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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

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.

BRIEF OF RESPONDENT

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II. **DOES THE PETITION AND THE CAP ON BUSINESS LICENSEES INTERFERE WITH APPELLANT'S VESTED RIGHTS?**

STATEMENT OF THE CASE

Respondent City of Folly Beach generally agrees with the Appellant Folly East Indian Co., LLC's Statement of the Case (designated "Procedural History" in Appellant's Brief). Appellant's Brief, Pages 5-6.

Folly Beach obviously does not agree with Appellant's argumentative "Statement of the Case and Facts." Appellant's Brief, Pages 1-5. This is not a "Statement of the Case" as required by Rule 208(b)(1)(C), but a summary of Appellant's argument and an argumentative recitation of the facts.

STANDARD OF REVIEW

The parties filed cross-motions for summary judgment on a distinct legal issue: can the Initiative and Referendum process set forth in South Carolina Code §§ 5-17-10, *et seq.* amend the City's Business License Ordinance. "When the parties file cross-motions for summary judgment, the issue becomes a question of law for the [c]ourt to decide de novo." *Meier v. Burnsed*, 438 S.C. 362, 882 S.E.2d 863, 868 (Ct. App. 2022), *cert. granted* (Jan. 9, 2024) (quoting *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 854 S.E.2d 836, 837 (2021)).

"[T]he interpretation of a statute is a question of law for the [c]ourt to review de novo." *Calhoun Cnty. Council*, 854 S.E.2d at 837. "Determining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law de novo." *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 417 S.C. 562, 790 S.E.2d 783, 785 (Ct. App. 2016), *aff'd as modified*, 424

S.C. 542, 819 S.E.2d 124 (2018) (quoting *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 760 S.E.2d 785, 788 (2014)). "Questions of law may be decided with no particular deference to the trial court." *Quicken Loans, Inc. v. Wilson*, 425 S.C. 574, 823 S.E.2d 697, 700 (Ct. App. 2019) (quoting *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432, 434 (2011)). "In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court." *Buchanan*, 790 S.E.2d at 785 (quoting *Lambries*, 760 S.E.2d at 788). "The appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and public policies of this state and the [c]ourt's sense of law, justice, and right." *Id.* at 785 (quoting *Lambries*, 760 S.E.2d at 788).

STATEMENT OF FACTS

Appellant Folly East Indian Co., LLC owns and operates seven fully licensed short-term rentals located in the City of Folly Beach. Amended Complaint, Paragraphs 1, 7. In this action, Appellant challenges a Petition, R. pp. 326-327, that "grandfathers in" all of Appellant's short-term rental business licenses, so Appellant can and does continue to rent each of its rentals to this day without any interference from the Petition or the cap on short-term rental business licenses the Petition created. Affidavit of Aaron Pope, Folly Beach City Administrator, Paragraph 18, Exhibit No. 4 to Folly Beach Motion for Summary Judgment, R. p. 343.

The Petition was spurred by the explosive growth of short-term rentals within the City. Pope Affidavit, Paragraphs 7-8, Record on Appeal ("R.") pp. 339-340. Short-term rental licenses grew from 329 in 2015 to 923 in 2020, nearly tripling over five years. That growth continued into 2022 reaching 1,196 short term rental licenses. By 2022, half of all residential parcels within the City were licensed for short-term rentals. *Id.*

In response, the City began considering amendments to its short-term rental ordinance, codified as part of the City's Business Regulations. City of Folly Beach Ordinance, Title XI: Business Regulations, Chapter 117: Short Term Rentals, Exhibit No. 2 to City's Motion for Summary Judgment, R. pp. 328-333 (hereinafter "Short-Term Rental Ordinance"). The City has always regulated short-term rentals through the City's Business License Code. Pope Affidavit, Paragraphs 4-7, R. pp. 337-339. The Business License Code is not part of the City's Zoning Code.

In May of 2021, the City began to examine new amendments to Chapter 117: Short Term Rentals. The City first established a Short-Term Rental Committee made of staff, citizens, and City Board members. Pope Affidavit, Paragraph 9, R. p. 340. The Committee reviewed national case studies and other literature on short-term rental regulations, including caps on the issuance of short-term business licenses, which are commonly used throughout the country to prevent short-term rentals from overwhelming residential neighborhoods. After over a year of studying the issues, the Short-Term Rental Committee issued its recommendations, including a cap on the number of short-term rental business licenses. *Id.*

In June of 2022, the Mayor proposed amendments to Chapter 117 based on the committee's recommendations. The Mayor's proposal included limiting short-term rental business licenses for non-owner occupied properties to 800. Pope Affidavit, Paragraph 10, R. p. 341. City Council declined to adopt the cap by a vote taken on June 28, 2022.

In October 2022, Intervenor Save Folly's Future submitted a Petition, R. pp. 326-327, to the City of Folly Beach to amend the City's Short-Term Rental Ordinance, R. pp. 328-333, to limit the number of short-term rental business licenses issued to "Investment Short Term Rentals" to 800. "Investment Short-Term Rentals" are dwelling units that are not claimed as legal residences. Petition, R. p. 326 (hereinafter "ISTR"). "Owner-Occupied Short-Term Rentals" are claimed as a

legal residence and are not subject to the cap (hereinafter "OSTR"). Short-Term Rental Ordinance, Section 117.01, R. p. 328.

The Petition contained over 450 signatures, significantly more than the 15% of registered voters required. On November 29, 2022, the Petition was certified by the Charleston County Election Commission. Pope Affidavit, Paragraph 12, R. p. 341.

Pursuant to South Carolina Code § 5-17-30, the City can either adopt the ordinance proposed in the Petition or hold an election for all qualified electors to vote on the Petition. The Petition came before City Council on December 13, 2022, and City Council failed to enact the ordinance proposed by the Petition. Consequently, by State law, the City *must* hold an election on the Petition. South Carolina Code § 5-17-30; Pope Affidavit, Paragraph 13, R. p. 342.

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. The Charleston County Election Commission certified the results of the election on February 9, 2023. Pope Affidavit, Paragraph 14, R. p. 342. By force of State law, the Amendment is now part of the City's Short-Term Rental Ordinance, codified as Chapter 117, of the City's Business Regulations, Title XI, R. pp. 328-333.

