STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Edward K. Woltz and Holly H. Woltz and S & C Properties, LLC, Petitioners, v. City of Aiken, Respondent.	)	Docket No. 23-ALJ-30-0285-CC **FINAL ORDER**

APPEARANCES: For the Petitioners: Clarke W. McCants, III, Esq.
Clarke W. McCants, IV, Esq.

For the Respondent: Robert E. Tyson, Jr., Esq.
Jasmine D. Smith, Esq.

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) based upon a request for a contested case hearing filed by Edward K. Woltz, Holly H. Woltz, and S&C Properties, LLC (collectively, Petitioners) on July 23, 2023. Petitioners contest the final decision of the City of Aiken (Respondent) finding their property rental activities constitute "business" which is subject to the licensure and tax payment requirements of Respondent's municipal business license tax ordinance. Petitioners challenge Respondent's application of the ordinance to them on vagueness and equal protection grounds.[1] On November 27, 2023, Respondent filed a Motion to Dismiss arguing Petitioners' claims were facial challenges to the constitutionality of a municipal ordinance. By Order dated December 21, 2023, the Court denied Respondent's motion, finding Petitioners' claims could be construed as-applied challenges.[2] On January 21, 2025, the Court held a hearing on the merits. Based upon the review of the testimony, the evidence presented and the parties' arguments, I conclude that Petitioners' challenges fail.

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[1] Petitioners initially challenged the timeliness of Respondent's enforcement actions and the authority of the City to base its license tax on revenues generated through rental properties located outside the City's municipal limits. Petitioners have since withdrawn these challenges.

[2] The Court's December 21, 2023 Order noted that to the extent Petitioners intended to raise facial challenges, the Court could not entertain them.

BACKGROUND

Petitioners did not obtain a City of Aiken business license nor pay the annual business license taxes to Respondent for their property rental activities during 2018, 2019, 2020 and 2021. On November 29, 2021, Respondent charged Petitioner Mr. Woltz with violating the City's business license tax ordinance. In August 2022, the charge was resolved through an agreement requiring Mr. Woltz to provide certain tax returns, complete a business license application with respect to Petitioners' real property rentals, and pay the amount of business license fees and penalties determined by Respondent based on its review of the tax records.

Based on the rental income shown in Petitioners' tax records,[3] Respondent presented to Petitioners its calculation of unpaid business license taxes and penalties for the years 2017 through 2021. Respondent's assessment totaled $11,477.63. On September 15, 2022, Petitioners paid Respondent the assessed amount under protest, stating that an appeal would be filed by Petitioners.[4] The next day, Petitioners appealed the business license tax assessment, and thereafter, Respondent designated a Hearing Designee to address the appeal.

On June 21, 2023, the Hearing Designee issued a written decision finding that Petitioners engage in business in the City of Aiken, as defined by the City's business license tax ordinance, and as such, are required to obtain a business license and pay an annual license tax. The Hearing Designee's written decision ordered Petitioners submit a business license application and pay $13,086.56—the amount of taxes, fees, and penalties determined to be due as of the date of the hearing.[5] On July 24, 2023, Petitioners filed this contested case.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

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[3] The tax returns provided to Respondent were joint returns filed by Mr. and Mrs. Woltz showing rental income received both from their individually-owned rental properties and properties owned by S&C.

[4] Petitioners' payment letter stated that "[a]n appeal of these assessments and levies will be filed by Mr. and Mrs. Woltz as well as S&C Properties, LLC, pursuant to the City Ordinance and the applicable State Statute."

[5] Petitioners had already paid this amount under protest by the time of the written decision.

Respondent's Business License Ordinance

On March 22, 2021, Respondent adopted its current business license tax ordinance. *See* City of Aiken, S.C., Ordinance 03222021 (March 22, 2021) (the Ordinance). The Ordinance replaced a previous municipal business license ordinance adopted in 2005, which was in effect during a portion of the relevant timeframe at issue in this case yet not entered into evidence at hearing. Additionally, Respondent's 2005 business license ordinance replaced an earlier version of the ordinance adopted in 1996. The provisions of the 1996 business license ordinance were substantially similar to those of the Ordinance, *i.e.,* the 1996 ordinance required any person conducting business in the City of Aiken to obtain a business license and pay an annual license fee, defining "person" and "business" in essentially the same terms as the Ordinance. The business classification index of the 1996 ordinance expressly included real estate leasing. The 1996 ordinance also required the Respondent's designated official to "adopt reasonable regulations and policies relating to [its] administration." Notably, neither party contended the 2005 business license ordinance materially differed from the 1996 ordinance or the (current) Ordinance with respect to the foregoing attributes.

