted under this section shall cooperate fully with the zoning administrator and his designees, including, but not limited to, providing pertinent information upon request and affording access to that portion of the premises which is used for the bed and breakfast use for reasonable site inspections.
7. Existing Approved and Bed and Breakfast Uses . All approved, legal bed and breakfast uses that are operating on the effective date of the ordinance from which this section derives or that are entitled to be in operation on the effective date of this ordinance shall be issued a bed and breakfast permit which shall be valid for one (1) year of issuance and shall be renewable annually unless revoked and shall adhere to the requirements of this Chapter.

d. Violations and Penalties .

1. Violations . It shall be a violation of this Chapter for an owner, his agent or manager to:
   (a) Operate an STR use, a bed and breakfast use or other accommodations use without complying with the requirements of this Chapter and the Code of the City of Charleston; or
   (b) Expand an STR use or bed and breakfast use without obtaining a new permit; or
   (c) Advertise a property as being available for an STR use, bed and breakfast use or other accommodations use without first complying with the requirements of this Chapter; or
   (d) Represent or submit for advertising or marketing, or to otherwise hold out an STR unit, bed and breakfast unit or other accommodations unit as being available for use or occupancy unless the STR or bed and breakfast has been permitted pursuant to this

Chapter and the permit number is displayed in the materials used to represent, advertise, market or otherwise hold out the property as available for STR or bed and breakfast use or occupancy; or

(e) Represent or submit for advertising or marketing, or otherwise to hold out the availability of an STR or bed and breakfast for use or occupancy by more than the number of occupants that are permitted pursuant to this Chapter; or

(f) Represent or submit for advertising, or marketing, or to otherwise hold out more STR or bed and breakfast units or other accommodations type units on a property than are permitted pursuant to this Chapter.

2. Penalties . A violation of this Chapter is a misdemeanor punishable by a fine and/or incarceration. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use, or other violation under this Chapter continues is considered a separate offense.

   Should the STR or bed and breakfast use fail to continue to meet the requirements under which it was authorized or be discontinued for a period of twelve (12) months or more, the operating permit issued pursuant to this Chapter shall be revoked.

(Ord. No. 2012-41, § 4, 1-24-12; Ord. No. 2018-043 , § 13, 4-10-18)

EXHIBIT NO. 15

ARTICLE XIII: VACATION RENTALS

Sec. 21-117. Prohibition and nonconformity.

Vacation Rentals are prohibited uses on Sullivan's Island. Nothing in this Ordinance shall be construed to permit any Principal Building or other structure to be used as a Vacation Rental. All legally established Vacation Rentals are interpreted to be Nonconforming Uses.

Sec. 21-118. Certificate of zoning compliance and business license required.

In order for the owner of a Principal Building that has been lawfully used as a Vacation Rental during the twelve (12) months prior to November 21, 2000 to continue to use the property as a Vacation Rental, the owner shall apply for, and if approved by the Zoning Administrator upon meeting the requirements of this Article, be issued a Certificate of Zoning Compliance and shall secure a Vacation Rental Business License.

A. A Certificate of Zoning Compliance shall be obtained for each calendar year the property is used for a Vacation Rental.

B. A Certificate of Zoning Compliance shall be obtained for each Principal Building.

C. A Certificate of Zoning Compliance shall not be granted, even if the Principal Building otherwise qualifies for a Certificate of Zoning Compliance, if subsequent to the ratification of this Ordinance, that Principal Building has been enlarged or razed or otherwise destroyed.

D. If a lot has more than one legally existing Principal Building, a Certificate of Zoning Compliance shall be obtained for each Principal Building that is being used for a Vacation Rental.

Sec. 21-119. Certificate of zoning compliance application.

A. An applicant for a Certificate of Zoning Compliance shall provide the following information to the Town Clerk in the application for a Certificate of Zoning Compliance for a Vacation Rental:

(1) The complete street address, lot and block number and the tax map number as used by Charleston County;

(2) Proof of ownership, including the name, address and phone number of each person or entity with an ownership interest in the property;

(3) If the applicant is someone other that an owner, the applicant shall provide proof in writing of the owner's (or owners') authorization of the applicant to apply for the Certificate of Zoning Compliance and a Vacation Rental Business License;

(4) The applicant shall provide a letter signed by all of the owners of the property acknowledging that a violation of the Town's Vacation Rental Ordinance by the applicant, any manager of the property, or tenant shall be considered a violation by the owner(s);

(5) The owner's valid and current federal employer tax identification number or the social security number which is used for reporting of state and federal income tax for income derived from the Vacation Rental property;

(6) The name, address and twenty-four (24) hour phone number of the person who will be operating the Vacation Rental;

(7) The name and signature of all owners, authorized agents and authorized property managers; and,

(8) Agreement to comply with all of the rules and regulations set out in Sec. 21-122.

B. No Certificate of Zoning Compliance shall be granted until sufficient written evidence is provided to show that:

(1) A Sullivan's Island Vacation Rental Business License was issued for the Vacation Rental for the previous calendar year;

(2) The property was not assessed under the State, County and Town Municipal ad valorem tax laws as a qualified assessment for owner occupied property but rather assessed at the six percent (6%) rate and paid at the six percent (6%) rate for the previous calendar year. If a property has previously or is presently being assessed with a qualified assessment as owner occupied property four percent (4%), then the owner shall present sufficient proof satisfactory to the Town Clerk that the property has lawfully met and continues to meet the requirements for the four percent (4%) assessment under the criteria set out in Section 12-43-220 of the Code of laws of South Carolina, as amended;

(3) Personal rental residential property taxes were assessed and paid for the previous calendar year;

(4) State accommodation taxes were collected and paid for the rental of the property for the previous calendar year;

(5) Sales taxes were collected and paid for the rental of the property for the previous calendar year;

(6) Local option sales taxes were collected and paid for the rental of the property for the previous calendar year;

(7) County accommodation taxes were collected and paid for the rental of the property for the previous calendar year;

(8) Water and sewer fees have been paid in full;

(9) The property was actually held out and used as a Vacation Rental during the previous calendar year and was so

used as a Vacation Rental for a period of more than two (2) weeks during the previous calendar year;

(10) The owner consents to an inspection of the property by the Fire Chief of the Town of Sullivan's Island and the Building Official for the Town of Sullivan's Island to determine if the property complies with all Town of Sullivan's Island fire and building ordinances; and,

(11) The Zoning Administrator confirms that the property has not been used in an unlawful manner in the prior twelve (12) months and that the owner(s) has not violated any laws of the Town of Sullivan's Island.

C. Except in cases involving the initial receipt of a Certificate of Zoning Compliance, the owner shall have complied with all of the rules and regulations set out in Sec. 21-122 during the previous twelve (12) months and there has been a determination by the Zoning Administrator that the owner has not violated the said rules and regulations on more than two (2) occasions in the previous twelve (12) months.

Sec. 21-120. Standards for denial.

(A) If the Zoning Administrator finds substantial and credible evidence that one or more of the requirements of Sec. 21-119 have not been met, then the Zoning Administrator shall deny the applicant a Certificate of Zoning Compliance.

(B) If the Certificate of Zoning Compliance is denied, the applicant may request a review and re-inspection by the Zoning Administrator. If the review and re-inspection is denied or if, after review and re-inspection, there is no change in the denial of the license, the owner/applicant may appeal the decision by petition to the Board of Zoning Appeals.

Sec. 21-121. Transferability.

The Certificate of Zoning Compliance and the Vacation Rental Business License may not be assigned or transferred, pledged, sold, or otherwise transferred by the license holder to any other person, business, or entity. The license belongs solely to the owner and shall remain in the owner's name until such time that the owner ceases to use the property for a short-term rental purpose or sells the property. If a new owner wishes to continue to use the property for a Vacation Rental, an application shall be made to the Town within thirty (30) days of the transfer of the property or thirty days before the first Vacation Rental of the property.

Sec. 21-122. Operational requirements.

A. Any owner of a Vacation Rental who obtains a Certificate of Zoning Compliance and a Vacation Rental Business License shall comply with the following:

(1) All Vacation Rentals shall comply with the terms of the current Sullivan's Island Waste Hauler contract associated with excessive garbage and charges for containment and collection of the same;

(2) Except as provided herein, each residential property where transient lodging use is in effect shall prominently display so as to be visible from the outside of the property the Vacation Rental Business License;

(3) A contact person shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of responding promptly to complaints regarding the conduct of the occupants of the Vacation Rental. The name and phone number of the contact person shall be registered with the Police Department;

(4) The occupancy of a Vacation Rental shall conform to the occupancy limits of the Town of Sullivan's Island and Fire and Building Ordinances and total occupancy in all cases shall be subject to the following:

(a) No more than two (2) occupants for each one hundred twenty (120) square feet of bedroom area, plus one (1) additional occupant for each additional sixty (60) square feet of bedroom area in bedrooms shared by more than two (2) occupants;

(b) No more then twelve (12) occupants and no more than twenty-four (24) people (including both occupants and temporary guests) gathered at the Vacation Rental or otherwise on the property at any time; and,

(c) There shall be no weddings, parties, or other social events where more than twenty-four (24) people would congregate or gather on the property at one time.

(5) The owner or manager shall maintain a tenant and vehicle registration which shall include the name and address of each unit's tenant(s), and the make, year and tag number of the tenant's (s') vehicle(s). This information shall be readily available upon request of any officer of the Town responsible for the enforcement of this Ordinance;

(6) The owner shall provide off-street parking on the Vacation Rental property for all vehicles, watercraft and trailers to be used by the tenants during any occupancy;

(7) There shall be a written lease between a Vacation Rental owner and the tenant and it shall contain the tenant's agreements to the regulations contained in this subsection; and,

(8) There shall be neither overnight leases nor any conversion from providing Vacation Rentals to operating an inn or motel. All leases, rentals or uses by a tenant shall be for a minimum of three (3) continuous nights.

B. Nothing in this subsection is intended to exclude the application of any other ordinance for the Town of Sullivan's Island to the property or to the related parties.

Sec. 21-123. Suspension, revocation or abandonment.

A. A Certificate of Zoning Compliance and/or a Vacation Rental Business License may be suspended or revoked upon a determination by the Zoning Administrator of the existence of two (2) or more instances of failure to satisfy the conditions that are required to be shown as set out in Sec. 21-119 or in violation of the conditions and regulations set out in Sec. 21-122. An appeal of such determination of the Zoning Administrator may be made by petition to the Board of Zoning Appeals in accordance with the provisions of this Zoning Ordinance.

B. The abandonment or failure to use a property as a Vacation Rental for a period of twelve (12) consecutive months for any period shall be deemed an abandonment of the Vacation Rental use and the property shall no longer be used as a Vacation Rental and the owner of the property shall no longer be entitled to obtain a Certificate of Zoning Compliance nor a Vacation Rental Business License. Furthermore, the owner of the property and any broker, real estate agent or authorized agent of the owner shall be prohibited from using the property as a Vacation Rental.

Sec. 21-124. Violations.

A. It shall be a violation of these regulations to enter into a long-term lease with a mutual intent to subvert the regulatory goals of this Article. It shall be a violation of these regulations to sublease or allow the subleasing of a Principal Building for less than twenty-eight (28) days with intent to subvert the regulatory goals of this Ordinance. It shall also be a violation of these regulations for a property owner to lease space to “roommates” for a period of less than twenty-eight (28) days when not licensed as provided hereunder. For the purposes of enforcement, a reputable presumption that “roommates” are involved shall exist if the persons use a common entrance to the Principal Building.

B. It shall be unlawful for any person, owner, tenant, broker, real estate agent, other agent or other representative of the owner to hold out or advertise a residential dwelling for a Vacation Rental if the property has not been issued a Certificate of Zoning Compliance and a Vacation Rental Business License. It shall further be unlawful to hold out and/or advertise a residential dwelling for occupancy or uses not permitted by these regulations. A broker or real estate agent who is found in violation of this regulation shall be subject to having his/her business license revoked.

C. Any violation of the regulations provided in this Article by any person, owner, tenant, agent, broker real estate agent or other representative of an owner shall be punishable as a misdemeanor and by a fine of up to Five Hundred Dollars ($500) per day per violation and/or a sentence of thirty (30) days in jail. Each day the violation continues or occurs shall constitute a separate offense. In addition to any other remedy available to the Town of Sullivan’s Island, the Town or any adversely affected party may enforce these regulations or the terms of this Ordinance in law or in equity. The Town of Sullivan’s Island or any party adversely affected by any violation may seek injunctive relief from a Court of competent jurisdiction to prevent a violation of this Article.

Sec. 21-125. Reserved.

§ 156.340 PURPOSE, DEFINITIONS AND APPLICABILITY. EXHIBIT NO. 16

(A) *Purpose.* The purpose of this subchapter is to regulate the use of residential dwelling units as short term rentals (STR) in order to:

(1) Protect the integrity of the residential character of the town's existing neighborhoods and the quality of life of its citizens;

(2) Establish a system to track and manage STR inventory in the town; and

(3) To protect the health and safety of occupants of STR units.

(B) *Definitions.* For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RESIDENTIAL DWELLING UNIT. Building or portion of a building arranged or designed to provide complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

SHORT-TERM RENTAL, or STR.