The Petition did not rezone Appellant's properties or any other properties. Indeed, Appellant continues to rent its properties. The Petition did not create any zoning districts or change the City's Zoning Code, contained in Title 15 of the City's Code of Ordinances. Specifically, short-term rentals remain an allowable use in all of the City's zoning districts. The Petition solely amended the City's Short-Term Rental Ordinance to set a cap on the number of ISTR business licenses issued by the City. Short-Term Rental Ordinance, R. pp. 328-333.

ARGUMENT

I. THE INITIATIVE AND REFERENDUM PROCESS CAN AMEND A MUNICIPALITY'S BUSINESS LICENSE REGULATIONS.

This appeal involves a simple issue that is easily answered by the plain language of the applicable statute: Can the Initiative and Referendum process set forth in South Carolina Code §§ 5-17-10, *et seq.* amend a municipality's business license regulations?

The plain language of South Carolina's Initiative and Referendum statute makes clear that *any ordinance* other than one that appropriates money or levies a tax can be adopted by Referendum:

> 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.

South Carolina Code Ann. § 5-17-10 (emphasis added).

Based on the plain language of the statute, a municipality's business license ordinance can be amended by Initiative and Referendum so long as it does not appropriate money or levy a tax. The Petition did not appropriate money or levy a tax.

Appellant 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. The Court ruled that "*zoning* by initiative and referendum is not allowed in South Carolina." *Id.* at 725 (emphasis added).

The *I'On* decision is not applicable here because the Petition did not seek to change the City's Zoning Code and did not rezone any property. Rather, the Petition amended the City's

Short-Term Rental Ordinance, which is codified as part of the City's Business Regulations, not the City's Zoning Code. Short-Term Rental Ordinance, R. pp. 328-333. The *I'On* decision only bars the Initiative and Referendum process from amending a municipality's zoning code, which must be adopted pursuant to the procedures set out in South Carolina Local Government Comprehensive Planning Enabling Act of 1994, South Carolina Code §§ 6-29-310, *et seq*. (hereinafter "Comprehensive Planning Act). Since the Comprehensive Planning Act does not encompass business regulations, *I'On* is not applicable to this Petition.

Folly Beach's Short-Term Rental Ordinance is, and always has been, part of the City's Business Regulations, not the City's Zoning Ordinance. Pope Affidavit, Paragraphs 4-10, R. pp. 337-341. The City first adopted its Short-Term Rental Ordinance in 2010 as part its Business Regulations contained in Title XI of the City's Municipal Code. Pope Affidavit, Paragraph 5, R. p. 338. For the past 14 years, the Short-Term Rental Ordinance has been amended multiple times, but it has always remained part of the Business Regulations.

The City's Short-Term Rental Ordinance has never been part of the City's Zoning Ordinance, contained in Title XV of the City's Code of Ordinances. Pope Affidavit, Paragraph 4, R. pp. 337-338. The Short-Term Rental Ordinance was not adopted or amended pursuant to the procedures set out in South Carolina Local Government Comprehensive Planning Enabling Act of 1994, South Carolina Code §§ 6-29-310, *et seq*. Pope Affidavit, Paragraph 4-6, R. pp. 337-339. Both the original Short-Term Rental Ordinance and all the amendments to the Short-Term Rental Ordinance have been adopted as a normal ordinance after two readings by City Council. South Carolina Code § 5-7-270.

As Appellant has acknowledged, Appellant's Brief, Page 3, when the City was considering a cap on short-term rental business licenses prior to the Petition, the City did not treat the

amendment as a zoning ordinance that went through the Planning Commission. Rather, the Mayor proposed a set of amendments to the City's Short-Term Rental Ordinance that included a cap on short-term rental business licenses. Pope Affidavit, Paragraph 10, R. p. 341.

In short, the Short-Term Rental Regulations are not part of the City's Zoning Ordinance and are not governed by the Comprehensive Planning Act. The Petition made no changes to the City's Zoning Ordinance and, therefore, does not run afoul of the decision in *I'On*.

Moreover, 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 . . ." *Greenville Cnty. v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428, 432 (2003), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005) (*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." *Kenwood Enterprises, Inc.*, 577 S.E.2d 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. And by extension, ordinances adopted through the Initiative and Referendum process are not barred by *I'On* simply because they touch upon the use of land. If the petition, like the one in this case, amends a business license ordinance adopted by police powers, it is not a zoning ordinance and, therefore, not barred by *I'On*.

A. THE *I'ON* DECISION ONLY EXCLUDES ZONING ORDINANCES FROM THE INITIATIVE AND REFERENDUM PROCESS.

Appellant 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. The Court ruled that "*zoning* by initiative and referendum is not allowed in South Carolina." *Id.* at 725 (emphasis added).

The Supreme Court took the unusual step of adding an additional exclusion to Section 5-17-10 because it found that the Initiative and Referendum process was not compatible with the 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 decided that "the detailed nature of zoning acts indicates a legislative intent that zoning matters must be decided only in the manner specified in those acts." *Id.* at 720-21. The Court found that the Initiative and Referendum process to amend a zoning ordinance could result "in arbitrary decisions and patchwork zoning with little rhyme or reason," and would nullify carefully developed rules for adoption of zoning provisions. *Id.* at 719-21.

> We decline to interpret the "any ordinance" language in Section 5–17–10 to encompass zoning by initiative and referendum. The obvious incompatibility between the initiative and referendum process and the comprehensive Title 6 provisions indicates the Legislature did not intend to allow voters to enact more complex zoning measures by initiative and referendum. Furthermore, the Title 6 provisions enacted in 1994 address the matter of zoning in detail. We conclude the Legislature intended for this more specific and more recent enactment to take precedence over the general initiative and referendum process enacted thirty-seven years ago.

Id. at 721. The Court's ruling was clearly limited to *complex zoning measures* that are subject to the Comprehensive Planning Act and can only be amended pursuant to the procedures of the Comprehensive Planning Act.

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). "'Land development' means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics." South Carolina Code § 6-29-1110(2). In other words, the Comprehensive Planning Act, and the decision in *I'On*, are primarily concerned with ordinances that regulate the *development* of land and are contained in a municipality's zoning code.