The main thrust of the Ordinance is a requirement that businesses operating in the City of Aiken obtain a business license and pay an annual business license tax. Although a portion of the relevant timeframe predates adoption of the Ordinance, I find that at all relevant times, Respondent's effective business license ordinance: (a) included a requirement for persons doing business in the city to obtain a license and pay an annual tax; (b) defined "person" to include individuals, corporate entities, and other groups acting as a unit (in the singular or the plural) as well as their principles or agents; (c) defined "business" to reach income-producing activities; (d) included real property rental in its business classification index; and, (e) required Respondent's designated business license official to undertake reasonable procedures to administer its provisions.

Role of Respondent's Business License Official

A primary duty of Respondent's Business License Official is to identify when a person is engaged in business. The Business License Official therefore must regularly and continuously make determinations about whether an activity constitutes doing business. In this case, the City's

revenue manager, Nathan Campbell, oversees the administration of the Ordinance;[6] which includes answering resident questions regarding business licensure, inspection of potential "businesses" and enforcement of the Ordinance. In carrying out these responsibilities, Respondent's Business License Official must naturally determine whether an activity constitutes a business in the City of Aiken.

Respondent's Application of Ordinance to Residential Rental Activities

For at least two decades and at all times relevant here, Respondent's practice has been to require individuals who own two or more residential rental properties to obtain a business license each year and pay an annual business license tax. Indeed, Mr. Campbell indicated that starting back in the 1980s the City began employing a policy of requiring business licensure for persons owning two or more residential rental properties. The current Business License Official, Andrew Ridout, expounded that the basis for this longstanding policy is to require licensure of residential property rental business while excluding activities that do not reflect an intent to conduct "business"—for example, the temporary leasing of real property inherited from a decedent's estate.[7] Respondent's distinction between those who rent out two or more residential properties and those who do not (including those who rent out a single residential property) is used to delineate the point at which a lessor of residential rental property is conducting business within the City of Aiken and is therefore subject to compliance with the Ordinance.[8]

Moreover, Steffanie Dorn explained that cities often create policies in furtherance of their administration of business tax license ordinances.[9] From a purpose of administration, she specifically explained that the purpose of such policies is not to categorize how many activities constitute a business but rather to establish policies to consistently determine whether a person is

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[6] Mr. Campbell has worked for the City for nearly two decades. As revenue manager, Mr. Campbell oversees the City's property tax and utility billing collections and the business license administration. Before serving as revenue manager, Mr. Campbell worked as the City's Business License official. I found Mr. Campbell to have a credible understanding of the City's administration of the business license tax and development of the policy at issue in this case.

[7] Mr. Ridout began working in this capacity during March 2021. I found Mr. Ridout to be a credible witness.

[8] Mr. Ridout opined that section 12-39 empowers the City to undertake reasonable procedures in its administration of the Ordinance.

[9] Ms. Dorn was qualified as an expert in the areas of administration and implementation of business license ordinances and the calculation of business license taxes.

in business. Ms. Dorn further explained that as a practical matter, many municipalities across South Carolina do not tax property owners of single rental properties because it is not uncommon for persons to inherit a piece of property and rent it until they decide what to do with the property. She explained that "oftentimes people are in a situation where they're making the choice to rent property out temporarily, and that is not something that they intend to do forever."

Petitioners' Business Activities

Edward K. Woltz is the owner of S & C Properties, LLC (S & C), which is operated out of the City of Aiken. S&C rented out ten residential rental properties within the city limits during the relevant timeframe.[10] Mr. Woltz and his wife Mrs. Holly Woltz, both residents of the City of Aiken, also personally owned and rented out commercial and residential rental properties in the City of Aiken. The gross revenues for the subject real property rentals amounted to hundreds of thousands of dollars over the relevant timeframe of 2017 through 2021. The Court finds that Petitioners' property rentals are income-producing activities conducted for the purpose of generating revenue.