(a) The rental or lease for valuable consideration of a residential dwelling unit, or portion thereof, for a duration of less than 30 consecutive days is considered an STR and is subject to this subchapter;

(b) This subchapter and its requirements shall apply to any, and all, businesses that were previously defined as a bed and breakfast under earlier town ordinances; and

(c) Home-based businesses and tourist accommodations, including hotels (includes motel and extended stay), boutique hotels (includes inn), and similar accommodations located on property in a commercial zoning district are not defined as ***SHORT TERM RENTALS*** and thus are not subject to this subchapter.

STR OPERATOR. Any property owner who receives payment for operating a residential dwelling unit, or portion thereof, as a short-term rental. For the purposes of this subchapter, ***OPERATOR*** may be interpreted to mean property owner.

(C) *Maximum number allowed.* At no time shall the maximum number of residential dwelling units used as STRs exceed 400, (the “Cap”), except as otherwise set forth in § 156.341(A)(2).

(Ord. 19048, passed 8-13-19; Am. Ord. 21019, passed 4-13-21; Am. Ord. 22052, passed 12-8-22)

Use, Conditional: The use allowed in a particular zoning district provided all the conditions, restrictions or limitations set forth in the text of the Ordinance are met.

Use, Permitted: The use allowed by right in a particular zoning district.

Use, Residential: Use of land or structure(s) thereon, or portion thereof, for residential occupancy of a permanent or semi-permanent nature with an intended continuous occupancy period, by any one individual or family, of not less than one month; and, except that this definition does not include occupancy of a visitor nature such as in hotel, motel or time-sharing uses involving periods of continuous occupancy of less than one month.

Use, Special Exception: The use allowed in a particular zoning district, after review by the Board of Zoning Appeals, for conformance with the conditions, restrictions or limitations set forth in the text of the zoning district as well as those set forth in Article 15 – *Conditional And Accessory Uses And Special Exceptions*.

Vapor Product: Any non-combustible product, which may or may not contain nicotine that employs a heating element, power source, electronic circuit, or other electronic chemical or mechanical means, regardless of shape or size that can be used to produce vapor from a solution or any other form. **Vapor Product** includes any electronic cigarette, hookah, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe or similar product or device, as well as any vapor cartridge or other container that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. **Vapor Product** does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

Variance: Permission, granted by the Board of Zoning Appeals, to depart from the literal requirements of the Ordinance.

Vehicular Use Area: Any area used for circulation, parking, and/or display of any and all types of vehicles, whether self-propelled or not, whether moving or at rest, including but not limited to parking lots, loading and unloading areas, mobile home parks, and sales service areas. Driveways are considered to be vehicular use areas wherever they are adjacent to public streets or other vehicular use elements described previously in this paragraph (intervening curbs, sidewalks, yards, landscape, strips, etc., do not eliminate an adjacency).

VE Zone: A flood insurance zone that corresponds to areas in the 100-year flood plain including the potential for wave action associated with the potential flood hazard. The VE Zone is the coastal high hazard area subject to high velocity waters, including but not limited to hurricane wave wash. The area is designated on the flood insurance rate map as Zone VE.

Vine: A plant whose natural growth characteristic produces climbing, meandering stems.

Visitor Accommodation: A visitor accommodation or transient accommodation, aka "short term rental" means a living unit or other accommodation used as a place of human habitation with sleeping accommodations (hereinafter collectively referred to as "an accommodation"), regardless of the manner of ownership or structure, which is exchanged, furnished to another, used, rented, leased or sub-leased for any time period less than ninety (90) continuous days or which is subject to time sharing, fractional ownership, tenancy in common (TIC), shared appreciation mortgages, or investment partnership pursuant to general law which is exchanged,

furnished to another, used, rented, leased or sub-leased for any time period less than ninety (90) continuous days. A visitor accommodation shall be considered a commercial use.

Warehouse: A warehouse is a commercial building for storage of goods, equipment, or materials.

Wearing Apparel: Inner and outer clothing and wearing accessories including dresses, suits, shirts, pants, blouses, hats, socks, shoes, jewelry, gloves, and ties.

Wireless Internetworking: A wireless extension of a wired Local Area Network (LAN) that provides all the capabilities normally associated with a wired LAN such as network management, data security, user authentication and authorization, traffic and congestion control, quality of service guarantee, real-time and constant/variable bit-rate support for voice and video.

Wireless Internetworking Node: A combination of antennas and radio components encased in a compact environmentally hardened outdoor package designed to be deployed outdoors to provide wireless internetworking and Wi-Fi coverage in nearby buildings or over large outdoor areas.

Wireless Internetworking Node, Support Structure: Any building, pole, or other permanently placed object used to mount the wireless internetworking node in the desired location for permanent operation.

Yard: Open space on a lot which is unoccupied and unobstructed from its lowest level upward for drives, landscaping, retaining and sea walls, fences, open patios, entrance steps, open parking space, transformers, gas meters, air conditioning units and solid waste containers. The area between the property line and the building line.

Yard, Front: A yard, contiguous to an adjacent right-of-way, extending across the full width of the lot, the depth (front yard setback) of which is the minimum horizontal distance between the front lot line and the building line parallel thereto (see Figure 2-9 – *Setback Yards*). An ocean yard shall not be considered a front yard. See the definition for "Yard, Ocean."

Yard, Ocean: Any yard contiguous to the ocean shall constitute an ocean yard, and shall meet the minimum ocean yard requirements of the district within which it is located.

Yard, Rear: A yard extending across the full width of the lot, the depth (rear yard setback) of which is the minimum horizontal distance between the rear lot line and the building line parallel thereto (see Figure 2-9 – *Setback Yards*).

Yard, Side: A yard extending along a side lot line and back to the building line drawn parallel to the side lot line at a distance therefrom equal to the width of the required minimum side yard (side yard setback), but excluding any area encompassed within a front yard or rear yard (see Figure 2-9 – *Setback Yards*). Unless otherwise stated, dimensions of minimum side yards specified in the district regulations of this ordinance refer to the required width of each side yard rather than to the total width of both side yards.

1712.G. In the Business Park (BP) district, exterior building materials shall consist of masonry (brick, stone, stucco, split-face and textured concrete block), glass, double-sided metal panel systems, or concrete. Pre-engineered building systems are permissible as long as they conform to the list of exterior materials above. Prefabricated metal buildings are specifically prohibited.

1712.H. Cooling towers and mechanical units in the Business Park (BP) district shall be screened to prevent view from any public right-of-way.

1712.I. There shall be no outdoor storage in the Business Park (BP) district.

Section 1713. Additional Design Standards for Commercial, Industrial and Mixed-Use Properties Contiguous to Residential (R, RM and residential PUD) Districts

1713.A. When a property abuts a residential (R, RM and residential PUD) district, the maximum height for the first 100' of that property (as measured from the district boundary) shall be either those of the district in which the property is located or the same as those in the abutting residential district, whichever is more restrictive. The minimum setback from the residential boundary line shall be 30'.

1713.B. When a property is directly across a public right-of-way from a residential (R, RM and residential PUD) district, the maximum height in the first one hundred feet of that property (as measured from the public right-of-way) shall be equal to that of the residential district or equal to the width of the right-of-way, whichever is greater, but in no case shall exceed that of the district in which the property is located.

Section 1714. Additional Standards for Residential Properties Throughout the City

1714.A. Front yard setbacks for dwellings. Where lots comprising 25 percent or more of the frontage of the same street, within the same block are developed with buildings having an average front yard with a variation in depth of not more than six feet, no building hereafter erected or structurally altered shall project beyond the average front yard so established.

1714.B. Rental Periods. Within any Single-family (R) or Multifamily (RM) district, no property or structure shall be leased for less than a 90-day period.

Section 1715. Design Standards for the Highway Commercial (HC2) District.

1715.A. Loading and storage areas: No loading or storage area shall be visible from any public right-of-way, unless that lot is a corner lot or fronts two (2) streets. in which case the loading or storage area may be visible from the street with the lowest traffic count so long as it is buffered in accordance with landscaping provisions found elsewhere in the zoning ordinance.

1715.B. Large developments: Development parcels larger than one acre in size and development subdivisions with one or more parcels greater than one acre in size

P-permitted use C-conditional use S-special exception Blank Cell-use type not allowed																													
Use Category and Type	Residential																												Additional Regulations
	R5	R7	R8	R10	R15	RMM	RMH	RMH-MH	RMV	MU-M	MU-H	C6	C7	C8	A	CG	E	HC1	HC2	MP	IN	AP	BP	LM	WM	CS	IR	PRC	
Transportation terminals and establishments providing for the interchange of freight													P	P				P	P			P		P	P				
Travel agencies										P	P				P			P	P	P									
Truck terminals																						P		P	P				
Unlicensed group residential (caregiving)										S	S							S	S	S									1501.E
Veterinary offices, clinics, and hospitals																		P	P	C					C				1501.GG
Video and other media productions															P		P							P	P				
Visitor accommodations not otherwise listed									P		P	P			P		P	P	P								S		1503.A
Visitor information reception center											P				P		P	P	P										
Warehouse storage																		P						P	P				
Welding shops																								P	P				

within 500 feet of a proposed B&B in either of these districts. Distances shall be measured from the property line.

e. **Meals:** No meals will be served to anyone other than registered guests, except as provided for in Section 3.6.2.C.1.f below. No variances from this condition shall be permitted.

f. **Events:** Business meetings, receptions, teas, and other events are permitted, provided that the events are hosted for registered guests. This shall apply to all B&Bs established under the Beaufort Code.

g. **Operation:** B&Bs shall be operated by a resident manager living on the premises.

2. **Short Term Rental**

a. **Specific to T3-S, T3-N, T4-HN, and all boats regardless of zoning district:** Short term rentals, where the owner does not live on the premises, are limited to 6% of the lots in the neighborhood as shown on the City of Beaufort Neighborhoods Map zoned T3-S, T3-N, and/or T4-HN. Boats used for Short term rentals are limited to 6% of the slips in marina. The following exceptions apply:

i. Structures on the City's List of Vacant and Abandoned Structures being rehabilitated for use as a short term rental; and

ii. Short term rentals are prohibited in The Point neighborhood, as shown on the City of Beaufort Neighborhoods Map.

b. **Minimum Stay:** 2 nights

c. **Permitted Rental Types**

i. Rental of the primary dwelling

ii. Rental of an accessory dwelling

iii. Rental of a portion of a primary dwelling.

iv. Rental of a boat in an approved marina.

d. **Parking:** Parking shall be provided on-site and located to the side or rear of the dwelling. On-site parking shall be clearly delineated with an improved surface such as pavement, gravel, or another method approved by the administrator. If formalized parking is provided on the street(s) adjacent to the primary or accessory unit, this may be utilized in lieu of on-site parking.

e. **Rental Agreement:** The applicant shall provide a copy of the rental agreement that will be used. The rental agreement shall specify the following:

i. The minimum stay

ii. The maximum number of guests--which shall be based on the number of beds in the unit. For Primary house rentals, the number of adult guests is limited to 2 per bedroom. For Carriage House rentals, the total number of adult guests is limited to 4.

iii. The maximum number of vehicles permitted at the unit--which shall be based on the number of bedrooms and the design of the driveway. For Primary house rentals, the number of vehicles is limited to 1 per bedroom. For Carriage House rentals, the total number of adult guests is limited to 2.

iv. Where guests are to park. Where no formalized on-street parking is available, the agreement shall specify that guests are to park on-site and not in the street.

v. That the City's noise ordinance applies between 9:00 PM and 8:00 AM

vi. Prohibit large gatherings such as weddings and reunions unless specifically approved by the City

vii. Pets, if permitted, are not to be left outside unattended

f. **Property Management Plan:** A property management plan shall be developed and approved by the administrator. The property management plan shall identify a property manager. Where the property owner does not live on the premises, the property manager must be available to appear on the premises to respond a complaint within three hours of being notified by the administrator. Where the property owner lives on the premises, a back-up property manager must be identified unless the owner certifies the unit will not be rented when the owner is out of town. The administrator shall be notified when management of the unit changes. Failure to comply with the approved property management plan shall result in the revocation of the zoning permit (Section 9.4).

g. **Signs:** No on-site signs shall be permitted.

h. **Rental Rules:** Rental rules, including use of the sanitation and recycling roll-carts, and emergency contact information including the police non-emergency number, shall be posted in a conspicuous location in the unit.

i. **Monitored Fire Alarm:** A monitored fire alarm is required for all units except boats. Boats are required to provide documentation that a Coast Guard Auxiliary Safety Vessel Check has been performed is required. The Vessel Safety Check can be arranged through this link: http://www.cgaux.org/vsc. Existing facilities not meeting this requirement shall be brought into conformance within 6 months of the date of adoption of this code.

j. **Outside Approvals Required:** For properties located in a neighborhood with a property owners' association, written confirmation from the association president that short-term rentals are permitted in the neighborhood is required. In multifamily structures, written approval from the property management association is required. For boats in an approved marina, written permission from the marina manager is required.

k. **Safety Inspection and Licensing:** A Safety Inspection shall be conducted before the Business License for the facility is issued. The facility shall comply with all business license, revenue collection, and health laws of the City of Beaufort, Beaufort County and the state of South Carolina.

l. **Unlicensed Units:** For units that are found to be operating without approval of the City, the short term rental application fee shall be $1,000. If the property owner chooses not to submit a short term rental application within 60 days of being notified by the City of being in violation of the ordinance, a short term rental application shall not be approved for a period of 2 years.

3. **Inn/Hotel/Motel**

a. **Specific to T4-N**

i. Inns up to 10 rooms are permitted.

ii. Inns with 11-24 rooms are permitted in retail frontage overlay areas.

b. **Specific to T4-NA:** This use is prohibited.

