

**RECEIVED**

**Nov 12 2024**

**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**

---

s/ Bijan K. Ghom

Alice F. Paylor (SC Bar#: 4380)

Bijan K. Ghom (SC Bar#: 103531)

Saxton & Stump, LLC

151 Meeting Street, Suite 400

Charleston, SC 29401

(843) 414-5080

afp@saxtonstump.com

bkg@saxtonstump.com

ATTORNEYS FOR APPELLANT

Other Counsel of Record:

Joseph C. Wilson, IV, Esquire  
City Attorney  
City of Folly Beach  
P.O. Box 178  
Folly Beach, SC 29439  
(843) 834-2390  
jwilson@follybeach.gov

ATTORNEY FOR RESPONDENT

Robert M. Turkewitz, Esquire  
Law Office of Robert M. Turkewitz, LLC  
768 St. Andrews Blvd.  
Charleston, SC 29407  
(843) 628-7868  
rob@rmtlegal.com

ATTORNEY FOR INTERVENOR

**VOLUME I**

**ORDERS**

April 6, 2023	Order Granting Save Folly’s Future’s Motion to Intervene.....	1
March 7, 2024	Order Granting Defendant City of Folly Beach’s Motion for Summary Judgment.....	8
April 17, 2024	Order Denying Plaintiff’s Motion to Reconsider Order Denying its Motion for Summary Judgment and Granting Defendant City of Folly Beach’s Motion for Summary Judgment.....	17

**PLEADINGS**

January 17, 2023	Verified Complaint .....	20
January 17, 2023	Plaintiff’s Motion for Preliminary Injunction.....	36
January 26, 2023	Defendant’s Memo in Opposition to Motion for Preliminary Injunction.....	38
January 27, 2023	Save Folly’s Future Motion to Intervene and Memorandum in Support of Motion to Intervene.....	168
January 27, 2023	Defendant’s Notice of Motions and Motions to Dismiss and for Judgment on the Pleadings .....	177
February 2, 2023	Plaintiff’s Memorandum in Support of its Motion for Preliminary Injunction .....	180
February 7, 2023	Plaintiff’s Memorandum in Opposition to Motion to Intervene.....	198
February 8, 2023	Save Folly’s Future’s Memorandum in Opposition to Plaintiff’s Motion for Injunctive Relief.....	205
February 15, 2023	Amended Complaint .....	244
March 15, 2023	Plaintiff’s Motion and Memorandum in Support of Summary Judgment .....	253
March 31, 2023	Defendant’s Motion for Summary Judgment and Memorandum in Support .....	284

April 19, 2023	Save Folly’s Future’s Motion and Consolidated Memorandum in Support of 12(b)(1) and (6) Motion to Dismiss and in Opposition to Plaintiff’s Motion for Summary Judgment.....	450
January 5, 2024	Defendant Folly Beach’s Supplemental Memorandum in Support of Summary Judgment .....	485

**VOLUME II**

January 8, 2024	Plaintiff’s Consolidated Memorandum in Opposition to Defendant City’s and Intervenor Save Folly’s Motions and Memoranda.....	499
January 11, 2024	Defendant Folly Beach’s Reply Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment.....	510
March 18, 2024	Plaintiff’s Motion to Reconsider Order Denying its Motion for Summary Judgment and Granting Defendant City of Folly Beach’s Motion for Summary Judgment .....	545
March 29, 2024	Defendant Folly Beach’s Memorandum in Opposition to Plaintiff’s Motion to Reconsider.....	548
May 16, 2024	Notices of Appeal .....	552

*\*All exhibits of the foregoing to be included*

**TRANSCRIPTS**

January 12, 2024	Transcript of Hearing Before the Honorable Paul M. Burch.....	585
------------------	---	-----

**CERTIFICATE OF COUNSEL**

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,

/s/ Bijan K. Ghom

Alice F. Paylor

Bijan K. Ghom

Saxton & Stump, LLC

151 Meeting Street, Suite 400

Charleston, SC 29401

(843) 414-5080

afp@saxtonstump.com

bkg@saxtonstump.com

ATTORNEYS FOR APPELLANT

November 12, 2024



two cases, a “**land use regulation cannot be effected via the referendum and initiative process.**” 353 S.C.167, 577 S.E.2d at 433 (emphasis added).

The Folly Beach Zoning Ordinance provides that short term rentals are an allowed use in every zoning district. The new Short Term Rental Ordinance, adopted as a business license ordinance, restricts the use of properties on Folly Beach by capping the number of properties that may be licensed as short term rentals. This ordinance is a land use regulation which prevents property owners from renting their properties on a short term basis, because the cap on the number of business licenses that can be issued has already been exceeded. Thus, the STR ordinance adopted by Folly Beach is a land use regulation. If Folly Beach had enacted this ordinance in the due course of exercising its police powers, which it repeatedly rejected, the ordinance would be valid. Because the City Council only accepted the ordinance after a referendum under § 5-17-30, the ordinance is invalid and must be set aside as the Supreme Court held in the two cited cases.

This ordinance enacted by referendum and initiative is the first Folly Beach ordinance that limits and, in all new cases, eliminates the allowed use of a property as a short term rental. The City repeatedly rejected the very land use changes proposed in the Ordinance until the City was compelled to enact the Ordinance by initiative and referendum under § 5-17-30, SC Code. See Aaron Pope Affidavits for the history of the restriction on STRs.

Put plainly, Plaintiff’s action challenges the initiative and referendum process as the means to enact this land use regulation. Whether, as the City and SFF argue, the City can take away this right by other means (*i.e.*, police powers or amending the Zoning Ordinance) is irrelevant here because the City rejected those methods and, instead, allowed the initiative and referendum process to do what the City Council refused to do. That is not allowed by Supreme Court precedent.

**II. Plaintiff has standing to bring this action.**

- a. Plaintiff, a property owner with short term rental properties in the City of Folly Beach, has sustained, and is in the immediate danger of sustaining, the loss of property rights as a result of the City’s legislative action.**

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. *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). To have 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’, and “‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Smiley v. S.C. Dep't of Health & Env't Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 33 (2007) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed. 2d 351, 364 (1992)); *see also Smiley v. S.C. Dep't of Health & Env't Control*, 374 S.C. 326, 332, 649 S.E.2d 31, 34 (2007) (“The “injury in fact” reflects the statutory requirement that a person be “adversely affected” or “aggrieved,” and it serves to distinguish a person with a direct stake in the outcome of a litigation—even though small—from a person with a mere interest in the problem. We have allowed important interests to be vindicated by plaintiffs with no more at stake in the outcome of an action than a fraction of a vote, ... a \$5 fine and costs, ... and a \$1.50 poll tax. [W]e see no reason to adopt a more restrictive interpretation of “adversely affected” or “aggrieved.”). In *Smiley*, our Supreme Court reversed the Court of Appeals and found that the plaintiff demonstrated a “stake in the outcome” merely by alleging interference with his enjoyment of the beach. *Id.* at 332-333.

The City alleges that Plaintiff lacks standing because it has not suffered an injury in fact since it currently possesses business licenses for each of its STR properties.<sup>1</sup> The City argues to this Court that it can regulate whatever it wants so long as it does so under the guise of a business license. Does that mean that the City can eliminate a property owner's right to rent at all by limiting the number of business licenses for property owners and leave no redress to the property owners? South Carolina law says that is not the case. See *Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 433 S.C. 405, 415, 859 S.E.2d 263, 268 (Ct. App. 2021), reh'g denied (July 1, 2021), cert. granted (Aug. 24, 2022), aff'd, 437 S.C. 258, 878 S.E.2d 861 (2022) (“Although the State can regulate businesses and business models in pursuit of protecting the public, *those affected by such laws have the right to challenge their validity.*”). It cannot be seriously disputed that Plaintiff is a business affected by the City's action and has the right to challenge the validity of the ordinance adopted by the initiative and referendum method, rather than the exercise of police powers by the Folly Beach City Council.

Although Plaintiff's status as an affected business owner should end the injury-in-fact inquiry, Plaintiff alleged more than mere status as an affected business. Plaintiff raises several serious injuries such as interference with the enjoyment of its property, interference with the right to rent its property, loss of future income, and loss of property value. As our Supreme Court demonstrated in *Smiley*, even the smallest amount of monetary loss can constitute an injury in fact for a plaintiff. See also, *Toussaint v. State Bd. of Med. Exam'rs*, 285 S.C. 266, 268, 329 S.E.2d 433, 434–35 (1985) (“An economic interest is a legally protected interest.”).

---

<sup>1</sup> At the pleading stage, Plaintiff's general factual allegations of injury resulting from defendant's conduct should be sufficient to withstand a motion to dismiss. *Town of Arcadia Lakes v. S.C. Dep't of Health & Env't Control*, 404 S.C. 515, 529, 745 S.E.2d 385, 392 (Ct. App. 2013). Plaintiff's argument in this Section addresses the standing issue in the summary judgment context.

Finally, both the City and SFF ignore the fact that Judge Curtis previously ruled that SFF had standing to intervene as a matter of right pursuant to Rule 24(a). *See* Order on Intervention. To intervene as a matter of right, Judge Curtis necessarily ruled that SFF had standing regarding the subject matter of the lawsuit and is a “real party in interest.” *GEICO, Ex parte*, 373 S.C. 132, 139, 644 S.E.2d 699, 703 (2007) (explaining that intervention under Rule 24(a) “is only appropriate where the party seeking intervention has a real proprietary interest in the subject matter of the proceedings”). Certainly, if SFF, a self-described unincorporated advocacy group is a real party in interest, despite owning no property at issue here, Plaintiff must be. Plaintiff is the owner of several STRs subject to the licensing scheme at issue. The current STR restriction, if upheld, will result in substantial economic loss to Plaintiff.

**b. Separately, and as Judge Curtis has ruled, the public importance exception to standing applies as “the issues in this case are of such public importance as to require its resolution for future guidance.”**

A party need not show a concrete or particularized injury where the issue involved is of such public importance that a resolution is required for future guidance. *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017). The party also need not show that he has “an interest greater than other potential plaintiffs.” *Davis v. Richland Cty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007). The public importance exception allows citizens access to the judicial process to address alleged injustices. *ATC South, Inc. v. Charleston County*, 669 S.E.2d 337 (S.C. 2008). The key to the “public importance” analysis in determining whether a party has standing is whether a resolution is needed for future guidance. *Id.*

Our Supreme Court has repeatedly conferred public importance standing to parties challenging the constitutionality of government action<sup>2</sup> or when the government establishes a

---

<sup>2</sup> *See S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (granting public importance standing to consider whether the statute that governs the composition

procedure that it will use again.<sup>3</sup> This case involves the conduct of government entities, the expenditure of public funds, the use of real property throughout the City, and an invalid legislative act which will likely be repeated by other government entities in South Carolina. *See Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000). Moreover, a decision on the merits will have “far-reaching consequences” for the citizens of the City of Folly Beach. *S.C. Pub. Int. Found.*, 421 S.C. at 119.

Judge Curtis’s ruling that “the issues in this case are “of such public importance as to require its resolution for future guidance” cannot be challenged at the trial level. Order on Intervention at 4; Rule 43(l), SCRPC (“If any motion be made to any judge and be denied, in whole or in part or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action.”); *see also Atl. Coast Builders & Contractors, LLC v. Lewis*, 730 S.E.2d 282, 285 (S.C. 2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”). Although SFF now apparently challenges Judge Curtis’s ruling, SFF was the one to persuade the Court that the public importance exception applies in the first place. In fact, SFF drafted the very Order ultimately signed by Judge Curtis. SFF cannot now take an inconsistent legal position and should be estopped from wasting the Court’s time on this issue. *Quinn v. The Sharon Corp.*, 343 S.C. 411 (Ct. App. 2000) (J. Anderson, concurrence) (“In certain circumstances a party may properly be precluded as a matter of law from adopting a legal position

---

of the South Carolina Transportation Infrastructure Bank's Board of Directors is constitutional); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (conferring public importance standing to determine whether the governor may hold a commission in the Air Force Reserve).

