

THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

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SC Court of Appeals
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APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER-IN-EQUITY,
BEAUFORT COUNTY
TRIAL COURT CASE NO.: 2013CP0700918

APPELLATE CASE NO.: 2014-000636

BEAUFORT COUNTY,

Respondent,

vs.

MARE BARACCO,

Appellant.

MOTION FOR AN ORDER TO DISMISS APPEAL, WITHOUT PREJUDICE, TO
ALLOW APPELLANT TO FILE WRIT OF MANDAMUS, IF JURISDICTION IS
CONFIRMED, OR IN THE ALTERNATIVE, FOR AN ORDER REVERSING THE
ADMINISTRATIVE AGENCY'S DEPARTMENT'S DETERMINATION



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Date: October 9, 2014

Appellant hereby petitions this court for an Order dismissing her Appeal, without prejudice, to allow her to file a Writ of Mandamus in this matter, based on the following summary, and on the grounds of a “sham legal process”¹; lack of personal, territorial and subject matter jurisdiction of the administrative agency; the failure of an administrative agency to issue a notice of hearing in a contested case, as provided for in Section 1-23-320, SC Code of Laws; the lack by an administrative agency to issue a written administrative agency decision/order, as provided for in Section 1-23-310, et seq., SC Code of Laws; the failure of an administrative agency to create a complete administrative contested hearing record in a contested case, as provided for Section 1-23-320, SC Code of Laws, and to provide said complete administrative contested hearing record to any court/tribunal to review prior to the rendering of any decision/order adverse to the Appellant or remanding said case to the administrative agency for further action based on an incomplete administrative agency contested hearing record. Due to these failures, Appellant lacks, and lacked throughout this unlawful procedure, the pre-requisite important documents, including, but not limited to, the (most important document) the written

¹ (a) “Sham legal process” means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate governmental entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property. (b) “Lawfully issued” means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political division of the State of South Carolina. Section 30-9-30, of the *SC Code of Laws, 1976, as Amended*.

“Finally, persons knowingly presenting documents in connection with a sham legal process may be subject to criminal prosecution, not only under the Federal Mail Statute, but also under the S.C. Sham Legal Documents Statute (Section 16-17-735), and such action may amount to obstruction of justice if they purport to prevent a South Carolina court from exercising its jurisdiction.” Letter of Rosalyn W. Frierson, Director, South Carolina Court Administration, South Carolina Supreme Court, August 25, 2010.

Administrative Decision/Order, a proper Notice of Hearing, and a complete administrative agency contested hearing record from which she would not be further prejudiced in the review of any appellant judicial entity.

In the alternative Appellant petitions this court for an Order reversing the Administrative Agency's illegal, ("Sham Legal Process") unconstitutional actions arising in this case based on the fact that Appellant's substantial rights have been prejudiced because the administrative actions are:

- a) in violation of constitutional and statutory provisions;
- b) in excess of the statutory authority of the agency;
- c) made upon unlawful procedure;
- d) affected by error of law;
- e) clearly erroneous in view of the of the reliable, probative, and substantial evidence on the whole record; and
- f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted of discretion.

One of the main basis' for Appellant seeking these types of relief from this Honorable Court is that in order for the Court of Appeals to have jurisdiction over this matter, there must have been correct, proper measures that led the Appellant to its steps of judicial powers. In an Administrative process by the governmental entity ("Agency") it must be shown that:

1. they² had legal authority and jurisdiction of the person, territory and subject matter;
2. they properly enacted the regulation³ as provided for in Section 1-23-10, et seq.;

² "they" means Beaufort County Council, Beaufort County Administrator or his staff, Beaufort County Sheriff, Beaufort County Sheriff's Department, and/or any other level of government or a subdivision of these entities involved in the process of drafting, creating and/or approving documents that would implement or prescribe law or policy or practice requirements of any agency, including, but not limited to policies, standards, procedures, notices, summons, or similar instruments.

3. they properly reviewed all documents that would implement or prescribe law or policy or practice requirements of any agency, including, but not limited to policies, standards, procedures, notices, summons, or similar instruments, to ensure that they complied with the ordinance and the Laws of the State of South Carolina as written prior to approval of any governmental entity within their organization;
4. they adopted and made available for public inspection a description of its organization and method of operations and the methods whereby the public may obtain information or make submissions or requests;
5. they adopted and made available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;
6. there must have been a legal document that conferred jurisdiction over a party (e.g. statute, ordinance, regulation, warrant, summons, order and/or rule to show cause);
7. there must have been a determination by a Department – Beaufort County Sheriff’s Department. A determination is defined in South Carolina Law for administrative purposes that “Department determination means the final determination within the department from which a person may request a contested case hearing (Section 12-60-30, *SC Code of Laws, 1976, as Amended*);
8. there must be a request for hearing in a contested case by the aggrieved party;
9. they must provide proper notice for the hearing in a contested case as provided for Section 1-23-320, *SC Code of Laws, 1976, as Amended*;
10. a party must be afforded the opportunity and rights provided for in Section 1-23-320(C)(D) &(E), *SC Code of Laws, 1976, as Amended*;
11. **there must be an actual Administrative Agency⁴ Hearing in the contested case** [emphasis added];

³“Regulation means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Section 1-23-10, *SC Code of Laws, 1976, as Amended*.

⁴“Agency” means eachdepartment, executive department or officer, other than the ...the courts, authorized to make regulations or to determine contested cases. Section 1-23-10(1), *SC Code of Laws, 1976, as Amended*.

12. they must provide a record in contested case and it **must** include documents and things as prescribed in Section 1-23-320(G)(1)(2)(3)(4)(5) & (6);
13. they must be cognizant and provide for the specific rules as they apply to evidentiary matters in a contested case, as provided for in Section 1-23-330, *SC Code of Laws*;
14. there must be a transcript of any available oral proceedings or any part of the oral proceedings of the hearing in the contested case so that it can be made available on request of a party, including, Appellant;
15. in a contested case when a majority of the officials of the agency who are to render the final decision have not heard the case or reviewed the record, the decision, if adverse to the party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one has read the record. The parties by written stipulation may waive compliance with this section. Section 1-23-340, *SC Code of Laws, 1976, as Amended*;
16. **there must be a written final decision or order⁵ adverse to a party in a contested case or stated in the record [emphasis added];**
17. they must (make) available for public inspection all final orders, decisions, opinions, except as otherwise provided by law⁶;
18. a party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision/order in a contested case is entitled to

⁵ Final decision or order in contested case. A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rule, a party submitted a proposed findings of fact, the decisions shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Section 1-23-350, *SC Code of Laws, 1976, as Amended*.

⁶ No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it is made available for public inspection as required by this article and Article 2. Section 1-23-140 of the *SC Code of Laws, 1976, as Amended*.

judicial review pursuant to Article 1 and 3 of the *SC Administrative Procedures Act*, Section 1-23-10, et seq. *SC Code of Laws 1976, as Amended*. Except as otherwise provided by law, **an appeal is to the court of appeals**⁷. Section 1-23-380, *SC Code of Laws, 1976, as Amended*; and

19. in the event that the agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with procedures prescribed in the *South Carolina Administrative Procedures Act*; the agency may file the regulation with the Council⁸, along with a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of the filing. An emergency regulation filed under this section, which has substantial economic impact, may not be refiled unless accompanied by the summary of the final assessment report prepared by the [department] pursuant Section 1-23-115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1-23-111. If emergency regulations are filed, the emergency regulations remain in effect for ninety (90) days and may not be refiled. Emergency regulations and the agency statement as to the need and reasonableness of immediate promulgation must be published. The summary of the final assessment report required for refiled emergency regulations must also be published.

Upon a proper investigation of the above-noted issues, this Honorable Court would find that there are severe deficiencies as they pertain to numbers 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, and 17. Appellant did not create these severe deficiencies that are the creation and sole

⁷ Appellant contends that appealing this matter to the court of appeals is part of the checks and balances the South Carolina Legislature instituted by way of this provision in the statute. Decision/orders of the State Agencies, other than the Workforce Agency decisions/orders, are appealable to the South Carolina Administrative Law Court. And, Workforce Agency decisions/orders are appealable to the Circuit Court. Appellant is informed and believes that this provides the necessary levels of protection so that parties that receive an adverse decision receive an impartial, unbiased review and ruling of the facts and record prior to making any decisions. Or in other words, preventing the party from being “home cooked” by an administration that may have sway within their own areas.

⁸ Appellant contends that in this event that both Councils (Beaufort County and Town of Port Royal) would have had to act upon this matter and there would had to been a slew of other regulations that would have had to be amended, repealed or acted upon, (conform) before the “emergency regulation” could have been legally enforced against her or any other citizens of either Beaufort County or Town or Port Royal.

actions and/or non-actions of the Respondent. She is but a mere party that has been caught in a “Kafkaesque” nightmare by reason of an incident that involved her and her personal property. There is no, and has never been, a proper required Administrative decision/order based on her contesting the determination of a department from which she could appeal. Nor is there a complete required record of the Administrative Hearing in her contested case that could be, and should have been, reviewed by any Court that participates, or has participated, in this case.

Appellant stands in the door of this Honorable Court with empty hands due to the unclean hands of the individuals she has encountered during the pendency of this action. She cannot produce what has never been provided to her, a legal adverse decision/order resulting from a properly noticed and held hearing in her contested case. Nor can she produce the record of the hearing of the contested case for this Honorable Court’s review, as it does not exist. However, what does exist, are sham documents, from a “Sham Legal Process”, that are adverse to her and her personal property, that have been entered and made part of public records of the Beaufort County Clerk of Court, Beaufort County Sheriff’s Department, and other offices of Beaufort County. These sham documents have been of record for more than two (2) years.

In an effort to provide as much information on how the Appellant and this Honorable Court have been forced upon this playing field without the necessary instruments so that informed decision could be made, (and in Appellant’s case, could have been made in the whole process – “sham” or otherwise) the Appellant provides this Honorable Court with following information:

Appellant is a resident of the Town of Port Royal, a municipality recognized by the State of South Carolina, as one of its subdivisions. Respondent, Beaufort County, is a County recognized by the State of South Carolina, as one of its subdivisions.

South Carolina 46 counties and 269 municipalities exists for general purposes. The 1895 South Carolina Constitution provided for counties, municipalities and school districts. Municipalities, the oldest form of local government in South Carolina, had more autonomy than counties and school districts until the 1970's. Counties and municipalities are political subdivisions of the State and have only such powers as have been given to them by the State, such as by legislative enactment. *Williams v. Wylie*, 217 S.C. 247, 60 S.E.2d 586 (1950). Such political subdivisions may exercise only those powers expressly given by the State Constitution or statutes, or such powers necessarily implied therefrom, or those powers essential to the declared purposes and objects of the political subdivision. *McKenzie v. City of Florence*, 234 S.C. 428, 108 S.E.2d 825 (1959). In doing so, however, political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws. *Central Realty Corp. v. Allison*, 218 S.C. 435, 63 S.E.2d 153 (1951); *Law v. City of Spartanburg*, 148 S.C. 229, 146 S.E. 12 (1928).

The authority for local governments is summarized in Article VIII, Section 17, of the South Carolina Constitution: "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."

Elected and autonomous county governments in South Carolina emerged in 1974.

The Home Rule Act in 1975 implemented the specific changes authorized by the revisions of Article VIII. The powers of municipalities and school districts were well-defined either by constitution or in statutory law, and, thus experienced few changes as a result of the Act. However, the powers of counties were significantly expanded. This Act also provided for intergovernmental cooperation between municipal and county government because they had

similar powers. In other words, they were equal. Therefore, the authority of a County does not supersede the authority of a municipality, and vice-versa.

Due to an incident July 4, 2012, between Appellant's dog and another dog, an investigating Police Officer from the Town of Port Royal Police Department, after meeting with the parties, issued Appellant a Uniform Traffic Ticket Number 39533FY, which had a bond of \$1,092.50, based on an alleged Ordinance Violation of the Town of Port Royal, under Animal Control Ordinance "*Animal-at-Large*" Section 3-53. The bond (fine) noted on this Uniform Traffic Violation stated \$1092.50; however, the Town of Port Royal Ordinance 3-62. Penalties states that the fine for first offenders is not less than twenty-five (\$25.00) dollars and not more than one hundred \$100.00 dollars. Taking into consideration the court administration fees of 107.5%, the fine pursuant to this Ordinance could be no less \$51.88 and no more than \$207.50. However, the State statute (Section 47-3-50 of the *SC Code of Laws, 1976, as Amended*) states that the fine shall be no more than \$50.00 for the first offense. Adding in the court administration fees, the amount of the total fine would be \$103.75.

On July 5, 2012, Beaufort County Sheriff's Department Animal Control Deputy Sheriff, L.Cpl. Brittany Chaplin, prior to going to the Appellant's residence, went to the Town of Port Royal Police Department to meet with and discuss the Port Royal Police Department's investigation of the July 4th incident. Deputy Chaplin, pursuant to Port Royal's Code of Ordinances for Animal Control 3-53, was to perform a determination of the Appellant's dog, as it pertained to the events of July 4th. During this determination, Deputy Chaplin took the statements of Appellant and her husband and observed their dog. Deputy Chaplin reported to Appellant and her husband, as well as in her official incident report, that based on her

observations of Appellant's dog, she did not find him to be dangerous and was, in fact, impressed with him.

On July 9, 2012, Appellant was issued an Official Notice based upon the unincorporated Beaufort County Ordinance Section 14-35. Deputy Chaplin referenced both the Port Royal Police Department's Incident Report #12-01444 and the Beaufort County Sheriff's Office's Incident Report #20120709-508 on this Official Notice Pursuant to Beaufort County Ordinance 14-35. The Official Notice Pursuant to Beaufort County Ordinance 14-35 stated that the Appellant was required within seventy-two (72) hours of said Official Notice to:

- a. Construct a pen on her property as provided for in said notice, without regard to the municipality's zoning and permitting requirements, and the hiring of the licensed contractors and time required for him/her to construct the same; not to mention other time-lines involved in this whole process. The construction of a pen pursuant to the requirements of this Official Notice is not a requirement of State statute, nor Beaufort County Ordinance⁹.
- b. Purchase of \$50,000 in liability insurance, which is not provided for in the State statute nor Beaufort County Ordinance.
- c. Non-Compliance would result in a fine in the amount up to \$1,092.50. While the Beaufort County Ordinance provides for a fine of up to \$500.00 or 30 days in jail, the State statute provides for a fine for a first offense of not more than \$200.00 or imprisoned for not more than 30 days.