D. **Retail & Restaurants**

1. **Specific to T4-N only:** Except for Animal Hospitals/Kennels, Restaurants and Retail

2. Spacing between Group Homes: Group Homes shall not be located within a radius of three thousand (3,000) feet of another Group Home (measured from the nearest point of the existing home to the nearest point of the proposed home)

G. Residential Care Facilities (N-MX, D-MX, UC-MX, MF-R, MH-R, N-B, G-B)

1. Multi-family dwelling standards apply: Such facilities are subject to the same standards as other multi-family dwellings including the provision of parks and open space and the alignment of buildings along streets.

3.4.3 LODGING

A. Home Stay Bed and Breakfast (Up to 5 guest rooms) (N-R, GR-2, GR-3, GR-5, MF-R)

1. Owner Residency Required: The bed and breakfast shall be owned and operated by at least fifty percent (50%) of the record ownership of the real property upon which the bed and breakfast is located and said owner(s) shall be a resident(s) of the subject property. For purposes of this Zoning Ordinance, to qualify as a resident(s) of a property, the person(s) shall use that property as their legal voting address, South Carolina driver's license address or South Carolina Identification Card address and four percent (4%) homeowners assessment ratio address, and shall actually reside on the property at least 183 days each year and be on site at any time guest are registered. If a bed and breakfast is owned by a Limited Liability Corporation (LLC), Corporation or any other type of business entity, at least fifty percent (50%) of the ownership of said LLC, corporation or other type of business entity shall be by the resident(s) as described above together with the same restrictions and qualifications set forth.
2. Maximum Number of Guest Rooms: 5
3. Peaceful Enjoyment by Neighbors: Such use shall create no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, unhealthy or unsightly condition, traffic, or parking problems.
4. Meals to Guests Only: No meals other than breakfast may be served by the resident owner to the paying guests.
5. Parking: One off-street parking place shall be provided for each guest room. Guest parking shall be in designated off-street parking areas consistent with neighborhood standards. No parking spaces, other than driveways, may be located in the required front yard setback.
6. Business License Required: A valid business license is required.
7. Insurance Required: Valid liability insurance is required for the Owner, Property management company/or any other entity. Valid insurance is required for each unit being licensed for short term rentals.
8. Safety Inspection: An initial safety inspection shall be conducted by the Town. Additional inspections for compliance with the regulations in this section may be performed by the Town if deemed necessary and with 24 hour notice to the permit holder/property manager.
9. Records Required: The Permanent Resident shall maintain records for two years demonstrating compliance with these provisions, including but not limited to information demonstrating Primary Residency, the number of days per calendar year he or she has occupied the residential unit, the number of days per calendar year the residential unit has been rented as a Short-Term Rental, and compliance with the insurance requirement in this section. These records shall be made available to the Town upon request.

B. Bed and Breakfast Inn (6-10 guest rooms) (N-R, N-MX, MF-R)

1. Owner-Occupancy Required: See the requirement for 3.4.3.A above for N-R and MF-R properties. For N-MX properties, owner-occupancy is dependent on the primary use of the structure and the primary use of the adjacent properties. If the primary use of the structure is residential and at least 50% of the adjacent properties have a primarily residential use, the requirement in 3.4.3.A above applies. Owner-occupancy is not required if the primary use of the structure is commercial and at least 50% of the adjacent properties have a primary commercial use.
2. Maximum Number of Guest Rooms: 10
3. Peaceful Enjoyment by Neighbors: See the requirement for 3.4.3.A above.
4. Meals to Guests Only: See the requirement for 3.4.3.A above.
5. Parking: See the requirement for 3.4.3.A above.
6. Business License Required: A valid business license is required.
7. Insurance Required: See the requirement for 3.4.3.A above.
8. Safety Inspection: See the requirement for 3.4.3.A above.
9. Records Required: See the requirement for 3.4.3.A above.

C. Inn (Up to 24 rooms) (N-MX)

1. Location: The facility shall be located at least fifty (50) feet from the boundary of any residential use or district, and only one Inn is permitted per block.
2. Manager's office: Inns with 11 or more units shall be required to have an on-site manager in the form of a resident manager or 24-hour desk service. An office for the manager shall be provided and shall be located near the entry to the residential hotel and have full view of the entry area.
3. Meals may be served to guests other than those registered with the bed and breakfast, provided the facility meets all other applicable town and state codes for food service. Cooking facilities are prohibited in individual guest rooms.
4. Leasing of common areas for social events shall be allowed, provided the facility meets all applicable off-street parking requirements and complies with the noise ordinance and all other provisions of the Town Code.
5. The proposed use will be compatible with the character of the adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
6. Screening: Such use must have existing or proposed screening or buffering, in terms of type, dimensions, and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

D. Hotel/Extended Stay (D-MX, UC-MX)

1. Access to all guest rooms shall be from an interior hallway (conditioned space) only.

E. Short Term Rental (N-R, N-MX, GR-2, GR-3, GR-5, MF-R, MH-R)

1. Determination of Short-Term Rental Offering: Any online advertisement posted by the owner or Permanent Resident is sufficient to determine that a unit is being offered as a short-term rental.
2. Owner-Occupancy Required: : See the requirement for 3.4.3.A above for N-R, GR-2, GR-3, GR-5, MF-R, and MH-R properties. For N-MX properties, owner-occupancy is dependent on

the primary use of the structure and the primary use of the adjacent properties. If the primary use of the structure is residential and at least 50% of the adjacent properties have a primarily residential use, the requirement in 3.4.3.A above applies. Owner-occupancy is not required if the primary use of the structure is commercial and at least 50% of the adjacent properties have a primarily commercial use.

3. Business License Required: See the requirement for 3.4.3.A above.
4. Peaceful Enjoyment by Neighbors: See the requirement for 3.4.3.A above.
5. Insurance Required: See the requirement for 3.4.3.A above.
6. Safety Inspection: See the requirement for 3.4.3.A above.
7. Records Required: See the requirement for 3.4.3.A above.

3.4.4 OFFICE/SERVICE

A. ATM (N-MX, D-MX, N-B)

1. Design review by the CDRB or BAR is required.

B. Home Occupation (N-R, N-MX, GR-2, GR-3, GR-5, MF-R, MH-R)

1. Residential Characteristics: There shall be no exterior indication, other than a sign permitted by Section 10.3, that the building is being used for any purpose other than a dwelling. There shall be no exterior indication of mechanical equipment in regular operation.
2. Peaceful Enjoyment by Neighbors: Such use shall create no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, unhealthy or unsightly condition, traffic, or parking problems.
3. On-Site Employees: The number of non-resident, regular, on-site employees shall be limited as follows:
   a. GR-2 District: 0
   b. N-R, GR-3, GR-5, MF-R, MH-R: 2
   c. N-MX: Not limited
4. Commercial Vehicles: Only vehicles used primarily as passenger vehicles will be permitted in connection with the conduct of the home occupation. Large vans, construction equipment, and similarly large-sized vehicles are not permitted.
5. Parking: Client parking shall be in designated off-street parking areas consistent with neighborhood standards. No parking spaces, other than driveways, may be located in the required front yard setback. Care shall be taken to ensure that on-street parking by clients does not disrupt normal neighborhood parking.
6. Signage: No more than one sign identifying, or in any way pertaining to, the home occupation shall be permitted, and all such signs shall meet the requirements of Chapter 10.
7. Typical home occupation businesses include, but are not limited to, professional services, personal services, small equipment repair, businesses support services, family day care homes, and studios.

C. Personal Services (G-B, L-I, H-I)

1. Tattoo and body piercing facilities as principal uses are only permitted in the G-B, L-I, and H-I.

EXHIBIT NO. 20

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC046210

10/5/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Sea of Tranquility, 112 E Indian Ave, Unit A

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

112 E Indian Unit A 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC046210

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/5/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 112 E Indian Unit A 29439
LICENSE NO: LIC046210
CLASS: 9.5
EXPIRATION: 4/30/2023

must have Certificate of Occupancy to issue Rental Registration

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC046211

10/5/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name 112 E Indian Ave, Unit B

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

112 E Indian Ave 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC046211

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/5/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 112 E Indian Ave 29439
LICENSE NO: LIC046211
CLASS: 9.5
EXPIRATION: 4/30/2023

must have Certificate of Occupancy to issue Rental Registration

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC048423

10/11/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Druken Sailor - 114 E Indian Ave, Unit A

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC048423

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/11/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC048423
CLASS: 9.5
EXPIRATION: 4/30/2023

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC048424

10/11/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Kings Tide - 114 E Indian Ave, Unit B

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC048424

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/11/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC048424
CLASS: 9.5
EXPIRATION: 4/30/2023

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC003728

5/24/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name 116 E Indian Ave

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC003728

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 5/24/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC003728
CLASS: 9.5
EXPIRATION: 4/30/2023

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC048425

10/11/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Turtles Nest - 118 E Indian Ave, Unit A

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC048425

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/11/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC048425
CLASS: 9.5
EXPIRATION: 4/30/2023

City of Folly Beach, South Carolina

Business License - City of Folly Beach

License #: LIC048426

10/11/2022
Date Issued

Company Name 122028 Folly East Indian Company

Business Name Surf Shack - 118 E Indian Ave, Unit B

Type of Occupation All Other Traveler Accommodation Rate Class 9.5

116 E INDIAN AV 29439
Location

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439
Mailing Address

Expires: 4/30/2023

Account #: LIC048426

Must be posted in a visible location in the business establishment

RECEIPT
RETAIN FOR YOUR RECORDS

Department of Revenue Collections
4045 Bridge View Drive
North Charleston, SC 29405-7464

Business License - City of Folly Beach
DATE ISSUED: 10/11/2022

Jurisdiction	Actual Gross Receipts	Amount	Balance Due

Richard Brendel or Michael Riffert
Folly East Indian Company
PO Box 1922
Folly Beach SC 29439

LOCATION: 116 E INDIAN AV 29439
LICENSE NO: LIC048426
CLASS: 9.5
EXPIRATION: 4/30/2023

ELECTRONICALLY FILED - 2023 Apr 19 4:53 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
FOLLY EAST INDIAN CO., LLC, Plaintiff, vs. CITY OF FOLLY BEACH, and SAVE FOLLY'S FUTURE, Defendants.	)	CASE NUMBER: 2023-CP-10-00264 MOTION TO DISMISS PURSUANT TO TO RULE 12(b)(1) and (6), SCRCP

TO: COUNSEL FOR THE ABOVE-NAMED PARTIES

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 12(b)(1) and (6), SCRCP, Save Folly's Future (SFF) by and through its undersigned attorney, hereby moves to dismiss this action on the grounds that because Plaintiff has suffered no injury in fact and lacks standing, this Declaratory Judgment action presents no justiciable controversy. As a result, this Court lacks subject-matter jurisdiction to hear this case under Rule 12(b)(1), and the Amended Complaint fails to state facts sufficient to constitute a cause of action under Rule 12(b)(6).

For the reasons set forth above and in more detail in SFF's accompanying Consolidated Memorandum in Support of its Motion to Dismiss and in Opposition to Plaintiff's Motion for a Summary Judgment, Plaintiff respectfully moves this Honorable Court for an order dismissing Plaintiff's Amended Complaint.

ELECTRONICALLY FILED - 2023 Apr 19 4:53 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

Respectfully Submitted,

Law Office of Robert M. Turkewitz, LLC

s/Robert M. Turkewitz
S.C. Bar No. 11589
768 St. Andrews Blvd
Charleston, SC 29407
T: (843) 628-7868
F: (877) 408-1078
rob@rmtlegal.com
www.rmtlegal.com

April 19, 2023
Charleston, South Carolina

Attorney for Save Folly's Future

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by electronic service in the manner prescribed by the applicable Rule of Civil Procedure.

This 19th day of April, 2023.

/s/ Robert M. Turkewitz

ELECTRONICALLY FILED - 2023 Apr 19 4:53 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

ELECTRONICALLY FILED - 2023 Apr 19 4:53 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NUMBER: 2023-CP-10-00264
FOLLY EAST INDIAN CO., LLC,	)	
	)	
Plaintiff,	)	CONSOLIDATED MEMORANDUM IN SUPPORT OF 12(b)(1) and (6) MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
	)	
vs	)	
	)	
	)	
CITY OF FOLLY BEACH, and SAVE FOLLY'S FUTURE,	)	
	)	
Defendants.	)	
	)	

I. INTRODUCTION

Save Folly's Future (SFF) has been granted intervenor status in this case. [1] For the reasons set forth in the City of Folly Beach's Motion for Summary Judgment, Plaintiff's Declaratory Action should be dismissed with prejudice.[2] In its Amended Complaint, Plaintiff has failed to demonstrate that it has suffered an "injury in fact," and it therefore has no standing and presents no justiciable controversy.[3] As a result, Plaintiff's Declaratory Action should be dismissed pursuant to SCRCP, Rule 12(b)(1) for lack of subject-matter jurisdiction, and Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action. If SFF's 12(b)(1) and (6) Motion is denied, SFF respectfully requests that Plaintiff's Motion for Summary Judgment be denied.

[1] The order was signed on April 6, 2023.
[2] SFF hereby joins the City in its Motion for Summary Judgment.
[3] *Jowers v. South Carolina Department of Health and Environmental Control*,423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018)("our courts will not address the merits of any case unless it presents a justiciable controversy.") *citing, Byrd v. Irma High School*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996).