<sup>3</sup> *Sloan v. Dep't of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008) (finding Sloan had public importance standing to challenge SCDOT's alleged misuse of a statutory emergency procurement provision); *Sloan v. S.C. Dep't of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005) (holding Sloan had public importance standing to dispute the propriety of the procurement procedure SCDOT used to award contracts for certain construction projects).

in conflict with one earlier taken in the same or related litigation. 'Judicial estoppel' is invoked in these circumstances to prevent the party from 'playing fast and loose' with the courts, and to protect the essential integrity of the judicial process.").

**III. The City failed to follow the proper procedure to eliminate a land use which was and is permitted under the zoning rules.**

**a. Short term rentals are permitted under zoning rules and no amendment to zoning has been made.**

Plaintiff's prior Memorandum thoroughly explains this point. Neither the City nor SFF contests the fact that short term rentals are permitted in every zoning district in the City. Instead, the City admits this but argues that the fact that this use (renting on a short term basis) is permitted in every zoning district is irrelevant here because the Ordinance amends only the Business License Code. See City's Mot. and Mem for Summ. J. at 1, 41. One of Plaintiff's arguments, though, is that the City was required to amend its zoning code because the City has already permitted the use under the same. See *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.").

The City fails to appreciate the holding of *Keen v. City of Manhattan Beach*. Plaintiff is not arguing that *Keen* stands for the proposition that "short-term rentals can only be created by zoning amendments." City's Brief at 21. Instead, and as expressly stated in Plaintiff's Motion and Memorandum in Support of Summary Judgment, the California Court found that the City of Manhattan Beach had previously permitted short-term rentals under its "old residential zoning ordinances," and consequently, the City of Manhattan Beach could only ban short-term rentals through amendments to the same. *Keen v. City of Manhattan Beach*, 77 Cal. App. 5th 142, 148,

292 Cal. Rptr. 3d 366, 369 (2022), review denied (June 29, 2022). In *Keen*, the City of Manhattan Beach raised the same argument as the City of Folly Beach does here—a city can ban short-term rentals under its general police power. See Brief of Appellant City of Manhattan Beach, 2021 WL 2254006 (Cal.App. 2 Dist.), 55-56. The *Keen* court rejected this argument and agreed with the trial judge that the City of Manhattan Beach must amend its zoning code to prohibit the previously authorized use. As in *Keen*, the City of Folly Beach has permitted short-term rental use under its zoning code, and it therefore cannot ban the use without amending the code. The City’s reliance on *Greenville County v. Kenwood Enterprises, infra*, is misplaced. In that case, Greenville County restricted the operation of sexually oriented businesses which were not discussed in the existing Zoning Ordinance in Greenville County. In the current case, short term rental are an allowed use under the Folly Beach Zoning Code, whereas the Greenville Zoning Ordinance did not reference sexually oriented businesses.

The City refers to neighboring municipalities as support for its argument that it can regulate STRs. However, the neighboring municipalities cited by the City support Plaintiff’s position that STR restrictions should be enacted under the Zoning Ordinance, because each of the listed municipalities regulates STRs within its Zoning Code, and none of them adopted STR restrictions using their police powers or initiative and referendum under § 5-17-30.

SFF points out that all of the municipalities listed by the City (and again by Plaintiff for discussion of their zoning code) also require that each person seeking to operate a STR must also obtain a business license. This is true. However, none of these municipalities limits or bans the right to rent on a short term basis through a business license. Any restriction or limits placed on the owner’s ability to operate a short-term rental on the property is included in the *zoning*

*ordinance* – where it belongs. And, most importantly, none of these municipalities used § 5-17-30 to enact the STR restrictions.

**D. The Ordinance regulates and/or eliminates the right to rent for all properties in Folly Beach.**

The ability to lease property is a fundamental privilege of property ownership. That right does not vary based on length of the lease term and the City has not, and cannot, cite any law to the contrary. As soon as the cap on STR business licenses was imposed, it was reached (and this was by design as the number for the cap was set below the number of existing short term rental properties). At this point in time, the Zoning Code is inaccurate because a potential new owner cannot apply for a short term rental license. An unsuspecting property owner viewing the zoning tables would not know that “permitted use” does not, in fact, mean it is a permitted use. The City has effectively barred the new owner from leasing the property on a short term basis, unless the new owner becomes a resident and lives in the property. In other words, the City has eliminated the use as a rental for each and every new potential property owner through a “business license.”

**IV. Plaintiff has a vested right to rent its property on a short term basis and the right runs with the land.**

The City again tries to avoid Plaintiff’s substantive argument by mischaracterizing the issue as a challenge to a business license regulation. At no point in Plaintiff’s pleadings has it argued or even suggested that it has a vested right to some business license. Plaintiff does, however, have a vested right in the use of its property—a use currently permitted under the City’s zoning rules.

The City argues a “vested right” under the Vested Rights Act only “means the right to undertake and complete the development of property under the terms and conditions of site specific development plan...” City’s Brief at 28. The City fails to include the definition of “site specific

development plan” which expressly says that “[t]he 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). As explained in Plaintiff’s prior Memorandum, Plaintiff’s right to rent on a short term basis became vested when he obtained, and/or benefited from, an affirmative government act allowing such right. S.C. Code Ann. § 6-29-1560(A). 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).

The right to rent property, whether short or long term, is as established and historically significant as any other property right. *See Main v. Thomason*, 342 S.C. 79, 89, 535 S.E.2d 918, 923 (2000), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005) (referring to the right to lease as one of the “bundle of rights typically associated with property ownership”); *see generally, Terrace, Columbia Ry., Gas & Elec. Co., supra*; Emily M. Speier, Comment, *Embracing Airbnb: How Cities Can Champion Private Property Rights Without Compromising the Health and Welfare of the Community*, 44 Pepp. L. Rev. 387, 395–97 (2017). The right to rent on a short term basis has been permitted in all of the City’s zoning districts prior to the enactment of this land use regulation. In an effort to regulate that existing right, the City required that the Plaintiff obtain rental registration permits, which Plaintiff obtained. Plaintiff was never told that it could lose the right to rent its properties on a short term basis, or that it would be

unable to transfer that right when Plaintiff sells its properties (or that a purchaser of the LLC would not be able to continue the use). While Plaintiff was on notice that the City regulated STRs, “there is a difference between knowing that the City requires a permit for short-term renting and having notice that the City may altogether eliminate the historically ... allowable use of residential STRs.” *Zaatari v. City of Austin*, 615 S.W.3d 172, 191 (Tex. App. 2019) (emphasis added). In reliance on the City’s approval to rent on a short term basis, and Plaintiff’s continued use for the same, Plaintiff invested substantially in its properties for the purpose of short term renting and now cannot recoup his investment.<sup>4</sup>

### CONCLUSION

For the reasons stated herein, and in consideration of such arguments and additional materials in Plaintiff’s Motion and Memorandum in Support of Summary Judgment, Plaintiff prays this Court will DENY the City’s Motions, as well as SFF’s Motion, and grant Plaintiff’s Motion for Summary Judgment finding that the Short Term Rental Restriction ordinance is invalid.

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

---

<sup>4</sup> Many of the neighboring municipalities cited by the City allow for license transfers in recognition of this right. Town of Mt. Pleasant, Code of Ordinances, Section 110.08(C); Town of Kiawah Island, Code of Ordinances, Section 14-505; Town of Sullivan’s Island, Code of Ordinances, Section 21-121. The right to rent your property is one that has always existed and runs with the land, even prior to Plaintiff’s possession. The City’s contention that this right did not exist until it began regulating short term rentals in 2010 is silly.



**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 11, 2024  
Folly Beach, South Carolina

# EXHIBIT NO. 22

- CODE OF ORDINANCES  
Chapter 6 - BUSINESSES AND BUSINESS REGULATIONS  
ARTICLE V. SHORT-TERM RENTAL UNITS

---

## **ARTICLE V. SHORT-TERM RENTAL UNITS<sup>1</sup>**

### **Sec. 6-110. Purpose and intent.**

It is the purpose of this article to establish uniform regulations for the operation of short-term rental units; to protect the public health, safety and general welfare of individuals and the community at large; to provide reasonable means to mitigate potential impacts that may be created by occupancy of short-term rental units; and, to establish appropriate regulations to protect the integrity of residential neighborhoods.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

### **Sec. 6-111. Definitions.**

*Short-term rental unit.* A dwelling unit, principal or accessory, that is rented in its entirety to transient guests for less than 30 consecutive days.

*Short-term rental unit agent.* A natural person designated by the owner of a short-term rental unit on the short-term rental unit permit application who can perform the duties described within this article.

*Transient guest.* A person who provides remuneration for lodging at a place other than his/her principal place of residence for a period of less than 30 consecutive days.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

### **Sec. 6-112. Permitted locations.**

- (a) Short-term rental units shall be permitted in zoning districts as provided in Section 4.4.3 of the Unified Development Ordinance, as defined in Chapter 23 of the Code of Ordinances for the Town of Bluffton.
- (b) Within Planned Unit Development zoning districts, short-term rental units may be permitted subject to any development agreements, deed restrictions, covenants, rules and regulations of a homeowners or property owners association, or other such restrictions.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

### **Sec. 6-113. Short-term rental unit permit required.**

No person shall rent, lease or otherwise exchange for compensation a residential dwelling unit as short-term rental unit, as defined in Section 6-111, without first obtaining a short-term rental unit permit.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

---

<sup>1</sup>Ord. No. 2020-25 § 1(Att. A), adopted Nov. 11, 2020, set out provisions intended for use as Art. V, §§ 6-100—6-112. To preserve the style of this Code, and at the editor's discretion, these provisions have been included as §§ 6-110—6-122.

---

**Sec. 6-114. Application for short-term rental unit permit.**

Applicants for a short-term rental unit permit shall submit an initial application for a short-term rental Unit permit, to be renewed annually. The application shall be furnished on a form prepared by the Town of Bluffton accompanied by a non-refundable application fee as set forth in the Town's Master Fee Schedule.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Sec. 6-115. Short-term rental unit agent and duties.**

- (a) The owner of a short-term rental unit shall designate a short-term rental unit agent on its application for a short-term rental unit permit. A property owner may serve as the short-term rental unit agent or, alternatively, the property owner may designate a natural person as his or her agent who is at least 18 years of age or older.
- (b) The short-term rental unit agent must be able to perform the following duties:
  - (1) Ensure that the short-term rental unit until is properly maintained and regularly inspected for compliance with applicable zoning, building, health, life safety code provisions and this article;
  - (2) Be available at a listed phone number 24 hours a day, seven days a week to handle any problems arising from use of the short-term rental unit;
  - (3) Travel to the premises of any short-term rental unit within one hour following notification by the Town of issues related to the use or occupancy of the premises. This includes, but is not limited to, notification from the Town that occupants of the short-term rental unit have created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of the Town of Bluffton Code of Ordinances or other applicable law. This is not intended to impose a duty to act as a peace officer or otherwise require the agent to place himself or herself in a perilous situation;
  - (4) Receive and accept service of any notice of violation related to the use or occupancy of the premises; and
  - (5) Be able to produce copies of the executed rental or lease agreement for current occupants as needed.
- (c) To change the designated agent, the owner shall notify the Town of Bluffton in writing of the new agent's identity, together with all information regarding such person as required by the applicable provisions of this article within five days of the change.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Sec. 6-116. Grant or denial of application.**

- (a) Review of a short-term rental unit application shall be conducted in accordance with due process principles and shall be granted unless the applicant fails to meet the conditions and requirements of this article, or otherwise fails to demonstrate the ability to comply with local, state or federal law. Any false statements or information provided in the application are grounds for revocation, suspension and/or imposition of penalties, including denial of future applications.
- (b) All of-record property owners adjacent to a proposed short-term rental unit shall be notified of the use prior to the issuance of an initial short-term rental unit permit. Notification shall be issued by the short-term rental unit owner or agent and proof of notification provided to the Town in the form of an affidavit. The notification to the property owners shall include:

- 
- (1) Street address of the proposed short-term rental unit rental;
  - (2) Name of the property owner(s); and
  - (3) Name of short-term rental unit agent and contact information.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Sec. 6-117. Posting of short-term rental unit permit and information on premises.**

Inside the short-term rental unit, the following shall be posted in a conspicuous place:

- (a) A legible copy of the short-term rental unit permit.
- (b) A legible copy of transient guest information to include the following:
  - (1) The name, address, telephone number(s) and email address of the short-term rental unit agent;
  - (2) The location of required parking spaces;
  - (3) Emergency numbers for the local police and fire departments;
  - (4) The schedule of solid waste and recycling pick-up;
  - (5) The permit number assigned by the Town;
  - (6) A statement that the occupant(s) agree to abide by the requirements of this article, any other Town of Bluffton ordinances and acknowledgement that his or her rights under the agreement may not be transferred or assigned to anyone else; and
  - (7) A statement that the Town has a noise control ordinance (Chapter 12, Article III) that will be enforced, that any sound that could be reasonably expected to create a nuisance or cause disturbance to the peace and enjoyment of neighboring properties will not be permitted and that "quiet hours" are between 10:00 p.m. and 7:00 a.m.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Sec. 6-118. Advertising.**

The short-term rental unit permit number assigned to an individual short-term rental unit must be published in every print and digital advertisement for the short-term rental unit.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Sec. 6-119. Inspections.**

Short-term rental units must be properly maintained and regularly inspected by the owner or short-term rental agent to ensure continued compliance with applicable zoning, building, health and life-safety code provisions.

( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Sec. 6-120. Violations and penalties.**

- (a) *Violations.* It shall be a violation of this article to:

- 
- (1) Operate a short-term rental unit without complying with the requirements of this article and the Town Code of Ordinances;
  - (2) Advertise a residential dwelling as being available for a short-term rental unit without first complying with the requirements of this article, including applying for and obtaining a short-term rental unit permit;
  - (3) Operate a short-term rental unit that has received two or more notifications of violations during any one-year permit period.
    - a. When there is a change of ownership, the number of allowable notices and violations shall be reset upon the issuance of a new short-term rental unit permit.
- (b) Failure of the short-term rental unit agent to timely appear to two or more complaints regarding violations may be grounds for penalties including but not limited to, revocation of the permit as set forth in this article.
- ( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Sec. 6-121. Licenses, permits and tax verification forms required.**

- (a) No person shall rent or lease a dwelling unit as a short-term rental unit as defined without initially and on a continuing basis:
    - (1) Obtaining a short-term rental unit permit from the Town of Bluffton;
    - (2) Providing proof of a business license from the Town of Bluffton; and
    - (3) Paying all applicable fees and taxes.
- ( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Sec. 6-122. Renewals and modifications.**

- (a) *Renewals.* All short-term rental unit permit holders must apply annually for renewal of the registration permit.
  - (b) *Modifications.* An application for a modification of a short-term rental unit permit is necessary when:
    - (1) When the short-term rental unit agent changes.
- ( Ord. No. 2020-25 § 1(Att. A), 11-10-2020)

**Secs. 6-123—6-139. Reserved.**

# EXHIBIT NO. 23

## ARTICLE IV. SHORT-TERM RESIDENTIAL RENTALS

---

### Contents:

#### Sec. 13-76. Introduction.

#### Sec. 13-77. Purposes.

#### Sec. 13-78. Definitions.

#### Sec. 13-79. Requirements.

#### Sec. 13-80. Violations.

#### Sec. 13-81. Revocation of registration.

#### Sec. 13-82. Severability, savings, and effective date.

### **Sec. 13-76. Introduction.**

The City of Clemson is a special and unique community. Clemson residents have enjoyed a long and treasured tradition of living in close-knit neighborhood settings within immediate proximity to one of our country's major universities. Being largely bounded by Clemson University lands, Lake Hartwell, and two contiguous municipalities, the city has few avenues for growth beyond its existing corporate limits. Accordingly, as both the university and the city have grown in population and in popularity, commercial and population density pressure on the city's residential neighborhoods has sharply increased.

Since 2008, there has been a nationwide expansion of a business model consisting of homeowners renting out rooms or entire residences on a short-term basis, often via centralized online booking. This business use of residences was already taking place within the City of Clemson, but was not legal until August 17, 2015, when the city adopted Ordinance #CC-2015-30. That ordinance amended the Clemson Zoning Ordinance to add short-term rentals in residential districts as a conditional accessory use. As noted in the council minutes, the city indicated at that time the ordinance was adopted that additional regulation of short-term rentals would be developed at a later date.

After providing many opportunities for public input, and following careful study and consideration, council finds it necessary, appropriate, and in the best interests of its citizens, property owners, and visitors to further and more comprehensively regulate short-term rentals within the city.

Unlike other municipalities where both the municipality and the residents may be largely, or even entirely, dependent upon year-round tourism, Clemson experiences an influx of tens of thousands of visitors in connection with an average of seven Clemson University home football games and one spring game each year, and, on a somewhat smaller scale, for university graduation ceremonies. Thus, tailoring the short-term residential rental ordinance to meet the specific and unique needs of the community appears both necessary and proper.

The regulation of short-term rentals as set forth herein is not intended to restrict homeowners from continuing to utilize their residences in any other manner permitted by the zoning ordinance for the type of zone in which a particular home is located. For example, a homeowner may still choose to live in a home, use a home as a weekend or vacation home, participate in Clemson's rental housing program by renting out a home as a long-term rental residence, or operate a bed and breakfast, as may be allowed in a particular residential zone. Similarly, this article does not restrict businesses from operating legal year-round transient accommodations in the form of hotels or motels located in appropriate commercial zones.

(Ord. No. CC-2016-13, 6-20-16)

### **Sec. 13-77. Purposes.**

The City of Clemson is committed to working to protect the traditional quality of life and character of Clemson's residential neighborhoods. Concerns about permitting short-term residential rentals include, but are not limited to, concerns about increased traffic, noise, trash, and parking needs; safety issues created by increased traffic and population density; residences potentially standing empty for long periods for time; negative impacts on the volume of available and affordable family residential housing stock; and other undesirable changes to the traditional nature of the city's neighborhoods. This article provides a registration and inspection process governing all short-term residential rentals, for the purposes of balancing the protection of existing residential neighborhoods and residents with allowing a limited business use of residences for short-term residential rentals, and for implementing life safety standards applicable to participating short-term rental residences.

(Ord. No. CC-2016-13, 6-20-16)

### Sec. 13-78. Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

**Dwelling** means any structure or series of multiple related structures that legally may be used for habitation by humans. For purposes of this article, the term "dwelling" includes single-household structures, two-household structures (duplexes), and townhouses.

**Improved surfaces.** Off-street parking spaces and vehicular use areas are subject to City Code requirements for the zone classification in which a dwelling is located. Generally, improved surfaces include areas surfaced with asphalt, concrete, bituminous or other alternative paving material, including grass pavers, porous concrete, and other similar materials, subject to approval by the city. Gravel and other materials similar to gravel are generally not allowed except in areas used for occasional parking, again only as permitted by applicable zoning requirements. (See Clemson City Code sections 19-801 through 19-900.)

**Owner-occupied.** A dwelling is owner-occupied if a dwelling owner uses the dwelling, or part thereof, as his or her primary residence.

**Rental day** means any day on which a dwelling or any part thereof is rented for any portion of the 24-hour period beginning at 12:00 a.m. and ending at 11:59 p.m. Unrented hours in a 24-hour period cannot be added to any other day to extend the number of days on which a dwelling may be rented as a short-term rental during a calendar year.

**Short-term residential rental** means the legally permitted accessory use of a dwelling or portion thereof for a fee or other compensation for a period or periods of up to a total of no more than 25 rental days per calendar year. Short-term residential rentals do not include 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, nor does the term include longer-term rentals subject to the city's rental housing regulations (sections 13-55 through 13-75).

If any part of a dwelling is rented on a rental day, that day counts towards the 25-day cap for the entire dwelling. In other words, the 25-day rental cap is calculated per dwelling, rather than per bedroom or per rental unit within a dwelling.

For structures with multiple separate dwelling units owned by more than a single owner, such as a condominium or townhouse building or complex, or for an apartment building with multiple leases of separate units to different tenants, the 25-day limit shall apply per separate unit.

**Short-term tenant** means any person, other than a legal owner, who pays a fee or other compensation in order to occupy a dwelling for 25 or fewer rental days, as defined by this article.

(Ord. No. CC-2016-13, 6-20-16)

### Sec. 13-79. Requirements.

- a. **Registration.** Property owners must register dwellings with the city planning and codes office prior to renting out a dwelling or any part of a dwelling for a short-term residential rental. All of the legal owners of a dwelling must complete and sign a form provided by the city for that purpose and pay the annual fee.
- b. The owners must provide information concerning the dwelling location, ownership, contact information, and the number of short-term rental units in the dwelling, and must agree to comply with the requirements of this article. The city may request additional registration information, as it deems necessary.
- c. When registering, the owner(s) must provide the city with the number of days each dwelling or any part of the dwelling was rented as a short-term residential rental during the preceding calendar year.
- d. Registrations are non-transferrable. If ownership of a registered dwelling changes, the new owner(s) must complete a new registration form before renting out any part of the dwelling for a short-term rental and must pay the annual fee. A change in ownership does not increase the number of rental days on which a dwelling or part of a dwelling may be rented for short-term rentals in a calendar year. The total number of rental days for short-term rentals for any registered or subsequently re-registered dwelling is no more than 25 rental days.
- e. A dwelling that is permitted under the City of Clemson Rental Housing Regulations (section 13-55 et seq.) as a residential rental unit, may also be registered by all legal property owners as a short-term residential rental dwelling under this article, but must also comply with all provisions applicable to short-term residential rental dwellings.
- f. If a residence is not owner-occupied, the owner(s) must provide the name of a person, firm, or corporation located within a 50-mile radius of the City of Clemson responsible for the care and maintenance of the residence and who can

be contacted in case of emergency or in case issues arise.

- g. *Annual registration and fee.* The annual registration fee is \$125 per dwelling regardless of the point in a calendar year that a registration is obtained. The registration year runs from April 15 to April 14 of the following year. All short-term rental registrations expire on April 14 each year. No registration fees are to be prorated or refunded. Re-inspection fees will follow that of the long term rental program. If a home that has been in the program or has been notified of the program and does not have a valid permit a late fee of \$75 will be charged for every month the home is found to be renting without a valid permit. After June 30th a municipal court summons will be issued for properties renting without a permit.
- h. It is the sole responsibility of the Property owner to maintain current contact information. If a property owner fails to notify the city of a change in contact information or a change of person in Charge, this failure to notify will not be considered justification for failing to meet any aspects of the Rental Housing Ordinance (Sec. [13-79](#)).
- i. *Signage and proof of registration.* No dwelling used as a short-term rental may display a sign advertising that rental unless otherwise permitted by applicable zoning requirements. However, during all rental days, each short-term rental dwelling must display in a location visible from the street a City-provided sign or decal.
- j. Maximum short-term residential rental days in a calendar year. Registered dwelling owners may allow short-term residential rentals for no more than 25 rental days per calendar year per registered dwelling.
- k. *Occupancy.* Maximum occupancy for a short-term residential rental dwelling is set as follows:
1. If the dwelling is owner-occupied, the maximum short-term residential rental occupancy is two persons per bedroom, plus two additional persons per dwelling, but in no cases shall rental occupancy exceed ten persons total; or
  2. If the dwelling is not owner-occupied, it is subject to the occupancy levels established by the type of zoning applicable to the dwelling. This means that non-owner-occupied short-term residential rentals may not rent to more than the number of unrelated occupants, as defined in Section 13-55, at a time. With that occupancy level established, the number of people allowed (regardless of relationship to one another) in a non-owner-occupied dwelling shall be limited to two persons per bedroom plus two additional persons per dwelling. Please note the distinction between "occupants" and "people" as applied to this ordinance. Occupant means a natural family or an individual unrelated by blood to a second degree of consanguinity, marriage, adoption, or guardianship to any other occupant of the dwelling unit. A natural family shall be counted as one occupant. The number of people is the sum total of the people staying in a house regardless of the occupancy limits.
- l. *Property owner(s), persons in charge, and tenants.* Registration of a short-term rental residence will not be allowed if the residence is not owner-occupied, or if the owners of a non-owner-occupied residence have not identified a person in charge. A person in charge, who may or may not be an owner, must reside in or have an office within a 50-mile radius of the city and be able to act as the agent for the owner(s). The city must be notified in writing within 14 days of the change if there is a change of ownership or in the identity of the person in charge.
- m. Owners and persons in charge must maintain all short-term rental residences under their ownership and/or control in compliance with all applicable city ordinances and regulations.
- n. Owners, persons in charge, and tenants shall be liable for violations of laws and/or ordinances, including, but not limited to, occupancy violations, at rental residences under their ownership, control, or occupancy.
- o. *Parking.* All parking for tenants must be contained on site and only on improved surfaces. During rentals, no parking for owners, occupants, tenants, or guests may be located on unimproved surfaces even if the property is also registered to participate in the city's game day parking program. Unimproved surfaces include, but are not limited to, grassed, wooded, dirt, and mulched surfaces, as well as any other parking surfaces not in compliance with applicable City Code requirements.
- p. *Safety and damages.* Property owners are responsible for their own safety and insurance needs, as well as the safety and sanitation needs of their tenants. By providing a registration process allowing property owners to conduct short-term rentals of dwellings and/or by providing a compliance inspection service, the city is not assuming responsibility for safety or liability related to rental activities.
- q. *Life, safety and sanitation requirements.* For purposes of this article, the following standards apply to short-term residential rentals and must be met prior to being issued a registration:
1. *9-1-1 numbers* - Minimum three inches tall and readily visible and legible from the street.
  2. *Trash cans and storage of solid waste* - One roll cart and recycling bin with a designated storage location for the roll cart behind the front building line.
  3. *Environmental* - Property exteriors shall comply with the International Property Maintenance Code.