CONCLUSIONS OF LAW

Jurisdiction

The Court has jurisdiction over this case pursuant to section 1-23-600 of the South Carolina Code (Supp. 2024) and subsection 6-1-410(B) of the South Carolina Code (Supp. 2024).

Standard of Review

Taxpayers aggrieved by final decisions of their business license tax appeals may request a contested case hearing before the ALC. S.C. Code § 6-1-410(B). A contested case hearing before the ALC is held *de novo*. *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002) (explaining that a contested case before the ALC is "in the nature of a *de novo* hearing with the presentation of evidence and testimony"). Petitioners bear the burden of proof as the taxpayers who requested this contested case. *See* 2 Am. Jur. 2d *Administrative Law* § 342 (burden of proof is with party asserting the affirmative in an adjudicatory administrative proceeding); *Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) ("A taxpayer

[10] 10 Betty Court, 114 Smallridge Dr., 119 Smallridge Dr., 117 Taylor St., 118 Taylor St., 122 Taylor St., 124 Taylor St., 129 Taylor St., 130 Taylor St., and 131 Taylor St., Aiken, South Carolina.

contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect."). The applicable standard of proof is a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5); *see also Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998) (noting that "the standard of proof in administrative hearings is generally a preponderance of the evidence").

Business License Tax

Section 6-1-400 of the South Carolina Code (Supp. 2024) and section 5-7-30 of the South Carolina Code (Supp. 2024) provide the authority for a municipality to levy a business license and the specific conditions under which a business license tax may be levied. Subsection 6-1-400(A)(2)(a) defines "business license" as "a license issued to a taxpayer by a county or municipality for the privilege of doing business in that county or municipality." Section 5-7-30 further provides "[e]ach municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, . . . including the authority to . . . levy a business license tax on gross income . . . ." Consistent with this provision, the City enacted the Ordinance.

City of Aiken Ordinance

Respondent adopted the current version of the Ordinance on March 22, 2021. City of Aiken, S.C., Ordinance 03222021 (March 22, 2021). The Ordinance provides in pertinent part that:

> [e]very person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits of the City of Aiken, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

Id. at § 12-31. The Ordinance defines a "person" as:

> any individual, firm, partnership, limited liability partnership, limited liability company, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

Id. at § 12-32. Further, a business is defined as "any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly." *Id.*

The Ordinance also includes rate and class schedules for various industry sectors, including "[r]eal estate rental and leasing." *Id.* at Exs. A, B. Finally, the Ordinance provides that Respondent's business license official shall "undertake reasonable procedures relating to the administration" of the Ordinance. *Id.* at § 12-39. [11]

Is the Ordinance Unconstitutional?

Petitioners contend the Ordinance is invalid as applied based on their constitutional vagueness challenge, their constitutional equal protection challenge, or both. Because this Court does not address facial challenges to the constitutionality of legislative enactments like the Ordinance, the legal determination for this Court is limited to Petitioners' as-applied constitutional challenges.[12] *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 108–09, 705 S.E.2d 28, 38–39 (2011) (ALC does not have the authority to address facial challenges to constitutionality of statutes or regulations but is empowered to consider as-applied challenges).

Vagueness

Petitioners contend the Ordinance is unconstitutionally vague because it fails to define the point at which rental of residential properties constitutes doing business.

"The constitutional standard for vagueness is whether the law gives fair notice to those persons to whom the law applies." *In re Amir X.S.*, 371 S.C. 380, 391, 639 S.E.2d 144, 150 (2006).

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[11] At the hearing, Respondent provided the calculations supporting its assessment that Petitioners' unpaid business license tax and penalties totaled $13,086.56 as of June 2023, as well as Petitioners' tax returns substantiating the calculations. Petitioners did not argue or present evidence that Respondent's calculation was inaccurate, nor did Petitioners otherwise challenge the amount as would be required for the Court to second-guess the total amount assessed by Respondent. *See Cloyd*, 295 S.C. at 88, 367 S.E.2d at 173 ("A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect.").