⁹ Political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws, which ordinance would be void Therefore, municipalities and counties are not free to adopt an ordinance which is inconsistent with or repugnant to general laws of the State. [P]olice ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or an ordinance cannot be lower or be inconsistent with a standard set by law. Article VIII, Section 14 of the State Constitution relating to local government states that: *(i)n enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall be set aside... (5) criminal laws and the penalties and sanctions for the transgressions thereof....* These provisions have been interpreted by the State Supreme Court to provide that local governments may not enact ordinances that impose greater or lesser penalties than those established by state law. *City of North Charleston v. Harper*, 306 S.C. 153, *Terpin v. Darlington County Council*, 286 S.C. 112, 332 S.E.2d 771 (1985)

- d. The Beaufort County Sheriff's Office's written Official Notice Pursuant to Beaufort County Ordinance 14-35 is not provided for in the State statute, nor the Beaufort County Ordinance.

Appellant contends that she cannot be subjected to two (2) different police power jurisdictions and that L.Cpl. Chaplin was required to act solely (that is, if any approved contracts and/or agreements existed between the Beaufort County Sheriff's Office and the Town of Port Royal and were properly proven, with all contracts and/or agreements prior to June 1, 2000, being properly ratified, pursuant to the *Doctrine of Ratification*¹⁰) under the *host jurisdiction* of the Town of Port Royal, South Carolina, not Beaufort County.

In light of the fact that the matter had already been investigated and acted upon by the Town of Port Royal Police Department and subsequently adjudicated by a jury of her peers in the Municipal Court of the Town of Port Royal, Appellant contends that L.Cpl. Chaplin and/or any Administrative Agency of Beaufort County lacked, and lacks, at the time of this occurrence and all occurrences thereafter, personal, territorial and subject matter jurisdiction over her person and/or her property as it pertains to the Official Notice Pursuant to Beaufort County Ordinance 14-35.

¹⁰ **Doctrine of Ratification**: Under South Carolina Law of Agency, if an agent acts without authority, the principal may later authorize the act. The principal's ratification relates back to cover the agent's act with authority. To ratify the agent's unauthorized action, certain requirements must be met. First the principal must have had the capacity to act at the time the action was taken. Second, the principal must be known at the time; the principal cannot be undisclosed. Third, the principal must know all material facts about the act before it can be ratified. Finally, the ratification must be complete; the principal must make an unequivocal affirmation of the action. *See, Lincoln v. Aetna Casualty & Surety Co.*, 300 S.C. 188, 386 SE2d 801 (1989); *Hopkins v. Smathers*, 111 S.C. 488, 104 SE 30 (1920).

After the issuance of the Official Notice, pursuant to Beaufort County Ordinance Section 14-35, Appellant contacted, by telephone, Deputy Chaplin's Supervisor, Lt. Jerry Spencer, and told him that she was contesting the Official Notice under the Beaufort County Ordinance Section 14-35, and inquired as to the Administrative procedures to contest the same. On July 10, 2012, Appellant met in person with Lt. Spencer and reiterated to him that she was contesting the Official Notice and wanted to know the Administrative procedures to contest the same. Appellant was informed by Lt. Spencer that she needed to write a letter to the Chief Magistrate, Rod Sproatt. Pursuant to Lt. Spencer's instructions, Appellant prepared and delivered the letter to Judge Sproatt that same day to Lt. Spencer. Lt. Spencer ordered Deputy Chaplin to go over to the Magistrate's Court and hand-deliver the letter and request a hearing.

Appellant contends that this was the wrong process to have been directed to and, in this case, followed, according to the *Administrative Procedures Act*, Article 3, Section 1-23-310, et seq., *Code of Laws of South Carolina*, 1976, as amended. Appellant further contends that once the horse was out of the barn by way of placing it in front of a Magistrate and then acting as the prosecutorial entity in the first proceeding, rather than admitting their error and falling on their sword, Respondent subjected Appellant to a "Sham Legal Process".

Lt. Spencer and Deputy Chaplin had a duty to know and understand the proper procedures to follow in this case, especially in light of the fact that they knew, or should have known, that the *South Carolina Administrative Procedures Act* had specific requirements that must be followed. It was their duties to know, and knew, the proper laws, ordinances, procedures, etc. that they were to act upon before taken any type actions. And if they did not know, to ask their superiors or others within the Sheriff's Department, including its Administration, and/or the County for guidance in this matter.

Further, Lt. Spencer, Deputy Chaplin, and/or any employees or agents or elected officials Beaufort County Sheriff's Office or Beaufort County Council and/or of the Administration of the Beaufort County Sheriff's Office, and the Administration of Respondent, knew, or should have known, that on July 5, 2012 and thereafter, Deputy Chaplin and any other Beaufort County Deputy, agent or employee, who entered into the municipality of the Town of Port Royal, were either acting outside of their jurisdiction; or, were, and are, subject to the jurisdiction of the *host jurisdiction(s)* and therefore could not, and cannot, enforce any of the ordinances of Beaufort County, unless they have been adopted by the *host jurisdiction(s)*, regardless if a Mutual Aid Agreement has been properly promulgated, including proper ratification by all parties involved. The issue as to the Mutual Aid Agreement, as well as other Mutual Aid Agreements, is/are up for debate and could possibly be shown that they came into existence by another "Sham Legal Process" after the South Carolina Supreme Court's Opinion in *The State v. Boswell*, Opinion No. 26941 was published in March, 2011.

In *State v. Boswell*, the South Carolina Supreme Court held that in 2000, the Legislature promulgated Section 23-20-50 to require county approval of multi-jurisdictional agreements. This section states: (A) An agreement entered into pursuant to this chapter on behalf of a law enforcement authority must be approved by the appropriate state, county, or local law enforcement authority chief executive officer. A state law enforcement authority must provide a copy of the agreement to the Governor and the Executive Director of the State Budget and Control Board no later than one business day after executing the agreement. An agreement entered into with a local law enforcement authority pursuant to this chapter **must** be approved by the governing body of each jurisdiction. For agreements entered into prior to June 1, 2000, the agreement may be ratified by the governing body of each jurisdiction. The Supreme Court also

believed that a *more stringent approach need[ed] to be followed in order to confer territorial jurisdiction*. Therefore, they opined that based on the failure to satisfy the requisite statutory provisions of ratifying a 1999 proven agreement (prior to June 1, 2000), the agreement was invalid. *Cf. Commonwealth v. Novick* 458 A.2d 1350 (Pa. 1983) (concluding that, absent a proven joint municipal contract for police protection between jurisdictions involved, an extra-jurisdictional arrest without a warrant was invalid.)

Further, since 2002, Beaufort County, Beaufort County Sheriff's Office and the Town of Hilton Head have had a contract for police services within the municipality of the Town of Hilton Head. (See, "Exhibit A"). Based on this long-term relationship, as proven by the Contract, Beaufort County and the Beaufort County Sheriff's Office are well aware of territorial jurisdiction and procedures in providing police services to a municipality.

Beaufort County, knew or should have known, that since Appellant was a resident of the municipality, the Town of Port Royal, that any actions they took in regard to this matter were void in the following ways: (1) they acted without authority in another jurisdiction; (2) they were not in pursuit of the Appellant to enforce one of their own ordinances that Appellant would have had to violate while in their jurisdiction to confer their jurisdiction upon her (Section 17-13-40 of the *South Carolina Code of Laws, 1976, as Amended*). They, in fact, pursued her without warrant or any other authority when they entered upon her property to observe her personal property, investigated a matter that was not within their proper perusal and acted without any proper jurisdiction when they issued an unapproved "Official Notice" pursuant to an Ordinance of their jurisdiction; and, (3) if the Mutual Aid Agreement was valid, they would have always been required to act under the provisions of the *host* jurisdiction and could only enforce the ordinances of the Town of Port Royal. Therefore, they were not, and could confer upon

themselves that they were the proper Administrative Agency, under whose ordinances Appellant was subject to and required to be subject to their procedures when contesting the same. The Town of Port Royal did not adopt the ordinances of Beaufort County, and when Beaufort County, acted within the jurisdiction of the Town of Port Royal, it was required to act upon the direction and control of the municipality (thus the reasoning that Deputy Chaplin went to the Town of Port Royal Police Department prior to acting on July 5, 2012). Deputy Chaplin could only enforce the ordinances of the Town of Port Royal.

Further, Appellant contends that Magistrates courts in the State of South Carolina are not courts of appellate judicial or quasi-judicial review. Therefore, the Beaufort County Magistrate's Court lacked personal, territorial and subject matter jurisdiction in this case.

Appellant has consistently contended that Beaufort County lacks, and lacked at the time of this incident, personal, territorial and subject matter jurisdiction. "Jurisdiction can be challenged at any time." "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v. Utah Power & Light Co.*, 495 F2d 906, 910. "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." *Hill Top Developers v. Holiday Pines Service Corp.*, 478 So2d 368 (Fla 2nd DCA 1985).

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lack jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." *Melo v. U.S.*, 505 F2d 1026. "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners*, 94 Ca2d 751. 211 P2d 389.

"There is no discretion to ignore that lack of jurisdiction." *Joyce v. US*, 474 F2d 215. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F2d 416.

Throughout this ordeal, Respondent, as the Administrative Agency, had a duty to provide within the entire record, from the defective *Official Notice*, (and any other documents that they utilized and/or would have utilized), that they had jurisdiction. “The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings.” *Hagans v. Lavine*, 415 US 533.

“A court must prove on the record, all jurisdiction facts related to jurisdiction asserted.” *Latana v. Hopper*, 102 F2d 188; *Chicago v. New York*, 37 F.Supp. 150. “The Law provides that once State jurisdiction has been challenged, it must be proven” *Main v. Thiboutot*, 100 S.Ct. 2502 (1980).

“Thus where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term.” *Dillon v. Dillon*, 187 P 27.

“A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to act, and a court must have the authority to decide that question in the first instance.” *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L.ed 1666, 67 S.Ct. 1409.

“A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court.” *Old Wayne Mut. L. Assoc. v. McDonough*, 204 US 8, 27 S. Ct. 236 (1907).

Lt. Spencer instructed Deputy Chaplin to request and set up a hearing with the Beaufort County Magistrate. “An action by an [presumed] Administrative Agency, whether directly or through a court sitting administratively as the hearing officer, must be clearly defined in the statute before it has subject matter jurisdiction, without such jurisdiction of the [Appellant], all

acts of the agency, by its employees, agents, hearing officers, are null and void.” *Doolan v. Carr*, 125 US 618; *City v. Pearson*, 181 Cal. 640.

“Agency, or party sitting for the agency, (which would be the magistrate or a municipal court) has no authority to enforce as to any [Appellant] unless he is acting for compensation... or that the act constituted part of a contract. Such an act is highly penal in nature. *Schomig v. Kaiser*, 189 Cal 596.

“A judge ceases to sit as a judicial officer because the governing principle of administrative law provides the courts are prohibited from substituting their evidenced, testimony, record, arguments, and rationale for that of the agency. Additionally, courts are prohibited from substituting their judgment for that of the agency. Courts in administrative issues are prohibited from even listening to or hearing arguments, presentation, or rationale.” *ASIS v. US*, 568 F2d 284.

“Ministerial officers are incompetent to receive grants of judicial power from the legislature, their acts in attempting to exercise such powers are necessarily nullities. *Burns v. Sup., Ct., SF*, 140 Cal. 1.

Appellant further contends that in each instance that she had asserted lack of jurisdiction or contested any other matters in this case, and the Administrative Agency and the courts have proceeded in their pursuit of this matter; they have deprived her of one or more of her constitutional rights, including, but not limited to, due process.

“The privileges and immunities of citizens of this State and the United States shall not be abridged, nor shall any person be deprived of life, liberty, and property without due process of law, nor shall any person be denied the equal protection of the law.” Article 1, Section 3, *South Carolina Constitution*.

“The power to suspend the laws shall be exercised by the General Assembly or by it authority in particular cases expressly provided for by it.” Article 1, Section 7, *South Carolina Constitution*.

“In the government of the State (County/Municipality), the legislative (Council), executive (Administrative), and judicial powers of the government shall forever be separate and distinct from each other, and no person or persons exercising the functions of one or said departments shall assume or discharge the duties of another.” Article 1, Section 8, *South Carolina Constitution*.

“All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.” Article 1, Section 9, *South Carolina Constitution*.

“No person shall be subject for the same offense to be twice put in jeopardy of life or liberty....” Article 1, Section 12, *South Carolina Constitution*.

“No person shall be finally bound by a judicial or quasi-judicial decision of an administration affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; not shall he be deprived of liberty or property unless a mode of procedure prescribed by the General Assembly, and he shall in all circumstances the right to judicial review.” Article 1, Section 22, *South Carolina Constitution*.

“To preserve and protect victim’s rights to justice and due process regardless of race, sex, age, religion, or economic status, (citizens) have the right to: (1) to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the process, and informed of the constitutional rights, provided by statute; (3) be informed of and present at any proceedings which are dispositive of the (decision of an Administrative Agency)

where the (citizen) has the right to be present; (4) be heard at any proceeding involving a decision; (6) be reasonably protected from the accused or persons acting on (their) behalf throughout the process; (8) have reasonable access to all documents relating to the incident; and (11) a reasonable disposition and prompt and final conclusion of the case.” Article 1, Section 24, *South Carolina Constitution*.

“A departure by a court from those recognized and established requirements of law, however, close apparent adherence to mere form in method of procedure, which has the *effect* of depriving one of a constitutional right, is an excess of jurisdiction. *Wuest v. Wuest*, 127 P2d 934, 937.

“Where a court (tribunal) failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris.” *Merritt v. Hunter, C.A. Kansas*, 170 F2d 739.

“A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property.” *Norwood v. Renfield*, 34 C 329; *Ex parte Giambonini* 49 P. 732.

“Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio.” *In Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 118 P2d 846.

The elementary doctrine that the constitutionality of a legislative act is open to attack only by persons whose rights are affected thereby, applies to statute relating to administrative agencies, the validity of which may not be called into question in the absence of showing of substantial harm, actual or impending, to a legally protected interest directly resulting from the enforcement of the statute.” *Board of Trade v. Olson*, 262 US 1; 29 ALR 2d 105.

Appellant asserts that the Respondent lacked, and lacks, personal, territorial and subject matter jurisdiction over her as it pertains to the July 4, 2012, incident. She believes she is entitled to an Order confirming the jurisdiction of this matter prior to any other proceedings going forward. Without proper jurisdiction, there is no case.