ELECTRONICALLY FILED - 2023 Apr 19 4:53 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

II. BACKGROUND

A. The Plaintiff Initially Filed a Baseless Complaint.

SFF will not recount the history of the petition and referendum in this memorandum as it has already done so in its Memorandum in Support of its Motion to Intervene and incorporates that by reference. Subsequent to the February 7, 2023 Special Election in which the Initiative prevailed and was certified, the City Council enacted the Ordinance contained in the Petition. In order to set the stage for our substantive discussion of the Rule 12(b)(6) motion, it is important to note that the Complaint now before this Court is not the Complaint that initiated this matter but rather it is an Amended Complaint. Plaintiff initially claimed, amongst other things, that its constitutional rights were being violated because the limit on the number of business licenses issued for Investment Short-Term Rentals (ISTRs) and proposed legislation contained therein was denying it the right to obtain the business licenses and that such a denial violated its constitutional right to be issued those licenses. In addition, Plaintiff claimed that the Initiative was an illegal attempt to pass zoning regulations by a voters' initiative. However, when it was determined that Plaintiff had indeed been issued the business licenses for its ISTRs, it became clear that the Plaintiff's claim failed to present a justiciable controversy and that Plaintiff therefore lacked standing. At that point, Plaintiff should have withdrawn or dismissed its complaint.[4] Instead, Plaintiff filed the Amended Complaint in which it removed the very claims that formed the basis of its initial lawsuit and are now left with the claim that it has been harmed because the business licenses it was issued are not transferable. Plaintiff has failed to cure its justiciability and standing problem because no business licenses are transferrable. Simply put, the Plaintiff was and continues to complain about injuries to allegedly constitutionally protected rights that have not and will not happen.

[4] The discarded claims regarding the business Licenses never should have been brought either by the Plaintiff or its counsel. It is important to note that being aware of the existence of the business licenses would have required only mere minutes of "investigation" as the licenses were presumably in the Plaintiff's possession. Plaintiff predictably alleges that its filing of a baseless complaint was the City's fault, but its is our understanding that The City informed the Plaintiff during several meetings that it had the business licenses it sought and that it only needed to apply for a Certificate of Occupancy once construction was completed.

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B. The Plaintiff's Memorandum is a collection of faulty claims and legal arguments that fail to support its requests for relief.

The Plaintiff's Amended Complaint and Memorandum in support of its motion are filled with schools of red herrings in an attempt to distract from the central issues in this case. The following is an overview of the spurious attacks the Plaintiff has made on the Ordinance.

1. The Ordinance proposed by the Citizen Petition and now enacted by the Folly Beach City Council (the Ordinance) is allegedly a zoning ordinance and thus violates the ruling in *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (S.C. 2000). It does not. Despite the Plaintiff's insistence that an Ordinance dealing with the issuance of Business Licenses is zoning, it is not.
2. The Plaintiff also argues that a cap on the issuance of ISTR business licenses constitutes "spot zoning." It does not. As the South Carolina Supreme Court stated, "[t]his Court has defined 'spot zoning' to be the 'process of singling out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of owners of such property and to detriment of other owners." *Knowles v. City of Aiken*, 305 S.C. 219, 407 S.E.2d 639 (S.C. 1991), *citing*, *Bob Jones University v. City of Greenville*, 243 S.C. 351, 361, 133 S.E.2d 843, 848 (1963), dismissed for lack of Fed.Q., 378 U.S. 581, 84 S.Ct. 1913, 12 L.Ed.2d 1036 (1964). The Plaintiff cannot identify any specific small partial of land that has been singled out because it has not happened. The Ordinance caps the number of business licenses that may be issued to individuals, corporations or other entities who wish to engage in the short-term rental business as an investment.
3. The Plaintiff claims that the Ordinance is in conflict with legislation now pending in Columbia. It is not.
4. The Plaintiff alleges that the Residential Property Condition Disclosure Act, §27-50-250 (Disclosure Act)[5] preempts the Ordinance. The Disclosure Act does not manifest the

[5] Also known as the South Carolina Vacation Rental Act.

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legislature's intent to preempt any local ordinances nor is preemption implied. Since it does not deal with the issuance of business licenses, there is no conflict between the Ordinance and the Disclosure Act.

5. The Plaintiff claims that since the Ordinance made ISTR business licenses non-transferable, it must be nullified because it deprives it of a "vested right" to transfer its business licenses. The Ordinance as proposed in the initiative Petition and approved by the voters in the special election has had no impact on the transferability of the business licenses. That is because all business licenses before and after passage of the Ordinance are not transferable.[6] The Ordinance treats transferability of ISTR business licenses the same as any other business license.

6. The Plaintiff argues that the passage and enactment of the Ordinance violated its right to due process. It does not. The Supreme Court has made it very clear that, "An ordinance is a legislative enactment and is presumed to be constitutional. The burden is upon the [the plaintiff] to prove unconstitutionality beyond a reasonable doubt. The burden requires the attacker to…'negate every conceivable basis that might support it.'" *Lehnhausen v. Lake Shore Auto Parts Company*, 410 U.S. 356, 364, 93 S.CT. 1001, 1006, 35 L.Ed. 2d 351 (1973) (*quoting Madden v. Kentucky*, 309 U.S. 83, 88, 60 S.Ct. 406, 408, 84 L.Ed.590 (1940). The Plaintiff has failed to meet this burden of proof. Neither the Ordinance contained in the petition nor the Ordinance establishing the moratorium is unconstitutional.

[6] The current Folly Business License Ordinance states very clearly at §110.08(B) that, "[a] business license shall not be transferable, and that a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on the old business income." This Ordinance was enacted in 2021.

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7. Contrary to Plaintiff's claims, there is no constitutionally protected property right in engaging in a business activity or the activity of making a profit. *College Savings Bank V. Floridian Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 675 (1999). As discussed previously, both the State statute and the Folly Beach ordinance regarding Business Licenses deal with engaging in business activity. As a result, there is no interference or damage done to a constitutionally protected property right.

8. The Plaintiff also argues that the Ordinance violates its constitutionally protected right to transfer its business licenses. It does not. The U.S. Supreme Court has held that there is no constitutionally protected property right in engaging in a business activity or the activity of making a profit. *College Savings Bank v. Floridian Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 675 (1999). As provided in both the state statute and the Folly Beach ordinance, Business Licenses deal with the **granting of the privilege by the City of Folly Beach to engage in business activity within its jurisdiction.** The Business License Tax Standardization Act, which was passed on September 23, 2020, and signed by the Governor on September 30, 2020, defines a business license as a license issued to a taxpayer by a county or municipality for the **privilege of doing business.** §6-1-400 (a). No one has a "vested right" to a business license. Business licenses by law must be renewed yearly and cannot be transferred. A vested right is a right that runs with the land. Business licenses do not attach to the property but rather are issued to the individual or corporation or other entity to which is granted. As a result, contrary to Plaintiff's claims there is no interference or damage done to a constitutionally protected property right.

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C. The Plaintiff is not the victim of the avaricious nature of the voters of Folly Beach.

To add to its scatter shot of legal claims, the Plaintiff attempts to paint itself as a victim of an avaricious group of Folly Beach voters. See Section II B that reads: "Not only is the Ordinance not part of the comprehensive plan it conflicts with it and **was enacted by citizen's (sic) for mere private gain**." Page 11 (emphasis added). While it is hard to comprehend what relevance this wild, unsubstantiated allegation has to the matter at hand, it is especially puzzling in view of the fact Plaintiff has made it clear that its goal is to protect its right to make as much profit as possible - that is its own private gain. It is important to note that the Ordinance was proposed by a grass-roots organization of volunteers and approved by the voters in a special election.

D. The Plaintiff's Memorandum is littered with misstatements of both the law and the facts.

As in Plaintiff's initial Complaint, its Amended Complaint relies on a misleading recitation of alleged facts often consisting of nothing but baseless claims, including the following:

1. Plaintiff cites the City's justification for enacting an ordinance limiting the number of business licenses as an exercise of the City's police power. They then state that zoning is also an exercise of the City's police power. So far so good. However, they then make a leap too far and argue that because the enactment of a zoning ordinance and the enactment of a business license ordinance are both exercises of the police powers, then the enactment of the ordinance relating to the issuance of business licenses is *a priori* the enactment of a zoning ordinance. Nothing could be further from the truth. As SFF will show in more detail below, the issuance of businesses licenses is a separate process that is carried out under a separate state statute and by local ordinance. It frankly has no impact on zoning whatsoever. While both actions may flow from the City's police power, it does not follow that all actions taken by the City pursuant to its police power comprise zoning. The

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Ordinance proposed by SFF did not seek, and now that it has been enacted pursuant to a vote by the residents of Folly, does not have any impact on zoning. It does not change the zoning of any district or area in Folly Beach. *See* Exhibit 1, copy of the ordinance and the petition. Just because Plaintiff wants the ordinance to be a zoning ordinance does not make it one.

2. The Plaintiff argues that because other cities and towns have chosen to prohibit or limit ISTRs from certain areas of their jurisdictions by zoning, therefore Folly Beach must do the same. In support of this claim the Plaintiff has attached to its Memorandum Exhibit B (Parts 1 and 2), which contains the zoning ordinances of four low country municipalities - Charleston, Sullivans Island, Mount Pleasant, and Myrtle Beach. In those ordinances short-term rentals are limited to certain areas of the municipalities. Such a decision is an appropriate zoning decision. In none of those ordinances is the issuance of business licenses for short term rentals or investment short term rentals discussed. Plaintiff fails to mention that these municipalities also require that persons, corporations or LLCs wishing to operate a Short-Term Rental Business must also obtain a business license to do so. In none of these municipalities does the zoning department issue business licenses, rather each town or city has a separately established department for the issuance of business licenses.

In the City of Charleston, an individual who wishes to conduct a short-term rental business must have two separate permissions from the City. One is a "use permit" for a short-term rental, which is issued by the Zoning Department. The other is a business license, which is issued by the license official as defined in the Ordinance. The License Official is not a member of Charleston's Zoning Department. Rather, the License Official

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is the Director of Revenue Collections Division. The issuance of the business license is not a matter of zoning, it is a function of the Department of Finance. Unlike Charleston, Folly Beach does not require a use permit, and short-term rentals are not prohibited in any area of the City. Contrary to the Plaintiff's claims, the Ordinance proposed in the initiative petition did not seek to change the zoning of any area of Folly Beach and its enactment by the City Council did not do so.

III. DISCUSSION

A. PLAINTIFF DOES NOT HAVE STANDING AND ITS ACTION SHOULD BE DISMISSED UNDER SCRCP 12(b)(6).

1. The Standard under Rule 12(b)(6).

In *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (S.C. 2011), the South Carolina Supreme Court set forth the standard under Rule 12(b)(6):

> Under Rule 12(b)(6), SCRCP, a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint. Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007). Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of [394 S.C. 149] the case. Id. The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Id.

2. Cases Seeking a Declaratory Judgment Must Present a Justiciable Controversy.

The Supreme Court of South Carolina has made clear that "our courts will not address the merits of any case unless it presents a justiciable controversy. *Jowers v. South Carolina Department of Health and Environmental Control*,423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) *citing, Byrd v. Irma High School*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). In *Jowers*, the plaintiff was challenging legislation as the Plaintiff is doing in this matter. The court noted that

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before any action may be maintained there must exist a justiciable controversy, and "justiciability encompasses both ripeness and standing." In the discussion that followed, the Court explained that standing is a personal stake in the subject matter of the law suit and that for a plaintiff to have standing to challenge legislation he must have sustained or be in immediate danger of sustaining actual prejudice or injury from the legislative action and that injury must be an injury in fact defined as an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not "conjectural" or "hypothetical." In defining ripeness, the *Jowers* Court explained that an issue that is contingent, hypothetical or abstract is not ripe for judicial review. *Jowers,* 423 S.C. at 353-354.

Noting that an action under the Declaratory Judgment Act must be justiciable, the Court in *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 70, 459 S.E.2d 844, 845 (S.C. 1995), stated:

> The Declaratory Judgment Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships. *Williams Furniture Corp. v. Southern Coatings and Chemical Co*., 216 S.C. 1, 56 S.E.2d 576 (1949).
>
> To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985). A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970).

A review of the South Carolina Supreme Court's holding in *Power v. McNair, Id.,* is instructive. In that case, police officers of the City of Laurens sought appointment as State constables. Believing that such appointment violated the State Constitution, the Governor in his discretionary denied the request. The action sought declaratory judgment as to the constitutionality

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of the officers filling the dual role. Noting that such appointment had not been made and there was nothing in the record to bind the Governor, the Court stated;

> At the outset, we must determine whether the pleadings state a cause of action entitling the parties to a declaratory judgment. We stated in *South Carolina Electric & Gas Co. v. South Carolina Public Service Authority*, 215 S.C. 193, 54 S.E.2d 777 that 'the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment.' While this question has not been raised, we raise it on our own motion, since the parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy. 26 C.J.S. Declaratory Judgments § 26, page 99; 22 Am.Jur. (2d), Declaratory Judgments, Section 75.

Power, 255 S.C. at 153, 177 S.E.2d at 552. The Court declared, "[i]n order to maintain an action under the statute, there must exist a justiciable controversy." *Power,* 255 S.C. 153-4, 177 S.E.2d at 553, citing *Dantzler v. Callison*, 227 S.C. 317, 88 S.E.2d 64, 65 (1955), and *Guimarin & Doan v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 155 S.E.2d 618 (1967). Setting forth the elements necessary to constitute a justiciable controversary, the Court stated:

> "Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action."