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 challenged petition in *I'On* was a classic zoning ordinance. That petition proposed to rezone a 243-acre tract from Planned Development to R-1 (residential), quite obviously a zoning measure. *Id.* at 717-18. The tract had already been through the lengthy zoning regulatory process dictated by the Comprehensive Planning Act to change the zoning from R-1 to Planned Development. This included review and approval by the Town's Zoning Board and adoption by Town Council. It was undoubtedly a zoning measure adopted in accord with the state's zoning

laws. After the rezoning, a referendum and petition then sought to directly undo this zoning process by reverting the property back to R-1. The petition was clearly a zoning ordinance, whereas the Petition in this matter is clearly a business license ordinance.

In short, both the facts and the Court's reasoning in *I'On* show that the ruling only applies to amendments to zoning ordinances adopted pursuant to the Comprehensive Planning Act. Since this court-created exclusion is not contained in the language of Section 5-17-10, it should be read narrowly and applied only to zoning ordinances. *Kenwood Enterprises, Inc.*, 577 S.E.2d at 433 ("To accept [plaintiffs'] expansive reading of *I'On* would necessarily eviscerate a County's ability to exercise its police power if that exercise in any way impacted land use."). Since the Petition in this matter did not amend any zoning ordinance, *I'On* does not control this matter.

B. THE PETITION WAS NOT A ZONING ORDINANCE.

1. The Petition amended the City's Business Code, not the City's Zoning Code.

The Petition in this case was not a zoning ordinance governed by the Comprehensive Planning Act. It did not amend the City's Zoning Ordinance. The Petition changed no language in the City's Zoning Code, contained in Title XV of the City's Code of Ordinances. The Petition only amended the City's existing Business Regulations, contained in Title XI of the City's Code of Ordinances. Short-Term Rental Ordinance, R. pp. 328-333.

Folly Beach's Short-Term Rental Ordinance is, and always has been, part of the City's Business Regulations, not the City's Zoning Ordinance. Pope Affidavit, Paragraphs 4-10, R. pp. 337-341. The City first adopted its Short-Term Rental Ordinance in 2010 as part its Business Regulations contained in Title XI of the City's Municipal Code. Pope Affidavit, Paragraph 5, R. p. 338. For the past 14 years, the Short-Term Rental Ordinance has been amended multiple times,

but it has always remained part of the Business Regulations. Pope Affidavit, Paragraph 6, R. pp. 338-339.

The City's Short-Term Rental Ordinance has never been part of the City's Zoning Ordinance, contained in Title XV of the City's Code of Ordinances. Pope Affidavit, Paragraph 4, R. pp. 337-338. The Short-Term Rental Ordinance was not adopted or amended pursuant to the procedures set out in Comprehensive Planning. Pope Affidavit, Paragraph 6, R. pp. 338-339. Both the original Short-Term Rental Ordinance and all the amendments to the STR Ordinance have been adopted as a normal ordinance after two readings by City Council. South Carolina Code § 5-7-270.

As Appellant has acknowledged, Appellant's Brief, Page 3, when the City was considering a cap on short-term rental business licenses prior to the Petition, the City did not treat the amendment as a zoning ordinance that went through the Planning Commission. Rather, the Mayor proposed a set of amendments to the City's Short-Term Rental Ordinance that included a cap on short-term rental business licenses. Pope Affidavit, Paragraph 10, R. p. 341.

In short, the Short-Term Rental Regulations are not part of the City's Zoning Ordinance and are not governed by the Comprehensive Planning Act. The Petition made no changes to the City's Zoning Ordinance and, therefore, does not run afoul of the decision in *I'On*.

2. <u>The STR Ordinance amended by the Petition does not look or act like a zoning ordinance.</u>

In addition to not being codified in the City's zoning code, the City's Short-Term Rental Ordinance amended by the Petition looks nothing like a zoning ordinance. The Petition amended the City's Business License Code because that was clearly the proper place to put them. The Petition and Amendment creating the cap on business licenses and the City's Short-Term Rental Ordinance are undoubtedly regulations of businesses, not land. The Petition limited the number

of business licenses issued for short-term rentals. The Petition applied the cap to the entire City. It did not limit the operation of short-term rentals to any particular district, but instead regulated the operation of short-term rentals uniformly throughout the entire City.

The Petition did not restrict Appellant's use of its property. Pope Affidavit, Paragraph 18, R. p. 343. The Petition did not rezone any property, as occurred in *I'On*. The Petition did not impact the development or use of any property. All residential properties in the City can still operate short-term rentals so long as they have a business license for same. The Petition did not impact the development or use of Appellant's property. Appellant continues to operate short-term rentals on all its properties and can continue to do so in the future so long as it has a business license to do so. Pope Affidavit, Paragraph 18, R. p. 343. In other words, the amendment to the Short-Term Rental Ordinance simply places additional conditions on the issuance of licenses to operate a short-term rental. It places no restriction on any property in the City. Pope Affidavit, Paragraph 4, R. pp. 337-338.

The Petition did not result "in arbitrary decisions and patchwork zoning with little rhyme or reason." *I'On*, 526 S.E.2d at 721. It did not nullify carefully developed rules for adoption of zoning provisions. *Id.* It merely adopted a cap on business licenses that the City had studied for over a year, but Council declined to adopt. Pope Affidavit, Paragraphs 9-10, R. pp. 340-341.

The regulation of business through the issuance of business licenses is not the same thing as a zoning ordinance. Licenses confer no property right. Rather, they are permits to operate a business issued pursuant to the government's general police power. *Army Navy Bingo, Garrison No. 2196 v. Plowde*n, 281 S.C. 226, 314 S.E.2d 339 (1984)*; Feldman v. South Carolina Tax Comm'n,* 203 S.C. 49, 26 S.E.2d 22 (1943) (liquor licenses). Ordinances that regulate businesses, even those that control where a business may be operated, are considered business regulations

adopted pursuant to the municipality's general police powers, not part of the zoning ordinance. *Kenwood Enterprises*, 577 S.E.2d at 428. In short, business license ordinances control how a business is operated.