Appellant contends that if this Honorable Court determines that the Respondent has and had jurisdiction over her, that she be allowed the time to prepare, serve and file a Writ of Mandamus requiring the Respondent to act responsibly and provide her with the proper notice; an actual administrative hearing as to the contested issues; proper record of the administrative hearing; and other such remedies that would make her whole before proceeding with issue.

In the alternative, the Appellant moves this Court for an Order reversing the Administrative Department determination based on the fact that Appellant's substantial rights have been prejudiced because the administrative actions are:

- a) in violation of constitutional and statutory provisions;
- b) in excess of the statutory authority of the agency;
- c) made upon unlawful procedure;
- d) affected by error of law;
- e) clearly erroneous in view of the of the reliable, probative, and substantial evidence on the whole record; and
- f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted of discretion.

In conclusion, Appellant referenced the "Kafkaesque Nightmare" she has been subjected to for over 2 ½ years. Appellant makes reference to Kafka's "The Trial", whereby a man is arrested and forced to participate in a "nightmarish labyrinthine legal system". Appellant believes that this correlates to this administrative process thus far. And she seeks, and has been seeking, nothing more than to be treated fairly and be provided all rights to due process as she should have been afforded in the first place.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mare Baracco', written over a horizontal line.

Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935
(843) 592-1062

Date: October 9, 2014.

Authorities ii

AUTHORITIES

S.C. Constitution, Article I, Section 3
S.C. Constitution, Article I, Section 7
S.C. Constitution, Article I, Section 8
S.C. Constitution, Article I, Section 9
S.C. Constitution, Article I, Section 12
S.C. Constitution, Article I, Section 22
S.C. Constitution, Article I, Section 24
S.C. Constitution, Article VIII, Section 14

ASIS v. US, 568 F2d 284.

Burns v. Sup., Ct., SF, 140 Cal. 1.

Board of Trade v. Olson, 262 US 1; 29 ALR 2d 105.

Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951);

Doolan v. Carr, 125 US 618; *City v. Pearson*, 181 Cal. 640.

In Re Application of Wyatt, 300 P. 132; *Re Cavitt*, 118 P2d 846.

Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928).

McKenzie v. City of Florence, 234 S.C. 428, 108 S.E.2d 825 (1959).

Merritt v. Hunter, C.A. Kansas, 170 F2d 739.

Norwood v. Renfield, 34 C 329; *Ex parte Giambonini* 49 P. 732.

Schomig v. Kaiser, 189 Cal 596.

Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950).

Wuest v. Wuest, 127 P2d 934, 937.

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STATUTES

S.C. Code Ann. Section 1-23-10, et seq.
S.C. Code Ann., Section 1-23-111, et seq.
S.C. Code Ann. Section 1-23-115, et seq.
S.C. Code Ann. Section 1-23-140, et seq.
S.C. Code Ann. Section 1-23-310, et. seq.
S.C. Code Ann. Section 1-23-320, et seq.
S.C. Code Ann. Section 1-23-340, et seq.
S.C. Code Ann. Section 1-23-350, et seq.
S.C. Code Ann. Section 1-23-380, et seq.
S.C. Code Ann. Section 12-60-30
S.C. Code Ann. Section 16-17-735
S.C. Code Ann. Section 17-13-40
S.C. Code Ann. Section 23-20-50
S.C. Code Ann. Section 30-9-30 et seq.
S.C. Code Ann. Section 47-3-50, et seq.
S.C. Code Ann. §47- 3-20

OTHER AUTHORITIES

Beaufort County Code of Ordinances Chapter 14 - Animals
Beaufort County's Official Notice Pursuant to Ordinance 14-35
Town of Port Royal Code of Ordinances Chapter 3 – Animals – Article II. Animal Control
Town of Port Royal Uniform Traffic Ticket Number 39533 FY - Violation of Ordinance 3-53
Town of Port Royal Municipal Court Disposition Sheet in Case #39533FY

Letter of July 10, 2012, pursuant to the direction of Lt. Spencer to the Beaufort County
Magistrate's Court.

Law Enforcement Mutual Aid Agreement – Town of Port Royal/Beaufort County of June 5,
2012

Town of Port Royal Resolution 6-2012 of September 12, 2012

Beaufort County, Beaufort County Sheriff Department and Town of Hilton Head initial
Agreement for Police Services dated February 1, 2002

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Port Royal VERSUS

FIRST NAME Marie MIDDLE NAME LAST NAME Baracco

STREET AND NO. CITY STATE ZIP CODE
1006 Madrid Ave Port Royal SC 29935

STATE LICENSED DRIVER'S LICENSE NO. CDL DRI. LIC. CLASS
SC 011385879 YES NO D

VEH. LIC. NO. STATE MAKE OF VEH YEAR COMM. VEH. AUTO 16 PSGR. VEH. COMB.
HAZ. MT. MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT STREET AND NO.
Grimsley 700 Paris Ave

DATE OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE
07 25 20 12 6:00PM Port Royal SC 29935

VIOLATION - COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO.
Animals at Large YES NO 3-53

OWNER OF VEHICLE DATE OF ARREST
Animals at Large 07 04 20 12

ADDRESS OF OWNER DATE OF VIOLATION
Animals at Large 07 04 20 12

BAIL DEPOSITED NAME OF ARRESTING OFFICER RANK
Puryear AFC

PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR Nolo Contendere, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

COUNTY	NUMBER
<u>BFT</u>	<u>07</u>
BADGE	TROOP
<u>316</u>	<u>06</u>
D S M T W T F S	1 2 3 4 5 6 7
<u>0930</u>	<u>Clear</u>
TIME OF VIOLATION	WEATHER
DISTANCE IN FEET FROM INTERSECTION OF	
AND	
MILES	N E S W
	1 2 3 4
HWY NO.	CITY
Lat	
Long	
OFFENSE CODE	B.A. LEVEL
<u>94</u>	<u>/</u>

Clerk of Court 843-986-2229

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET

39533 FY

VIOLATOR'S COPY

Band # 1,092 50

8/8/12

This is an Official Notice

Section 14-35 of the Beaufort County Ordinance States:

"Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals.

The animal described below has hereby been declared dangerous. You are required by law to comply with the following requirements within seventy-two (72) hours of:

Date / Time July 9, 2012 / 2:30 PM
Species: Canine Breed: Rhodesian Ridge Back mix
Name: Bodi Age: 3yrs Gender: M
Description: Red w/ white chest
Owner / Address / Location of Animal: Mare Baracco
1006 Madrid Avenue, Port Royal SC 29935

Requirements:

(1) The dangerous animal shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel appropriate to the size of the animal. All pens or structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure floor (such as concrete) attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal. The pen or run area must be clearly marked as containing a dangerous animal and must be designed to prevent the entry of the general public, including children, and to prevent the escape or release of the animal.

(2) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition.

(3) The dangerous animal must not go outside its kennel or pen unless the animal is securely leashed and muzzled with a leash no longer than six feet in length and under the actual physical control of a person 18 years of age or older. Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

(4) The person owning, keeping, sheltering or harboring the animal must register the animal with the Beaufort County Animal Shelter within the required seventy-two hour timeframe and provide proof of liability insurance of at least fifty thousand dollars insuring or securing the owner for personal injuries inflicted by the dangerous animal. The Beaufort County Animal Shelter will issue Dangerous Animal tags which must be displayed on the animal's collar at all times. The dangerous animal must also display its current rabies tag on its collar at all times. The person owning, keeping, sheltering or harboring the dangerous animal shall have an identification microchip implant placed under the animal's skin by a licensed veterinarian within the required seventy-two hour timeframe.

Receipt left with: [Signature]

Date 7/9/12

Deputy: Lt B. Chaplin

Date 7-9-12

Signing under duress, app

Penalties:

Failure to comply with these requirements within seventy-two (72) hours of the date and time listed on this notice will result in the responsible party being fined in the amount up to \$1092.50. The dangerous animal will be removed from the premises and secured at the Beaufort County Animal Shelter in accordance with Section 14-35 of the Beaufort County Ordinance pending the decision of the Court.

Reasons for declaration of dangerousness: Reference case # 12-01444 (PRPD) and 20120709-508 (BCSO) involving an animal attack which the victim's K9 died.

PORT ROYAL MUNICIPAL COURT

P.O. DRAWER 9
PORT ROYAL, SC 29935

DISPOSITION SHEET

Date Printed: 10/07/2014

Case Type: Traffic Ticket 39533FY

Case #: 39533FY

Name: MARIE BARACCO
1006 MADRID AVE
PORT ROYAL, SC 29935

Violation: NT 00-00-0000 / 3-53
ANIMALS AT LARGE

Trial Date: 11/08/2012

Offense Date: 07/04/2012

Disposition: 5 NOT GUILTY JURY TRIAL

Total Fine:

Total Paid:

Sentence:

Certified to be a True Copy
[Signature]
Notary Public South Carolina
Commission expires: 09-27-2023

Chapter 14 - ANIMALS

FOOTNOTE(S):

--- (1) ---

Cross reference— Environment, ch. 38; health and sanitation, ch. 46; agricultural use regulations, § 106-1156 et seq.

ARTICLE I. - IN GENERAL**ARTICLE II. - ANIMAL CONTROL**

FOOTNOTE(S):

--- (2) ---

Editor's note—Ord. No. 2010/7, adopted Apr. 26, 2010, amended art. II in its entirety to read as herein set out. Former art. II pertained to the same subject matter, consisted of §§ 14-26—14-37, and derived from the 1982 Code; Ord. No. 2008/10, adopted Apr. 14, 2008; and Ord. No. 2009/13, adopted Mar. 20, 2009.

Sec. 14.26 - Definitions.

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

Animal means any domestic live, vertebrate creature.

Animal control director means any person so appointed by the county administrator.

Animal control officer means any person designated by the county administrator and/or commissioned to perform such duties under the laws of the county and the state.

Animal shelter means any facility so designated by the county council.

Confined means kept in an enclosure designed to restrain an animal from leaving the owner's premises; a fully fenced pen or kennel.

Dangerous animal means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals; an animal which makes an unprovoked attack that causes bodily injury to a human being and the attack takes place other than the place where the animal is confined; or an animal that commits unprovoked attacks any place other than the place where the animal is confined and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being. A dog will be considered a dangerous animal if it is used as a weapon in the commission of a crime.

Owner means any person owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more (S.C. Code 1976, § 47-5-20).

Certified True Copy
Clerk to Council
Beaufort County, SC
 By: *Suzanna M. Reiney*
 Suzanna M. Reiney
 Date: *September 23, 2014*

Pet means any animal kept for pleasure rather than utility.

Public nuisance means any animal which:

- (1) Molests passersby or passing vehicles;
- (2) Attacks other animals;
- (3) Trespasses on school grounds;
- (4) Is repeatedly at large;
- (5) Damages private or public property;
- (6) Barks, whines, howls, screeches or crows in an excessive, continuous or untimely fashion; or
- (7) Causes harm to the public's health, safety or well being.

Restraint means an animal secured by a leash or lead, under the control of a responsible person within the boundaries of the owner's property or any public property.

Running at large means a pet or domestic animal which is off the property or premises of the owner and which is not under the physical control of owner by means of a leash or confinement.

Veterinary hospital means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

Wild animal means any warm-blooded animal such as a monkey (subhuman primate), raccoon, opossum, squirrel, rat, leopard, panther, tiger, lion, lynx, or other warm-blooded animal which can normally be found in the wild state.

(Ord. No. 2010/7, 4-26-2010)

Cross reference— Definitions generally, § 1-2.

Sec. 14-27. - Sterilization and microchip identification.

- (a) *Sterilization*. No impounded pet may be redeemed without (a) first having been surgically sterilized and a fee paid therefore, which fee shall not exceed the fee charged by the shelter for the sterilization of animals prior to adoption, or (b) paying an intact animal fine of \$200.00 to redeem the pet intact. If an intact pet comes to be impounded for a second or subsequent time in a calendar year, the intact animal fine shall be \$1,000.00.

Sterilization under this section may not take place sooner than after the fifth working day following the pet's placement in the custody of the shelter, or when the owner appears at the shelter to redeem the animal, whichever is sooner.

The shelter must give written notice of the policies and options regarding redemption and sterilization set forth herein to owners seeking to redeem their pets.

- (b) *Microchip identification and fee*. When a dog or cat is adopted from the county animal shelter, the animal shelter may implant a microchip in the dog or cat identifying the owner and all other information as provided by law. The county animal shelter shall charge a fee for implantation of a

microchip in an amount recommended by the county administrator.

- (c) *Fee for redemption of a microchipped animal.* A microchipped animal returned to the county animal shelter may be reclaimed by the owner upon the owner's payment to the county animal shelter of a redemption fee. A redemption fee shall be in the amount recommended by the county administrator.
- (d) *Fee for redemption and microchipping of an unmicrochipped animal.* All reclaimed animals are required to be microchipped prior to release to their owners along with payment of a redemption fee. Both the fee for implantation of a microchip and the redemption fee shall be in the amount recommended by the county administrator.

(Ord. No. 2010/7, 4-26-2010; Ord. No. 2010/27, 11-8-2010)

Sec. 14-28. - Restraint of animals by owners.

- (a) *Running at large.* It shall be unlawful for any owner or custodian of any dog, cat, or other animal to permit the dog, cat, or other animal to run at large at any time upon any street or highway or other property within the county (S.C. Code 1976, § 47-7-110).
- (b) *Control of animals generally.* No owner shall fail to exercise proper care and control of his animals to prevent them from becoming a public nuisance.
- (c) *Female dogs and cats in heat.* Every female dog and cat in heat shall be confined in such a manner that such female dog or cat cannot come into contact with another animal.

(Ord. No. 2010/7, 4-26-2010)

Sec. 14-29. - Impoundment.

- (a) *Seizure of animals running at large generally.* Any dog, cat, dangerous animal, or other animal running at large may be seized by an animal control officer and transported to the county animal shelter and there confined in a humane manner for a period of not less than five working days and may thereafter be disposed of in a humane manner if not claimed by the owner. However, if the animal is terminally ill, critically injured or a threat to the shelter staff and/or other animals being housed at the shelter, the county veterinarian or director may waive the five-day hold period and the animal may be immediately disposed of in a humane manner.
- (b) *Disposition of animals at large.* When an animal is found running at large and its ownership is known to an animal control officer, such animal need not be impounded but can be returned to the owner, and the officer may cite the owner of such animal to appear before a county magistrate to answer to charges of violation of this article. Upon the seizure of any animal found running at large with a rabies tag, the county animal shelter and control will screen the rabies records and attempt to notify the owner or custodian by written notice and/or telephone that the animal is being held by a shelter for disposition (S.C. Code 1976, § 47-3-540). All animals will be scanned for microchip identification.
- (c) *Disposition of unclaimed animals.* Animals not claimed by their owners after notification or attempted notification or before the expiration of five working days, shall become the property of the county animal shelter and control and may be placed for adoption or euthanized at the

discretion of the director of the county animal shelter and control.