4. *Doors and windows* - Individual dwelling units must have access directly to the outside or to a common corridor. Sleeping rooms must have at least one operational window.
  5. *Stairs, rails, porches, decks* - A graspable handrail is required for four or more stairs whether indoors or out. Guardrails are required on decks over 30 inches above grade, must be a minimum of 36 inches in height and not have any openings between pickets or rails that exceeds four inches. Porches and decks shall not have apparent structural damage or broken or missing rails or steps. No exposed risers are allowed on stairs over 30 inches in height whether indoors or out.
  6. *Swimming pools/spas* - Swimming pools and spas shall be enclosed and include a self-closing and self-latching gate of 48 inches minimum height.
  7. *Electrical service and electrical hazards* - Electrical service shall be provided through the public service provider. All bathrooms, exterior outlets, non-dedicated kitchen outlets within six feet of kitchen sink shall be ground-fault protected. Missing or cracked plates on switches or outlets shall be repaired.
  8. *Ceilings* - Habitable spaces and hallways must have a clear ceiling height of not less than seven feet. Ceilings shall not have any apparent visual defects, evidence of mold or mildew, or holes with exposed wiring or insulation.
  9. *Walls* - Walls shall not have any apparent visual defects, evidence of mold or mildew, or holes with exposed wiring or insulation.
  10. *Floors* - Floors shall not have any apparent visual defects, evidence of mold or mildew, or soft spots.
  11. *Sink* - In kitchen with hot and cold running water. Hot water to be at least 85 degrees and not to exceed 120 degrees.
  12. *Stove or range* - Stoves and ranges shall be free of apparent hazards. Combustible material must be at least 30 inches above the heat source. Anti-tip device must be installed for freestanding units.
  13. *Toilet* - Flushing and leak free in a room affording privacy.
  14. *Wash basin* - Operational and leak free equipped with hot and cold running water. Hot water to be at least 85 degrees and not to exceed 120 degrees.
  15. *Tub or shower* - Must be operational and equipped with hot and cold running water in a room affording privacy. Hot water to be at least 85 degrees and not to exceed 120 degrees.
  16. *Ventilation in bathroom* - Bathrooms must have a window or mechanical ventilation and not have an evidence of mold or mildew.
  17. *Smoke detectors* - Every bedroom and adjoining hallway as well as the common area shall be equipped with an operational, approved listed smoke detector. In units containing more than one story, detectors are required on each story.
  18. *Fire extinguisher* - Minimum 2.5 lb-ABC fire extinguisher that is fully charged. The weight shall be the weight of the material inside the extinguisher not the gross weight of the fire extinguisher. The age and useful life of the fire extinguisher must follow the standards of NFPA 10.
  19. *Evacuation plan* - Each room used for sleeping shall have an evacuation plan posted on the door.
  20. *Heating equipment* - Operational heating facilities capable of maintaining a room temperature of 70 degrees.
  21. *Evidence of infestation* - Premises shall appear free of rats, mice, roaches or other vermin.
  22. *Interior stairs and common halls* - Stairs and halls shall not have apparent damage or missing rails or steps. No exposed risers are allowed on stairs over 30 inches in height whether indoors or out.
  23. *Carbon Monoxide Detector* - Carbon Monoxide Detector will be required and properly installed in all units that have attached garage and/or gas appliances.
- r. *Compliance inspections*. Properties may enter into the program at any point. However, annual compliance inspections of short-term residential rentals shall begin January 1, 2017, and will be required for 2017 and each year thereafter. Short-term rental inspections will be conducted from January 1 to April 14 each year. Property owners must arrange with the city for on-site inspections of short-term rental properties prior to the use of a dwelling for short-term rental purposes. Properties that do not pass inspection may not be used for short-term rentals until successfully completing inspection. Properties that do not pass inspection must correct all defects noted on the inspection report and schedule a reinspection of the property.
- s. *Accommodations, sales, and income taxes*. There are federal, state and/or county laws and rules for collection of sales, accommodations, and income taxes. Owners, operators, lessors, occupiers, and/or tenants of dwellings used for short-term rentals are solely responsible for payment of all applicable taxes. The city does not collect or accept such taxes.

(Ord. No. CC-2016-13, 6-20-16; CC-2019-04, 4-1-19; Ord. No. [CC-2023-09](#), 06/20/2023)

Effective on: 6/20/2023

### **Sec. 13-80. Violations.**

Depending on severity, violations of this article may result in immediate revocation of the registration of a dwelling or dwellings. Absent the need for immediate revocation, a formal written warning shall be issued for a first violation in a 12-month period. However, if there is an additional violation at the same dwelling within the 12-month period immediately following a warning, registration for that dwelling shall be revoked for 12 months to begin with the start of the next calendar year. Warnings, citations, and revocations may be issued to dwelling owners, operators, lessors, agents, occupants, tenants, and/or guests, depending on the nature of the violation. Dwelling owners are ultimately responsible for the conduct of their dwelling operators, lessors, agents, occupants, tenants, and guests, regardless of whether the owners are present at the dwelling.

Violations include, but are not limited to:

1. Lying and/or providing false information about a dwelling or short-term rental to the city;
2. Failure to have a valid registration for any dwelling at a time when it is used in whole or in part as a short-term rental;
3. Failure to display a city short-term rental sign with a current registration decal during any short-term rental day;
4. Falsifying or altering a registration sign or decal (for example, using a sign and/or decal issued for one dwelling at another dwelling location or altering the date on the decal);
5. Violation of any part of this article; and
6. Violation of any applicable ordinance or laws by owners, operators, lessors, agents, occupants, tenants, or guests of short-term rentals (examples include, but are not limited to, violations of ordinances and laws concerning excessive noise, disorderly conduct, littering, underage drinking, drug offenses, public drunkenness, traffic and parking, and all other criminal and nuisance offenses).

(Ord. No. CC-2016-13, 6-20-16)

### **Sec. 13-81. Revocation of registration.**

If it is determined that a dwelling's registration for short-term rentals should be revoked, a revocation hearing notification will be sent to the property owner(s) at the contact address provided in the registration application. Notice shall include the time and place for the hearing, which shall take place before city council for the purpose of determining whether to revoke registration.

After the hearing, the city shall notify the property owner(s) of the council's decision by written notice sent by certified mail or delivered in person. The notice shall set forth the effective dates of any revocation, the reason for any revocation, the penalties that may be imposed for violation of any revocation, and any applicable appeal rights, deadlines, and filing procedures.

(Ord. No. CC-2016-13, 6-20-16)

### **Sec. 13-82. Severability, savings, and effective date.**

- a. *Severability.* A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part, of this article shall not affect the validity of the remaining parts of the article.
- b. *Savings.* Any enforcement action which is pending on the effective date of this article and which arose from a violation of an ordinance repealed by this article, or a prosecution which is started within one year after the effective date of this article arising from a violation of an ordinance repealed by this article, shall be tried and determined exactly as if the ordinance had not been repealed.
- c. *Effective date.* This article is effective on first day of January, 2017.

(Ord. No. CC-2016-13, 6-20-16)

# EXHIBIT NO. 24

- CODE OF ORDINANCES  
Chapter 5 - BUILDINGS AND BUILDING REGULATIONS  
ARTICLE IX. SHORT TERM RENTALS

---

## **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.

(Ord. No. 2023-037 , 4-4-23)

### **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.

*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 four percent 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.

(Ord. No. 2023-037 , 4-4-23)

---

## 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:

- (1) *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.
- (2) *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.
- (3) *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:
  - a. Animal Control, Chapter 4;
  - b. Building and Building Regulations, Chapter 5;
  - c. Environmental Health and Sanitation, Chapter 8;
  - d. Fire Prevention and Protection, Chapter 9;
  - e. Unified Development Ordinance, Chapter 17; and
  - f. Solid Waste Management, Chapter 19.
- (4) *Safety inspection.* A safety inspection to ensure compliance with the regulations in this article may be performed by the city if deemed necessary and with 24-hour notice to the permit holder.
- (5) *Records required.* The property owner shall maintain the following which shall be made available to the city upon request:
  - a. 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
  - b. The name and phone number of each short-term guest that booked the STR for the previous two years.
- (6) *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.
- (7) *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.
- (8) *Minimum guest's age.* The guest making the booking or reservation for an STR shall be at least 18 years of age.
- (9) *Minimum stay duration.* The short-term rental shall not be available for occupancy for a period of less than one night.
- (10) *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.
- (11) *House manual.* At a minimum, the following shall be made available to each short-term guest:

- 
- a. Emergency contact numbers;
  - b. The name and contact information for the owner or responsible local representative;
  - c. Instructions or a diagram of the designated parking space(s); and
  - d. The house rules imposed on guests by the owner.
- (12) *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
- (13) *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.
- (14) *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.
- (15) *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.

(Ord. No. 2023-037 , 4-4-23)

#### **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 STRs 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.
- (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.

(Ord. No. 2023-037 , 4-4-23)

---

### **Sec. 5-404. Short-term rental permit application and 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 \$50.00; 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 \$100.00.
- (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.

(Ord. No. 2023-037 , 4-4-23)

### **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.

(Ord. No. 2023-037 , 4-4-23)

---

### **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.

(Ord. No. 2023-037 , 4-4-23)

### **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, 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.
- (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.

(Ord. No. 2023-037 , 4-4-23)

### **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 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.

(Ord. No. 2023-037 , 4-4-23)

### **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.

(Ord. No. 2023-037 , 4-4-23)

# EXHIBIT NO. 25

TITLE 10 - BUSINESS AND PROFESSIONAL LICENSING; FRANCHISING AND REGULATION  
Chapter 2 SHORT-TERM RENTALS

---

## 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. 26

- CODE OF ORDINANCES

Article 14 - GENERAL REGULATIONS

CHAPTER 5. RENTAL APPLICATIONS AND REGULATIONS

---

## 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 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 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 lessee 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. Vacation 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 1<sup>st</sup>, 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 (a) 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 is 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. 27

## ARTICLE V. - SHORT-TERM RENTALS

### Sec. 12-61. - Purpose.

It is the purpose of this section to protect the public health, safety, and general welfare of individuals and the community at large; to ensure that neighborhoods are not adversely affected or disrupted by short-term rentals.

(Ord. No. 07-15, 3-14-07)

### Sec. 12-62. - Definitions.

*Short-term rental* means a transient vacation rental or use in which overnight accommodations are provided in dwelling units to guests for compensation, for periods of less than thirty (30) days. Short-term rental for the purpose of this regulation are those accommodations classified within the North American Industry Classification System (NAICS) as 72119 Other Traveler Accommodation. Further the activity is classified as \*7011 Hotels and Motels (except hotels, motels, and bed and breakfast inns under the 1987 United States Standard Industrial Classification (SIC)).

(Ord. No. 07-15, 3-14-07)

### Sec. 12-63. - License required.

Any property owner engaged in the activity of short term rental within the limits of the town will obtain an occupational license as provided for by article II, occupational license, of this chapter.