[12] During opening arguments, Petitioners' Counsel stated at one point that the primary issue is "whether or not the ordinance **on its face** is vague and ambiguous …. [as] [t]here's nothing in that statute which guides individuals as to how they should treat one or more properties for purposes of obtaining a business license." (Emphasis added). Similarly, in its proposed order, Petitioners frame the issue before the Court as whether "those provisions in the City Code dealing with business licenses and taxes are unconstitutionally vague as a matter of law and may not be applied to them." As set forth in this Court's December 21, 2023 Order, Petitioners' argument that the Ordinance is vague on its face is not a proper subject for consideration in this contested case. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 38-39 (2011)(holding that ALCs are able to hear as-applied challenges to the constitutionality of statutes and regulations but not facial challenges). Petitioners' vacillation concerning their arguments leaves the Court in a quandary as to their efforts to establish that the Ordinance is unconstitutionally vague as applied. Moreover, although the Court clearly can consider an as-applied constitutional challenge, Petitioners failed to explain the remedy which this Court should apply if it found that they were denied equal protection under the law. *Doe v. State*, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017). While Mr. Woltz proclaimed that he believed he should receive a credit for one property, he failed to identify a property which should be credited or assert a specific amount which this Court should award.

Fair notice is "measured by common understanding and practices." *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 599 (2001). Because constitutionality is determined "in light of the standing of the party who seeks to raise the question and of its particular application," Petitioners must demonstrate that the challenged statute is vague as applied to their *own* conduct, regardless of its potentially vague application to others. *Town of Mount Pleasant v. Chimento*, 401 S.C. 522, 535 n.7, 737 S.E.2d 830, 839 n.7 (2012) (citation omitted).

Here, Petitioners operated at least ten residential rental properties in the City of Aiken which, during the relevant period, generated hundreds of thousands of dollars in gross revenue for Petitioners. The Court concludes that a reasonable person could discern that such activity constitutes a "business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits of the City of Aiken" and that such conduct is therefore subject to the requirements of the Ordinance. Ordinance at § 12-32. In fact, Petitioners do not dispute that their properties are income-producing activities conducted for the purpose of generating revenue. The Court further notes that the class schedule appended to the Ordinance includes "[r]eal estate and rental and leasing" among other listed industry sectors. Ordinance at App. B, p.B-15. *See, e.g., Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498, 102 S. Ct. 1186, 1193, 71 L. Ed. 2d 362 (1982) (noting that "economic regulation is subject to a less strict vagueness test … because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action."). For these reasons, the Ordinance's language gives fair notice that its requirements apply to Petitioners' conduct.

Because the Ordinance clearly reaches Petitioners' conduct, Petitioners' vagueness challenge fails. *See, e.g., Holder v. Humanitarian Law Project*, 561 U.S. 1, 18-19, 130 S.Ct. 2705, 177 L.Ed.2d 355 (2010) (stating that a defendant who "engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others"); *United States v. Hosford*, 843 F.3d 161, 170 (4th Cir. 2016) (where the law clearly reaches a party's conduct, "a court cannot examine" whether it may be vague for other hypothetical parties).

Equal Protection

Petitioners contend that Respondent's failure to treat them similarly to owners of a single residential rental property amounts to an equal protection violation. Petitioners further argue that

the disparate treatment was not reasonable because the Respondent's policy arbitrarily drew a line between the rental of owners of a **single** residential rental property and those who own **two or more** residential properties. (Emphasis added). In contrast, Respondent argues Petitioners failed to show that they have been treated differently from other residents of South Carolina because they own more than one residential rental property.

Article I, section 3 of the South Carolina Constitution provides, in pertinent part, that no "person shall be denied the equal protection of the laws." S.C. Const. art. I, § 3. Similarly, the Equal Protection Clause of the United States Constitution provides that "[n]o state shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Equal protection does not prohibit classifications that yield different treatment of one class of persons from another; it merely forbids irrational or unjustified classifications. *See Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S. Ct. 2326, 2331, 120 L. Ed. 2d 1 (1992) ("The Equal Protection Clause does not forbid classifications."); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359, 93 S. Ct. 1001, 1003, 35 L. Ed. 2d 351 (1973) ("The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others."); *In re Treatment & Care of Luckabaugh,* 351 S.C. 122, 147, 568 S.E.2d 338, 351 (2002) ("The equal protection clause only forbids irrational and unjustified classifications.") (quotation omitted). "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. S.C. Coastal Council,* 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).