The Short-Term Rental Ordinance amended by the Petition is not a zoning ordinance under state law. The goals of a zoning ordinance are entirely different. Zoning ordinances are concerned with the *development* of a piece of property, that is the structures that are to be built on the property. South Carolina Code § 6-29-1110(2) (Land development means "the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments . . ."). Zoning ordinances "must be for the general purposes of guiding *development* in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." 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 Short-Term Rental Ordinance and Petition do none of these things. The Petition is not a zoning ordinance. The Petition 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 business licenses that the City will issue, not where those businesses can be conducted. The cap does not regulate the development of any property. For example, Appellant's properties have already been developed. After the properties

were developed, Appellant obtained ISTR licenses, which they still hold to this day despite the Petition and cap. Pope Affidavit, Paragraph 18, R. p. 343. No state law requires that the City follow the Comprehensive Planning Act to amend its Business Regulations. If this were a requirement, the City's entire Business Regulations Code, as well as the Business Regulation Codes of most other municipalities, would be invalid. *Kenwood Enterprises*, 577 S.E.2d at 433 ("To accept [plaintiffs'] expansive reading of *I'On* would necessarily eviscerate a County's ability to exercise its police power if that exercise in any way impacted land use.").

C. MUNICIPALITIES ARE AUTHORIZED TO REGULATE THE USE OF LAND THROUGH BUSINESS REGULATIONS.

South Carolina's Home Rule Act, South Carolina Code § 5-7-30 authorizes Folly Beach to regulate short-term rentals through the issuance of business licenses or through any other police power. The South Carolina Supreme Court has clearly ruled that ordinances impacting the use of property can be adopted by either police powers or the zoning code. *Kenwood Enterprises*, 577 S.E.2d at 432. Thus, even though the Petition can impact the use of property that has not been grandfathered in like Appellant's property, this potentiality does not make the Petition part of the zoning code where it would run afoul of the *I'On* decision. In other words, both the City and its citizens can amend the Business Code and the Short-Term Rental Ordinance without following the rules of the Comprehensive Planning Act.

1. The Home Rule Act grants municipalities, and by extension its citizens, the authority to adopt ordinances touching upon the use of land through the general police powers.

The Home Rule Act grants municipalities broad police powers, "including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government

in it." South Carolina Code § 5-7-30. This includes the right to "levy a business license tax on gross income." *Id.*

The South Carolina Constitution confirms the broad powers granted under Home Rule are to be liberally construed in favor of the local government:

> The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

South Carolina Const. art. VIII, § 17.

"Although Section 5–7–30 lists various specific powers possessed by municipalities, . . . the broad grant of power stated at the beginning of the statute is not limited by the specifics mentioned in the remainder of the statute." *Hospitality Association of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 464 S.E.2d 113, 118 (1995). To hold otherwise would directly contradict the Home Rule Act, which states that "the specific mention of particular powers shall not be construed as limiting in any manner the general powers of ... municipalities." *Id.* Further, a limited reading of the Home Rule Act is inconsistent with the liberal rule of construction mandated by Article VIII, § 17.

"This grant of power for purposes of municipal legislation is as broad and comprehensive as it was within the power of the State to delegate. It is a grant of the sovereign police power of the State itself, limited alone (1) by the territorial confines of the municipality authorized to exercise it, and (2) by the proviso that legislation thereunder shall not be inconsistent with the laws of the State." *Charleston v. Jenkins*, 243 S.C. 205, 133 S.E.2d 242, 243 (1963). Thus, the Home Rule Act authorizes the City to regulate businesses, including short-term rentals, as part of its general powers. The City does not, and has never, relied upon the grant of powers from the Comprehensive Planning Act to regulate short-term rentals.

2. A hundred years of South Carolina jurisprudence confirms that municipalities, and its citizens, can exercise their police powers to regulate businesses.

A hundred years of South Carolina jurisprudence confirm that municipalities can exercise their police powers to regulate a business. In *Clegg v. City of Spartanburg*, 132 S.C. 182, 128 S.E. 36, 37 (1925), the Supreme Court ruled that a city can use its police powers to completely ban a business, pool rooms, that is allowed under State law. In *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735, 739 (1943), the Court stated that "[s]uch power to regulate valid business enterprises, including those which have been licensed by the State, has been exercised by municipalities ever since their inception with reference to a variety of legal enterprises of a commercial nature, particularly with reference to business transactions on Sunday.".

More recent opinions have also recognized that the government may "regulate any trade, occupation or business, the unrestrained pursuit of which might affect injuriously the public health, morals, safety or comfort; and in the exercise of the power particular occupations may be ... required to be conducted within designated limits." *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 596 S.E.2d 917, 924 (2004) (quoting *City of Charleston v. Esau Jenkins*, 243 S.C. 205, 133 S.E.2d 242, 244 (1963)). *See also Main v. Thomason*, 342 S.C. 79, 535 S.E.2d 918, 922–23 (2000), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005) ("The State has a legitimate interest in preserving property and can properly exercise its police powers to do so."); *Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 476 S.E.2d 477, 479 (1996) ("The individual's privilege to use property freely is always subject to a legitimate exercise of the police power under which new burdens and restrictions may be imposed when the public welfare demands.").

In contrast, the Comprehensive Planning Act governs the adoption of zoning codes by local governments. The Comprehensive Planning Act makes no reference to business licenses. It is solely concerned with zoning land and planning for the *development* of land. No court has ever suggested that municipalities must follow the procedures set out in the Comprehensive Planning Act for business license ordinances or the regulation of businesses.

3. The *Kenwood Enterprises* decision confirms that municipalities, and its citizens, can regulate the use of land either through zoning rules or police powers.

The central question in this matter is whether the City has the option to use its business license powers under the Home Rule Act to control the operation of businesses or, as argued by Appellant, can the City *only* use its zoning powers under the Comprehensive Planning Act to regulate the use of land. Fortunately, the South Carolina Supreme Court has ruled on this very question. *Kenwood Enterprises, Inc.*, 577 S.E.2d at 432.