- (d) *Records of impounded animals.* It shall be the duty of the director of the county animal shelter and control or other persons designated by the county council to keep accurate and detailed records of seizures and dispositions of all animals coming into their custody and to file this report with the county administrator or his designee each month. Any reports prepared by a designee shall also be filed with the director of the county animal shelter and control.
- (e) *Abandoned animals.* When determined that an animal has been left unattended for a period of 24 hours or longer, it will be considered abandoned. The animal control officers may enter the property for the purpose of removing the animal. The animal will then be taken to the animal shelter and confined there for a period of five working days. It is unlawful to abandon an animal.
- (f) *Diseased animals.* Any diseased animal presented to a county animal shelter and control whose condition endangers the health of other animals in the shelter or any severely injured animal may be euthanized immediately, notwithstanding the five working day holding period, as specified in subsections (a) and (c) of this section.
- (g) *Shelter space allocations.* At any time the number of animals presented to the county animal shelter and control for holding exceeds the holding space available, the animal shelter director shall ration the available spaces among the municipal, county and military animal control officers and the general public. If all local rescuers are full and the number of animals exceeds the holding space available, the director can network with other organizations from within and outside Beaufort County for their care and placement.

(Ord. No. 2010/7, 4-26-2010 ; Ord. No. 2010/27, 11-8-2010)

Sec. 14-30. - Redemption of impounded animals.

- (a) *Procedure.* The owner shall be entitled to resume possession of any impounded animal upon proof of ownership and payment of impoundment fees and fines as set forth in this section.
- (b) *Failure to redeem within holding period.* The owner of an animal impounded and not redeemed within the required holding period shall be responsible for any costs incidental to impoundment in the amount set forth in this section.
- (c) *Payment of fees.* Any impounded animal may be redeemed as provided in this section upon payment of the fees by the owner to the county animal shelter and control.
- (d) *Redemption fees.* The redemption fee shall be \$50.00 for the first 24 hours of confinement for the first impoundment; the redemption fee for the second impoundment will be \$125.00 and the redemption fee for the third impoundment and each subsequent offense will be \$250.00.
- (e) *Boarding fee.* A boarding fee not to exceed \$25.00 a day will be imposed following the first 24 hours.
- (f) *Posting of fees.* All fees shall be published and posted in a prominent place within the county animal shelter and control.
- (g) *Proof of rabies [vaccination].* In order to redeem an impounded animal from the county animal shelter and control, a current and valid rabies certificate must be presented at the time of

redemption or obtained from a licensed veterinarian within three business days and provided to the county animal shelter. Proof of the rabies vaccination certificate must be presented or obtained at the time of the redemption. If a rabies certificate is not presented within three business days, an animal control officer will issue the owner a ticket, which will be processed through the Magistrate's Court in Beaufort County.

(Ord. No. 2010/7, 4-26-2010 ; Ord. No. 2010/27, 11-8-2010)

Sec. 14-31. - Adoption fees and sterilization.

- (a) *Adoption fee established.* Animal adoption fees shall be established by the administrator and the director of the county animal shelter and control.
- (b) *Sterilization.* Animals adopted from the county animal shelter and control will be sterilized prior to going into the adopted home. Sterilization fees shall be collected by the county animal shelter and control at the time of adoption.
- (c) *Authority to refuse adoption.* The county animal shelter and control director or designee shall have the authority to refuse adoption of an animal to any person deemed unable to provide proper shelter, confinement, medical care and food or to any person who has a past history of inhumane treatment of or neglect to animals. Any person seeking adoption of an animal more frequently than 90 days shall be subject to refusal of adoption. Any person who has been refused adoption of an animal may appeal his case to the deputy administrator for community services. If any person turns in an owned animal to the animal shelter and control, they will not be able to adopt an animal for ninety days. Persons turning in more than one owned animal within one year will no longer be allowed to adopt an animal from the shelter.

(Ord. No. 2010/7, 4-26-2010 ; Ord. No. 2010/27, 11-8-2010)

Sec. 14-32. - Cruelty.

- (a) *Animals care generally.* No owner shall fail to provide his animals with sufficient, good and wholesome food and water at all times; proper shelter and protection from the weather; a clean and sanitary environment; veterinary care when needed to prevent suffering; and humane care and treatment. Failure to comply with the animal control officer's instructions or directions will result in the animal control officer impounding the animals pending the ruling of the court.
- (b) *Mistreatment.* No person shall beat, cruelly ill-treat, torment, overload, overwork or otherwise abuse an animal or cause, instigate or permit any fight or other combat between animals or animals and humans.
- (c) *Cropping or dubbing of ears, tails, comb, wattles, spurs or earlobes.* No person shall crop or dub an animal's ears or tail or wattle or comb, except a licensed veterinarian who is qualified to perform such an operation.
- (d) *Giving away for commercial purpose.* No person shall give away any live animal, fish, reptile, or bird as a prize for or as an inducement to enter any contest, game, or other competition or as an inducement to enter a place of amusement or offer such vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

- (e) *Striking with motor vehicle.* Any person, as the operator of a vehicle, who strikes a dog or cat should, if reasonably possible, report the accident to the owner, and should call 911 and ask that the animal control division be notified of the time and place of the accident.
- (f) *Poisoning.* No person shall expose any known poisonous substance, whether mixed with food or not, in such a manner as to endanger any domestic animal.
- (g) *Leaving unattended.* No person shall leave an animal unattended for more than 24 hours. This shall constitute abandonment. After a 24-hour period, if no contact has been made with an owner, the animal control officer will pick up the animal and transport it to the animal shelter.
- (h) *Locking in vehicle.* It shall be illegal for any person to leave an animal unattended in a vehicle. The animal control officer assisted by another law enforcement officer will remove the animal when the officer's opinions are that the animal is in distress.
- (i) *Denial of shelter.* No person shall fail to provide shelter or deny shelter for any animal, fish, bird, fowl or reptile of any kind in any manner without shading same from the sun, any direct light, heat or cold and providing adequate ventilation for their use.
- (j) *Denial of treatment.* No person shall fail to provide humane treatment or deny humane treatment for any diseased, sick or injured animal.

(Ord. No. 2010/7, 4-26-2010)

Sec. 14-33. - Rabies control.

- (a) *State law adopted.* The provisions of S.C. Code 1976, § 47-5-10 et seq. are adopted by this article.
- (b) *Duty to report animal bites.* It shall be the duty of every physician or other practitioner to report to the county public health department or an authorized agent the names and addresses of persons treated for bites inflicted by animals, together with such information as will be helpful in rabies control. Any person bitten by an animal must report the bite to the county health department within 24 hours of the incident.
- (c) *Sheriff's office to report animal bites.* It shall be the duty of the sheriff's department to forward a copy of each report involving an animal bite to the county health department within 24 hours of receipt of such report.
- (d) *Uninoculated animals biting humans.* If an uninoculated animal has bitten a person, the animal will be seized and the county health department contacted for necessary forms for processing. After authority is given by DEHEC following a waiting period, the animal will be euthanized at the county animal shelter and taken to a consenting veterinarian, who will remove the head. Once the head is removed, the county health department will pick up and ship the head to the authorities for examination.
- (e) *Inoculated animals biting humans.* When an animal that has been inoculated against rabies is involved in an incident where a person is bitten, the owner of the animal must take the animal to a licensed veterinarian for examination. The owner must also notify the county health department within 24 hours of the incident. The county health department will direct the owner to quarantine

the animal for ten days at the owner's residence or at a veterinary clinic as the department may determine. Subsequent to the ten days' quarantine, the animal will again be examined by a licensed veterinarian and the results of the examination furnished by the owner to the county health department. If a bite is considered severe by the medical director, the director may process such animal for a determination of rabies contamination as he determines necessary, whether or not the animal has been vaccinated.

- (f) *Uninoculated animal not considered property.* Animals that have not been inoculated against rabies shall not be held to be property in any of the courts of the county.
- (g) *Inoculation of dogs and cats required.* All dogs and cats three months of age or more are required to be inoculated against rabies. A rabies tag issued at the time of rabies inoculation shall be attached to a collar or harness and worn by the animal at all times.

(Ord. No. 2010/7, 4-26-2010)

Sec. 14-34. - Management of feral cat colonies.

(a) *Definitions.*

Animal means any live, vertebrate creature, domestic or wild.

Caregiver means any person who provides food, water or shelter to or otherwise cares for a feral cat colony.

Caregiver manager means any person in charge of a caregiver program.

Eartipping means straight-line cutting of the tip of the left ear of a cat while the cat is anesthetized.

Feral cat means a cat which currently exists in a wild or untamed state.

Feral cat colony means a group of cats that congregates. Although not every cat in a colony may be feral, any non-feral cats that routinely congregate with a colony shall be deemed to be a part of it.

Nuisance means disturbing the peace by (a) habitually or continually howling, crying or screaming, or (b) the habitual and significant destruction of property against the wishes of the owner of the property.

Suitable shelter means shelter that provides protection from rain, sun and other elements and is adequate to protect the health of the cat.

TNR means trap, neuter and return.

TNA program means a program pursuant to which cats are trapped, neutered or spayed, vaccinated against rabies, eartipped or tattooed and returned to the current location of the managed colony.

(b) *Feral cat colonies.*

- (1) Feral cat colonies shall be permitted and caregivers shall be entitled to maintain them in accordance with the terms and conditions of this section.
- (2) Caregiver requirements. It shall be the duty of the caregiver to:
 - a. Report bi-annually to the county animal control on the following:

- Number of colonies in the county if the caretaker maintains more than one colony.
2. Providing the county animal control with descriptions of each cat in the colony and copies of documents evidencing that the cats have been vaccinated and spayed/neutered.
- b. Help to resolve any complaints over the conduct of a colony or a cat within a colony.
 - c. Maintain records on the size and location of the colonies as well as the vaccination and spay/neuter records of cats in the colonies.
 - d. Mandatory vaccination of the colony population for rabies and making reasonable efforts to update the five-way or equivalent vaccinations on cats that can be recaptured.
 - e. Mandatory spaying/neutering of all cats within the colony by a licensed veterinarian. In facilitating the spaying/neutering of cats, caregivers shall be presumed to have acted in good faith in concluding that cats routinely congregating within the colony are feral.
 - f. Providing food, water and suitable shelter for colony cats.
 - g. Observe the colony cats daily and keeping a record of any illnesses or unusual behavior noticed in any colony cats.
 - h. Obtaining proper medical attention to any colony cat who appears to require it.
 - i. Obtaining written approval of the owner of any property, on which the colony resides, or to which the caregiver requires access, to provide colony care.
 - j. In the event that kittens are born to a colony cat, the caregiver shall remove the kittens from the colony after they have been weaned and be responsible for the placement of the kittens in homes or foster homes for the purpose of subsequent permanent placement.
 - k. Caregivers shall make reasonable efforts to find permanent inside homes for colony cats who exhibit the potential for acclimating to such a placement.
 - l. Caregiver shall make reasonable effort to maintain the colony as to prevent the colony from running at large beyond the confines of the designated area. (S.C. Code 1976 § 47-7-110)
- (c) *Ordinance enforcement.* Nothing shall interfere with the animal control officer's ability to:
- (1) Seize/remove a cat from a colony that is creating a nuisance as defined above if the caregiver has failed to cure the nuisance within a reasonable timeframe.
 - (2) Seize/remove a feral cat colony when the caregiver fails to comply with the requirements of this section.

(Ord. No. 2010/7, 4-26-2010)

Sec. 14-35. - Regulation of dangerous animals.

- (a) *Definition.* "Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals; an animal which makes an unprovoked

attack that causes bodily injury to a human being and the attack takes place other than the place where the animal is confined; or an animal that commits unprovoked attacks any place other than the place where the animal is confined and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being. A dog will be considered a dangerous animal if it is used as a weapon in the commission of a crime.

- (b) *Confinement.* Every dangerous animal, as determined by the animal control officer, magistrate or licensing authority, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner (S.C. Code 1976, § 47-3-720).
- (1) All dangerous animals shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this section. Such pen, kennel or structure must have secure sides and a secure top attached to the sides.
 - (2) All pens or other structures designed, constructed or used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom, floor or foundation attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal.
 - (3) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition. No dangerous animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition.
 - (4) No person shall permit a dangerous animal to go outside its kennel or pen unless such animal is securely leashed and muzzled with a leash no longer than six feet in length. No person shall permit a dangerous animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless both the animal and the leash are under the actual physical control of a person 18 years of age or older.
 - (5) Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.
- (c) *Declaring an animal dangerous.*
- (1) An animal control officer, in his or her discretion, observes that a particular animal is a dangerous animal as defined in this article, may declare such animal a dangerous animal by delivering a written notice of declaration to the owner. The notice shall include a description of the animal and the basis for the declaration of dangerousness. The notice shall be served upon any adult residing at the premises where the animal is located or may be posted on the premises if no adult is present.
 - (2) The person owning, keeping, sheltering or harboring the animal in question must comply with the requirements as designated in this section within 72 hours of the receipt of the animal control officer's declaration.
 - (3) Any animal that is alleged to be dangerous and that is under impoundment or quarantine at the

animal shelter shall not be released to the owner, until such time that the owner is capable of confining the animal to his/her property in accordance with this section.

- (4) All dangerous animals shall have an identification microchip implant placed under the animal's skin once the animal has been declared dangerous. The owner shall pay the actual fee charged by the shelter or the licensed veterinarian who performed the microchip identification procedure.

(Ord. No. 2010/7, 4-26-2010)

Sec. 14-36. - Enforcement.

- (a) *Duties.* The division of animal control shall be charged with the responsibility of:
 - (1) Cooperating with the health officers of various state government units and assisting in the enforcement of laws of the state with regard to the control of animals, and especially with regard to the vaccination of dogs and cats against rabies.
 - (2) Investigating all complaints with regard to animals covered by this article.
 - (3) Enforcing within the unincorporated areas of the county and municipalities, all of the state laws, ordinances enacted by the county and contracts entered into the county for the care, control and custody of animals covered by this article.
- (b) *Entering the premises.* The animal control officer shall patrol the properties of the county, public and private, for the purpose of checking animals for the following:
 - (1) Rabies.
 - (2) Inhumane treatment and the health of animals.
 - (3) Boarding.
- (c) *Interference with officers.* No person shall interfere with or hinder an animal control officer or any such agent of the county in the performance of such officer's duty or seek to release animals in the custody of the animal control officer or any such agent of the county.
- (d) *Penalties.* Any person who violates the provisions of this article shall be guilty of a misdemeanor and upon conviction, shall be subject to a fine up to \$500.00 or 30 days in jail. Each day's violation of any provision of this article shall constitute a separate offense.