In evaluating whether an equal protection has been shown, courts commonly begin the analysis by determining what level of scrutiny to applicable. "Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny. 16B Am.Jur.2d Constitutional Law § 812 (1998). If the classification does not implicate a suspect class or abridge a fundamental right, the rational basis test is used." *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004). Here, the Ordinance creates a distinction between those who rent out two or more residential properties and those who do not (including renters of a single residential property). The classification therefore does not implicate a suspect class or abridge a fundamental right. Accordingly, because Petitioners have not alleged or shown Respondent's distinction between property owners does not implicate any

fundamental right or suspect class, the rational basis test applies here. *Lee v. S.C. Dep't of Natural Res.*, 339 S.C. 463, 466-67, 530 S.E.2d 112, 113-14 (2000) (court must employ rational basis review where no fundamental right or suspect class implicated) *see also City of Beaufort v. Holcombe*, 369 S.C. 643, 649, 632 S.E.2d 894, 897 (Ct. App. 2006).[13]

Under the rational basis test, "[t]o satisfy equal protection the classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis." *Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 563, 455 S.E.2d 688, 689-90 (1995) (citing *Hanvey v. Oconee Mem'l Hosp.*, 308 S.C. 1, 416 S.E.2d 623 (1992)).

Whether the Classification Is Reasonably Related to the Purpose of the Ordinance

A classification meets the first prong of the rational basis test "as long as there is some evidence that it will further a legitimate purpose." *SPUR at Williams Brice Owners Ass'n v. Lalla*, 415 S.C. 72, 87, 781 S.E.2d 115, 123 (Ct. App. 2015). Here, the express purpose of the Ordinance is to raise revenue for Respondent's general fund through an excise tax on the privilege of doing business in the City of Aiken. Ordinance at § 12-33 ("The business license required by this article is for the purpose of … raising revenue for the general fund through a privilege tax."). Furthermore, Respondent established that determining whether an activity constitutes "doing business" is one of the main duties of its business license official in administering the Ordinance, and that the classification is used for that purpose. The classification delineates the point at which residential real estate rental activity constitutes doing business (two or more residential rental properties) thereby triggering the Ordinance's requirements for licensure and payment of an annual business license tax. As such, I find that the classification is reasonably related to the revenue-generation purpose of the Ordinance. *See* S.C. Code Ann. § 5-7-30 (Supp. 2024) (defining powers of municipalities including authority to "levy a business license tax on gross income"); *Thomson*

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[13] In *Holcombe*, the Court of Appeals of South Carolina addressed an equal protection challenge to an uncodified distinction used in the administration of a municipal business license ordinance, treating landlords who lease to third parties differently from landlords who lease to their own business. *Holcombe,* 369 S.C. at 647, 632 S.E.2d at 896 ("Although not expressly provided for in the ordinance, the City exempts a landlord from the license fee requirements when the landlord occupies rental property for his own use or pays rent to himself."). The court found that the administrative distinction "created two classes of commercial landlords: (1) those utilizing commercial property for their own businesses, so that those businesses are their source of income, and (2) those who are renting property to third parties, so that the rental fees generated are their source of income." *Id.* at 649, 632 S.E.2d 897.

Newspapers, Inc. v. City of Florence, 287 S.C. 305, 307, 338 S.E.2d 324, 325 (1985) ("Municipalities are empowered to levy a business license tax on gross income.").

Have Petitioners Shown Disparate Treatment?

The second prong of the rational basis test requires the Court to determine whether Petitioners have shown disparate treatment or in other words, whether the government classification treats members of the designated class equally. *Lee v. S.C. Dep't of Natural Res.*, 339 S.C. 463, 470, 530 S.E.2d 112, 115 (2000).