(Ord. No. 07-15, 3-14-07)

### Sec. 12-64. - Accommodation fee required.

Any property owner engaged in the activity of short-term rental within the limits of the town will collect and remit to the town the local accommodations tax as provided for in chapter 18, article III, Local Accommodations Tax. Additionally, a unique number will be assigned to each rental unit by the town. This number must be used in any marketing platform (online or otherwise).

(Ord. No. 07-15, 3-14-07; Ord. No. 2021-18, § 1, 6-9-21)

### Sec. 12-65. - Short-term rental regulating procedure.

To ensure that neighborhoods are not disrupted by renters, the town shall notify the owner of a residential rental unit of all instances in which nuisance behavior of the rental guest, or the conduct of his agent or property manager, results in a conviction for a code violation. Points for such convictions shall be assigned to the property owner according to the following schedule. Only convictions in the town municipal court will trigger the assignment of points.

	First Offense	Second Offense	Subsequent Offenses
Noise violation	2	4	8

Improper parking	2	4	8
Disorderly conduct at the subject property	2	4	8
Unsanitary conditions	2	4	8

The business license administrator shall maintain in each short-term rental business license file a record of all code violation convictions occurring at a short-term rental property. When a property owner has accumulated sixteen (16) (or more) points for a particular property within a period of twelve (12) consecutive months, or twenty-four (24) points within a period of twenty-four (24) consecutive months, the town shall suspend the short-term rental permit for the subject property for a period of twelve (12) consecutive months subject to the right of appeal set forth in section 12-66. Further, the town shall not issue a new short-term rental permit during the period of suspension. However, twenty-four (24) months after the date of conviction, the town shall expunge all points associated therewith, and outstanding points relating to the subject property, if any, shall be recalculated to indicate the reduction.

(Ord. No. 07-15, 3-14-07)

Sec. 12-66. - Appeals to town council.

- (a) A person aggrieved by the town's decision to revoke, suspend or deny a short-term rental permit may appeal the decision to the town council. The appeal must be filed in writing within thirty (30) calendar days 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 thirty (30) calendar days after receipt of a request unless otherwise agreed to, in writing, by the town and the aggrieved party. The town council shall prescribe the rules of evidence and testimony and the procedures applicable to the conduct of the hearing. All interested parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be electronically recorded and transcribed at the expense of the party so requesting. The town council shall render a decision by a majority vote of members present. The decision shall be in writing based upon findings of fact and the application of relevant standards. The decision shall be served upon all parties or their designated representatives and shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.
- (c) No person shall be subject to prosecution for doing business without a license and/or a permit until the expiration of ten (10) calendar days after notice of denial or revocation which is not appealed, or until after final judgment of a circuit court upholding denial or revocation.

(Ord. No. 07-15, 3-14-07)

Secs. 12-67—12-70. - Reserved.

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,	)	
	)	
	)	<b>PLAINTIFF’S MOTION TO</b>
PLAINTIFF,	)	<b>RECONSIDER ORDER DENYING ITS</b>
	)	<b>MOTION FOR SUMMARY</b>
vs.	)	<b>JUDGMENT AND GRANTING</b>
	)	<b>DEFENDANT CITY OF FOLLY</b>
CITY OF FOLLY BEACH and	)	<b>BEACH’S MOTION FOR SUMMARY</b>
SAVE FOLLY’S FUTURE,	)	<b>JUDGMENT</b>
	)	
DEFENDANTS.	)	

Plaintiff Folly East Indian Co., LLC, by and through its undersigned counsel, respectfully move, pursuant to South Carolina Rule of Civil Procedure 59, for a reconsideration and reversal of the Court’s March 7, 2024 Order denying Plaintiffs’ Motion for Summary Judgment and granting the City of Folly Beach’s Motion for Summary Judgment. In the alternative, Plaintiffs seeks an amendment to the Order to clarify the basis of the ruling.

(1) The Order is based on a misapplication of law, that the Supreme Court of South Carolina, in *Greenville Cnty. v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428, 432 (2003), used the term “land use regulation as a synonym for a zoning ordinance adopted pursuant to the Comprehensive Planning Act.” Order at 6; *citing I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). While it is true that in *Kenwood Enterprises*, the Supreme Court was addressing whether a city could regulate land use via its police powers outside of the Comprehensive Planning Act, it does not stand for the proposition that a City can regulate land use via the initiative and referendum process. Rather, and as expressly stated by our Supreme Court, “*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 cannot be effected via the referendum and initiative

process.” The second sentence of the preceding quote does not state that land use regulation can be accomplished by referendum and initiative. Nor does it state that land use regulation can be accomplished by the referendum and initiative process so long as it is not one that must be part of the comprehensive plan and enacted pursuant to the Comprehensive Planning Act.

(2) The Order is based on a misapplication of law, that the City’s Ordinance, enacted by S.C. Code Ann. § 5-17-10, is enacted pursuant to the City’s “police powers,” despite the fact that the City expressly declined to enact such Ordinance, and was compelled to do so only pursuant to § 5-17-10. Plaintiff is therefore challenging the *means* in which the Ordinance was enacted, not whether the Ordinance could not be enacted in other ways—only what the City *actually* did in this case. The Court’s Order, at page 7, states that “Plaintiff has admitted that the City could have adopted this cap pursuant to its police powers.” Plaintiff has made no such concession and prays the Court did not misunderstand Plaintiff’s argument. Instead, Plaintiff has argued, *ad nauseum*, that an ordinance proposed and enacted by the initiative and referendum process (§ 5-17-10) is not pursuant to the City’s Police Powers.

Alternatively, if the Court fully understands Plaintiff’s argument and rejected the same, Plaintiff respectfully requests the Court to expressly rule on the same.

(3) The Order is based on a misapplication of law, that the City’s Ordinance is merely an issue of licensing and does not require the City to Amend its Zoning Code because it “regulates how many short-term rental businesses there can be in the City, not where those businesses can be conducted.” Order at 5. However, and as Plaintiff argued, the City has effectively banned this property use—which is permitted in all districts—by license. In other words, and under the Court’s ruling, the City can effectively ban any property use, even if permitted by Zoning,

through licensing. This cannot be the law. Alternatively, if this is the law in South Carolina, Plaintiff respectfully asked the Court to expressly rule on this issue for appellate purposes.

This Motion is based upon the pleadings and record of file, the applicable law, and argument of counsel. Plaintiff may supplement this Motion with a memorandum in support of the same. Plaintiff respectfully requests that this Court reconsider and/or clarify its Order for these reasons.

SAXTON & STUMP, LLC

s/Bijan K. Ghom  
Alice F. Paylor  
Bijan K. Ghom  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
afp@saxtonstump.com  
bkg@saxtonstump.com  
(843) 414-5080

ATTORNEYS FOR PLAINTIFF

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.	)	MEMORANDUM IN OPPOSITION TO
	)	PLAINTIFF’S MOTION TO
CITY OF FOLLY BEACH,	)	RECONSIDER
	)	
Defendant.	)	
	)	
and	)	
	)	
SAVE FOLLY’S FUTURE,	)	
	)	
Intervenor.	)	
_____	)	

This matter is before the Court on the Motion of Plaintiff Folly East Indian Co., LLC, to Reconsider this Court’s Order Denying Plaintiff’s Motion for Summary Judgment and Granting Defendant’s Motion for Summary Judgment. The Motion to Reconsider raises no new issues of law or fact and should be denied on the grounds outlined in the Court’s Order finding that the State’s 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.

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).

In reliance on South Carolina Code § 5-17-10, *et. seq.*, a majority of the citizens of the City of Folly Beach voted in favor of capping Investment Short-Term Rental Business Licenses at 800. The Petition and Referendum did not appropriate money or authorize the levy of taxes. Rather, it simply added a provision to the City’s existing Short-Term Rental Business License Ordinance creating the cap.

Plaintiff argues that the Petition and Referendum procedure cannot be used to place a cap on business licenses, relying on *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 on the Referendum procedure not contained in the explicit language of Section 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 and did so because it felt that *zoning* ordinances can only be adopted by way of the Comprehensive Planning Act.

Plaintiff has argued from the start of this case that the business license cap is somehow a “zoning ordinance” because it impacts the use of land. Plaintiff takes this position even though 1) the cap is codified in the City’s Business Ordinance, where the City has always regulated Short-Term Rentals, 2) the cap made no changes to the City’s Zoning Ordinance, 3) the cap acts completely as a business regulation and not a zoning ordinance, and 4) the Supreme Court in *Greenville Cnty. v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428, 432 (2003), ruled

that municipalities in South Carolina can regulate land use through both their zoning ordinances and their police powers.

In its Motion to Reconsider, Plaintiff reiterates its argument that somehow there is a distinction between the City's police powers and the Referendum procedure, and the reasoning in *Kenwood* somehow does not apply to the Referendum procedure. Plaintiff makes no effort to explain the legal or logical basis for this imagined distinction. Plaintiff does not explain why a City can adopt a business license regulation under its police powers but not via Referendum. Indeed, there is no conceivable reason to fashion a distinction between the two procedures. In short, the Referendum procedure can be used to amend ordinances adopted via the City's police power.

So, once again, the City would simply point out that the decision in *I'On* was concerned with undoing zoning ordinances via Referendum. The decision in *I'On* had nothing to do with business regulations or business licenses or any other ordinance adopted via municipal police powers. The Court's reasoning in *I'On* was that zoning ordinances could only be passed pursuant to the Comprehensive Planning Act. Zoning ordinances cannot be passed pursuant to the Referendum process, just like zoning ordinance cannot be passed pursuant to a normal ordinance process of two council readings with no public hearing and no planning commission review. In any case, since the cap is not a zoning ordinance by any stretch of the imagination, *I'On* is simply not applicable.

Business license caps are business regulations, and they can be passed like any other ordinance, either by two votes of the City Council or by Referendum, by which "electors of a municipality may propose *any ordinance*." S.C. Code Ann. § 5-17-10 (emphasis added). The Supreme Court's ruling in *Kenwood* simply confirms this and confirms that *I'On's* holding is

limited to changes to the zoning code that must be adopted pursuant to the Comprehensive Planning Act.

There is simply no precedent and no logic for holding that business license caps can only be adopted by the Comprehensive Planning Act. As Plaintiff now admits, business license regulations are part of the City's police powers, and amending those regulations, whether by Ordinance or Referendum, has nothing to do with the zoning ordinance or the Comprehensive Planning Act.

Based on the foregoing, Defendant City of Folly Beach would ask that the Court deny Plaintiff's Motion to Reconsider.

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

March 29, 2024  
Folly Beach, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**May 16 2024**

**SC Court of Appeals**

Appeal from Charleston County  
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2023-CP-10-0264

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

v.

City of Folly Beach.....Respondent.

v.

Save Folly’s Future.....Intervenor.

**NOTICE OF APPEAL**

Appellant Folly East Indian Co., LLC, (hereafter “Appellant”) appeals the trial court’s order dated March 7, 2024, denying Plaintiff’s Motion for Summary Judgment and granting the City of Folly Beach’s Motion for Summary Judgment and the April 17, 2024, order denying Plaintiff’s Motion to Reconsider the Court’s order of March 7, 2024. A copy of the order dated March 7, 2024, is attached hereto as **Exhibit A**. A copy of the order dated April 17, 2024, is attached hereto as **Exhibit B**.

[SIGNATURE ON FOLLOWING PAGE]

By: /s/ Bijan K. Ghom  
Alice F. Paylor  
Bijan K. Ghom  
Saxton & Stump, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 414-5080  
afp@saxtonstump.com  
bkg@saxtonstump.com

ATTORNEYS FOR APPELLANT

May 16, 2024

OTHER COUNSEL OF RECORD:

Joseph C. Wilson, IV, Esquire  
City Attorney  
City of Folly Beach  
P.O. Box 178  
Folly Beach, SC 29439  
(843) 834-2390  
jwilson@follybeach.gov

ATTORNEY FOR RESPONDENT

Robert M. Turkewitz, Esquire  
Law Office of Robert M. Turkewitz, LLC  
768 St. Andrews Blvd.  
Charleston, SC 29407  
(843) 628-7868  
rob@rmtlegal.com

ATTORNEY FOR INTERVENOR

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**May 16 2024**

**SC Court of Appeals**

Appeal from Charleston County  
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2023-CP-10-0264

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

v.

City of Folly Beach.....Respondent.

v.