(Ord. No. 2010/7, 4-26-2010)

Cross reference— Health and sanitation, ch. 46.

ARTICLE II. ANIMAL CONTROL

- Sec. 3-51. Definitions.
- Sec. 3-52. Licensing of dogs.
- Sec. 3-53. Animals running at large.
- Sec. 3-54. Impoundment of animals.
- Sec. 3-55. Redemption of impounded animals.
- Sec. 3-56. Adoption procedures.
- Sec. 3-57. Cruelty to animals.
- Sec. 3-58. Keeping of wild animals.
- Sec. 3-59. Performing animal exhibitions.
- Sec. 3-60. Enforcement.
- Sec. 3-61. Rabies control.
- Sec. 3-62. Penalties.

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[Signature]
Mayor Public South Carolina
Commission expires: 09-27-2023

Sec. 3-51. Definitions.

As used in this article, the following terms mean:

- (1) *Animal*: Any live, vertebrate creature, domestic or wild.
- (2) *Animal control officer*: Any person designated by the county administrator and/or commissioned to perform such duties under the laws of the state.
- (3) *At large*: Any dog shall be deemed at large when the dog is off the property of its owner and not under control of a competent person.
- (4) *Animal shelter*: Any facility so designated by the county council.
- (5) *Licensing authority*: Any participating veterinary hospital or animal shelter.
- (6) *Owner*: Any person, partnership or corporation owning, keeping or harboring one (1) or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) consecutive days or more.
- (7) *Performing animal exhibition*: Any spectacle, display, act or event other than those events in which performing animals are used which have been approved by the county administrator.
- (8) *Pet*: Any animal kept for pleasure rather than utility.
- (9) *Public nuisance*: Any animal or animals which:
 - a. Molest passersby or passing vehicles;
 - b. Attack other animals;
 - c. Trespass on school grounds;
 - d. Are repeatedly at large;
 - e. Damage private or public property; or
 - f. Bark, whine or howl in an excessive, continuous or untimely fashion.
- (10)

Restraint: Dog secured by a leash or lead, or under the control of a responsible person and obedient to that person's commands; on or within a vehicle being driven or parked on any street or highway or within the real property limits of its owner.

- (11) *Veterinary hospital:* Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.
- (12) *Vicious animal:* Any animal or animals that constitute a physical threat to human beings or other animals.
- (13) *Wild animal:* Any live monkey (subhuman primate), raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx, or other warm-blooded animal which can normally be found in the wild state.

(Ord. No. 83-18, § (4-6), 6-8-83)

Cross reference— Definitions and rules of construction generally, § 1-2.

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Tina Anderson
Notary Public South Carolina
Commission expires: 09-27-2023

Sec. 3-52. Licensing of dogs.

- (a) *Application—Requirements:*
 - (1) Any person owning, keeping, harboring, or having custody of a dog over four (4) months of age within the area of Beaufort County must obtain a license as provided in this section.
 - (2) Application for a license must be made within thirty (30) days after obtaining a dog over four (4) months old, except this requirement shall not apply to a nonresident keeping a dog within the county for no longer than sixty (60) days.
- (b) *Same—Procedure.* Prior to the first day of each year, a written application for a license shall be made to any participating veterinary hospital or animal shelter. Such application shall state the name and address of the owner, the dog's name, breed, color, age and sex of the dog. Each license applicant must furnish proof that the dog for which the license is requested has a valid rabies vaccination. The license fee shall be paid at the time of making application, a numbered receipt given to the applicant and numbered metallic tag shall be issued to the owner for attachment to the pet's collar or harness.
- (c) *Licensing period.*
 - (1) If not revoked, licenses for keeping a dog shall be for a period up to one (1) year. All licenses expire on December thirty-first for the year issued.
 - (2) Application for a license must be made within fifteen (15) days after obtaining a dog over four (4) months old, except this requirement will not apply to a nonresident keeping a dog within the county for no longer than sixty (60) days.
- (d) *Fees—Amount.* The animal license fee for each male or female dog is three dollars (\$3.00) per year.
- (e) *Same—Disposition.* From the license fees collected, all the participating veterinarians and animal shelters shall file not less than monthly a certificate as to the licenses issued for the preceding month with the Beaufort County Council which shall immediately transmit such information to the health department or its designated agency on a form prepared and issued by the Beaufort County Council.
- (f) *Same—Exemptions.* License fees shall not be required for seeing eye dogs or governmental police dogs.
- (g) *Tags—Issuance.* Upon acceptance of the license application and fee, the licensing authority shall issue a durable metal tag stamped with identifying number and the year of issuance. Tags should be designed so that they may be conveniently fastened or riveted to the animal's collar or harness.

- (h) *Same—Required.* A valid metal rabies tag and a license tag must be attached to a collar or harness and worn by the dog at all times.
- (i) *Same—Replacement.* A duplicate license for a lost tag may be obtained upon the payment of a one dollar (\$1.00) replacement fee.
- (j) *Records.* The Beaufort County Animal Shelter shall maintain a consolidated record of all identifying county license tags issued and shall make this record available for public inspection.
- (k) *Certificates to be filed.* From the licensing fee collected, all participating veterinarians and animal shelters shall file not less than monthly a certificate with the Beaufort County Council or its designated agency on a form prepared and issued by the Beaufort County Council a certificate as to the licenses issued for the preceding month.
- (l) *Transfer of license.* If there is a change in the ownership of a dog during the licensing year, the new owner may have the current license transferred to his name upon the payment of a transfer fee of one dollar (\$1.00).
- (m) *Use of license for another animal.* No person may use any license (tag) for any animal other than the animal for which it was issued.
- (n) *Exemptions from licensing.* Dogs licensed by any municipal government within Beaufort County are exempt from the licensing provision of this article.

(Ord. No. 83-18, § (4-7), 6-8-83)

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Travis H. Hurd

Notary Public South Carolina
Commission Expires 09-27-2023

Sec. 3-53. Animals running at large.

- (a) *General prohibition.* It shall be unlawful for any owner or custodian of any dog, cat or other animal to permit same to run at large at any time upon any street or highway or other property within the county.
- (b) *Control of animals generally.* No owner shall fail to exercise proper care and control of his animals to prevent them from becoming a public nuisance.
- (c) *Female dogs and cats.* Every female dog or cat in heat shall be confined in a building or secure enclosure in such manner that such female dog or cat cannot come into contact with another animal except for planned breeding.
- (d) *Vicious animals.* Every vicious animal, as determined by the animal control officer, magistrate or licensing authority, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner.
- (e) *Animals disturbing the peace.* No person owning or having custody of any dog, or any other animal, shall permit the same to unreasonably bark and/or to otherwise disturb the peace.
- (f) *Leashed animals and their feces removal.* No person owning or having custody of any dog, cat, or any other animal shall permit the animal to depart the owner's/custodian's premises without being leashed and physically controlled. That the owner/custodian of the animal will immediately remove feces deposited by the animal on any public property, public right of way or private property.

(Ord. No. 83-18, § (4-8), 6-8-83; Ord. No. 98-37, 12-2-98)

State law reference— Dogs running at large, S.C. Code 1976, § 47-3-50(a).

Sec. 3-54. Impoundment of animals.

- (a) *Seizure of animals running at large generally.* Any dog, vicious animal or cat running at large may be taken up by the animal control officer and transported to the county animal shelter

second impoundment will not exceed fifteen dollars (\$15.00) and the reclaim fee for the third impoundment will not exceed twenty dollars (\$20.00).

- (e) *Boarding fee.* The boarding fee is not to exceed fifteen dollars (\$15.00) a day following the first twenty-four (24) hours.
- (f) *Fees to be posted.* All fees shall be published and posted in a prominent place within the Beaufort County Animal Shelter.


(Ord. No. 83-18, § (4-10), 6-8-83)

Sec. 3-56. Adoption procedures.

- (a) *Adoption fee.* Adoption fees not to exceed fifteen dollars (\$15.00) shall be established by the Beaufort County Animal Shelter Board and the director of the Beaufort County Animal Shelter.
- (b) *Sterilization deposit.* Sterilization deposits not to exceed fifteen dollars (\$15.00) shall be established by the Beaufort County Animal Shelter Board and the director of the Beaufort County Animal Shelter.
- (c) *Authority to refuse adoption.* The Beaufort County Animal Shelter director shall have the authority to refuse adoption of an animal to any person he deems unable to provide proper shelter, confinement, medical care and food, or to any person who has a past history of inhuman treatment or neglect to animals. Any person who has been refused adoption of an animal may appeal his case to the Beaufort County Shelter Board of Directors.
 - (1) From the fees collected, the veterinarians shall receive a fee of fifty cents (\$0.50) for each license or replacement license issued.
 - (2) All other fees collected shall be deposited into the general fund of Beaufort County.

(Ord. No. 83-18, § (4-11), 6-8-83)

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Notary Public South Carolina
Commission expires: 09-27-2023

Sec. 3-57. Cruelty to animals.

- (a) *Animal care generally.* No owner shall fail to provide his animals with sufficient good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and humane care and treatment.
- (b) *Mistreatment of animals.* No person shall beat, cruelly ill treat, torment, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any dogfight, or other combat between animals or between animals and humans.
- (c) *Abandoning animals.* No owner of an animal shall abandon such animal.
- (d) *Cropping of dogs' ears.* No person shall crop a dog's ears, except a licensed veterinarian who is qualified to perform such an operation.
- (e) *Giving away animals for commercial purposes.* No person shall give away any live animal, fish, reptile, or bird as a prize for, or as an inducement to enter, any contest, game, or other competition, or as an inducement to enter a place of amusement; or offer such vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.
- (f) *Striking animals with motor vehicle.* Any person operating a motor vehicle who strikes a domestic animal shall stop at once and render such assistance as may be possible and shall immediately report such injury or death to the animal's owner. In the event that the owner cannot be ascertained and located, such operator shall report the incident at once to the Beaufort County Animal Shelter. If the shelter is closed, the operator shall report the incident to the local law enforcement agency.

- (g) *Poisoning of animals.* No person shall expose any known poisonous substance, whether mixed with food or not, in such a manner as to endanger domestic pets.
- (h) *Leaving animals unattended.* No person shall leave an animal unattended for more than twenty-four (24) hours.

(Ord. No. 83-18, § (4-12), 6-8-83)

State law reference— *Cruelty to animals, S.C. Code 1976, § 47-1-10 et seq.*

Sec. 3-58. Keeping of wild animals.

- (a) *Wild animals kept for exhibition.* No person shall keep or permit to be kept on his premises any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply to performing animal exhibitions, or circuses.
- (b) *Wild animals as pets.* No person shall keep or permit to be kept any wild animal as a pet unless authorized to maintain wild animals by the South Carolina Wildlife and Resources Commission after demonstrating to the commission his ability to maintain the animal in a safe and humane manner.
- (c) *Temporary permits.* The licensing authority may issue a temporary permit for the keeping, care and protection of an infant animal native to this area which has been deemed to be homeless.
- (d) *Release of wild animals held under permit.* The licensing authority shall have the power to release or order the release of any infant wild animal kept under temporary permit which is deemed capable of survival.

(Ord. No. 83-18, § (4-13), 6-8-83)

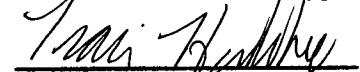
State law reference— *Prohibition on sale of wild carnivores as pets, S.C. Code 1976, § 47-5-50.*

Sec. 3-59. Performing animal exhibitions.

- (a) *Inducement with harmful devices.* No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical or manual devices in a manner which will cause, or is likely to cause, physical injury or suffering.
- (b) *Equipment.* All equipment used on a performing animal shall fit properly and be in good working condition.

(Ord. No. 83-18, § (4-14), 6-8-83)

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Commission expires: 09-27-2023**

Sec. 3-60. Enforcement.

- (a) *Entering owner's premises.* For the purpose of discharging the duties of this article and to enforce its provisions, the duly appointed animal control officer of the county or any law enforcement officer is entitled to enter any premises upon which any dog is kept or harbored and demand the exhibition by the owner of the license for such dog.
- (b) *Inhumane treatment of animal, procedure for search warrant and seizure.* When complaint is made on oath or affirmation to any magistrate authorized to issue warrants in criminal cases that the complainant believes or has probable cause to believe that this article in relation to cruelty to animals has been violated in any particular building, premises, or place, such magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any law enforcement officer to search the building or place, but no search shall be made after sundown unless specifically authorized by the magistrate upon

satisfactory cause. The law enforcement officer may examine such animal and take possession of such animal when in his opinion it is receiving inhumane treatment. The animal shall be taken to the animal shelter and held for disposition.

- (c) *Interference with officer.* No person shall interfere with, hinder or molest the duly authorized animal control officer of the county in the performance of his duty or any such agents or seek to release animals in the custody of the duly authorized animal control officer of the county or any agent of the county, except as provided in this article.

(Ord. No. 83-18, § (4-15), 6-8-83)

Sec. 3-61. Rabies control.

- (a) *State law adopted.* The Code of Laws of South Carolina, section 45-5-10 et seq., and amendments thereto are adopted by this article.
- (b) *Duty to report animal bites.* It shall be the duty of every physician, or other practitioner, to report to the county animal shelter or an authorized agent the names and addresses of persons treated for bites inflicted by animals, together with such other information as will be helpful in rabies control. It shall be the duty of the sheriff's department to forward a copy of each report involving the animal bite to the county health department within twenty-four (24) hours of receipt of such report.
- (c) *Unlicensed animals biting humans, seizure.* In the event a suspected stray unlicensed animal has bitten a person, the animal shall be seized and the county health department contacted for necessary forms for processing. The animal shall then be taken to a consenting veterinarian who will euthanize the animal and remove the head. Once the head is removed, the county health department shall pick up and ship the head to the state authorities for examination.
- (d) *Licensed animals biting humans, examination.* When a licensed animal bites a person, the owner shall be directed to take the animal to a licensed veterinarian for examination. The owner shall then cause the animal to be quarantined for ten (10) days. The quarantine may be at the owner's residence or veterinary clinic. Subsequent to the ten-day quarantine, the animal shall again be examined by a licensed veterinarian and the results of the examinations furnished by the owner to the county health department.
- (e) *Animals without rabies inoculation.*
- (1) Any animal not displaying the metal license tag issued at the time of rabies inoculation and which has been involved in a possible rabies exposure to a human may be seized and processed for determination of rabies contamination as prescribed by the health department of Beaufort County or the health department of the state.
 - (2) Any animal which has not been inoculated against rabies in accordance with the provisions of subsection (e)(1) above shall be held not to be property in any of the courts of Beaufort County.