Power, 255 S.C. 153-4, 177 S.E.2d at 553, *quoting, Dantzler*, 227 S.C. at 321, 88 S.E.2d at 66.

The Court further defined the limits of justiciability for a litigant seeking a Declaratory Judgment:

> "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character...."

Id. 255 S.C. at 154, 177 S.E.2d at 553, *quoting, Guimarin & Doan.*, 249 S.C. at 566, 155 S.E.2d at 621. The Court concluded:

> Under these circumstances, an adjudication of the present question would settle no legal rights of the parties. It would be only advisory and, therefore, beyond the intended purpose and scope of a declaratory judgment. We simply refuse to enter the field of advisory opinions.

Id. 255 S.C. at 154 – 155, 177 S.E.2d at 553.

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3. The Complaint Fails to Allege a Justiciable Controversy

A review of the claims made in Plaintiff's Amended Complaint fail to allege a justiciable controversy. Instead, it deals with things that have not happened, that are hypothetical and might happen to others, and that are contingent on some future event. There is nothing urgent or immediate regarding a violation of any constitutionally protected right. For example, **Paragraph 16** of the Amended Complaint alleges:

> Due to the importance of STRs to the local community and economy, state legislators have introduced a pending Bill, H. 45471, which would prohibit any municipality from enacting an ordinance that prohibits STRs.

This is an example of the kind of contingent and hypothetical injuries that the Court in *Jowers* held will not fulfill the requirement of standing. Even if such legislation is enacted, the Ordinance does not prohibit short-term rentals. There is no justiciable controversy upon which to find jurisdiction to hear this matter.

Paragraph 30 i. claims that the Petition, "seeks to change the zoning of particular tracts of land in which the plaintiff owns real property and this zoning would disallow the use of STRs on Plaintiff's property if Plaintiff should transfer its property." Because Plaintiff has been issued the ISTR business licenses in question, there is simply no "injury in fact" – that is, "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not "conjectural" or "hypothetical." *Jowers*, 423 S.C. at 353-354.

In addition, the claim in Paragraph 30 i. conflicts with the law, since: 1) the Ordinance at issue caps the number of ISTR business licenses without regard to the location or use of particular tracts; and 2) Folly Beach's 2021 Business License Ordinance, §110.08(B), states very clearly that, "[a] business license shall not be transferable." While the liberal rules allow alternative pleading, they

must comport with the law. As with Paragraph 30 vii., there is no justiciability where there is no controversy, and the party has no legal right to the relief sought. *See Power v. McNair, supra*.

Similarly, **Paragraph 30 ii.** claims that the Petition and Ordinance violate the holding in *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 720 (S.C. 2000). As with paragraph 30 i., there is no injury in fact since Plaintiff was issued business licenses to conduct its ISTR business. This claim is also wrong legally since the referendum in *I'on, L.L.C.* sought to change the zoning status of parcels. Here, the Referendum and Ordinance on their face did not involve any attempt to change the zoning status of any area or parcel in the jurisdiction of the City of Folly Beach. In fact, the business licenses issued for Investment Short Term Rentals **do not** rely on the zoning status of the parcel of land in which the ISTR sits.

Paragraph 30 iii. claims that the zoning code allows STRs in every zoning district and there should be no restriction of obtaining or transferring STR licenses. Once again, having obtained business licenses, Plaintiff has suffered no injury in fact. Further, any impact on transferability is not only legally fictitious, but also contingent and hypothetical.

Paragraph 30 iv. claims that the Ordinance deprives Plaintiff of its vested rights and interferes with its reasonable investment-back expectations. The Constitution does not guarantee a property owner the right to obtain the maximum return on its property. What it does prohibit is regulation that deprives the landowner of "all feasible economically beneficial interest." *Lucas v. SC Coastal Council*, 505 U.S. 1003 (1992). This standard remains as viable today as it was in 1992. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency Tahoe-Sierra Preservation Council, In v. Tahoe Regional Panning Agency*, 535 U.S. 305, 122 S.Ct. 1465 (2002). Having been issued business licenses for all its properties, Plaintiff's claim fails on its face.

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Paragraph 30 v. of the Amended Complaint alleges:

> The Ordinance by special election further prevents property owners from complying with §27-50-250, which requires property owners to honor vacation rentals after the sale and/or transfer of real property.

Paragraph 30 vi. alleges:

> The inability to comply with §27-50-250 under the Ordinance by special election would subject property owners, including Plaintiff, to unfair legal action and penalties.

These claims hinge on allegations that the Ordinance may allegedly cause some difficulties to a future purchaser of its property. As SFF has discussed in its previous Memorandum, any alleged conflict is totally in the heads of the Plaintiff and the fictitious future purchaser in that the Plaintiff can appropriately schedule the closing and rental arrangements to comply with the statute it references. No one will compel the purchaser to violate regulations that may be in place at the time of the sale. This is another example of the kind of contingent and hypothetical injuries that the Court in *Jowers* held will not fulfill the requirement of standing.

Paragraph 30 vii. alleges:

> Because the Ordinance by special election seeks to impose a restriction on property that conflicts with §27-50-250, the Ordinance must be struck down as the proposed ordinance is preempted by a South Carolina statute.

Plaintiff has been issued the ISTR business licenses and any impact is contingent and hypothetical. As discussed previously, there is no conflict between the Ordinance and §27-50-250, and there is nothing in the statute indicating the legislature's intent to preempt all local ordinances dealing with short-term rentals. There is no justiciability where there is no controversy, and the party has no legal right to the relief sought. *See Power, supra*.

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B. PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT SHOULD BE DENIED.

1. The Standard Under SCRCP 56(c).

To successfully oppose a Summary Judgment Motion, the non-moving party need only offer a scintilla of evidence. *Hancock v Mid-South Management Company, Inc.*, 381 S.C.326,303 (2009). In this case, both the facts and the law favor SFF and the City, in that each and every claim made by the Plaintiff is both factually and legally flawed. As a result, the Plaintiff is not entitled to a Summary Judgment as a matter of law. South Carolina law is crystal clear on this issue. Summary Judgment should only be granted when there are no genuine issues of material facts and the moving party is entitled to judgment as a matter of law. SCRCP Rule 56(c). *Lanham v. Blue Cross & Blue Shield of South Carolina, Inc.* 349 S.C. 356, 361 (2002). The *Lanham* Court further held that Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law and should not be granted even when there is no dispute as to the evidentiary facts if there is a disagreement as to the legal conclusion to be drawn from those facts. *Lanham*, 394 S.C. at 362. Further, all ambiguities and inferences should be resolved in favor of the non-moving party.

2. Plaintiff's Declaratory Action Fails to Present a Justiciable Controversy.

For Plaintiff to be entitled to summary judgment, it must demonstrate that this court has jurisdiction under the Declaratory Judgment Act. Accordingly, for there to be jurisdiction, there must be an underlying controversy - a justiciable claim or issue. If it should be found that there is no such claim, the analysis stops and summary judgment should be denied. For the reasons discussed previously, Plaintiff's Declaratory Action fails to present a justiciable claim.

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3. The Ordinance is Not a Zoning Ordinance.

Plaintiff boldly claims that it is entitled to a declaratory judgment declaring the Ordinance now enacted by the City Council null and void because it is a zoning ordinance. The Plaintiff is simply wrong on the facts and the law. The Ordinance to which it objects was not and is not, as we have discussed above and will also discuss further below, a zoning ordinance.

Contrary to Plaintiff's claim, the Initiative did not attempt to change any of the zoning regulations currently on the books in Folly Beach. The thrust of the referendum was to limit the number of business licenses issued to persons wishing to conduct an Investment Short-Term Rental business in Folly Beach to 800. It does not prohibit Investment Short-Term Rentals. It does not limit the zones in which an investment short-term rental business could be conducted. It merely limits the number of business licenses that could be issued to conduct such a business. Zoning was not an issue at all.

In its initial complaint, Plaintiff chose to ignore the fact that it had not been disserved by either the moratorium, the referendum, or the enactment of the proposed statute regarding the limitation on the issuance of business licenses for investment short-term rentals because it had in its possession all the business licenses it needed. It does the same in its Amended Complaint, and no matter how Plaintiff stretches and twists the truth, the ordinance approved by the voters of Folly Beach has nothing to do with zoning.

4. The Petition and Ordinance Do Not Violate the Holding in I'on, LLC v. Town of Mount Pleasant.

The Plaintiff claims that the Petition and Ordinance violates the holding in *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 720 (S.C. 2000). It does not. As discussed above, the Ordinance contained in the Petition did not involve any attempt to change the zoning

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status of any area or parcel in the jurisdiction of the City of Folly Beach. The issuance of a business License is not an issue of zoning. Business licenses are not issued by the Department of Zoning. Applications for business licenses are made to the Business Licensing Official and if the applicant qualifies, the business license is issued by the Business License official. Notably, in Folly Beach the business licenses issued for Investment Short Term Rentals **do not** rely on the zoning status of the parcel of land on which the ISTR sits.

In sum, what the Plaintiff is asking this Court to do is turn its back on a state sanctioned democratic process that affords voters to have a say about how their City is being run. In making this claim, Plaintiff is conflating the business license process with zoning. To support its claim that the ordinance is a zoning ordinance, the Plaintiff claims that even though the language of the ordinance is clear, it must be a zoning ordinance because when other cities and towns have limited short term rentals they have done so via zoning. The flaw in that argument is that the citizens of Folly Beach chose not to go that path and had a right to do so. The City's decision to choose only to limit the number of ISTR business licenses is not transmogrified by the actions and decisions of others.

5. The Plaintiff has Failed to Establish that the Ordinance or the Enacting of the Ordinance has Violated its Due Process rights.

The Plaintiff in this matter is challenging the constitutionality of an Ordinance that was approved by a majority of Folly Beach voters and enacted by the Folly Beach City Council relating to the issuance of business licenses on the grounds that it is unconstitutional and inconsistent with the general law of South Carolina. In this context, the Plaintiff bears a heavy burden. Proving the constitutional invalidity of an ordinance is on the Party attacking it. *Southern Bell Tel. & Tel. Co. V. City of Spartanburg*, 285 S.C. 495, 497(1985) (The burden is on the taxpayer to prove unconstitutionality beyond a reasonable doubt.) The Plaintiff has not carried that burden.

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To prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. *Sunset Cay, LLC v. City of Folly Beach,* 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004). Before one goes any further in the analysis the Plaintiff must show that it has such an interest. As discussed above, a business license is not a cognizable property interest.

6. The Ordinance does Not Conflict with the Residential Property Condition Disclosure Act, §27-50-250.

The Plaintiff argues in Section V of its memorandum that the ordinance is null and void because it conflicts with the residential Property Condition Disclosure Act, §27-50-250 (Disclosure Act) and is therefore preempted by it. For the Disclosure Act to preempt Folly Beach's Ordinance regarding the issuance of business licenses, there must be clear legislative intent for the statute to regulate the subject-matter to the exclusion of local government. The statute cited by the Plaintiff is first and foremost a statute that both encourages and requires certain disclosures when certain types of vacation rental accommodation changes hands. § 27-50-250 (B). [7] SFF disagrees that 27-50-250 applies in this case at all.

[7] S.C. Code, § 27-50-250 provides as follows:

(A) The grantee of residential property subject to a vacation rental shall take title subject to the vacation rental agreement and the vacation rental management agreement for all vacation rental periods that begin no later than ninety days after the date the grantee's interest is recorded in the office of the register of deeds. If the vacation rental begins more than ninety days after the recording of the grantee's interest, then no party has the right to enforce the terms of the vacation rental agreement or occupancy provided for in the agreement, but the tenant is due a refund of any payments towards the agreement within forty-five days of the recording of the transfer of interest.

(B) Before the ratification of any contract of sale, the grantor shall disclose to the grantee in writing all future time periods that the property is subject to a vacation rental. Not later than consecutive fourteen days after the transfer of interest the grantor shall disclose in writing to the rental management agency the grantee's name, address and the date the transfer of interest was recorded. A grantor or grantee who knowingly violates or fails to perform any duty prescribed by any provision of this article is liable for actual damages proximately caused to the tenant and court costs. The court may award reasonable attorney's fees incurred by the prevailing party. No action may be brought against a owner or the rental management company by a tenant for damages or injuries that occur as the result of property defects of which an owner or rental management company had not actual knowledge.

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There is no indication in the statute's language that the legislature intended to regulate short-term rental to the exclusion of local government, nor is the Ordinance in conflict with the statute.

The Plaintiff claims that compliance with S.C. Code, § 27-50-250 will be made impossible if it must also comply with the Ordinance. As discussed previously, it would seem from Plaintiff's argument that it is concerned about a future transferee's interest in an investment short term rental license. Any "conflict" that might occur would not be the fault of the operation of the Ordinance but would be caused by the Plaintiff's own decision to enter into such an agreement that comes within the 90-day period described in § 27-50-250(A) knowing that any new owner would have to apply for a new business license which may or may not be available to the grantee.

Additionally, the Plaintiff alleges that it purchased property at 112, 114, 116 and 118 East Indian Avenue with the **intent** of using them as short-term rental properties. Intent is not a license. It is also not a business plan. As has been previously discussed, the issuance of a business license is not a matter of zoning. Business Licenses are not issued by the Zoning Administrator of Folly Beach.