Petitioners failed to show that they have suffered disparate treatment. Notably, Petitioners did not bring this case on behalf of other taxpayers nor did Petitioners seek to show disparate treatment vis-à-vis others who own and rent two or more rental properties.[14] In fact, the only evidence before the Court suggests that Respondent treats property owners of multiple residential properties uniformly. Rather, Petitioners seek to cast a wider net by contending that they are similarly situated to City of Aiken residents who rent out a single residence. However, comparing Petitioners to persons on the "other side" of line drawn by Respondent misconstrues the analysis. *See J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 173, 519 S.E.2d 561, 567 (1999) (upholding constitutionality of sewer fee imposed on all "new customers" of the system and rejecting plaintiff's attempt to categorize relevant class as "all residents"). Rational basis review of a government classification does not look for disparate treatment vis-à-vis other classes created by the government's distinctions; rather it examines whether there is disparate treatment within the designated class. *See Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 429, 593 S.E.2d 462, 469 (2004) (relevant question under rational basis review of a classification is whether government "treated residents within each of those classes alike under similar circumstances"). As such, Petitioners have not shown disparate treatment within their class.

Whether the Classification Is Supported by a Rational Basis

Lastly, Petitioners have failed to show that Respondent's classification lacks a rational basis. For **legislated** classifications, it is well-established that a successful equal protection

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[14] Nevertheless, "[e]ven an unequal enforcement of a valid state law is not a denial of equal protection unless the unequal enforcement is the result of "**arbitrary and invidious discrimination**." *Pork Motel Corp. v. Kansas Dep't. of Health & Env't*, 673 P.2d 1126, 1135, 1136 (Kan. 1983). Importantly, the person claiming unfair treatment carries the burden to establish an equal protection violation. *See TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 626, 503 S.E.2d 471, 479 (1998).

challenge requires the challenger to negate any conceivable basis for enacting the classification. *Boiter v. S.C. Dep't of Transp.*, 393 S.C. 123, 128, 712 S.E.2d 401, 403 (2011) (persons challenging statutory classification under rational basis test "have the burden to negate every conceivable basis which might support it") (quoting *Lee,* 339 S.C. at 470 n.4, 530 S.E.2d at 115 n.4). Thus, had the classification at issue been enacted by Aiken City Council, Petitioners would "bear[] the burden of proving beyond a reasonable doubt that the classifications created are not supported by any rational basis." *Bodman v. State*, 403 S.C. 60, 71, 742 S.E.2d 363, 368 (2013).

Here, however, Respondent's classification is a longstanding administrative practice, rather than a statutory classification. Because it was not subject to the deliberation and debate inherent in a legislated classification, Respondent's administrative interpretation of its ordinance thus presumably comes to this Court without the same "strong presumption of validity" a statutory classification might enjoy. *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314–15, 113 S. Ct. 2096, 2101–02, 124 L. Ed. 2d 211 (1993) (statutory classifications come to court "bearing a strong presumption of validity"); *Sunset Cay*, 357 S.C. at 429, 593 S.E.2d at 469 ("The Court must give great deference to a legislative body's classification decisions because it presumably debated and weighed the advantages and disadvantages of the legislation at issue."). The non-statutory nature of Respondent's classification therefore calls into question whether Petitioners must show beyond a reasonable doubt that the classification lacks any reasonable basis. That question need not be answered here, however, because Petitioners ultimately carry the burden to show that the classification lacks a rational basis; a burden which Petitioners have failed to meet.

From the testimony and other evidence presented at hearing, the Court readily discerns the basis for Respondent's classification. As discussed by Ms. Dorn and Mr. Campbell, "doing-business" determinations are a quintessential component of the Ordinance. Clearly, Respondent's classification based on "two or more residential rental properties" is intended to facilitate a key aspect of administering the Ordinance. Further, the classification facilitates administration of the Ordinance by delineating the point at which residential real estate rental activity constitutes "business." As a result, the classification also helps ensure Respondent's compliance and enforcement resources are directed at actual business activities (as here) rather than towards one-off, temporary rental activities that may have no business purpose. Under rational basis review, such administrative considerations are legitimate bases for government classifications. *See*

Armour v. City of Indianapolis, 566 U.S. 673, 682, 132 S. Ct. 2073, 2081, 182 L. Ed. 2d 998 (2012) ("Ordinarily, administrative considerations can justify a tax-related distinction."); *Lee*, 339 S.C. at 468, 530 S.E.2d at 114 (enforcement considerations constitute valid and rational basis for classifications).