(Ord. No. 83-18, § (4-16), 6-8-83)

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Tami Haddock

Notary Public South Carolina
Commission expires: 09 27 2023

Sec. 3-62. Penalties.

Any person interfering with the performance of duty of an animal control officer or the director of an animal shelter or violating any of the paragraphs as outlined in section 3-53 shall be deemed guilty of a misdemeanor and punished in the following manner:

- (1)

First offenders. First offenders of the licensing clauses of this article will be subject to a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100.00).

- (2) *Second offenders.* Second offenders will be subject to a fine not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) and/or thirty (30) days in jail.
- (3) *Separate offenses.* Each day's violation of this article will constitute a separate offense.

(Ord. No. 83-18, § (4-17), 6-8-83; Ord. No. 98-37, 12-2-98)

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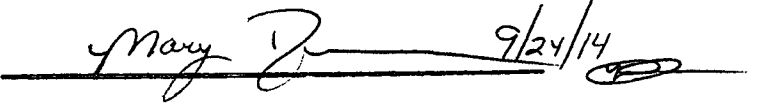
Tami D. Dobbins

Notary Public South Carolina
Commission expires: 09-27-2023

July 10, 2012

I state that this is a true and
Certified copy of the original record
on file with Beaufort County
Magistrate Court.

The Honorable Judge Sproat
Beaufort Magistrates Court
Beaufort SC 29902



Dear Judge Sproat:

The undersigned asks for a hearing on an injunction/revocation of issuance of a "Dangerous Animal Notice" for the following reasons:

- 1) An assessment was made by the Animal Control Officer on July 5. Said Assessment found "the dog is not a dangerous animal". A week after this assessment was made, an Animal Control Supervisor revised the assessment because the victim dog died (due to its size, not the degree of injury). However, per SC Statute 43-3-710, the degree of injury ranges from "broken bones, lacerations, punctures of the skin, or any bodily injury resulting in death" (Section E). Injury alone is not the determining factor in the Assessment. Further, we want to know if pressure from outsiders was a determining factor in this change of Assessment and, we would also like to know how many times previously, a supervisor, who was not on the scene nor present to personally Assess an animal and did not review any of the submitted video evidence, overrode the professional Assessment of a qualified Animal Control Officer. Therefore, we submit the subsequent revision/issuance of the "Dangerous Dog Notice" is invalid.
- 2) We have a pending trial on this issue in Port Royal Magistrate Court. We are submitting evidence in the form of videos, witness testimony from a Port Royal Police Officer, a City of Beaufort Detective, and two professional canine handlers, all of whom have long term experience with this dog and are also familiar with, and have evidence pertaining to the Defense, the case before the court. Our evidence is intended to show that, contrary to Statute 43-3-710, Section "A", "*which the owner knows or reasonably should know "animal" has a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or animals.*" that owners did not know of any propensity of the animal in question to attack unprovoked. Further, we will submit evidence of such, through expert and video testimony, and also evidence there was provocation which precipitated the incident.
- 3) It is our contention, based upon the Statute and the circumstances surrounding the revision of the Assessment, that this re-Assessment is in violation of Statute 43-3-710, is overly harsh, unfair, and enforcement of it will impose financial hardship, permanent stigmatization of the dog in question, and a violation of due process.

We ask the court to issue an emergency injunction of this revised order (scheduled to go into effect tomorrow, July 11) and to grant a hearing as to its disposition.

Respectfully,

Tim Deckard



7-10-12

Mare B. Deckard



7/10/2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **LAW ENFORCEMENT**
) **MUTUAL AID AGREEMENT**
) **TOWN OF PORT ROYAL/BEAUFORT COUNTY**

This agreement, made between the **Town of Port Royal, through the Port Royal Police Department** and **Beaufort County, through the Beaufort County Sheriff's Office** provides as follows:

SECTION 1: Purpose of Agreement

Whereas, it is to the mutual advantage and benefit of the **Town of Port Royal and Beaufort County** that each agency agrees to render mutual aid law enforcement services as may be needed from time to time. It is further recognized that there may be situations where additional law enforcement officers and services are needed. These services may include, but are not limited to, patrol services, crowd control, traffic control and other emergency service situations. The use of law enforcement officers to perform law enforcement duties outside of the territorial limits of the jurisdiction where the law enforcement officers are legally employed may be desirable and necessary in order to preserve and protect the health, safety, and welfare of the public.

SECTION 2: Authorization

- a) Intergovernmental law enforcement services and assistance may be provided among jurisdictions during times of emergency and routine law enforcement work when mutual aid would best serve the interests of each jurisdiction and its residents in accordance with Sections 23-1-210 and 23-20-10 et seq. of the Code of Laws of South Carolina, 1976 as amended.
- b) It shall be the responsibility of each agency to provide the other with verification of the approval and authorization by their respective governing council to enter into agreement.

SECTION 3: Power of Authority

- a) **The Sheriff or Commanding Officer of the Beaufort County Sheriff's Office** shall determine the amount of personnel and equipment available to render mutual law enforcement aid to the **Town of Port Royal**. His/Her decision shall be final.
- b) **The Chief of Police or Commanding Officer of the Port Royal Police Department** shall determine the amount of personnel and equipment available to render mutual law enforcement aid to **Beaufort County**. His/Her decision shall be final.
- c) Law enforcement officers acting under this agreement shall be commanded by superior authority from within their own agency to maintain the peace or perform duties outside of their territorial limits. These law enforcement officers shall be under direction and authority of one person from their own agency/jurisdiction. That person shall in turn be under the direction and authority of the host jurisdiction to which they are called to perform law enforcement or peace duties. They shall have all powers and authority of law enforcement officers and peace officers as provided by law, including the power of arrest. All arrests and any enforcement actions and prosecutions shall remain

within the jurisdiction where such actions would be properly brought in the absence of this agreement.

SECTION 4: Compensation

- a) Cooperative law enforcement service shall be rendered without charge to reciprocal participating agencies for routine law enforcement activities.
- b) In the event of any extraordinary cost incurred in the rendering of aid under this agreement, a request may be submitted for compensation by the agency rendering aid.

SECTION 5: Liability

- a) Participating agencies shall not be liable or obligated to indemnify any other person or entity for any of its equipment damaged or destroyed and the individual officers shall not be indemnified for any material damage to his/her property, injury to his/her person or on account of his/her death resulting from the performance under this agreement.
- b) The party receiving aid under this agreement shall not be responsible for reimbursing any amounts paid or due as benefits to employees of a party giving aid under the terms of the South Carolina Workers' Compensation Act due to personal injury or death occurring while such employees are engaged in rendering aid under this Agreement. Both parties shall be responsible for payment of compensation and benefits only to their respective employees.
- c) All individuals retain all compensation, pension, retirement and disability rights while performing duties in accordance with this agreement, and all officers shall continue to be paid by the entity where they are permanently employed as of the dates services are rendered.
- d) This agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action under this agreement for any cause whatsoever.
- e) To the extent permitted by law, and without waiving sovereign immunity, each agency shall be responsible for any and all claims, demands, suits, actions, damages and causes of action related to or arising out of or in any way connected with its own actions, and the actions of its personnel in providing aid or law enforcement services under this agreement.

SECTION 6: Equipment and Facilities

Each law enforcement agency may utilize equipment from their respective agency or other law enforcement agencies in carrying out their duties under this agreement. Each agency shall also maintain records concerning the performance of services provided by the agency

SECTION 7: Effective Date of Agreement

- a) This agreement shall be in effect and legally binding when signed by each agency executive.
- b) This agreement shall be executed in multiple originals and each counterpart shall be given full force and effect.

SECTION 8: Termination of Agreement

This Agreement shall become effective and renew automatically one year from the date of last executive signature, unless fourteen (14) days notice of intent to terminate is provided by one of the parties.

Michael M. Hatfield
Witness
Date
5/20/10

BEAUFORT COUNTY

BY: [Signature]

ITS: Sheriff

DATE: 5.22.12

[Signature]
Witness
Date
06/09/12

TOWN OF PORT ROYAL

BY: T. A. Beach

ITS: Chief of Police

DATE: 6-5-12

AGREEMENT FOR POLICE SERVICES

THIS AGREEMENT FOR POLICE SERVICES, dated the 15th day of February ~~2007~~ is made by and between the Town of Hilton Head Island (Town) and Beaufort County (County) and the Sheriff's Office (BCSO).

WITNESSETH:

WHEREAS, the Town has heretofore maintained a level of professional police protection for the benefit of the citizenry thereof through a law enforcement services contract with Beaufort County and the Sheriff's Office, and

WHEREAS, the Town directed that a police services study be performed by DMG-Maximus that included, in part, an assessment of current and desired levels of law enforcement services; and

WHEREAS, based on the results of the study, Town Council resolved to pursue an improved, measurable contract that would result in an acceptable, appropriate delivery of law enforcement service befitting the Town; and

WHEREAS, the Town is desirous of maintaining a high level of competent professional police service in conjunction and harmony with its fiscal policies of sound, economical management; and

WHEREAS, BCSO has agreed to render to the Town a high level of professional police service, and the Town is desirous of contracting for such service upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

- 1.1 **DEFINED TERMS.** The following terms when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):
 - 1.1.1 **AGREEMENT.** "Agreement" shall mean this Agreement for Police Services between the Town, County and the BCSO.
 - 1.1.2 **ANCILLARY SERVICES.** "Ancillary Services" shall mean those other services listed on the attached Schedule "2" under heading "Ancillary Services" that BCSO shall provide within the Town Boundaries during the Term.

- 1.1.3 **APPLICABLE LAWS.** "Applicable Laws" shall mean, with respect to any Person, all provisions of constitutions, statutes, rules, ordinances, regulations, charters, and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders or decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it or any of its property may be bound.
- 1.1.4 **BASIC LAW ENFORCEMENT SERVICES.** "Basic Law Enforcement Services" shall mean the basic contract of law enforcement services to be provided by BCSO pursuant to this Agreement as more particularly described on the attached Schedule "I".
- 1.1.5 **BCSO.** "BCSO" shall mean the duly elected and qualified Sheriff of Beaufort County, South Carolina and the staff of the Sheriff's Office in its entirety.
- 1.1.6 **BCSO'S ADDRESS.** "BCSO's address" shall mean Beaufort County Sheriff's Office, 2001 Duke Street, Beaufort, South Carolina 29902.
- 1.1.7 **BEAUFORT COUNTY.** "County" shall mean Beaufort County, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and consisting of the geographical location with borders as prescribed by statute and including the municipalities of Beaufort, Port Royal, Bluffton and the Town of Hilton Head Island, South Carolina.
- 1.1.8 **COMMAND OFFICER.** "Command Officer" shall mean the Sheriff or his designee who will be deemed to be the officer responsible for the actions of the BCSO employees who provide the Services to the Town of Hilton Head Island.
- 1.1.9 **CONSIDERATION.** "Consideration" shall mean the monthly payment and other amounts payable by the Town hereunder in consideration of the Services performed by BCSO.
- 1.1.10 **COUNTY'S ADDRESS.** "County's Address" shall mean Beaufort County, 100 Ribaut Road, Beaufort, South Carolina 29902.
- 1.1.11 **DEPUTY SHERIFF.** "Deputy Sheriff" shall mean any person certified by the South Carolina Criminal Justice Academy as a law enforcement officer and commissioned by the Sheriff of Beaufort County to enforce the law in Beaufort County.
- 1.1.12 **EFFECTIVE DATE.** "Effective Date" shall mean February 1, 2002.
- 1.1.13 **EQUIPMENT.** "Equipment" shall mean all vehicles and equipment owned by the Town.

- 1.1.14 MARINE PATROL. "Marine Patrol" shall mean the deployment of officers to repress and prevent criminal activities, investigate offenses, apprehend offenders, and furnish day to day law enforcement services to the waterways within the Town Boundaries as defined in Exhibit "A."
- 1.1.15 PATROL UNIT. "Patrol Unit" shall mean one uniformed officer and all standard police support equipment.
- 1.1.16 REPLACEMENT VEHICLES. See Article VII.
- 1.1.17 SHERIFF'S OFFICE ENFORCEMENT DIVISION/ SOUTHERN ENFORCEMENT BRANCH. Shall mean all deputy sheriffs assigned to enforcement duties within the Town Boundaries.
- 1.1.18 SHERIFF'S OFFICE JURISDICTION. "Sheriff's Office Jurisdiction" shall mean all land and waterways lying within the boundaries established by statute and known as the Town as specified in Municipal Code *Section 2-1-20 Corporate Boundaries* and in Exhibit "A."
- 1.1.18 SHERIFF'S PATROL. "Sheriff's Patrol" shall mean the deployment of deputy sheriffs to repress and prevent criminal activities, investigate offenses, apprehend offenders and furnish day to day law enforcement services within the Town Boundaries.
- 1.1.19 SHERIFF'S SUBSTATION. "Sheriff's Substation" shall mean that facility located at 40 Palmetto Parkway, Hilton Head Island, South Carolina, the building currently occupied by BCSO and also referred to as the "Hilton Head Office."
- 1.1.20 TERM. "Term" shall mean three (3) years commencing on the Effective Date and expiring on the Termination Date and any extensions thereto.
- 1.1.21 TERMINATION DATE. "Termination Date" shall mean February 1, 2005.
- 1.1.22 TOWN. "Town" shall mean the Town of Hilton Head Island, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina and located within the boundaries of Beaufort County, South Carolina.
- 1.1.23 TOWN ADDRESS. "Town Address" shall mean 1 Town Center Court, Hilton Head Island, South Carolina 29928.
- 1.1.24 TOWN BOUNDARIES. "Town Boundaries" shall mean the area within the municipal corporate boundaries of the Town as specified in Municipal Code *Section 2-1-20 Corporate Boundaries* and in Exhibit "A."

- 1.1.25 **TOWN MANAGER.** "Town Manager" shall mean the duly appointed Town Manager of the Town, who, on the effective date of this Agreement is Stephen C. Riley. In the absence of the Town Manager, the Assistant Town Manager or person acting in the capacity of the Town Manager shall have the same authority as that of the Town Manager.
- 1.1.26 **TRAFFIC UNIT.** "Traffic Unit" shall mean one uniformed deputy sheriff and all standard police support equipment assigned to a special team and shift to accomplish traffic patrol, auto accident investigation and traffic control.
- 1.1.27 **UNIFORMED OFFICER.** "Uniformed Officer" shall mean a uniformed deputy sheriff employed by BCSO.
- 1.1.28 **VEHICLE FLEET.** See Schedule 3.