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 Appellant 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 Comprehensive Planning Act. *Id.* at 431-32. The plaintiffs in *Kenwood Enterprises*, like Appellant 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*, 499 S.E.2d 780) (emphasis in original). Numerous other courts across the country have rejected Appellant's argument that ordinances regulating land use can only be adopted as a zoning ordinance. *See, e.g., Artistic Ent., Inc. v. City of Warner Robins*, 331 F.3d 1196, 1204 (11th Cir. 2003) ("[N]ot every ordinance regulating the use of land constitutes a zoning ordinance."); *Fairfax MK, Inc. v. City of Clarkston*, 274 Ga. 520, 555 S.E.2d 722, 724 (2001) ("The regulation of certain types of businesses due to their inherent character is not general and comprehensive like zoning. Instead, such regulation is special and limited in scope and governed by consideration of the circumstances, at the time of application, as to the particular business under consideration, the applicant, and even the location proposed. . . . If a local ordinance applies to a particular activity wherever it is carried out in the town and does not suspend or limit the zoning ordinance, it 'is not a zoning law merely because it touches the use of land.'") (*quoting Town of Islip v. Zalak*, 165 A.D.2d 83, 91, 566 N.Y.S.2d 306, 310 (1991) ("[C]ompliance with statutory zoning procedures is needed only when the local law in question represents an exercise of the local government's general "zoning" powers, rather than an exercise of a more specific "police" power. ")); *City of Carmel v. Martin Marietta Materials, Inc.*, 883 N.E.2d 781, 787 (Ind. 2008) ("In point of fact, several Indiana decisions have upheld ordinances that regulated how property was used and maintained, but were not zoning ordinances."); *Am. Sign & Indicator Corp. v. Town of Framingham,* 9 Mass. App. Ct. 66, 68, 399 N.E.2d 41, 43 (1980) ("[N]ot all ordinances or by-laws which regulate land use are zoning laws and that only the latter need conform with the Zoning Enabling Act."); 8 McQuillin, The Law of

Municipal Corporations, § 25:16, *Zoning and licensing* (3d ed.) ("Not every ordinance regulating the use of land constitutes a zoning ordinance.").

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." *Kenwood Enterprises, Inc*., 577 S.E.2d at 432 (citing *Bugsy's,*530 S.E.2d 890). Rather, local governments are entitled to regulate businesses through their general police powers granted under the Home Rule Act, South Carolina Code § 5-7-30.

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

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

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

Thus, even if the Petition capping business licenses affect land use, as argued by Appellant, 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 made part of a municipality's business regulations, as the City has opted to do. *Kenwood Enterprises*, 577 S.E.2d at 432. Indeed, Appellant has admitted that the City could have adopted this cap pursuant to its police powers. Appellant's Consolidated Memorandum, Page 2, R. p. 500. As such, the Petition that created the cap does not implicate the City's zoning code, the

[1] Appellant primary argument is 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. Indeed, the Court says exactly this in the preceding sentence.

Comprehensive Planning Act, or the decision in *I'On*. South Carolina Code Ann. § 5-17-10 ("The electors of a municipality may propose *any ordinance*, except an ordinance appropriating money or authorizing the levy of taxes.") (emphasis added).

D. APPELLANT'S ARGUMENTS MISSTATE THE LAW.

Appellant ignores this clear South Carolina law and simply misstates the holdings of both South Carolina courts and foreign courts.

First, Appellant claims that other jurisdictions have held that a cap on short-term rentals must be adopted by a zoning ordinance. Appellant's Brief, Page 7. This is not the holding of the cases cited by Appellant. Two of the cases cited by Appellant acknowledge that short-term rentals can be regulated both through the zoning code and the business code. In *South Weber City v. Cobblestone Resort, LLC*, 511 P.3d 1207 (2022), the court examined short-term rental regulations adopted in both the zoning code and the business license code and upheld the City's right to require a business license to operate a short-term rental.). In *Chaumont v. City of New Orleans*, 302 So.3d 39, 51-53 (2020) the court again examined short-term rental regulations adopted both in the zoning code and in the business license code, and the court concluded that the ordinances were constitutional, stating that "operating a short-term rental is a privilege, not a right. *See* Sec. 26-615(c) (stating that short-term rental permits are 'regulated privileges, not rights, and can be revoked or suspended by the city in accordance with the provisions provided herein.')" So, these opinions actually support the City's position.

In *Keen v. City of Manhattan Beach*, 77 Cal.App.5th 142 (2022), the California Court of Appeals enforced a California state rule requiring that coastal cities in California must seek approval for amendments to its ordinances from the California Coastal Commission. The dispute was whether there was an amendment at all. *Id.* at 146 ("But the City has stoutly maintained there

has been no amendment, because its *old* ordinances always prohibited short-term rentals."). The Court did not rule that regulations of short-term rentals can only be created by zoning amendments. Moreover, the court's holding arose from its analysis of California statutory requirements, and has no applicability to South Carolina. It certainly in no way contradicts the holding in *Kenwood Enterprises* that cities are free to use business license ordinances to regulate short-term rentals.

In *Zaatari v. City of Austin*, 615 S.W.3d 172 (Tx.Ct.App. 2019), the Texas Court of Appeals invalidated a complete and retroactive ban on non-owner-occupied short-term rentals on the grounds that it violated *Texas's* ban on retroactivity laws. *Id.* at 188-92. Obviously, Texas's retroactivity laws do not apply in South Carolina. Further, the Petition in this matter 1) did not ban all non-owner occupied short-term rentals, and 2) grandfathered in all existing licenses. So, there is no question of retroactivity here. The Petition only applies prospectively to future license applicants.

More to the point, at no point does the *Zaatari* court discuss the use of business regulations to regulate short-term rentals. In *Zaatari*, the challenged ordinance banning all "ISTRs" was a zoning ordinance. *Id.* at 180 ("[T]he City adopted an ordinance to regulate Austinites' ability to rent their properties through amendments to the zoning and land-development chapters of its municipal code."). The words "business license" appear no where in the decision. So, *Zaatari* was clearly not grappling with the issue before this Court.

Next, Appellant claims that all other municipalities have adopted short-term rental restrictions and caps through zoning ordinances only. Appellant's Brief, Page 7. This is not true either. Several other South Carolina municipalities have adopted short-term rental restrictions in their business license regulations as part of their police power, including Town of Bluffton, Exhibit No. 22 to Folly Beach Reply Memorandum, R. pp. 512-515, City of Clemson, Exhibit No. 23, R.

pp. 516-520, City of Columbia, Exhibit No. 24, R. pp. 521-527, City of Hilton Head, Exhibit No. 25, R. pp. 528-533, Town of Kiawah Island, Exhibit No. 26, R. pp. 534-542, and the Town of Port Royal, Exhibit No. 27, R. pp.543-544. Thus, including Folly Beach, at least seven municipalities have adopted regulations governing short-term rentals that are not part of the zoning code and were not adopted pursuant to the South Carolina Comprehensive Planning Act.