7. The Ordinance Will Not Run Afoul of any Proposed Legislation, Which is Not Even Guaranteed to Pass.

Plaintiff also alleges that the Ordinance would run afoul of the allegedly pending legislation that would prohibit municipalities from banning Short-Term Rentals. This is the second time this legislation has been proposed. It was first filed in the 2021-2022 term, but it was not enacted. There is no guarantee that it will be enacted in its current form this time around. In fact, as it now stands the proponents seem to have decided that the proposed ordinance could not be enacted as a stand-alone bill and have instead inserted it in the proposed budget for the next fiscal year hoping to avoid an up or down vote on the issue.

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Even if enacted, the proposed language as it now stands would only impact any municipality that enacts an ordinance that prohibits short-term rentals by withdrawing certain funding from that municipality. The Ordinance does not prohibit short-term rentals, rather it merely limits the number of business licenses that can be issued to persons who seek to engage in the Investment Short-Term Rental business in Folly Beach. Notably, the Ordinance does not limit the number of business licenses issued for Owner Occupied Short-Term Rentals. As a result, the Ordinance passed by the voters of Folly Beach does not run afoul of this **unenacted** statute.

IV. CONCLUSION.

As SFF has shown, the Plaintiff is not entitled to bring the Declaratory Judgment claim because it has not established that there is a justiciable issue to be resolved by this Court and thus this Court has no jurisdiction. As a result, the Court should issue an order dismissing the Plaintiff's Amended Complaint with prejudice pursuant to Rule 12(b)(1) and (6), SCRCP. In the alternative, SFF has shown that the Plaintiff has not established its right to a summary judgment, and SFF respectfully requests that Plaintiff's Motion for a Summary Judgment be denied.

Respectfully Submitted,

Law Office of Robert M. Turkewitz, LLC

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Attorney for Save Folly's Future

April 19, 2023
Charleston, South Carolina

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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by electronic service in the manner prescribed by the applicable Rule of Civil Procedure.

This 19th day of April, 2023.

/s/ Robert M. Turkewitz

Exhibit 1

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(Resized from Legal to Letter)

STATE OF SOUTH CAROLINA) **Petition**
) **To Limit Investment Short Term Rental**
CITY OF FOLLY BEACH) **Business Licenses to a maximum of 800**

To the Mayor and City Council of Folly Beach:

We the undersigned voters of the City of Folly Beach request that the City adopt the following ordinance: TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800. This Petition is submitted pursuant to the South Carolina Code of Laws, section 5-17-10, *et seq*.

Whereas the unrestricted growth of the number of *investment short term rentals* within the City of Folly Beach:

- lowers the quality of life for its residents
- stresses the city's infrastructure & environment
- places extra ordinary burdens on the city's public services sector and
- poses an existential threat to the community.

Whereas the requisite number of voters have affixed their names to this PETITION TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800, pursuant to South Carolina Code of Laws, section 5-17-10 et seq;

NOW THEREFORE:

We the undersigned request that the following additions be inserted into Chapter 117 of the Folly Beach Code of Ordinances:

DEFINITIONS:

1. ***Investment Short Term Rental (ISTR)*** - A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.

2. ***Owner-Occupied Short Term Rental (OSTR)*** – A property and/or dwelling unit, in whole or part, licensed for short term rentals whose owner claims the licensed property to be the owner's primary residence as evidenced by: (a) current S.C. drivers license or S.C. identification card, (b) the address where they are, or may be, enrolled and registered to vote in local, state and federal elections and (c) the physical address used for the purpose of filing local, state and federal income taxes.

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SHORT TERM RENTAL BUSINESS LICENSES:

(A) The City is authorized to issue two classes of short term rental business licenses:
(1) Investment Short Term Rental business license, and
(2) Owner-Occupied Short Term Rental business license.

(B) Owner Occupied Short Term Rental Business License:
There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.

(C) Investment Short Term Rental CAP
(1) The maximum number of permitted Investment Short Term Rental business licenses, city wide, shall be no more than 800, henceforth referred to as the CAP.
(a) Upon enactment the CAP shall be set at 800.

(2) No New Investment Short Term Rentals shall be permitted unless the total number of Investment Short Term Rentals is below the CAP.
(a) Exception : After enactment, all existing Investment Short Term Rental business License holders in good standing may continue to renew annually, even if the initial number of Investment Short Term Rentals exceeds the CAP.

(3) Investment Short Term Rental Wait List: If demand for Investment Short Term Rental business licenses exceeds the CAP a wait list will be established and maintained by the City of Folly Beach.
(a) When the number of allowable Investment Short Term Rental business licenses falls below the CAP, a license shall be offered by US Mail to the next qualified applicant on the wait list.
(b) If the applicant fails or neglects to complete an application for an Investment Short Term Rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.

(D) Non- transferable
(1) Investment Short Term Rental wait list status terminates upon transfer of property and is non-transferable.
(2) Investment Short Term Rental business licenses terminate upon transfer of property and are non-transferable.
(3) Owner Occupied Short Term Rental business licenses terminate upon transfer of property and are non- transferable.

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CHAPTER 117: SHORT TERM RENTALS

Section

117.01 Purpose, applicability, and definitions
117.02 Short term rental business licenses
117.03 License, registration, and tax requirements
117.04 Additional requirements for short term rentals

Cross-reference:

Noise from short term rental properties, see § 131.31

§ 117.01 PURPOSE, APPLICABILITY, AND DEFINITIONS.

(A) The purpose of this chapter is to regulate the use of residential units as short term rentals in order to:

(1) Protect the integrity of the city's neighborhoods and the quality of life of its citizens;

(2) Establish a system to track the short term rental inventory in the city;

(3) To protect the health and safety of occupants of short term rental units;

(4) To ensure a level playing field for individuals in the short term rental market; and

(5) To protect the residential character of the residential districts of the city.

(B) The following definitions apply:

DESTINATION CLUBS. Destination or private vacation clubs ("destination clubs") are classified as private and/or exclusive membership organizations or commercial businesses primarily engaged in providing short term overnight accommodations and related services for its club members with non-ownership interest who seek alternative options to standard vacation home rentals. ***DESTINATION CLUBS*** typically own or lease properties from the owners on a long term basis, provide those properties in a variety of locations to its members on a short term basis, and model a membership access structure where its members purchase membership levels granting access to properties and personalized services. Properties offered by destination clubs to a member for less than 30 days are considered short term rentals whether the destination club is an owner of record or a lessee. All references to "owners" in this chapter apply to destination clubs.

HOUSE EXCHANGE PROGRAMS. The occasional occupancy of a residential occupancy assessed by Charleston County at a 4% property tax rate by someone other than the owner of the residence while the owner is temporarily absent from the residence, and no monetary compensation is paid to the owners for such occupancy. ***HOUSE EXCHANGE PROGRAMS*** are not short term rentals.

INVESTMENT SHORT TERM RENTAL (ISTR). A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.

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OWNER-OCCUPIED SHORT TERM RENTAL (OSTR). A property and/or dwelling unit, in whole or part, licensed for short term rentals, whose owner claims the licensed property to be the owner's primary residence as evidenced by:

(a) Current S.C. drivers license or S.C. identification card;

(b) The address where they are, or may be, enrolled and registered to vote in local, state and federal elections; and

(c) The physical address used for the purpose of filing local, state and federal income taxes.

TIME SHARES. "Vacation time sharing plans" as defined in S.C. Code § 27-32-10(9) are not short-term rentals. However, any "vacation time sharing lease plan" as defined in S.C. Code § 27-32-10(8) that is less than three years is considered a short term rental. "Vacation multiple ownership interests" as defined in S.C. Code § 27-32-250(1) are not short term rentals.

RENTAL OCCUPANT. Any person who, in exchange for compensation paid, occupies a dwelling unit for less than 30 days.

SHORT TERM RENTALS. Residential dwellings, or any portion thereof, rented for less than 30 days and used in a manner consistent with the residential character of the dwelling. Tourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered ***SHORT TERM RENTALS***.

(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 027-22, passed 9-13-22; Am. Ord. 033-22, passed - -)

§ 117.02 SHORT TERM RENTAL BUSINESS LICENSES.

(A) The city is authorized to issue two classes of short term rental business licenses:

(1) Investment short term rental business license; and

(2) Owner-occupied short term rental business license.

(B) *Owner-occupied short term rental business license.* There will be no limit on the number of owner-occupied short term rental business licenses issued.

(C) *Investment short term rental CAP.*

(1) (a) The maximum number of permitted investment short term rental business licenses city-wide shall be no more than 800, henceforth referred to as the CAP.

(b) Upon enactment the CAP shall be set at 800.

(2) (a) No new investment short term rentals shall be permitted unless the total number of investment short term rentals is below the CAP.

(b) *Exception.* After enactment, all existing investment short term rental business license holders in good standing may continue to renew annually, even if the initial number of investment short term rentals exceeds the CAP.

(3) *Investment short term rental wait list.* If demand for investment short term rental business licenses exceeds the CAP, a wait list will be established and maintained by the City of Folly Beach.

(a) When the number of allowable investment short term rental business licenses falls below the CAP, a license shall be offered by U.S. Mail to the next qualified applicant on the wait list.

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(b) If the applicant fails or neglects to complete an application for an investment short term rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.

(D) *Non-transferable.*

(1) Investment short term rental wait list status terminates upon transfer of property and is non-transferable.

(2) Investment short term rental business licenses terminate upon transfer of property and are non-transferable.

(3) Owner-occupied short term rental business licenses terminate upon transfer of property and are non- transferable.

(Ord. 033-22, passed - -)

§ 117.03 LICENSE, REGISTRATION, AND TAX REQUIREMENTS.

Any owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.

(A) *Business license.* A business license must be obtained and renewed annually by the submittal of a form and fee as established by the city for each residential dwelling unit or portion thereof offered as a short term rental

(1) No business license shall be issued for the rental of a residential unit which is planned or under construction until a certificate of occupancy is issued for the unit.

(2) A business license shall only be issued to owners of a residential unit. Lessees of residential dwelling units may not apply for a business license to rent the unit.

(3) A designated agent may apply for a short term rental business license on behalf of an owner. An application for a business license submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner including name, address, phone number, email, and any other information as required on the application form.

(B) *Rental registration permit.* A rental registration permit must be obtained and renewed annually by the submittal of a form and fee as established by the city for each residential dwelling unit or portion thereof offered as a short term rental.

(1) *Annual registration.* The rental registration permit application shall be completed prior to June 1 of each year.

(a) No new business license to operate a short term rental shall be issued prior to the approval of a rental registration permit.

(b) Renewals of valid prior year business licenses shall be allowed prior to the approval of a rental registration permit. Failure to complete a rental registration permit application within 30 days of the business license renewal date shall be grounds for revocation of the license.

(2) *Annual fee.* The fee for a rental registration permit shall be set by City Council and shall be reviewed periodically.

(3) A rental registration permit shall only be issued to owners of a residential unit. Lessees of a

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residential dwelling unit may not apply for a rental registration permit.

(4) A designated agent may apply for a rental registration permit on behalf of an owner. An application for a rental registration permit submitted by a designated agent must provide the correct taxpayer identification and contact information for the owner, including name, address, phone number, email, and any other information as required on the application form.

(5) *Change in registered information*. The owner or designated agent of a rental dwelling already registered with the city shall re-register within 60 days after any change occurs in the registration information. There shall be no additional fee upon change of registration information except that a new owner of a registered dwelling, upon application for a new business license, shall re-register the dwelling and pay the appropriate fee within 60 days of assuming ownership.

(6) *Information required*. Application for rental registration permit shall contain the following information:

(a) The street address of the rental dwelling unit;

(b) The unit number if applicable;

(c) The number of bedrooms in each rental dwelling unit;

(d) The number of parking spaces provided on site as well as a site plan showing the location of all on site parking spaces. One on site parking space must be provided for each bedroom being rented. This requirement shall not apply to:

1. New and renewed permits issued to residential units located in a multi-family housing development.

2. New and renewed permits issued to residential units approved by the city for resident only parking signs in the right-of-way.

3. Renewed permits issued to residential units with a valid business license and rental registration permit before September 13, 2022. Rental registration permits for such properties may be renewed without the required parking until such time as the ownership of the property changes.

(e) The maximum overnight occupancy of each rental dwelling unit, which shall not exceed two persons per bedroom, plus two additional people per rental dwelling unit, except as allowed under an exception under § 164.03-01(C);

(f) The type of wastewater system (septic or sewer). If the property is serviced by a septic system, the owner must certify that the system is protected from parking;

(g) The name, mailing address, business phone number, personal phone number, and business address of the owner and local agent;

(h) The physical address and email address where the owner and local agent will accept notices and orders from the city and acknowledgment that service by U.S. Mail and/or transmission to the provided email addresses will constitute acceptable service of any notice, notice of violation, ordinance summons, or ticket;

(i) Certification that the owner has read applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts;

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(j) Certification that a copy of the parking diagram provided to the city for the property as well as a summary of applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented;

(k) Certifications that tenants listed on any rental agreement shall receive a copy of the parking diagram provided to the city for the property as well as a summary of applicable city ordinances, including, but not limited to, regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts is prominently posted within the residential dwelling unit to be rented. The summary of applicable ordinances shall be in a form determined by the city, and made available to all owners of rental property;

(l) Proof of payment from the owner or designated agent for payment of local, county, and state taxes due on short term rental accommodations;

(m) Certification that the owner is aware that short term rental licensees shall be subject to strikes issued against the license when the owner, agent, occupant, or guest has been convicted of any violation of the requirements of this chapter or other city ordinances related to the use of the property as a short term rental, and that three strikes during any rolling twelve-month period can result in suspension, revocation, or non-renewal of the license;

(n) Certification by the owner verifying the presence of smoke alarms, carbon monoxide monitors, fire extinguishers, the number of bedrooms, the number of parking spaces, the provision of trash receptacles, the posting of address and house numbers, and posting of rules and regulations, and, if present, that sprinklers are operational; and

(o) Documentation in the form of Charleston County property records or a certificate of occupancy confirming the number of bedrooms offered for rent.