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

**PROOF OF SERVICE**

I do hereby certify that on May 16, 2024, I have served all counsel in this action with a copy of the *Notice of Appeal* via e-filing to the following email addresses:

Joseph C. Wilson, IV, Esquire  
City Attorney  
City of Folly Beach  
P.O. Box 178  
Folly Beach, SC 29439  
(843) 834-2390  
jwilson@follybeach.gov

ATTORNEY FOR RESPONDENT

Robert M. Turkewitz, Esquire  
Law Office of Robert M. Turkewitz, LLC  
768 St. Andrews Blvd.  
Charleston, SC 29407  
(843) 628-7868  
rob@rmtlegal.com

ATTORNEY FOR INTERVENOR

*s/ Taylor Davis* \_\_\_\_\_  
Taylor Davis, Paralegal  
Saxton & Stump, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 414-5080 (o)

**EXHIBIT A**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 FOLLY EAST INDIAN CO., LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CITY OF FOLLY BEACH, )  
 )  
 Defendant. )  
 )  
 and )  
 )  
 SAVE FOLLY’S FUTURE, )  
 )  
 Intervenor. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2023-CP-10-0264

**ORDER GRANTING DEFENDANT  
CITY OF FOLLY BEACH’S MOTION  
FOR SUMMARY JUDGMENT**



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

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)).

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

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

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

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<sup>1</sup> 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).

---

<sup>1</sup> 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.

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.<sup>2</sup>

### 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

---

<sup>2</sup> 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.



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

Electronically signed on 2024-03-07 11:09:51 page 9 of 9

ELECTRONICALLY FILED - 2024 Mar 07 11:15 AM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

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

**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), SCRPC.

---



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

Electronically signed on 2024-04-17 11:26:54 page 3 of 3

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

# SAXTON & STUMP

LAWYERS AND CONSULTANTS

151 Meeting Street, Suite 400 • Charleston, SC 29401  
P: (843) 414-5080 • F: (843) 580-8303

**Direct Dial:** (843) 278-0114  
**Email:** tdavis@saxtonstump.com

May 16, 2024

**VIA E-FILING**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**  
**May 16 2024**  
**SC Court of Appeals**

Re: Folly East Indian Co., LLC v. City of Folly Beach  
Case No.: 2023-CP-10-00264

Dear Ms. Kitchings:

Please find enclosed the following documents in connection with the above referenced matter:

1. Notice of Appeal;
2. Proof of Service of Notice of Appeal;
3. Order Dated April 17, 2024; and
4. Order Dated March 7, 2024.

We are also already in possession of the transcript related to this appeal. Lastly, enclosed is a check in the amount of \$250.00, to cover the filing fee. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

*s/ Taylor Davis*

Taylor Davis  
Paralegal

/tnd

Enclosures

cc: Joseph C. Wilson, IV, Esquire (via e-mail only)  
Robert M. Turkewitz, Esquire (via e-mail only)

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Charleston County  
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

---

Case No. 2023-CP-10-0264

---

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

v.

City of Folly Beach.....Respondent.

v.

Save Folly’s Future.....Intervenor.

---

**NOTICE OF APPEAL**

---

Appellant Folly East Indian Co., LLC, (hereafter “Appellant”) appeals the trial court’s order dated March 7, 2024, denying Plaintiff’s Motion for Summary Judgment and granting the City of Folly Beach’s Motion for Summary Judgment and the April 17, 2024, order denying Plaintiff’s Motion to Reconsider the Court’s order of March 7, 2024. A copy of the order dated March 7, 2024, is attached hereto as **Exhibit A**. A copy of the order dated April 17, 2024, is attached hereto as **Exhibit B**.

[SIGNATURE ON FOLLOWING PAGE]

By: /s/ Bijan K. Ghom  
Alice F. Paylor  
Bijan K. Ghom  
Saxton & Stump, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 414-5080  
afp@saxtonstump.com  
bkg@saxtonstump.com

ATTORNEYS FOR APPELLANT

May 16, 2024

OTHER COUNSEL OF RECORD:

Joseph C. Wilson, IV, Esquire  
City Attorney  
City of Folly Beach  
P.O. Box 178  
Folly Beach, SC 29439  
(843) 834-2390  
jwilson@follybeach.gov

ATTORNEY FOR RESPONDENT

Robert M. Turkewitz, Esquire  
Law Office of Robert M. Turkewitz, LLC  
768 St. Andrews Blvd.  
Charleston, SC 29407  
(843) 628-7868  
rob@rmtlegal.com

ATTORNEY FOR INTERVENOR



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), SCRCF. “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)).

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

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

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

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<sup>1</sup> 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).

---

<sup>1</sup> 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.

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.<sup>2</sup>

### 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

---

<sup>2</sup> 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.



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

Electronically signed on 2024-03-07 11:09:51 page 9 of 9

ELECTRONICALLY FILED - 2024 Mar 07 11:15 AM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000264

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), SCRCPC;  Rule 41(a), SCRCPC (Vol. Nonsuit);  Rule 43(k), SCRCPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCPC;  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

**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), SCRPC.

---



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

Electronically signed on 2024-04-17 11:26:54 page 3 of 3

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

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Charleston County  
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

---

Case No. 2023-CP-10-0264

---

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

v.

City of Folly Beach.....Respondent.

v.

Save Folly’s Future..... Intervenor.

---

**PROOF OF SERVICE**

---

I do hereby certify that on May 16, 2024, I have served all counsel in this action with a copy of the *Notice of Appeal* via e-filing to the following email addresses:

Joseph C. Wilson, IV, Esquire  
City Attorney  
City of Folly Beach  
P.O. Box 178  
Folly Beach, SC 29439  
(843) 834-2390  
jwilson@follybeach.gov

ATTORNEY FOR RESPONDENT

Robert M. Turkewitz, Esquire  
Law Office of Robert M. Turkewitz, LLC  
768 St. Andrews Blvd.  
Charleston, SC 29407  
(843) 628-7868  
rob@rmtlegal.com

ATTORNEY FOR INTERVENOR

s/ Taylor Davis  
Taylor Davis, Paralegal  
Saxton & Stump, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
(843) 414-5080 (o)

1 STATE OF SOUTH CAROLINA            **TRANSCRIPT OF RECORD**

2 COUNTY OF CHARLESTON            CASE NO.:2023-CP-10-0264

3 **\*\* TRANSCRIPTION OF WEBEX HEARING \*\***

4 -----

5                            January 12, 2024

6            **BEFORE:**    The Honorable Paul M. Burch

7 -----

8 FOLLY EAST INDIAN COMPANY, LLC,

9 Plaintiff,

10 vs.

11 CITY OF FOLLY BEACH,

12 Defendant.

13 -----

14  
15 APPEARANCES:

16  
17                    Alice Paylor, Esq.  
                          Appearing for the Plaintiff.

18                    Joseph Wilson, Esq.  
                          Appearing for the Defendant.

19  
20                    Robert Turkewitz, Esq.  
                          Appearing for Save Folly's Future

21  
22 Recorded by:    Webex Video Courtroom

23 Transcriber:    Natalie Dahl, RPR  
                          SC Official Court Reporter

24

25

NOTE: Pursuant to Rule 607 (H) (1) (B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

**INDEX**

Description	Page
(NONE)	

**EXHIBITS**

(None)

**Transcript Legend**

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

1                   **P R O C E E D I N G S**

2           THE COURT: We're now ready for the Folly  
3 East matter. Do we have everybody onboard with  
4 that?

5           MS. PAYLOR: I believe so, Your Honor.

6           THE COURT: All right. Who is going to lead  
7 off here?

8           MS. PAYLOR: Well, there are -- each side  
9 made a motion for summary motion, so I'll be happy  
10 to go. I'm Alice Paylor. I represent the  
11 plaintiff, who is Folly East Indian Company.

12           Are you ready for me to proceed, Your Honor?

13           THE COURT: Yes, ma'am. Go ahead.

14           MS. PAYLOR: Thank you. My client is Folly  
15 East Indian Company. It is a South Carolina  
16 limited liability company that owns and develops  
17 real properties on Folly Beach for use of  
18 short-term rentals. The individual owners of the  
19 plaintiff are residents of Folly Beach.

20 Plaintiff's properties host tourists who want to  
21 visit Folly Beach on a short-term basis, which is  
22 less than 28 days, Your Honor. So these are  
23 primarily weekly rentals. And plaintiff built  
24 these properties solely to be used as short-term  
25 rentals. They are not suitable for single-family

1 residences. They are big houses with a lot of  
2 bedrooms and bathrooms in them, and families will  
3 come and rent a house and stay there for a week.

4 Short-term rentals are a land use. They are  
5 set forth in Folly Beach's zoning ordinance, which  
6 defines a short-term rental as less than 28 -- 28  
7 or 29 days, and states that short-term rentals are  
8 an allowed use in every zoning district of Folly  
9 Beach with no restrictions.

10 In 2022, at the initiation of Folly Beach's  
11 mayor, after having a committee appointed to study  
12 short-term rentals, an ordinance was presented to  
13 Folly Beach Council to limit short-term rentals for  
14 non-owner occupied properties to 800. That  
15 ordinance was rejected by the Folly Beach City  
16 council on June 28, 2012. These facts all came  
17 from Aaron Pope's affidavit. He's the city  
18 administrator, Your Honor.

19 On October 11, 2022, residents of Folly Beach  
20 submitted a petition to city council to request  
21 that it pass a similar ordinance to the one that it  
22 earlier rejected, again, capping non-owner occupied  
23 properties with short-term rental licenses to 800.  
24 The existing licenses, Your Honor, well exceed 800.  
25 So what this would do would be to cap the licenses

1 to really what they are now and for the existing  
2 future. The petition sought to enact the ordinance  
3 that the council previously refused citing South  
4 Carolina Code 5-17-30, which is an ordinance that  
5 allows -- that allows ordinances to be enacted  
6 pursuant to petition and referendum. The petition  
7 was presented to city council. City council,  
8 again, refused to enact that ordinance. So under  
9 the statute, it called for a special election.

10 On February 7, 2023, Folly Beach held a  
11 special election, and the voting residents voted in  
12 favor of adopting the short-term rental ordinance  
13 previously submitted to and rejected by Folly Beach  
14 City Council.

15 Subsequently, citing Section 5-17-30 of the  
16 South Carolina Code, Folly Beach Council adopted  
17 the proposed ordinance that it had previously  
18 rejected on multiple occasions. Plaintiff seeks to  
19 have this Court set aside the ordinance because it  
20 regulates the use of land on Folly Beach, and the  
21 supreme -- South Carolina Supreme Court has held  
22 that an ordinance that regulates the use of land  
23 may not be adopted under the initiative and  
24 referendum Statute 5-17-30.

25 There are two cases which hold this, Your

1 Honor. One is Ion versus the Town of Mount  
2 Pleasant, which we cited in our brief. The other  
3 is the case of Greenville County versus Kenwood  
4 Enterprises, which Folly Beach relies on  
5 extensively. That case held that 5-17-30 may not  
6 be used to enact a land use regulation.

7 Mr. Wilson has presented great arguments that  
8 the police powers allow Folly Beach to enact such a  
9 -- such an ordinance, but they didn't use their  
10 police powers. They rejected the ordinance when  
11 they were doing it under police powers, and instead  
12 only enacted the ordinance after they had the  
13 special election.

14 It is plaintiff's position that Folly Beach  
15 had to either amend its zoning ordinance in order  
16 to restrict the use of short-term rentals, or -- we  
17 don't necessarily agree with this -- use its police  
18 powers to enact it after it studied it rather than  
19 just acting on what the initiative and referendum  
20 asked them to do. And that's what these two  
21 supreme court cases hold, Your Honor.

22 The defendants have said that the plaintiff  
23 does not have standing. That matter has, really,  
24 already been determined. Judge Curtis had a  
25 hearing on whether Save Folly's Future could

1 intervene, and we took the position that Save  
2 Folly's Future did not have an interest and should  
3 not be allowed to intervene. But the Court held  
4 that it did have an interest in it, and so under  
5 both the interest that they didn't want to have  
6 short-term rentals and, secondly, that -- the  
7 public interest exception, Your Honor.

8 And, so, under at least the public interest  
9 exception, my clients have an interest. They have  
10 a real interest because they cannot transfer their  
11 short-term rental licenses, so the value of their  
12 property has greatly diminished.