Next, Appellant claims that the Petition is invalid because no regulation touching upon the use of land can be effectuated by Referendum and Initiative. Appellant's Brief, Pages 8-14. This argument is based on an interpretation of both the *I'On* and *Kenwood Enterprises* decisions that ignores the basis for both opinions. As set forth above, taken together the two opinions are clear that 1) only zoning ordinances are judicially exempt from the Referendum and Initiative process, and 2) this exemption does not extend to all ordinances that touch upon the use of land.

The ruling in *I'On* is plainly based on the Supreme Court's holding that the Comprehensive Planning Act has exempted all zoning ordinances from the Referendum and Initiative Process. This ruling only applies to zoning ordinances that must be passed pursuant to the Comprehensive Planning Act because adopting such ordinances by Referendum would nullify carefully developed rules governing zoning. *I'On*, 526 S.E.2d at 720-22. This was the entire reasoning behind the Court's decision: that the carefully developed zoning rules created by the Comprehensive Zoning Act completely preempted any other method to adopt zoning rules. The converse is also true: if an ordinance is not a zoning ordinance and is not required to be adopted pursuant to the Comprehensive Zoning Act, then that ordinance can be adopted by Referendum. South Carolina Code Ann. § 5-17-10 ("The electors of a municipality may propose *any* ordinance, except an ordinance appropriating money or authorizing the levy of taxes.") (emphasis added).

As explained by the Court in *Kenwood Enterprises*, just because an ordinance touches upon the use of land, does not mean that it must be adopted pursuant to the Comprehensive Zoning Act.:

> *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. 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).

In the context of the two cases, it is quite clear that the courts used the term "land use regulation" to reference zoning ordinances that must be adopted by the Comprehensive Planning Act, not to reference any ordinance touching upon the use of land. Appellant's interpretation of "land use regulation" in this single sentence to cover any ordinance affecting land use directly contradicts the reasoning in both *I'On* and *Kenwood Enterprises*. Indeed, the language in the preceding sentence in *Kenwood* literally states the exact opposite of Appellant's tortured interpretation of "land use regulation." The holding in *I'On*, as clarified by the Court in *Kenwood Enterprises*, "does not stand for the proposition that **any** ordinance affecting land use must be part of the comprehensive plan." Rather, it only requires that zoning ordinances (referenced as "land use regulations") must be passed pursuant to the Comprehensive Plan Act and, thus, are exempt from the Referendum process. In other words, the Court in *Kenwood Enterprises* was plainly using "land use regulations" to reference zoning ordinances, not "**any** ordinance affecting land use."

Appellant also misinterprets what the Petition adopting the business license cap has done to Appellant's own properties. The cap has not rezoned or altered the allowable uses of Appellant's properties or any other property within the City. Appellant can and still does rent its properties as

a short-term rental because it has an ISTR business license to do so for all of its properties. In addition, Appellant, or any other property owner, can still rent its property long term or as an owner-occupied short-term rental. The property is still zoned residential, which includes short-term rentals and can be used as a short-term rental so long as the owner has a business license for short-term rentals. So, this cap and the Petition do in fact impact the right to operate a business, but do not impact the right to use the property in a certain way.

In conclusion, the Petition was a response to the explosive growth of businesses in the City's residential areas. When the Petition was adopted by a majority of voters, these businesses occupied half of all residences. Pope Affidavit, Paragraph 8, R. pp. 339-340. Council elected not to impose a cap to limit those businesses, but the Petition did. The Petition did not change any zoning ordinance. It did not alter any zoning standards. It did not alter the types of dwellings that could be constructed on a lot. It had no impact on the development of any lot. It does not bar the operation of short-term or long-term rentals on any lot or in any particular zoning district.

The Petition simply adopted a limit on the number of business licenses that could be issued in all districts throughout the City. As such, it was not a zoning ordinance and is not invalid under the *I'On* ruling.

II. THE PETITION AND THE CAP DO NOT INTERFERE WITH APPELLANT'S VESTED RIGHTS.

Appellant next claims that the Petition and Amendment to Folly Beach's Short-Term Rental Ordinance infringes upon Appellant's vested rights under South Carolina's Vested Rights Act, South Carolina Code § 6-29-1510, *et. seq.* Appellant's Brief, Pages 14-19. As pointed out above, Appellant actually holds ISTR business licenses on all of its properties and continues to rent those properties, so it is hard to understand how Appellant's rights have been infringed upon at all.

Perhaps recognizing this, Appellant also argues that it has the right to transfer its short-term rental businesses and licenses to third parties.

These arguments ignore clear law governing business licenses. In short, business licenses 1) create no property rights, 2) cannot be transferred, and 3) are not governed by the Vested Rights Act in any case. The Amendment to the City's Short-Term Rental Ordinance does not interfere with any cognizable right held by Appellant.

A. THE RIGHT TO OPERATE A BUSINESS IS CONTROLLED BY BUSINESS ORDINANCES AND BUSINESS LICENSES, NOT ZONING ORDINANCES.

Appellant's primary argument here, Appellant's Brief, Pages 14-19, is a re-hash of its prior argument that the City can only control businesses through zoning ordinances and that zoning laws control this issue. Appellant continues to ignore the fact that municipalities can and do regulate businesses through business ordinances and business license regulations with no impact on zoning or property rights. The City will not reiterate its prior arguments on this point.

However, the City would point out that the problem faced by Appellant, and the prohibition on Appellant's right to transfer a business license, is created by business license rules and regulations, not zoning rules and regulations. Not to state the obvious, but Appellant is seeking to overturn a cap on business licenses, not a zoning ordinance. Appellant ignores this simple fact throughout its brief perhaps because Appellant's attorneys are well aware that Appellant has no vested rights in business licenses.

B. THE PETITION AND CAP ON BUSINESS LICENSES DO NOT INTERFERE WITH ANY RIGHT HELD BY APPELLANT.

Factually, as noted above, all of Appellant's properties are currently licensed as short-term rentals. The Amendment to Folly Beach's Short-Term Rental Business License Ordinance does not interfere in any way with those existing licenses. Appellant is entitled to renew those licenses

and continue renting those properties for as long as Appellant owns them. Pope Affidavit, Paragraph 18, R. p. 343. As such, the City has not interfered with any rights that could conceivably arise out of the issuance of a business license to Appellant.