(7) *Designation of local agent.* The owner of a rental dwelling shall designate a responsible agent who shall be responsible for operating the rental dwelling in compliance with the law. Official notices may be served on the responsible local agent and/or the owner, and any notice served on the agent shall be deemed to have been served upon the owner of record.

(a) Nothing shall prevent the owner of rental property from designating himself or herself as the agent.

(b) Non owner agents must be licensed by the State of South Carolina as an attorney, real estate agent, broker in charge, or property manager. Employees under the direct supervision of attorneys, real estate agents, brokers in charge, or property managers licensed by the State of South Carolina may be designated as local agents.

(c) The agent shall be required to be able to physically respond to the site upon notification from the city within 60 minutes in case of emergency or need by the city for entry into the property.

(8) *More than one owner or ownership by entity.* Where more than one person has an ownership interest in a short term rental, the required information shall be provided for each owner. In those cases in which the owner is not a person, the information required shall be provided for the organization owning the rental dwelling, and for the president, general manager, or other chief executive officer of the organization.

(C) *Taxes.* Owners of short term rentals are subject to local, county, and state taxes, including,

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but not limited to, sales, use, and accommodations taxes, and are liable for the payment thereof as established by state law and the city code of ordinances.

(D) *Violations and penalties.*

(1) *Violations.* Violations of this chapter include but are not limited to:

(a) Operating a short term rental without complying with the requirements of this chapter and the city code of ordinances;

(b) Advertising a property as being available as a short term rental without first complying with the requirements of this chapter;

(c) Operating a short-term rental without a business license, registration permit, and accommodations tax account;

(d) Advertising a short-term rental without listing the business license number and rental registration permit number;

(e) Operating a short-term rental in such a manner that individual rooms are rented at the same time under separate rental contracts;

(f) Advertising a short term rental as being available for more overnight occupants than have been permitted pursuant to this chapter;

(g) Expanding the allowable occupancy of a short term rental without obtaining a new permit;

(h) Advertising more short term rental units on a property than have been permitted pursuant to this chapter. For example, advertising a single-family dwelling as accommodating multiple short term rentals is not permitted;

(i) Advertising a property as a short term rental or "event house" for events or parties with more than 25 people in attendance;

(j) Offering a short-term rental in any zoning district for fewer than two consecutive nights;

(k) Failure to post the business license number, rental registration permit number, allowable overnight occupancy, and city approved beach rules prominently within a rental unit;

(l) Failure to obtain a rental registration permit within 30 days of renewing a business license, failure to provide accurate information for the registration of rental dwellings, failure to provide information required by the application form;

(m) Failure to complete a new rental registration permit application within 60 days of a change in ownership;

(n) Failure of the designated agent listed on the rental registration permit to respond physically to the site within 60 minutes of notification from the city of an emergency;

(o) Failure to maintain, and provide to the city, any and all information required in § 117.02(A);

(p) Failure to provide tenants listed on any rental agreement information as required under § 117.02(B);

(q) Failure to inspect and repair a failed septic system as required under § 55.07;

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(r) Operating a business out of a short term rental or otherwise using a short term rental for non-residential use except for allowable home occupations, e-commerce, and remote work; and

(s) Operating a short term rental that has received three strikes within any twelve-month rolling period.

1. The number strikes shall be reset upon a change of ownership that results in no overlap with prior common ownership.

2. For the purpose of determining the total number of strikes, all convictions stemming from violations occurring within a single rental contract period shall be considered one instance. In no case shall strikes exceed one per rental contract period.

3. All strikes issued prior to the date of this section shall not be counted for the purposes of license revocation.

(2) *Penalties.* No permit may be issued or approved unless the requirements of this chapter, or any ordinance adopted pursuant to it, are complied with. A violation of this chapter may result in the following penalties:

(a) Any person violating any provision of this chapter shall be deemed guilty of a civil offense and shall be subject to a fine of up to $500 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violations shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this chapter.

(b) Denial, revocation, suspension, or non-renewal of a business license pursuant to §§ 110.14 or 110.15 and in accordance with the appeal procedures set forth in § 110.16.

(c) Revocation, suspension, or non-renewal of the short term rental business license, in accordance with the appeal procedures set forth in § 110.16, for three strikes during a rolling twelve-month period.

1. The license will be assessed a strike when the owner, agent, occupant, or guest of the property has been convicted of any violation of the requirements of this chapter or any other city ordinances related to the use of the property as a short-term rental, including but not limited to noise, trash, parking, litter, dune protection, animals at large, and sea turtle violations and when the registered agent of the property is given notice of the strike as set forth herein.

2. For the purpose of determining the total number of strikes, each strike issued upon conviction shall be considered in effect on the date of the original offense and all convictions related to offenses occurring within a single rental contract period shall be considered one strike. In no case shall strikes exceed one per rental contract period.

3. Strikes will re-set upon the transfer of the property.

4. The city will provide notice of each strike to the registered agent of the property as follows:

A. First strike: a description of the violationand resultant conviction, and a warning that progressive action shall be taken by the city in the case of further violations.

B. Second strike: a description of the violation and resultant conviction, and a warning that the city shall initiate revocation of the rental license in the case of further violations.

C. Third strike: a description of the violation and resultant conviction, and notice of the

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initiation of license revocation procedures.

(d) Any violation of a noise ordinance that occurs on the property will result in a notice that the owner is strongly encouraged to install noise monitoring.

(Ord. 19-10, passed 9-28-10; Am Ord. 26-17, passed 1-9-18; Am. Ord. 32-19, passed 11-12-19; Am. Ord. 033-21, passed 11-9-21; Am. Ord. 027-22, passed 9-13-22)

§ 117.04 ADDITIONAL REQUIREMENTS FOR SHORT TERM RENTALS.

(A) All owners and/or agents responsible for the leasing of short term rentals shall be required to keep the following for city inspection and copying for a period of one year:

(1) The name, address, and other contact information of each signatory on the rental agreement;

(2) A copy of the city approved rental regulations summary, signed by each signatory of the rental agreement.

(3) A document signed by the owner and/or agent responsible for renting the dwelling, certifying the number of persons intended to occupy the dwelling.

(4) The information required by this section shall be updated by the owner and/or agent for each rental to different tenants or occupants.

(B) The owner and/or agent shall provide the following for each person signing a rental agreement as a responsible party for a short term rental:

(1) The address of the short term rental and emergency contact numbers;

(2) The name and contact information for the owner or designated agent; and

(3) A copy of the parking diagram provided to the city for the property as well as a copy of the city's rules and regulations regarding noise, trash, parking, alcohol on the beach, animals, litter, surfing, dune protection, sea turtles, smoking on the beach, requirements for special events, maximum occupancy, and golf carts.

(C) Each residential dwelling unit may contain only one short term rental. Individual rooms in short term rentals may not be rented under separate contracts at the same time. For example, a single family home or individual multi-family unit may only be rented as a single short term rental under one contract.

(D) Any events held on the premises of a short term rental shall meet the following requirements:

(1) Must follow any applicable special event notification rules established by the city in § 153.05 for events on private property;

(2) Shall be subject to all applicable provisions of the noise regulations in §§ 131.30 through 131.35; and

(3) May not feature mobile food trucks, carts, or other outdoor retailers offering products for sale or in exchange for donations. Caterers are allowed at events on the premises of short term rentals.

(E) All special events held after October 11, 2022, on the premises of a short term rental shall

meet the following requirements:

(1) May not exceed 25 people; and

(2) May not include outdoor amplified music, including bands, deejays, music broadcast through speakers and electronic musical instruments.

(3) These requirements do not apply to events hosted by the owner of the property for which the owner is on site for the duration the event, the owner has completed the required special event notification, and for which no compensation has been paid for the event or the use of the house.

(Ord. 26-17, passed 1-9-18; Am. Ord. 027-22, passed 9-13-22)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-0264
FOLLY EAST INDIAN CO., LLC,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT FOLLY BEACH'S
vs.	)	SUPPLEMENTAL MEMORANDUM
	)	IN SUPPORT OF SUMMARY
CITY OF FOLLY BEACH,	)	JUDGMENT
	)	
Defendant.	)	
	)	
and	)	
	)	
SAVE FOLLY'S FUTURE,	)	
	)	
Intervenor.	)	
	)	

Defendant City of Folly Beach hereby submits a Supplemental Memorandum in Support of its Motion for Summary Judgment to address two factual issues that have arisen since the original Motion for Summary Judgment was filed.

I. THE CITY CONTINUES TO ALLOW BUYERS OF SHORT-TERM RENTAL PROPERTIES TO HONOR EXISTING RENTALS.

Plaintiff argues that the cap on Short-Term Rental Licenses, and specifically the fact that such licenses do not transfer with the sale of property, conflicts with and is preempted by South Carolina Code § 27-50-250(A). South Carolina Code § 27-50-250(A) requires purchasers of residential property to honor post-sale vacation rentals for ninety days after the transfer of the property. In its Complaint, Plaintiff has claimed that the Amendment would prevent property owners from complying with this State law because short-term business licenses are not transferable to the purchasers. Amended Complaint, Paragraph 30(v) & (vi). Plaintiff further

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asserts that Section 27-50-250(A) amounts to a preemption of the Amendment. Complaint, Paragraph 30(vii).

In its original Motion, the City presented substantial arguments that the Plaintiff's argument on South Carolina Code § 27-50-250(A) was both premature and legally and factually wrong. Plaintiff's claim remains premature. The City had administratively decided to allow purchasers of property with short-term rentals in place to comply with Section 27-50-250(A). Pope Affidavit, Paragraphs 16-17, Exhibit No. 4 to original Memorandum. A new purchaser merely needs to inform the City of the rental dates for ninety days following the purchase, and they can honor those rentals. *Id.* Mr. Pope's original Affidavit Noted that this policy was in place as a temporary measure until May 8, 2023. *Id.*

The City attaches hereto Mr. Pope's Supplemental Affidavit, Exhibit No. 21, which notes that this "temporary measure" did not expire but has remained in place for the time-being. Thus, it is the City's current policy for now that buyers will be allowed to honor existing rentals at the time of sale for 90 days in compliance with South Carolina Code § 27-50-250(A). Until that policy is rescinded, Plaintiff's arguments on preemption by South Carolina Code § 27-50-250(A) remain premature. Pope Supplemental Affidavit, Paragraph 2, Exhibit No. 21.

II. PLAINTIFF FOLLY EAST INDIAN, LLC, MAY HAVE BEEN SOLD DURING THE PENDENCY OF THIS ACTION, CALLING INTO QUESTION ITS CONTINUED STANDING TO PURSUE ITS CLAIMS.

When this Motion for Summary Judgment was initially filed, the City was not taking any action to regulate or monitoring limited liability companies that owned short-term rentals and held Short-Term Rental Business Licenses. Pope Supplemental Affidavit, Paragraph 3, Exhibit No. 21. This meant that a limited liability company, like Plaintiff Folly East Indian Co., LLC, could sell interests in the LLC to effectuate a transfer of the property owned by the LLC as well as the Short-

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Term Rental Business License held by the LLC. Thus, for several months, including when this action and Motion were filed, Plaintiff could freely sell interests in the LLC, or even the entire LLC without a change in deeded ownership. Since there was no change in the deeded ownership of the properties, the LLC would be able to renew its Short-Term Rental Business License even though it was under new ownership. This was a method to effectuate a transfer of a Short-Term Rental Business License. *Id.*

In September of 2023, City staff adopted a new policy on the transfer of interests in LLCs and other legal entities that held Short-Term Rental Business Licenses. Pope Supplemental Affidavit, Paragraph 4, Exhibit No. 21; New LLC Policy, Exhibit A. That New LLC Policy declared that most transfers of interests in an LLC or other legal entity would be treated as a transfer of ownership of the property and would result in a termination of the Short-Term Rental Business License in the same manner as the sale of property owned by individuals. In short, the City closed a loophole allowing LLCs to circumvent the cap on Short-Term Rental Business Licenses. *Id.*

The effective date of this new policy was October 20, 2023. Pope Supplemental Affidavit, Paragraph 5, Exhibit No. 21; New LLC Policy, Exhibit A. This means that any LLC transfers that occurred before October 20, 2023 would not be treated as a "sale" of the property and could use the loophole that was closed on October 20, 2023.

With regards to Plaintiff Folly East Indian Co., LLC, on September 14, 2023, the City received an email from a local attorney and realtor, John Rosen, stating that he represented the owners of Plaintiff Folly East Indian Co., LLC, and that his clients were preparing to sell the Plaintiff LLC to third parties. Pope Supplemental Affidavit, Paragraph 6, Exhibit No. 21;

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September 2023 Rosen Email Chain, Exhibit B. As a result of this email, the City elected to give the New LLC Policy an effective date of October 20, 2023. *Id.*

Thus, Plaintiff Folly East Indian Co., LLC, had eight months after the adoption of the cap on Short-Term Rental Business Licenses to effectuate a sale of its property, and a transfer of its Business Licenses, through a sale of interests in its LLC. This possible sale presents a number of new legal issues that call into question Plaintiff's standing to bring this lawsuit, as well as its barely alleged takings claim.