13 I know Mr. Wilson made an argument that they  
14 perhaps had sold the LLC, and that has not  
15 happened, Your Honor. The same people still own  
16 the LLC.

17 If plaintiffs have no right to challenge the  
18 validity of this ordinance, then there is nobody  
19 who does. That would just let Folly Beach do  
20 whatever they wanted to without complying with the  
21 law.

22 Folly Beach's ordinance restricts the number  
23 of short-term rentals, and this is clearly a  
24 regulation of use of land. Prior to the adoption,  
25 you -- a person could open a short-term rental

1 anywhere on Folly Beach.

2 City council rejected this precise ordinance  
3 on two different occasions. If you look at the two  
4 cases that I previously cited to you, Ion was the  
5 first one that said you could not use Section  
6 5-17-30 to enact a land use regulation, and then  
7 the Greenville County versus Kenwood case came up.

8 In that case, Greenville County had not even  
9 zoned its entire county. It had pieces of property  
10 that were not subject to zoning. This case  
11 involved sexually oriented businesses, Your Honor.  
12 It didn't involve -- and they were not treated  
13 under the zoning ordinance. So this was --  
14 Greenville County first was going to amend their  
15 zoning ordinance, and then they subsequently did  
16 not, and did it under their police powers because  
17 they wanted to control sexually oriented businesses  
18 in the entire county.

19 So what this case -- what the supreme court  
20 said in this case is that -- it distinguished the  
21 Ion case, because in the Ion case it was the  
22 initiative and referendum. In this case, they used  
23 police powers. And what it said -- it said that  
24 Ion -- the Ion case simply held that a land use  
25 regulation cannot be effected via the referendum

1 and initiative process. That is precisely what  
2 happened in this case, Your Honor. It is not valid  
3 under both the Ion case and the Kenwood case.

4 The big difference with the Greenville County  
5 case is it was not enacted under the petition and  
6 election statute, 5-17-30. That is what the Ion  
7 case held, and what Greenville County said the Ion  
8 case held.

9 We're not saying that Folly Beach could not  
10 enact this ordinance. What we're saying is that  
11 they cannot enact this ordinance under the  
12 initiative and referendum process. Folly Beach  
13 rejected the precise ordinance that it subsequently  
14 adopted after an election, because Folly Beach  
15 ordinance is a land use regulation, the Ion's  
16 holding applies, and Folly Beach could not adopt it  
17 pursuant to 5-17-30.

18 We have a simple argument, Your Honor. If  
19 this is a land use regulation, we feel that you  
20 must grant our motion for summary judgment, because  
21 the South Carolina Supreme Court has given the  
22 legal precedent that says 5-17-30 cannot be used to  
23 enact a land use regulation, and that is precisely  
24 what happened in this case.

25 We make some other arguments, but they are

1 just kind of built in suspenders, Your Honor. We  
2 do believe that zoning ordinances should have  
3 control of the short-term rental because that's how  
4 it always has been. Our clients relied on zoning  
5 when they bought this property, when they built  
6 these properties to be short-term rentals.

7 Folly Beach enacted a zoning ordinance. They  
8 found short-term rentals was a land use. They  
9 allowed them in every district. It's plaintiff's  
10 position, Your Honor, that the proper way to enact  
11 this ordinance would have been to amend the zoning  
12 ordinance. But, in any case, the police powers --  
13 neither the police powers were used, nor an  
14 amendment to the zoning ordinance.

15 We've also made an argument about vested use,  
16 Your Honor. These properties were built to be used  
17 as short-term rentals. They've always been used as  
18 short-term rentals. They were not built to be  
19 single-family residences, which is what they would  
20 have to be used as, or long-term rentals, but that  
21 would also be for single-family use. Most people  
22 aren't going to rent a big house for over a month,  
23 and that's what this comes down to.

24 Folly Beach cites a number of ordinances  
25 which have restricted short-term rentals, Your

1 Honor. None of them were enacted under Section  
2 5-17-30. They were all enacted either in their  
3 zoning ordinances, or under their police powers.  
4 We do not -- we still take the position that this  
5 is a very simple case. You cannot use Section  
6 5-17-30 to enact a land use regulation, and that's  
7 what the South Carolina Supreme Court has said.

8 Your Honor, in closing, plaintiff has  
9 standing to bring this action. It owns properties  
10 used as short-term rentals. They are impacted by  
11 this ordinance. They -- their property values have  
12 been greatly diminished if they can't sell the  
13 short-term rental licenses that go with them.  
14 Judge Curtis has already held that this is a matter  
15 of public importance, and we believe that our  
16 clients definitely have standing.

17 Plaintiff is entitled to summary judgment  
18 because the short-term ordinance is a land use  
19 regulation; and, as such, could not be enacted  
20 pursuant to 5-17-30. Thank you, Your Honor. We  
21 are asking that you grant summary judgment to the  
22 plaintiff. Thank you.

23 THE COURT: Thank you, Counsel.

24 All right.

25 MR. WILSON: Your Honor, I'll go next. I'm

1 Joe Wilson. I'm the attorney for the City of Folly  
2 Beach.

3 I want to make clear what this case is about.  
4 This case is about one land owner attempting to  
5 overturn a referendum adopted by over half of the  
6 residents of this island, putting a cap on  
7 short-term business rental business licenses. This  
8 cap has no impact, whatsoever, on where someone can  
9 operate a short-term rental. It simply creates a  
10 cap on how many short-term rental business licenses  
11 can be issued by the city. The plaintiff in its  
12 four or five properties is currently operating  
13 short-term rentals on each and every one of those  
14 properties. Those properties are all grandfathered  
15 in under this ordinance adopted by referendum. So  
16 I want to make that clear.

17 I think it's important to look at -- I mean,  
18 this case is governed by one statute and two cases.  
19 It is not that complicated. We have the referendum  
20 statute, which is how this cap was created. The  
21 referendum statute at 5-17-10 says the electors of  
22 a municipality may propose any ordinance except an  
23 ordinance appropriating money or authorizing the  
24 levy of taxes.

25 So this state legislature said exactly when

1 you can do an ordinance by referendum and when you  
2 can't, and it said any ordinance except taxes and  
3 appropriating money. So that is where we're  
4 starting from, a very broad grant under the  
5 referendum powers.

6 Now, several years ago, in 2000, the South  
7 Carolina Supreme Court took an extraordinary step  
8 and created an additional exception that does not  
9 exist in the state law, and that was the Ion case,  
10 Ion versus Mount Pleasant. It's important to  
11 understand what happened here.

12 In that case, the Town of Mount Pleasant  
13 spent months, if not years, rezoning a piece of  
14 property, literally changing the zoning of the  
15 property that went through all of the steps that  
16 cities have to go through under the Comprehensive  
17 Planning Act, which means it goes to the planning  
18 commission, you have public hearings, you have all  
19 of these readings before a zoning ordinance can be  
20 passed.

21 So they changed -- after this property was  
22 rezoned under the Comprehensive Planning Act, a  
23 group of citizens submitted a referendum to rezone  
24 that property again. So this was a very unusual  
25 situation where the city had done exactly what it

1 was supposed to do under the zoning act, and then a  
2 group of citizens tried to undo all of that work  
3 under the Comprehensive Planning Act.

4 In that particular situation, the supreme  
5 court said we're not going to allow this to be done  
6 by referendum. And I would urge the Court to just  
7 glance at the Ion versus Town of Mount Pleasant  
8 case. It is very clear that the only reason the  
9 court added this additional exception to the  
10 referendum statute was because of the Comprehensive  
11 Planning Act, because it was a zoning ordinance,  
12 which is not what we're dealing with here today.

13 The court found that the Comprehensive  
14 Planning Act was such an involved procedure that it  
15 couldn't be bypassed by referendum, even though  
16 that is not what the statute says. So it's a very  
17 unusual situation with a court-created exception  
18 that doesn't exist in the referendum statute. So  
19 we have that.

20 The second case that you need to read is  
21 Greenville County versus Kenwood Enterprises,  
22 decided three years after the Ion case. In that  
23 case -- in the Kenwood Enterprises case, Greenville  
24 County was attempting to adopt a regulation of  
25 sexually oriented businesses, and this included a

1 licensing scheme and where those sexually oriented  
2 businesses could be placed. Okay. It started --  
3 this proposal started as a zoning ordinance, but  
4 eventually Greenville County decided that they were  
5 not going to pass this as a zoning ordinance.  
6 They, instead, were going to use its police powers  
7 and regulate sexually oriented businesses through  
8 business licenses.

9         Again, I want to emphasize: This is not just  
10 how they are operating their sexually oriented  
11 businesses, it's also where can they put the  
12 sexually oriented businesses. So Greenville  
13 County, when they were looking at this, stepped  
14 away from the Comprehensive Planning Act, stepped  
15 away from putting this all through the planning  
16 commission and having the public hearings and all  
17 of that stuff, and decided we're just going to pass  
18 it as a business license ordinance. And that's  
19 what they did, even though it regulated the use of  
20 land, and that you could have your sexually  
21 oriented business here, but not there, and you can  
22 do X, Y, and Z in the operation of your sexually  
23 oriented business.

24         So Kenwood Enterprises appealed that decision  
25 using the exact same argument that the plaintiffs

1 are using today. You can't regulate our business  
2 through business licenses. That's what they argue.  
3 You have to go through the zoning ordinance. That  
4 is what the plaintiffs argued. You have to go  
5 through the Comprehensive Planning Act, and you can  
6 only regulate us through zoning ordinance. And the  
7 supreme court rejected that, so did the trial  
8 court, so did two or three North Carolina courts,  
9 all cited in this case.

10 The key ruling here -- and I couldn't -- you  
11 know, you just have to glance at it, but the key  
12 ruling here is cities have the right to regulate  
13 land use in two different ways: They can do it  
14 through a zoning ordinance, or they can do it  
15 through their police powers, including business  
16 licenses. In other words, you can tell people how  
17 to use their properties, what uses can be done to  
18 those properties, either through zoning amendments  
19 or through the city's police powers.

20 So the reason that -- and Greenville County  
21 -- the Kenwood Enterprises' opinion even cited Ion,  
22 because that's where the plaintiffs argued -- much  
23 like the plaintiffs today -- that Ion says you have  
24 to use the zoning (inaudible), and the supreme  
25 court said, No, that's not what Ion means. Ion is

1 only about zoning. But if you go by the Business  
2 License Act through the police powers, you can  
3 regulate land use that way. And it's repeated  
4 again and again. They say while the Comprehensive  
5 Planning Act governs zoning, it simply does not  
6 (inaudible) a legislative intent to completely  
7 prohibit any other local enactments from touching  
8 upon zoning or land use.

9         So it's our position that Kenwood really  
10 decides this case. The City of Folly Beach has  
11 always regulated short-term rentals through  
12 business licenses. Before this referendum ever  
13 came along -- we've gone through several changes --  
14 and the whole history of our Short-term Rental  
15 Business License Act is set up in our briefs. It's  
16 gone on for almost a decade of regulating  
17 short-term rentals, and not in the zoning code, but  
18 in our business license code. So that separates us  
19 -- we're doing what Kenwood Enterprises says we can  
20 do. We can use our business code to regulate  
21 short-term rentals.

22         And unlike the situation in Kenwood  
23 Enterprises where they use the business license  
24 code to tell you where you could put your business,  
25 this doesn't even do this. This -- this is a

1 blanket provision that covers every square inch of  
2 the island. It has no connection to how you are  
3 zoned. The plaintiff -- the irony of all of this  
4 is that the plaintiffs are arguing that they lost a  
5 property right, that their property is no longer,  
6 quote, zoned for short-term rentals, when, in fact,  
7 they're operating short-term rentals on there, and  
8 they continue to do it to this day, and they'll  
9 continue to do as long as they want. That has not  
10 changed. It hadn't been zoned any differently. If  
11 the numbers go below the cap, any person can run a  
12 short-term rental there. It just has nothing to do  
13 with the zoning, whatsoever.

14         So this is a business regulation, and  
15 business regulations are adopted by police powers  
16 and can be adopted by the very broad grant of  
17 referendum powers, which is exactly what happened  
18 here.