ARTICLE II GENERAL AGREEMENT TERMS

- 2.1 **INTERPRETATION.** Each definition in this Agreement shall, unless otherwise specified, include such agreement as modified, amended, restated or supplemented from time to time, and except where the context otherwise requires, reference to a party to this Agreement includes that party and its permitted successors and assigns. The captions or headings in this Agreement are for convenience only and in no way limit the scope or intent of any provision of this Agreement.
- 2.2 **ACCOUNTING TERMS.** All references in this Agreement to generally accepted accounting principles shall be to such principles as in effect from time to time in the United States of America. All accounting terms used herein without definition shall be used as defined under such generally accepted accounting principles.
- 2.3 **CROSS REFERENCES.** Unless otherwise specified, references in this Agreement to any Article or Section are references to such Article or Section of this Agreement, and unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition. The words "hereof", "hereby", "hereto", "herein", "hereunder" and the like refer to this Agreement in its entirety.
- 2.4 **CONTRACTOR RELATIONSHIP.** Town hereby retains County and the BCSO as an independent contractor to provide the Services within the Town Boundaries subject to the terms and conditions contained herein. In addition, County and the BCSO shall also provide the Ancillary Services for the benefit of the Town, subject to availability, when County and the BCSO deems same necessary or desirable. This is inclusive of Basic and Ancillary Services listed under Schedule "1" and "2".

- 2.5 **NO PARTNERSHIP.** The relationship between the Town, County and the BCSO shall be solely as set forth herein. No party shall be deemed the employee, agent, partner or joint venture of the other, nor have, or represent to have, any authority or capacity to make or alter any agreement on behalf of the other, to legally bind the other, to credit or receive money due on behalf of the other or to do any other thing on behalf of the other, except as specifically set forth herein. Neither the Town nor County and the BCSO will have or attempt to exercise any control or direction over the methods used by the other to perform its work, duties and obligations under this Agreement except as specifically set forth herein. The respective employees, agents and representatives of each of the Town, County and the BCSO shall remain their own employees, agents or representatives, and shall not be entitled to employment benefits of any kind from the other, except as specifically set forth herein. The Town, County and the BCSO shall assume full responsibility for their own compliance with any and all Applicable Laws.

ARTICLE III TERM & TRANSITION PERIOD

- 3.1 **TERM.** This Agreement shall commence on the Effective Date and shall continue thereafter for the Term, unless otherwise extended or terminated as set forth herein. The Town shall have the option to extend the Term upon the same terms and conditions contained herein.
- 3.2 **TERMINATION OF CONTRACT.** Should the Town determine that it desires to provide police services through its own police force, the Town shall notify Beaufort County and the BCSO, within 19 days of formal Town Council Action.
- 3.3 **TRANSITION PERIOD.** A transition period of not more than eighteen months (18) shall commence upon the County's receipt of formal notification of termination of this Agreement, for any reason by the Town. The County and the BCSO shall be bound by the same terms and conditions set forth herein during the transition period, unless the Town hires a number of BCSO deputy sheriffs that would significantly impact the ability of the BCSO to meet the terms of this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF TOWN

- 4.1 **REPRESENTATIONS AND WARRANTIES OF TOWN.** The Town represents, warrants and covenants to County and the BCSO as of the date hereof and throughout the Term of this Agreement that:
- 4.1.1 **EXISTENCE.** The Town is and will remain duly organized, validly existing and in good standing under the laws of the State of South Carolina, has and will retain the requisite power and authority to conduct its business, to enter into this

Agreement and to perform the terms hereof and by proper action on behalf of the Town has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith.

4.1.2 **BREACH.** Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and provisions hereof (a) conflicts with, or result in a material default under or breach of or grounds for termination of, any material agreement or any license, permit or other governmental authorization to which Town is a party or by which Town is bound, (b) result in the violation by the Town of any provision of any Applicable Law applicable to Town or to which Town may be subject, (c) violate or conflict with any charter or other document governing the actions of Town, or (d) require Town to obtain or make any consent, authorization, approval, registration or filing under Applicable Law or order of any court or governmental agency, board, bureau, body, department, authority or any other person which has not already been obtained. The Town is not in default with respect to any order, judgement, ordinance, award or decree of any governmental agency or instrumentality affecting this Agreement or the transactions contemplated hereby.

4.2 **REPRESENTATIONS AND WARRANTIES OF COUNTY AND THE BCSO.** County and the BCSO represents, warrants and covenants as of the date hereof and throughout the term of this Agreement that:

4.2.1 **DULY ELECTED.** P.J. Tanner is the duly elected Sheriff of Beaufort County, South Carolina, has and will retain the requisite power and authority pursuant to the power so vested in him under Applicable Law to conduct its business, to enter into this Agreement and to perform the terms hereof and by proper action has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith:

4.2.2 **ENFORCEABLE.** This Agreement has been duly executed and delivered to County and the BCSO and constitutes the valid and legally binding obligation of County and the BCSO enforceable in accordance with its terms.

4.2.3 **BREACH.** Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and provisions hereof (a) conflicts with, or result in a material agreement or any license, permit or other governmental authorization to which County and the BCSO is a party or by which County and the BCSO is bound, (b) result in the violation by the County and the BCSO of any provision of any Applicable Law applicable to the County and the BCSO or to which County and the BCSO may be subject, (c) violate or conflict with any charter or other document governing the actions of County and the BCSO, or (d) require County and the BCSO to obtain or make any consent, authorization, approval, registration or filing under Applicable Law or order of any court or governmental agency,

board, bureau, body, department, authority or any other person which has not already been obtained. County and the BCSO is not in default with respect to any order, judgement, ordinance, award or decree of any governmental agency or instrumentality affecting this Agreement or the transactions contemplated hereby.

**ARTICLE V
STAFFING AND LEVELS OF SERVICE**

- 5.1 **STAFFING.** Commencing on the Effective Date, BCSO shall schedule, provide and employ the personnel necessary to provide the services within the Town Boundaries in accordance with the articles of this Agreement and outlined in the Description of Services and Ancillary Services attached hereto as Schedule "1" and "2". BCSO shall have the sole responsibility and control over setting Policy, Procedures and Standards and, provided BCSO complies with the Basic Service requirements set forth in Article V of this Agreement, all other matters related to performing the Services and Ancillary deployment within the Town Boundaries of BCSO deputy sheriffs.
- 5.2 **SOUTHERN ENFORCEMENT BRANCH ASSIGNMENT CHANGES.** The BCSO shall maintain duty assignments in accordance with existing command and control structure of the Sheriff's Office, as well as established policies and procedures.
- 5.3 **SHERIFFS PATROL.** BCSO shall provide a minimum of four (4) staffed patrol units on duty 24 hours a day, seven days a week to provide basic sheriff's patrol within the Town Boundaries.
- 5.4 **PATROL UNIT SUPERVISOR.** In addition to the minimum staffing requirements within 5.3 above, staffing shall consist of not less than one (1) "Patrol Unit Supervisor" on duty at all times, responsible for basic law enforcement patrol activities within the Town boundaries 24 hours per day, seven days a week.
- 5.5 **TRAFFIC ENFORCEMENT TEAM.** BCSO shall provide a four (4) person, two (2) unit Traffic Enforcement Team to work traffic during the hours of 0700 and 1900 within the Town Boundaries.
- 5.6 **MARINE/BEACH PATROL.** The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.
- 5.7 **EVIDENCE TECHNICIAN.** BCSO shall provide one deputy sheriff who is tasked primarily with the collection, cataloging, custody and preservation of evidence collected at crime scenes within the Town Boundaries.

- 5.8 CRIMINAL INVESTIGATORS. The BCSO shall provide three (3) deputy sheriffs assigned to investigate major criminal incidents occurring within the Town Boundaries.
- 5.9 DRUG INVESTIGATORS. The BCSO shall provide two (2) deputy sheriffs assigned to enforce narcotics laws within the Town Boundaries.
- 5.10 CLERK. The BCSO shall provide two (2) clerks assigned to the Sheriff's Substation on Hilton Head Island for the purpose of performing administrative duties such as correspondence and record keeping.
- 5.11 VICTIM'S ADVOCATE. The BCSO shall provide one deputy sheriff who is assigned as the Victim's Advocate to work with victims of crimes occurring within the Town Boundaries in compliance with state statutes.
- 5.12 DISTRICT COVERAGE. Two (2) geographical divisions are currently established as Patrol Areas on Hilton Head Island known as 5A and 5B. These two areas shall be maintained in accordance with established procedures of the BCSO.
- 5.13 NO EMPLOYMENT RESPONSIBILITY. All BCSO employees shall not be considered employees of the Town for purposes of pension benefits, insurance benefits, compensation and/or any status or right. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, or other compensation, contributions to pension funds, insurance premiums, workmen's compensation, vacation or compensatory time, sick leave benefits or any other amenities of employment to any BCSO employee whatsoever arising out of BCSO's employment of such Deputy Sheriffs and such Deputy Sheriff's performance of the services.
- 5.14 ASSIGNMENT OF POLICE POWERS. As sworn, certified, commissioned deputy sheriffs, each deputy sheriff assigned to duties within the Town Boundaries shall be vested with the authority by the Town to enforce such municipal ordinances as may be necessary in the performance of their duties under the Terms of this Agreement.

ARTICLE VI
SOUTHERN ENFORCEMENT BRANCH COMMAND

- 6.1 COMMAND OFFICER. At all times during the Term, BCSO shall employ a Command Officer to exercise authority over the Southern Enforcement Branch of the Enforcement Division. The Command Officer shall meet and confer with the Town Manager or his designee as needed, for the purpose of maintaining the viability and vitality of this Agreement.

- 6.2 LOCATION OF COMMAND OFFICER. The Command Officer of the Southern Enforcement Branch shall maintain his or her principal office at the Sheriff's Substation located at 40 Palmetto Parkway, Hilton Head Island, South Carolina.

ARTICLE VII
VEHICLES AND EQUIPMENT

- 7.1 VEHICLES. The Town currently maintains title to thirty-five automobiles, two all terrain vehicles and two boats that are in the Sheriff's Office inventory at the commencement of this Agreement on the Effective Date. The Town shall transfer vehicle title to the County to all aforementioned vehicles prior to July 1, 2002. The Town, County, and BCSO shall negotiate and finalize the terms of sale for all vehicles prior to July 1, 2002.
- 7.2 USE OF TOWN OWNED VEHICLES AND EQUIPMENT. During the transition period these vehicles shall be used for the performance of law enforcement related duties on Hilton Head Island, however the equipment may under emergency conditions be deployed as deemed necessary by the Sheriff for the purpose of maintaining the peace throughout Beaufort County. Upon the completion of the transition period on July 1, 2002 the Sheriff may deploy the equipment as he deems necessary for the good order and peace of Beaufort County.
- 7.3 DAMAGED TOWN-OWNED VEHICLES AND EQUIPMENT. All incidents of damage to Town-owned vehicles and equipment shall be reported and investigated according to Sheriff's Office Policies and Procedures. A Review Board shall be established as necessary by the Sheriff to determine if negligence was the primary cause of the damage. The Town Manager, or his designee shall be invited to be a sitting member of the Review Board. All deputy sheriffs found negligent shall be dealt with according to established Sheriff's Office Policies and Procedures. This shall continue through the transition period. Upon the completion of the transition period, the Town Manager shall no longer be notified of the Review Board convening.
- 7.4 REPLACEMENT VEHICLES. The Town shall not be responsible for the replacement of any vehicles between the Effective Date of this Agreement and the completion of the transition period on July 1, 2002. The County and the BCSO shall be responsible for all replacement vehicles.
- 7.5 CARE AND MAINTAINENCE OF TOWN EQUIPMENT AND VEHICLES. The Town of Hilton Head Island shall retain authority for the care and maintenance of all Town-owned equipment and vehicles until the completion of the transition period on July 1, 2002. The County and the BCSO shall then

assume all authority and responsibility for the care and maintenance of all vehicles.

ARTICLE VIII DISPATCHING SERVICES

- 8.1 **RADIO PROCEDURES.** All radio traffic generated by BCSO personnel shall take place on "channels" and "talk groups" as prescribed in existing BCSO standardized Policies and Procedures.
- 8.2 **EMERGENCY RESPONSE GRID SYSTEM.** The Grid system established by the Beaufort County Communications Center shall be utilized for all reporting and call tracking conducted by the BCSO.
- 8.3 **DISPATCHING SERVICES.** All calls for Sheriff's emergency services placed to Hilton Head Island Communications Center will be transferred to Beaufort County Communications Center using a "One Button" transfer system. All calls for service for Hilton Head Island for other than Sheriff's services placed to Beaufort County Communications Center will be transferred to Hilton Head Island Communications Center using a "One Button" transfer system. The Beaufort County Communications Center will serve as a back-up for the Hilton Head Island Communications Center 24 hours a day and seven days a week. The Hilton Head Island Communications Center will serve as a back-up for the Beaufort County Communications Center 24 hours a day and seven days a week. To insure that each Communications Center has the resources necessary to perform the back-up function for the other center, the following types of information will be shared between the centers: (1) geographic and address data relative to the territory being backed-up; (2) operational procedures which have been mutually agreed to by the management of each center relative to providing the back-up function; and (3) sharing of planning information so that each center may properly equip itself to perform the back-up function.

ARTICLE IX MUNICIPAL COURT

- 9.1 **DEPUTY APPEARANCE AT COURT.** All deputy sheriffs appearing in Municipal Court shall adhere to Uniform Standards as set forth in the BCSO Policies and Procedures Manual. All deputy sheriffs shall make every reasonable effort to notify the Court in the event of their delay, absence or request for continuance of a pending case.
- 9.2 **OFFENSES TO BE HEARD IN MUNICIPAL COURT.** All municipal level and traffic related offenses occurring within the Town Boundaries shall be scheduled before the Municipal Court of Hilton Head Island by deputy sheriffs assigned to the Southern Enforcement Branch.