C. BUSINESS LICENSES DO NOT CONFER VESTED RIGHTS OR PROPERTY RIGHTS.

Even if any of Appellant's rights were actually voided by the cap, Appellant has no vested or property right in having a license renewed without additional restrictions, much less demanding that a hypothetical future purchaser receives a brand new business license. Put simply, business licenses do not create rights. They create obligations, and those obligations are subject to change by the City.

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

A business license is "a license issued to a taxpayer by a county or municipality *for the privilege of doing business* in that county or municipality." South Carolina Code Ann. § 6-1-400 (emphasis added). It is the granting of a privilege, not the granting of a right.

> Licenses confer no property right, but are permits issued pursuant to the State's police power. [*Army Navy Bingo, Garrison No. 2196 v. Plowden*, 281 S.C. 226, 314 S.E.2d 339 (1984)]*; Feldman v. South Carolina Tax Comm'n,* 203 S.C. 49, 26 S.E.2d 22 (1943) (liquor licenses). A license is a special privilege and not a contract. *Heslep v. State Hwy. Dep't*, 171 S.C. 186, 171 S.E. 913 (1933). As such, it creates neither a vested nor a permanent right. *Id.* It is a creature of statute, and the rights of the licensee are only as the statute confers. *See State ex rel. Pollard v. Superior Court of Marion County,* 233 Ind. 667, 122 N.E.2d 612 (1954) (liquor licenses). The license is to be enjoyed only so long as the licensee complies with the restrictions and conditions governing its continuance. *Feldman v. South Carolina Tax Comm'n*, 203 S.C. 49, 26 S.E.2d 22 (1943).

> . . .
> Because the license is issued pursuant to the police power, the licensee takes it subject to the right of the State, at any time, for the public good, to make further restrictions and regulations.

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

"[T]his is the general rule notwithstanding the expenditure of money by the licensee in reliance thereon, and regardless of whether the term for which the license was given has expired." *Id.* (quoting *Heslep,* 171 S.E. at 916). *See also Hobbs v. City of Pac. Grove,* 85 Cal. App. 5th 311, 301 Cal. Rptr. 3d 274, 285-86 (2022), *as modified* (Nov. 14, 2022) (Property owners' alleged sacrifice of thousands of dollars and numerous hours to improve and maintain their properties to offer as short-term rentals did not give them a vested right in renewal of their short-term license.).

Even cases cited by Appellant recognize that operating a short-term rental is a privilege granted by license, not a property right. *Chaumont v. City of New Orleans*, 302 So.3d 39, 53 (2020) ("Additionally, operating a short-term rental is a privilege, not a right.").

Where, as here, a license or similar benefit may be withdrawn at will, the holder of the license or benefit has no property interest because he has no legitimate claim of entitlement to something that can be withdrawn at the whim of the grantor. *Richardson v. Town of Eastover*, 922 F.2d 1152, 1157 (4th Cir. 1991); *Bannum v. Town of Ashland*, 922 F.2d 197 (4th Cir.1990) (a city's approval for operation of a halfway house, which could be withdrawn at will, did not create a property interest); *See also Dep't of Health & Mental Hygiene v. VNA Hospice of Maryland*, 176 Md. App. 475, 933 A.2d 512, 521 (2007), *vacated*, 406 Md. 584, 961 A.2d 557 (2008) ("[A] professional license or license to operate a business does not create a vested right."); *Missouri Real Est. Comm'n v. Rayford*, 307 S.W.3d 686, 691 (Mo.Ct.App. 2010) ("[N]o one who possesses a

license has the right or ability to presume the license is "vested" or that the license has an "independent existence." Rather, the license remains subject to the laws and regulations which authorized its issuance in the first place, which is the antithesis of a vested right."); 9 McQuillin, The Law of Municipal Corporations, § 26:2, *Definitions; nature of municipal license* (3d ed.) ("The municipal license is essentially a governmental *restriction* upon private rights, since it is valid only if based upon an exercise by the municipality of its police or taxing powers, *out of which can arise no private rights, but only duties*, such as the duty to pay taxes or to obey police regulations.") (emphasis added).

Put simply, Appellant has no property right arising from the issuance of its Short-Term Rental Business Licenses. Business Licenses are always subject to further regulation, and that is all the Petition and cap does: attach additional regulations to Appellant's Business Licenses, regulations that, in fact, have no impact on Appellant's Business Licenses in any case.

D. APPELLANT HAS NO RIGHT TO TRANSFER ITS BUSINESS LICENSE.

Appellant next claims that it has a right to transfer its Short-Term Rental Business License to a potential purchaser of one of its properties. Appellant's Brief, Pages 16-17. While the Petition and cap does include an explicit ban on the transfer of Short-Term Rental Licenses, Appellant has never had the right to transfer its Business Licenses. Indeed, South Carolina law mandates that business licenses *must* be issued to a single taxpayer and *must* last for one year and one year only:

> A business license *must* be issued to a *taxpayer* for a twelve-month period beginning May first and ending April thirtieth. Each business license issued *must* expire April thirtieth or, if issued on a construction contract, at the completion of the construction project. The business license must be renewed before May first of the year in which it expires.

S.C. Code Ann. § 6-1-400(B)(1) (emphasis added).

Appellant points to no law allowing it to transfer a business licenses to a third party, much less a law granting Appellant an inviolable right to transfer its business licenses. Rather, the law is quite clear that the City has unlimited rights to prohibit or condition the transfer of licenses. *Troy Iron & Nail Factory v. Corning*, 55 U.S. 193, 194, 14 L.Ed. 383 (1852) ("A mere license to a party without words showing that it was meant to be assignable is only the grant of a personal power to the license fee and is not transferrable by him to another."); *City of Columbia v. Abbott*, 269 S.C. 504, 238 S.E.2d 177, 179 (1977) (disallowing book store to transfer business license to another location).

This is hardly surprising. The point of licensing businesses is to regulate those businesses, not facilitate the owner in selling those businesses. *State v. Reeves*, 112 S.C. 383, 99 S.E. 841, 842 (1919) ("If [a governmental entity] undertakes to regulate such an act by requiring a license, the object is the protection of the public, and it is not intended for the benefit of the licensee. The defendant, therefore, has no right to complain, even though the statute may be regarded as prohibitory in its effect.").