Based on the evidence presented, Petitioners failed to show Respondent's interpretation of the Ordinance is unreasonable. Indeed, to the contrary, Respondent's interpretation of the Ordinance reasonably facilitates its determinations of whether persons renting out residential property are "doing business" in the City of Aiken. Ms. Dorn, Respondent's expert on the administration and implementation of business license ordinances, specifically stated that the determination of whether a person is "doing-business" is the first step in determining the need for a business license under the Ordinance. Moreover, Respondent's revenue manager and former Business License Official, Mr. Campbell, characterized doing-business determinations as a daily and continuous undertaking and that the Business License Official must naturally make in determining whether an activity constitutes a business. It stands to reason that establishing a clear point at which residential real estate rental activity constitutes "business" not only reduces the need for individualized, case-by-case scrutiny, but promotes consistent determinations about the need for licensure. Furthermore, equal protection does not prohibit governments from using reasonable presumptions to draw lines which advance a legislative purpose while minimizing the burden associated with case-by-case administration. *See, e.g., Astrue v. Capato ex rel. B.N.C.*, 566 U.S. 541, 557, 132 S. Ct. 2021, 2033, 182 L. Ed. 2d 887 (2012) (upholding Social Security administrators' application of state intestacy law to determine benefit eligibility and finding resulting classifications supported by "twin interests in reserving benefits for those children who have lost a parent's support, and in using reasonable presumptions to minimize the administrative burden of proving dependency on a case-by-case basis"); *Sandy Springs Water Co. v. Dep't of Health & Envt'l Control*, 324 S.C. 177, 182, 478 S.E.2d 60, 62 (1996) (noting that "administrative concerns may provide a rational basis" for classifications).

Petitioners also did not establish that Respondent's delineation of what constitutes "doing business" is unreasonable. Each of Respondent's witnesses explained that the classification is used to identify business activity (as it did here) while excluding circumstances that may not reflect a business intent, such as a person's temporary leasing of a house inherited from a decedent's estate.

As Ms. Dorn testified, the classification recognizes that "oftentimes people are in a situation where they're making the choice to rent property out temporarily, and that is not something that they intend to do forever." That underlying presumption—that non-business circumstances might lead to someone renting out a house, but renting out multiple houses is a business venture—is consistent with the common understanding that one-off activities are, in general, less likely to have a business purpose. *See, e.g., Pee Dee Chair Co. v. City of Camden*, 165 S.C. 86, 162 S.E. 771, 772 (1932) (noting that the words *business* and *occupation* in an ordinance "ordinarily carry with them some idea of custom or continuity as opposed to an isolated or sporadic act"). Importantly, many municipalities across South Carolina have the same or similar policies related to rental properties. The Court therefore concludes the classification is supported by a rational basis.

Petitioners, nevertheless, assert that no document or other writing before the Court shows that that Aiken City Council has granted Respondent's Business License Official with the authority to utilize the classification. However, delegations of municipal authority need not always be evidenced by writing. *Lathem v. City of Greenville*, 256 S.C. 586, 590, 183 S.E.2d 455, 457 (1971). Moreover, the provisions of the City's code expressly directs Respondent's Business License Official to administer the Ordinance and to "undertake reasonable procedures" in so doing. *See* Ordinance § 12-39; *see also Banks v. Batesburg Hauling Co.*, 202 S.C. 273, 24 S.E.2d 496, 498 (1943) (legislative bodies may vest administrative officers with large measure of discretionary authority, especially to make rules and regulations relating to enforcement). Additionally, Ms. Dorn attested that establishing such policy thresholds is within the ambit of a business license official's authority.

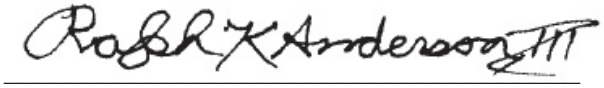
The Court's inquiry is not to determine if Respondent's classification is the "best fit" in furtherance of the Ordinance, nor to assess whether the classification results in some unfairness. Rather, this Court's review is limited to whether Respondent's classification is supported by a rational basis. The Court readily concludes that the classification meets the applicable standard of mere rationality and is not arbitrary. Accordingly, I conclude the application of the Ordinance withstands rational basis review and does not violate Petitioners right to equal protection. *Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993) ("[A] classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.").

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that Petitioners must obtain a business license for their real estate rental activities and pay an annual license business license tax for their property rental activities for tax years 2017-2021.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

March 27, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

March 27, 2025
Columbia, South Carolina