First, it demonstrates that Plaintiff's only possible "burden" arising from the new cap on Short-Term Rental Business Licenses, namely an inability to transfer same, did not impact Plaintiff until October was not a limitation at all if the Plaintiff was purchased by new owners, those new owners bought the LLC with full awareness of the cap on Short-Term Rental Business Licenses. They have bought into any real or imagined burdens that the cap places on them. They have bought the property knowing that they cannot transfer the Short-Term Rental Business Licenses to another party. They have bought the property knowing that the City will not be issuing any additional Short-Term Rental Business Licenses until the total number of licenses is below 800. This calls into question their standing to pursue this matter at all.

Defendant has already moved for dismissal due to a lack of standing. Standing is "a personal stake in the subject matter of the lawsuit." *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). A plaintiff has standing to challenge legislation when he sustained, or is in immediate danger of sustaining, actual prejudice or injury from the legislative action. *Id.* To meet the "stringent" test for standing, "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.' " *Id.*

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(*quoting Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed. 2d 351, 364 (1992)); *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353–54, 815 S.E.2d 446, 451 (2018).

At this time, Plaintiff has not suffered an injury in fact. Plaintiff is not facing an actual or imminent loss of a legally protected interest. Plaintiff can continue to rent all the houses it owns. Plaintiff has contended that it may suffer an injury in the future when it sells its property and cannot transfer the short-term rental business license with it. Not only is this is the quintessential "conjectural" damage that cannot support standing, but, in fact, Plaintiff was able to sell its property, and effectuate a transfer of its Short-Term Rental Business Licenses, and may well have done so. Put simply, Plaintiff has no standing to bring this lawsuit because Plaintiff has suffered no injury.

In addition, if ownership of the LLC has changed hands in the past year, then the new owners bought this property knowing of the limitations that existed, including the cap on Short-Term Rental Business Licenses and the restriction on the transfer of same in the future. Vested rights only protect property owners from future changes in the law. They do not protect property owners from laws that have already been adopted prior to the acquisition of the subject property.

Similarly, purchasers who acquire a property after a change in the law do not have standing to pursue a takings claim for the change in the law. A regulation does not constitute a taking if the party's interests "were not part of his title to begin with." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027, 112 S.Ct. 2886 (1992); *see Wyatt v. United States*, 271 F.3d 1090, 1097 (Fed. Cir. 2001) ("[T]he existence of a valid property interest is necessary in all takings claims."); *Moskovic v. City of New Buffalo*, No. 1:21-CV-144, 2022 WL 16548948, at *21 (W.D. Mich. Oct.

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31, 2022) (Plaintiffs never possessed a vested right to a permit, so a moratorium on short-term rental licenses did not create a taking.).

"[A] property owner's reasonable investment-backed expectations are defined at the time he makes the relevant investment in the property, and any regulatory regime in place at that time informs the scope of those expectations." *Braden's Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 205, 886 S.E.2d 674, 692 n. 23 (2023). *See also Palazzolo v. Rhode Island*, 533 U.S. 606, 633-34, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001) (O'Connor, J., concurring) ("Further, the regulatory regime in place at the time the claimant [invests in] the property at issue helps to shape the reasonableness of those expectations.... For example, the nature and extent of permitted development under the regulatory regime vis-à-vis the development sought by the claimant may also shape legitimate expectations without vesting any kind of development right in the property owner."); *Murr v. Wisconsin*, 582 U.S. 383, 137 S. Ct. 1933, 1949, 198 L. Ed. 2d 497 (2017) ("Petitioners cannot claim that they reasonably expected to sell or develop their lots separately given the regulations which predated their acquisition of both lots.").

CONCLUSION

Based on the foregoing, Defendant would ask that the Court grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

/s/ Joseph C. Wilson, IV
Joseph C. Wilson, IV
City Attorney
City of Folly Beach
P.O. Box 178
Folly Beach, South Carolina 29439
(843) 834-2390
jwilson@follybeach.gov

January 5, 2024
Folly Beach, South Carolina

EXHIBIT NO. 21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-0264
FOLLY EAST INDIAN CO., LLC,	)	
	)	
Plaintiff,	)	
	)	SUPPLEMENTAL AFFIDAVIT OF
vs.	)	AARON POPE
	)	
CITY OF FOLLY BEACH,	)	
	)	
Defendant.	)	
	)	

COMES NOW, Aaron Pope, and swears or affirms under the penalty of perjury that:

1. I am older than eighteen years of age and am competent to make this Supplemental Affidavit. The statements in this Supplemental Affidavit are based on my own personal knowledge.

2. Paragraph 16 of my original Affidavit in this matter noted that the City has adopted an administrative policy to allow the purchaser of a property subject to short-term rentals to honor outstanding short-term rentals for 90 days, so long as those outstanding rentals are identified by the seller and purchaser as required by the SC Vacation Rental Act. At the time of my original Affidavit, this was a temporary policy that was set to expire on May 8, 2023. However, since then, the policy has been adopted as a permanent policy and remains in place to this day.

3. The City has had another relevant policy change. At the time of the original filing of this Motion, the City was did not monitor the ownership limited liability companies that owned short-term rentals and held Short-Term Rental Business Licenses. This meant that a limited liability company, like Plaintiff Folly East Indian Co., LLC, could sell interests in the LLC to effectuate a transfer of the property owned by the LLC as well as the Short-Term Rental Business License held by the LLC. Thus, for several months, Plaintiff could freely sell interests in the LLC,

or even the entire LLC, without the transaction being deemed a transfer of ownership for the properties held by the LLC. Since there was no change in the deeded ownership of the properties, the LLC would be able to renew its Short-Term Rental Business License even though it was under new ownership. This was a method to effectuate a transfer of a Short-Term Rental Business License.

4. In September of 2023, City staff adopted a new policy on the transfer of interests in LLCs and other legal entities that held Short-Term Rental Business Licenses. New LLC Policy, Exhibit A. That New LLC Policy declared that most transfers of interests in an LLC or other legal entity would be treated as a transfer of ownership of the property held by the LLC and would result in a termination of the Short-Term Rental Business License in the same manner as the sale of property owned by individuals. In short, the City closed a loophole allowing LLCs to circumvent the cap on Short-Term Rental Business Licenses.

5. The effective date of this new policy was October 20, 2023. This means that any LLC transfers that occurred before October 20, 2023 would not be treated as a "sale" of the property and could use the loophole that was closed on October 20, 2023.

6. With regards to Plaintiff Folly East Indian Co., LLC, on September 14, 2023, I received an email from a local attorney and realtor, John Rosen, stating that he represented the owners of Plaintiff Folly East Indian Co., LLC, and that his clients were preparing to sell the Plaintiff LLC to third parties. September 2023 Rosen Email Chain, Exhibit B. As a result of this email, the City elected to give the New LLC Policy an effective date of October 20, 2023. I do not know if the sale of LLC was prior to that effective date, but, if it was sold prior to October 20, 2023, then Plaintiff can continue to hold and renew its Short-Term Rental Business Licenses that are the subject to this lawsuit.

FURTHER AFFIANT SAYETH NOT.

Aaron Pope, AICP

JAN 5th, 2024

Sworn and subscribed before me
this 5th day of JANUARY, 2024

ERIC A. LUTZ
Notary Public for South Carolina.

ERICA LUTZ NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp 09-28-2025

My commission expires 9-28-2025.

EXHIBIT A

CITY OF FOLLY BEACH
POLICY ON SHORT-TERM RENTAL BUSINESS LICENSES
FOR PROPERTIES OWNED BY LEGAL ENTITIES

PURPOSE:

The purpose of this Policy is to address Short-Term Rental Business Licenses for properties owned by Legal Entities, including corporations, limited liability companies, and trusts. In particular, this policy confirms that a change in the ownership of a Legal Entity that owns a Short-Term Rental property will be treated as a transfer of the property owned by the Legal Entity. Since short-term rental business licenses terminate upon transfer of the property and are not transferable, see Section 117.02(D) of the City of Folly Beach Code of Ordinances, a Change in Ownership of a Legal Entity will terminate any Short-Term Rental Business License held by the Legal Entity or its designee, as well as any wait list status. Thus, the newly owned Legal Entity will have to apply for a new short-term rental business license. By way of example, an Investment Owned Short-Term Rental Business Licenses held by a Legal Entity that changes ownership will lose its exemption from the cap imposed by Section 117.02(C).

DEFINITIONS:

LEGAL ENTITY: A "Legal Entity" under this policy is any legally created or recognized entity, including corporations, limited liability companies, sole proprietorships, partnerships, and trusts.

CHANGE IN OWNERSHIP: A "Change in Ownership" is any change in the ownership of a Legal Entity that changes either the direct or indirect owners of the Legal Entity. Direct and indirect owners include owners of the Legal Entity that directly own the subject property and also includes owners of any parent Legal Entities that own the Legal Entity that directly owns the subject property.

EFFECTIVE DATE: The "Effective Date" of this Policy is October 20, 2023.

POLICY:

From the Effective Date forward, any Change in Ownership of a Legal Entity that owns a short-term rental property will be treated as a transfer of the ownership of that property and will terminate any Short-Term Rental Business License owned by the Legal Entity or by any person holding the Short-Term Rental Business License on behalf of the Legal Entity. In addition, any such Change in Ownership will result in a loss of any wait list status.

EXEMPTIONS:

1. **REDUCTION IN OWNERS:** A Change in Ownership that a) reduces the number of owners of the Legal Entity, b) does not add any new owners, and c) leaves the ownership of the Legal Entity in the hands of persons identified in the document creating the Legal Entity, is exempt from this Policy and will not result in the termination of a Short-Term Rental Business License held by the Legal Entity.

EXAMPLES: A family trust that loses a beneficiary due to the death of that beneficiary is exempt from this Policy. Similarly, a limited liability company in which one owner buys out another owner is exempt from this Policy.

2. **CHANGES PRIOR TO EFFECTIVE DATE:** A Change in Ownership prior to the Effective Date is exempt from this Policy and will not result in the termination of a Short-Term Rental Business License held by the Legal Entity.

   EXAMPLE: A limited liability company that owned the Short-Term Rental property on February 7, 2023 is sold to new owners in March of 2023. This sale is exempt from the Policy and will not result in the termination of the Short-Term Rental Business License.

LIMITATION ON EXEMPTIONS: The above exemptions only apply to Legal Entities that owned the subject property continuously from February 7, 2023 to the Effective Date. The exemptions cannot be claimed by any Legal Entity that acquired a subject property after February 7, 2023 or sold a subject property prior to the Effective Date.

ENFORCEMENT: City staff is authorized to include questions on the City's rental registration form to determine if there has been an unreported change to a Legal Entity owning a Short-Term Rental property and otherwise research subject properties owned by a Legal Entity to determine if a Change in Ownership has occurred.

EXHIBIT B

Joe Wilson

From: Joe Wilson
Sent: Wednesday, September 20, 2023 12:14 PM
To: Aaron Pope; John Rosen
Subject: RE: New Legal Entities Amendment to STR License Transfers
Attachments: Policy-Change in Ownership of Legal Entity.pdf

Categories: Red category

John

We have given the new policy on sales of LLC's an effective date of October 20, 2023. This means that any sale of an LLC that is closed before October 20, 2023 will not be deemed a sale of property (that would require a new ISTR business license). So, if your clients close before October 20, 2023, they will not be impacted by the new policy (attached).

Let me know if you have any questions.

Joe

Joseph C. Wilson, IV, Esquire
Wilson Law Firm
P.O. Box 178
Folly Beach, South Carolina 29439
Cell Phone: (843) 834-2390

From: Aaron Pope <apope@follybeach.gov>
Sent: Sunday, September 17, 2023 5:41 PM
To: John Rosen <john@sweetgrassrealestate.com>; Joe Wilson <jwilson@follybeach.gov>
Subject: Re: New Legal Entities Amendment to STR License Transfers

John,

I am copying Joe on this reply. He and I are working on a clear policy position in this question. We are meeting Monday or Tuesday morning and we will get an answer on this. I will update you ASAP.

Aaron

Sent from my iPhone

> On Sep 14, 2023, at 3:49 PM, John Rosen <john@sweetgrassrealestate.com> wrote:
>
> **CAUTION: This email originated from outside the City of Folly Beach. Maintain caution when opening external links/attachments**
>
> Aaron,

I hope this email finds you well and enjoying the respite in visitors on the island! I have a question for you. We have a listing on the market for Folly East Indian, Co., LLC. As you know, they have been granted their STR licenses as it was determined by the City that they should have received them prior to the new year and well before the referendum vote on February 7, 2023. I would like to find out if they are able to sell the company to a buyer and the buyer can keep the STR licenses? We have been in negotiations with the prospective buyer for at least a month under the understanding that they could sell the LLC to the buyer who could then maintain the licenses. Is that still allowed? If not, it would torpedo this transaction and cause major financial implications to our clients.

Thank you for your time and I look forward to hearing from you.

Warm regards,
John
John E. Rosen
Broker-in-Charge, Realtor®

SWEET GRASS
REAL ESTATE

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