So, as dictated by South Carolina law and the City's own Business License Code, business licenses are personal to the business operator and cannot be transferred. Since Appellant never held the right to transfer its Business Licenses, the Petition's bar on the transfer of Short-Term Rental Business Licenses does not interfere with any established or vested right held by Appellant.

E. THE VESTED RIGHTS ACT DOES NOT APPLY TO BUSINESS LICENSES OR BUILDING PERMITS.

Similarly, South Carolina's Vested Rights Act does not provide vested rights to business license holders, much less future hypothetical applicants for business licenses.

First, the Vested Rights Act only protects "site specific development plans," and neither a business license nor a building permit is a site specific development plan:

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

South Carolina Code Ann. § 6-29-1520 (emphasis added).

Neither a building permit nor a business license is a development plan "describing with reasonable certainty the types and density or intensity of uses." A business license is a license to operate a particular business, not an approval of the types and density or intensity of use for a property. A building permit "vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit." South Carolina Code § 6-29-1540(11). A "building permit" is defined separately from a "site specific development plan." *Compare* South Carolina Code § 6-29-1520(2) and (9). The Vested Rights Act has never been applied to a business license or building permit. Because business licenses and building permits are not site specific development plans, they are not governed by the Vested Rights Act.

Second, the Vested Rights Act confirms that "vested right" means "the right to undertake and complete the *development of property* under the terms and conditions of a site specific development plan . . ." South Carolina Code § 6-29-1520(10) (emphasis added). The Petition and cap do not interfere with the *development*[2] of Appellant's property. *See also* South Carolina Code

[2] "'Land development' means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics." South Carolina Code § 6-29-1110(2).

§ 6-29-1550 ("A vested right pursuant to this section is not a personal right, but attaches to and runs with the applicable real property."). The structural developments on Appellant's properties (or any other property) are already built, and the Petition and cap do not interfere with the development or lots in any way.

Third, the Vested Rights Act only provides a vested right for the "*approval* of site specific development plans." South Carolina Code § 6-29-1530(A)(1) (emphasis added). While the City has issued a building permit for Appellant's property, it has not *approved* the operation of a short-term rental, or any other use, on that property. Nothing in the Appellant's submissions for the building permits seeks such approval. Pope Affidavit, Paragraph 25, R. p. 345. A building permit is not approval of the *use* of the property. It is an approval of the *development* on that property. The City's approval of a building permit is simply not the same thing as approving any particular use of the Property. Since the City never approved any particular use of Appellant's properties, Appellant holds no vested right in the use of the properties.

This is amply demonstrated by the fact that all building permits have expiration dates that are not related to the two-year vested rights granted under the Vested Rights Act. Building Permits for 112 East Indian Avenue, Exhibit No. 13 to City's Motion for Summary Judgment, R. pp. 420-423. According to the very terms of those Building Permits, they expired in 2022. Any right derived from those Building Permits expired in 2022. The Building Permits for Appellant's other dwellings have long since expired. Even if the Vested Rights Act applied, it would only have given Appellant a vested right for two years.

In summary, the Vested Rights Act does not apply to business licenses or building permits.

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

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

The only unusual thing about the Petition in this case is that it still allows for over 30% of all properties in the City to be used as short-term rentals. Pope Affidavit, Paragraph 11, R. p. 341. Most caps are well below that number, and many local governments ban all Investment Short-Term Rentals in residential districts.

The City of Charleston only allows commercial short-term rentals (the equivalent of Investment Short Term Rentals) in commercially zoned properties in a very limited number of zoning districts reflected in a Short-Term Rental Overlay Zone. City of Charleston, Code of Ordinances, Section 54-227, Exhibit No. 14 to City's Motion for Summary Judgment, R. pp. 424-429. In short, City of Charleston completely bans Investment Short Term Rentals on any residential property.

The Town of Sullivan's Island prohibits all vacation rentals and strictly regulates rentals that existed when the ban was passed, including not allowing transfer of licenses. Town of Sullivan's Island, Code of Ordinances, Section 21-117, *et seq.*, Exhibit No. 15, R. pp. 430-432.

The Town of Mt. Pleasant caps all short-term rentals at 400, which is approximately 1% of all dwelling units in the Town. Town of Mt. Pleasant, Code of Ordinances, Section 156.340(C), Exhibit No. 16, R. p. 433.

The Town of Kiawah Island has capped all short-term rentals in single-family and two-family residential districts to 20% of all developed lots. Town of Kiawah Island, Code of Ordinances, Section 14-505, Exhibit No. 9, R. pp. 386-394.

The Town of Myrtle Beach considers short term rentals, referenced as "visitor accommodations," as a commercial use, and does not allow any short-term rentals in residential districts. City of Myrtle Beach, Code of Ordinances, Sections 203 (Definitions) and 1714.B, Exhibit No. 17, R. pp. 434-437.

The City of Beaufort considers Investor Short Term Rentals as a commercial use and has set a cap of 6% for all Investor Short Term Rentals. City of Beaufort, Code of Ordinances, Section 3.6.2.c.2, Exhibit No. 18, R. p. 438.

The Town of Summerville only allows owner-occupied short-term rentals in its residential districts. So, it has a complete ban on whole house rentals in residential districts. Town of Summerville, Code of Ordinances, Sections 3.4.3.A.1 and 3.4.3.E.2, Exhibit No. 19, R. pp. 440-442.

None of these measures have been overturned as violating owners' vested rights or for creating a regulatory taking.

CONCLUSION

The plain language of South Carolina's Initiative and Referendum statute makes clear that *any ordinance* other than one that appropriates money or levies a tax can be adopted by Referendum:

> 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.

South Carolina Code Ann. § 5-17-10 (emphasis added).

Based on the plain language of the statute, a municipality's business license ordinance can be amended by Initiative and Referendum so long as it does not appropriate money or levy a tax. The Petition did not appropriate money or levy a tax. The *I'On* opinion does not save Appellant from the plan language of the statute. *I'On* only exempts zoning ordinances from the Initiative and Referendum procedure. Since a cap on business licensees is undoubtedly a business license ordinance, *I'On* has no applicability here.

Finally, the Home Rule Act, the *Kenwood Enterprises* opinion, and countless other opinions confirm that municipalities can regulate the use of land through business license ordinances. Just because a business license ordinance touches upon the use of land does not automatically make it a zoning ordinance.

Respectfully submitted,

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December 3, 2024
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