19         I just -- in thinking about this, I don't  
20 think there is a real dichotomy between the zoning  
21 code and business license ordinances, but it's  
22 important to remember that the Ion case, which was,  
23 again, a very unusual thing. It was all about  
24 going through the Comprehensive Planning Act. If  
25 you look at the Comprehensive Planning Act, it is

1 very specific about what land development is. Land  
2 development means building a house on land. Zoning  
3 -- just reading a few sections of the Comprehensive  
4 Planning Act, zoning ordinances must be for the  
5 general purposes of guiding development. That's  
6 not what this development -- that is not what this  
7 ordinance is about. Land development means  
8 changing of land characteristics through  
9 development or redevelopment. It means subdivision  
10 into parcels. It means the creation of any other  
11 combination of owner characteristics. It is to  
12 provide adequate light, air, and open space.

13         So the Comprehensive Planning Act and zoning  
14 ordinances, which you can't adopt by referendum,  
15 are about the development of property. These  
16 properties are already developed. We are today  
17 dealing with the regulation of existing properties,  
18 and that is what the states do through their  
19 business license ordinances and through their  
20 general police powers, and that, in turn, means  
21 that they can be adopted by referendum.

22         With regards to any kind of -- these  
23 plaintiffs have no vested rights to continue their  
24 short-term rental business. Business licenses are  
25 not property rights. Licenses confer no property

1 right. They are permits issued pursuant to the  
2 state's police power. That is cited from the Army  
3 Navy Bingo case that is in our briefings.

4 Licenses are neither contracts, nor rights of  
5 property. They are issued to a taxpayer by a  
6 municipality for the privilege of doing business.  
7 They last for one year. And once they're gone, you  
8 do not have a vested right for a reissuance of your  
9 business license. They are not transferable.  
10 Business licenses have never been transferable, so  
11 they have no right to transfer these business  
12 licenses. So they are just extremely different  
13 from the rights created in a zoning ordinance  
14 passed under the Comprehensive Planning Act.

15 I just want to reiterate -- I mean, this case  
16 comes down to Kenwood Enterprises. And the Court's  
17 warning in that case to accept the plaintiff's  
18 expansive reading of Ion would necessarily  
19 eviscerate a county's ability to exercise its  
20 police power if that exercise in any way impacted  
21 land use.

22 So the fact that this referendum indirectly  
23 impacts land use does not make it a zoning  
24 ordinance, does not make it something we have to  
25 only pass by the Comprehensive Planning Act. And

1 by extension, that means this can be adopted by  
2 referendum.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Wilson.

5 Anybody else that hasn't been heard?

6 MR. TURKEWITZ: Yes, Your Honor. This is Rob  
7 Turkewitz. I represent Save Folly's Future, which,  
8 as Counsel had mentioned, is intervened in this  
9 case. Judge Curtis granted our motion. Save  
10 Folly's Future is a grassroots organization that  
11 was instrumental in getting this referendum and the  
12 ordinance passed. The reason that they formed --  
13 and the reason for the referendum -- is because the  
14 investment -- the investment short-term rentals was  
15 changing the character of Folly Beach from a  
16 residential to a commercial rental island, and that  
17 had profound effects throughout the community, and  
18 the people, basically, said we don't want to have a  
19 community that is just commercial short-term  
20 rentals.

21 If you look at some of the facts here, like  
22 the census data from 2010 to 2020, it was  
23 20 percent decrease in the residential population.  
24 So the citizens of Folly Beach, we believe, had a  
25 perfect right to have this referendum put out, and

1 the citizens spoke and decided that we do not want  
2 -- we want to limit the number of investment  
3 short-term rentals.

4 One thing I want to make sure that is clear  
5 is that when this ordinance was passed, there were  
6 about 950 investment short-term rentals, and the  
7 ordinance is limiting the number of rentals to 800.  
8 Well, the additional 150 short-term rentals --  
9 investment short-term rentals were grandfathered  
10 in. So to the extent that it was implied that  
11 those short-term rentals were left out in the cold,  
12 that's just not true.

13 So one of the things we have -- two things.  
14 One is there is a motion filed by the City of Folly  
15 Beach for summary judgment, and I want to note for  
16 the record that we join in that motion. And  
17 counsel for the plaintiff has -- does not object to  
18 that. So we ask the Court to allow us to join in  
19 that motion.

20 We have a motion -- Your Honor, if you want  
21 any questions about that?

22 THE COURT: No.

23 MR. TURKEWITZ: Okay. We have -- our  
24 interest are aligned, so there shouldn't be any  
25 issue as far as joining in that motion.

1           We do have a motion pending, and that is  
2 related to standing. Our position is that -- when  
3 this case was originally filed, the injury that was  
4 being alleged is that they were -- the plaintiff  
5 was unable to get a short-term rental business  
6 license. It turned out that, for whatever reason,  
7 that they had short-term licenses, so they amended  
8 the complaint.

9           Now, really, the only injury that the  
10 plaintiff is -- is -- is faced with is that they  
11 are not allowed to transfer the business license  
12 upon the sale of the property. As Mr. Wilson  
13 mentioned, no short-term rental is allowed to do  
14 that, whether it is a residential short-term or an  
15 investment short-term rental. In fact, business  
16 licenses are not transferable in any situation upon  
17 sale.

18           So our position is that they really have not  
19 -- they have not suffered an injury of fact and do  
20 -- as a result, they cannot prove that they have  
21 standing. Or, in addition, there is a lack of  
22 justiciability with regards to that. We cited a  
23 number of cases in our brief that we think support  
24 that.

25           There is a question of whether or not the

1 public importance exception to standing applies,  
2 and Counsel focused on that, and possibly stands  
3 that there is no standing here, and that she has to  
4 rely on the public importance exception.

5         The fact that Judge Curtis granted Save  
6 Folly's Future's intervention motion based on that,  
7 in part, does not automatically mean that it  
8 applies to the plaintiff. Save Folly's Future is a  
9 grassroots organization that is representing the  
10 citizens, and what -- based on the cases that were  
11 cited, and the cases that are out there, courts  
12 have held where a plaintiff is contesting  
13 legislation or an ordinance, they have granted the  
14 public exception -- public importance exception  
15 where the plaintiff is seeking to act on behalf of  
16 the citizens, for one thing, and also where there  
17 is misconduct involved with the municipality. In  
18 this case, there is no indication that either of  
19 those apply.

20         So we would ask that the Court grant our  
21 motion and deny plaintiff's standing on their -- on  
22 both standing justiciability and also the public  
23 importance exception does not apply.

24         Thank you, Your Honor.

25         THE COURT: Thank you.

1           Anyone else to be heard?

2           MS. PAYLOR: Your Honor, I would like to  
3 respond.

4           THE COURT: Sure.

5           MS. PAYLOR: Thank you.

6           I'll respond to the standing argument first.  
7 Mr. Turkewitz is right. At first, Folly Beach told  
8 my clients that. They had some properties that  
9 they were developing for use of short-term rentals,  
10 and they, at first, told them they could not  
11 operate them as such, so that is when we first  
12 brought it. Subsequently, they changed their mind  
13 and said they could operate them.

14           My clients are acting on behalf of all of the  
15 other short-term rental owners who find themselves  
16 in the same or similar situation. There are plenty  
17 of other people who started to develop properties  
18 to use for short-term rentals who will not ever be  
19 able to get a business license to operate them.

20           This is a public interest. It is a public  
21 interest. Judge Curtis found that. I believe  
22 Mr. Turkewitz even admits that. My clients are  
23 citizens of Folly Beach. They have the right to  
24 bring this, to set aside an ordinance that was  
25 enacted invalidly.

1           Mr. Wilson, you know, his argument basically  
2 is my argument. There are two cases that control  
3 this, Your Honor, and they are the Ion case and the  
4 Greenville County case. He is correct about the  
5 Ion case. His facts are correct. The supreme  
6 court said because zoning has all of these hoops  
7 you have to go through, these citizens could not  
8 undo it. Well, that's very similar to what we have  
9 here. The zoning was in place. Short-term rentals  
10 were allowed in every district.

11           Just like in Mount Pleasant in the Ion case,  
12 Folly Beach spent years studying the short-term  
13 rental process. They also attempted, on at least  
14 two occasions, to pass this very same ordinance  
15 under their police powers. Folly Beach Council  
16 rejected those on each occasion. It only passed  
17 this land use regulation when it went through --  
18 when Save Folly's Future got their petition up and  
19 submitted it to council. They had an election, and  
20 it did go against my client's position.

21           But if you look at the Greenville case, Your  
22 Honor, it is so clear that it supports plaintiff's  
23 position. It says -- and I'm just going to read  
24 from it -- talks about the comprehensive plan,  
25 whether zoning decisions involve the development of

1 an overall zoning system or master plan, the  
2 Comprehensive Planning Act is designed to allow  
3 ample planning and ensure due process for all  
4 interested parties, and that had already occurred  
5 here. Short-term rentals were an allowed use with  
6 no restrictions.

7 Greenville County -- in Greenville County,  
8 the reason they didn't go through their zoning  
9 ordinance is because their zoning ordinance did not  
10 cover all of the land in Greenville County at that  
11 time. There were many patches of properties that  
12 were not included in the zoning ordinance. So the  
13 fear was that these sexually oriented businesses  
14 were just going to go there if they enacted this,  
15 and they didn't want that to happen, so they used  
16 their police powers.

17 What the supreme court says is Ion does not  
18 stand for the proposition that any ordinance  
19 affecting land use must be part of the  
20 comprehensive plan and enacted pursuant to the  
21 Comprehensive Planning Act in a zoning ordinance.  
22 Instead, Ion simply held that a land use  
23 regulation, just like we have in this case, Your  
24 Honor -- cannot be effected via the referendum and  
25 initiative process.

1           The Ion case was not dispositive in the  
2 Greenville County case because they used their  
3 police powers. It is dispositive, Your Honor, in  
4 this case, because that's the only reason town --  
5 city council enacted this ordinance that restricts  
6 the use of land, and they only enacted it because  
7 it came to them under the initiative and referendum  
8 process, Your Honor.

9           Clearly, plaintiffs are entitled to summary  
10 judgment, that the City of Folly Beach could not  
11 enact this ordinance in that way. It either had to  
12 use its police powers, which it rejected on at  
13 least two occasions, or it had to go through a  
14 zoning ordinance, and neither of those happened,  
15 Your Honor. This is the very case that Ion says is  
16 improper.

17           Thank you, Your Honor.

18           THE COURT: Thank you, Counsel.

19           Well, I'll have to take a look at this one.  
20 Am I rushing anybody if you can get me proposed  
21 orders within ten days?

22           MS. PAYLOR: Happy to do it, Your Honor.

23           MR. WILSON: Yes. Yes, Your Honor, that's  
24 fine.

25           THE COURT: Mr. Turkewitz, I mean, you can

1 all combine -- you know, go together, or you can do  
2 separate, whatever.

3 MR. TURKEWITZ: Yes, Your Honor. We can do a  
4 consolidated order.

5 THE COURT: All right. You all can  
6 consolidate it, that will be fine.

7 Ten days okay with everybody?

8 MS. PAYLOR: Yes, sir.

9 MR. WILSON: Yes, sir.

10 MS. PAYLOR: No problem. How do you want us  
11 to present them? Just e-mail them to you or go  
12 through the filing process?

13 THE COURT: E-mailing them will be fine.  
14 Save a lot of papers.

15 MS. PAYLOR: Thank you, Your Honor.

16 THE COURT: Okay. Well, this is an  
17 interesting case.

18 MR. WILSON: Yes, Your Honor.

19 THE COURT: Looks like every time I come to  
20 Charleston it is something involving Folly Beach or  
21 an apartment complex or something.

22 But, anyway. Okay. Ten days, and we'll take  
23 a look at it. Thank you all. Good seeing you.

24 (Whereupon, the WebEx hearing concluded.)

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF TRANSCRIBER**

Case Name: Folly East Indian Co., LLC v. City of Folly Beach

Case No.: 2023-CP-10-0264

Date of Hearing: January 12, 2024

\* \* \* \* \*

I, Natalie Dahl, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording.**

I do further certify that I am neither of kin, counsel, nor have interest to any party hereto.

*Natalie Dahl, RPR*

\_\_\_\_\_  
Natalie Dahl, Registered Professional Reporter and transcriber for the State of South Carolina