**ARTICLE X
CONSIDERATION**

- 10.1 **CONSIDERATION.** In consideration of the services provided hereunder, the Town agrees to pay BCSO the Consideration in equal monthly installments commencing at the end of the first full month after the Effective Date of this agreement. Should the term commence or end on other than the first or last day respectively of a calendar month, the monthly installment due for said month shall be prorated accordingly. The Consideration to be paid by the Town for subsequent fiscal years shall be subject to an annual increase not to exceed CPI-W, and shall be subject to the Annual Review clause Article XII Section 12.3 contained herein. BCSO shall provide the Town with written documentation to support any percentage rate increase or other change impacting the Consideration amount. The increase shall be calculated on the total consideration paid in the prior year. BCSO and Town agree and understand that BCSO shall make every reasonable effort to limit the annual increase in the Consideration, and shall consider an increase only when other alternatives are insufficient to meet the needs of the Town and BCSO under the terms and conditions of this agreement.
- 10.2 **SERVICE CREDITS.** The above stated Consideration for services to be provided is agreed to based on BCSO providing the services at the levels stated within this agreement. The Town shall be entitled to a credit for each level of service not attained for that month and shall be deducted from the Consideration payment for the next month. Any level not attained or maintained for a period of three (3) consecutive months shall constitute a breach of this agreement. Said credit shall be calculated using the actual cost of providing that annual level of service divided by 12, times the percent of service not provided then times the number of months the service was not provided. (This should not apply due to the area deployment schedule.)
- 10.3 **ANNUAL REVIEW.** On an annual basis, the Town and BCSO will review current service levels and proposed service level alterations. The proposed Consideration shall be determined after the completion of the Annual Review that will occur simultaneous to the Annual Proposed Budget Process.
- 10.4 **SERVICES RENDERED STATEMENT.** The BCSO shall provide to the Town, on a monthly basis, a bill for services budgeted for annually. A monthly report (Exhibit "C") shall be provided to support the billing detailing the percentage of time spent by each position identified in the contract for services rendered. Positions are billed based on the entry level salary for each classification.

**ARTICLE XI
REPORTS**

- 11.1 BCSO shall deliver reports as outlined in Exhibit "B" according to schedule contained therein.

**ARTICLE XII
GRANTS AND FUNDS**

- 12.1 **GRANT FUNDS AND MISCELLANEOUS REVENUES.** The BCSO shall seek grant funding as deemed appropriate under direction from the Sheriff. The BCSO shall retain all funds and equipment gained through grant awards as established in existing BCSO policies.

**ARTICLE XIII
INSURANCE**

- 13.1 **BCSO OBLIGATIONS.** BCSO shall maintain general liability and tort insurance policies in the amounts as established by state statute and county policy. BCSO shall maintain these insurance policies throughout the Term. BCSO shall provide the Town with copies of the insurance policies required hereunder and all renewals thereof. The Costs of these insurance policies shall be the sole obligation of the County and the BCSO.

**ARTICLE XIV
DEFAULT**

- 14.1 **DEFAULTS.** The occurrence of any one or more of the following shall constitute a "Default" by the party causing same (the "Defaulting Party").
- 14.2 **PAYMENT.** Failure of the Defaulting Party to pay any amount required hereunder, whether for Consideration, insurance or any other obligations, within thirty (30) days after such is due hereunder; or
- 14.3 **PERFORMANCE OF SERVICES.** Failure of BCSO to perform the Services as required herein at any time during the Term; or
- 14.4 **OTHER PERFORMANCE.** Failure of the Defaulting Party to perform any other covenant, condition, agreement or provision contained herein (other than the Services) or to cure any misrepresentation or breach of any representation or warranty herein thirty (30) days after receipt by the Defaulting Party of written notice of such failure, misrepresentation or breach; or
- 14.5 **DEFAULT.** Failure of the Defaulting Party to perform any covenant, condition, agreement or provision contained in any other agreement or to cure any misrepresentation or breach of any representation or warranty in any other

agreement between the parties hereto within any applicable grace period provided in such agreement.

- 14.6 **REMEDIES.** Upon the occurrence and continuance of a Default by the Defaulting Party, the party not in Default (the "Non-Defaulting Party") may, at its option and without any obligation to do so and in addition to any other remedies otherwise set forth in this Agreement, elect any one or more of the following remedies:
- 14.6.1 Terminate and cancel this Agreement; or
 - 14.6.2 Withhold payment or performance under this Agreement until such time as such Default is cured; or
 - 14.6.3 Seek injunctive relief to enjoin any act of the Defaulting Party in violation hereof; or
 - 14.6.4 Seek specific performance of any covenant or obligation of the Defaulting party hereunder; or
 - 14.6.5 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of South Carolina
- 14.7 **SEPARABILITY.** Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement. Each and all of the rights and remedies given to the Non-Defaulting Party by this Agreement or by law or equity are cumulative and the exercise of any such right or remedy by the Non-Defaulting party shall not impair the Non-Defaulting Party's right to exercise any other right or remedy available to the Non-Defaulting Party under this Agreement or by law or equity.
- 14.8 **WAIVER.** No delay in exercising or omission of the right to exercise any right or power by any party hereto shall impair any such right or power, or shall be construed as a waiver of any breach or default or as acquiescence thereto. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant, provision or condition. The consent or approval by either party to or of any act of the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Payment or receipt of a lesser amount than that due hereunder shall not be deemed to be other than on account of the earliest amount due hereunder.
- 14.9 **FORCE MAJEURE.** If the performance of any covenant, agreement, obligation, or undertaking (exclusive of payment or monetary obligations of either party

hereunder) required hereunder is delayed, hindered or prevented by reason of strikes, lock-outs, labor troubles, wars, civil commotion's, Acts of God, governmental restrictions or regulations or interference's, fires or other casualty, the performance of such covenant, agreement, obligation or undertaking shall be excused and extended and shall not be a Default for the period of such delay, hindrance or prevention...

- 14.10 **ATTORNEY'S FEES.** In the event of any controversy arising under or relating to the interpretation or implementation of this Agreement or any breach thereof, the prevailing party shall be entitled to payment for all costs and attorney's fees (both trial and appellate) incurred in connection therewith.
- 14.11 **COUNTY AND BCSO ACKNOWLEDGMENT.** County and the BCSO do hereby acknowledge that the Town is entering into this Agreement in reliance upon County's and the BCSO's obligations herein imposed for the Term. Accordingly, County and the BCSO agree that it shall have the right to terminate this Agreement only as permitted in this Section.

ARTICLE XV
INDEMNIFICATION

- 14.1 The County and the BCSO shall assume liability for, defend against, and secure the Town from all costs or damages for injury to persons or property caused by the negligence or intentional misconduct of the Sheriff's personnel in providing or failing to provide general law enforcement services, as outlined in this Agreement, to the Town provided the liability is not the result of Town policy.

ARTICLE XVI
MISCELLANEOUS

- 15.1 **NOTICE.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given three (3) business days after deposit in the mail, designated as certified mail, return receipt requested, postage-prepaid, or one (1) business day after being entrusted to a reputable commercial overnight delivery service, or when sent by telex or telecopy on a business day addressed to the party to which such notice is directed at its address determined in accordance with this Section with customary confirmation of receipt of such telex or telecopy received. All notices and other communications under this Agreement shall be given to the parties hereto at the following addresses: If to Town, to it at Town's address; if to BCSO, at BCSO's address and to the County at its address. Any party hereto may change the address to which notices shall be directed under this Section by giving ten (10) days written notice of such change to the other parties.

16.2 **NON-ASSIGNABILITY.** Neither party shall assign any of its obligations or benefits imposed hereby or contained herein, except upon the other party's prior written approval.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures hereto the date first written hereinabove.

Clayton H. Adams
WITNESS

BEAUFORT COUNTY
By: [Signature]
John Gaehmar, Beaufort County
Administrator

Michael M. Hatfield
WITNESS

BEAUFORT COUNTY SHERIFF'S
OFFICE
By: [Signature]
P. J. Turner, Beaufort County
Sheriff

Justin J. Smith
WITNESS

TOWN OF BILTON HEAD ISLAND
By: [Signature]
Stephen G. Raley, AICP, Town
Manager

AGREEMENT FOR POLICE SERVICES

EXHIBIT "A"

Municipal boundaries:

The municipal corporate boundaries of the Town of Hilton Head Island, SC are specified in Municipal Code Sections 2-1-20. Corporate boundaries

Statutory Provisions:

Section 5-7-140. Extension of police jurisdiction and authority of municipalities bordering on high tide line or high water mark of navigable body of water.

- (A) The corporate limits of any municipality bordering on the high-tide line of the Atlantic Ocean are extended to include all that area lying between the high-tide line and one mile seaward of the high-tide line. These areas are subject to all the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal ordinances where the misdemeanor occurred in the area defined in this section.
- (B) The corporate limits of any municipality bordering on the high-water mark of a navigable body of water, other than the Atlantic Ocean, are extended to include all that area lying between the high-water mark and the low-water mark. These areas are subject to all of the ordinances and regulations that may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the areas defined in this section.

Section 5-7-150 Coastal municipalities' criminal jurisdiction over piers and other structures and waters of the ocean.

Every coastal municipality has criminal jurisdiction over piers and other structures and the waters of the ocean, a sound, or an inlet within one mile of those portions of the strand within the corporate limits. The corporate limits of the municipality are extended in a straight line from the strand into the ocean, inlet, or sound from the point where the corporate limits of the municipality reach the high-water mark of the strand. If an extension overlaps with the criminal jurisdiction of another political subdivision, the jurisdiction of each political subdivision extends to the equidistant point from the high-water mark of each strand.

AGREEMENT FOR POLICE SERVICES

Exhibit "B"

Reports

Crime Statistics (Due Annually)

UCR Reports

SLED "Crime in South Carolina" annual report

FBI "National Trends" annual report

Victims/Witness Advocacy Program (Due Annually)

Number of victims served

Police Patrol (Due Annually)

Calls for Police Patrol Services

Calls for Service per Patrol Unit

Average Response Time in Minutes from Dispatch to Scene (Citizen Generated)

Dispatched Calls

Criminal Investigation (Due Annually)

Number of Cases Assigned per Investigator

Number of Cases Cleared per Investigator

Quarterly Report

Crimes Against Persons

Crimes Against Property

Vehicle Collisions

Offense Clearances

Drug Violations

Tickets Written for Municipal Court

Additional Offenses

	SUPERVISOR	PATROL 5A/B	TRAFFIC	INVEST	MARINE	EVIDENCE	VICTIM	OVERTIME
1					E31E34/S21			
2					E44E46/S40			
3					E44E46/S21/S40			
4					E31E44/S21/S40			
5					E31E34/S40			
6	B11D20A123B12	D50D97A192B25A64B8B1A104			E44E46/S21			
7	B11B20A123B12	H6L41B4A125A8C0B97B92B95B94B954B94B91B038			E44E46/S40			
8	B11B20A123B12	B50B97B04B29B97B91B04B05B08			E44E46/S21			
9	B10B21A113B22	H34A106B04B73B42B54B52			E31E34/S40			
10	B10B21A113B22	B33B67B88B034B38B49B49B22B88			E31E34/S21			
11	B10B21A113	H25B64A065A09B02B30B30B09A1B64			E44E46/S40			
12	B20B23A112	D50D97B25B064B97B95B92B91B01B01B038			E44E46/S21			
13	B10B21A113B22	H47B0A85B06B107B34B40B42			E31E34/S40			
14	B10B21A113	H33A152B04B03			E31E34/S21			
15	B10B21A113	B30B06B13A10B30B1B58B065B10B340			E31E34/S21			
16	B20B12	D25D02B64B04B57B55B01A104			E34B65/S40			
17	B20B25A123B12	H91B94B07B65B07B84B56B97			E31B65/S21			
18	B10B13	B88B021B07B24B42B27B140B33			E34A32/S40			
19	B10B13	H07B34B03B21B68B22B42B40		D10D40B32	E34A32/S21			
20	B20B23B12	B50B97B64B04B05B04B01B06A065		B31B32B10	S21E34/S40			
21	B20B23B12	B84B92B52B07B57B65B91B95		D31	E44E46/S40			
22	B20B12	B64B54B25B02B85B01B61B38		D31	E44E46/S21			
23	B10B13B22	B87B33B34B09B52B42B93B40		D34B20B32	E31E34/S40			
24	B10B13	B34B56B07B33B06B05B14C0B83		D10D20B32	E31E34/S21			
25	B11B20B12	B64B97B04B03B95B28B5B04B28B85		D32B20B31	E44E46/S40			
26	B20B23B12	B52B10B25B02B07B65B06B12B89A		D31B34B32	E44E46/S21			
27	B10B13	H33A196B130B34B52B05B42B86		D32B10B30	E31E34/S40			
28	B10B21A113	B33A156B130B14B64B03A142B95B106		D40	E31E34/S40			
29	B10B21A113	H40B03B052B42		D40	E31E34/S21			
30	B11B20B12B12	B25A139B92B35B041B04B94B67B38B85		D31B20B10	E44E46/S50			
31	B11B20B12B12	B64B97B59B041B33B03B05B07B09		D30B10B34	E44E46/S40			

WORKED FULL SHIFT UNLESS NOTED BY PERCENTAGE

COMMAND OFFICER

AGREEMENT FOR POLICE SERVICES

SCHEDULE "1"

BASIC LAW ENFORCEMENT SERVICES

1. SHERIFFS PATROL. The BCSO shall provide a minimum of four (4) staffed patrol units on duty 24 hours a day, seven days a week to provide basic sheriffs patrol within the Town Boundaries.
2. PATROL UNIT SUPERVISOR. In addition to the minimum staffing requirements above, staffing shall consist of not less than one (1) "Patrol Unit Supervisor" on duty at all times, responsible for basic law enforcement patrol activities within the Town boundaries 24 hours per day, seven days a week.
3. TRAFFIC ENFORCEMENT TEAM. The BCSO shall provide a four (4) person, two (2) unit Traffic Enforcement Team to work traffic during the hours of 0700 - 1900 within the Town Boundaries.
4. MARINE/BEACH PATROL. The BCSO shall provide and maintain a Marine/Beach Patrol Team consisting of two (2) designated uniformed deputy sheriffs. The Marine/Beach patrol shall patrol as deemed necessary to provide specialized enforcement on the beaches and waterways within the Town Boundaries.
5. EVIDENCE TECHNICIAN. The BCSO shall provide one deputy sheriff whom is tasked primarily with the collection, cataloging, custody and preservation of evidence collected at crime scenes within the Town Boundaries.
6. CRIMINAL INVESTIGATORS. The BCSO shall provide three (3) deputy sheriffs assigned to investigate major criminal incidents occurring within the Town Boundaries.
7. DRUG INVESTIGATORS. The BCSO shall provide two (2) deputy sheriffs assigned to enforce narcotics laws within the Town Boundaries.
8. CLERK. The BCSO shall provide two (2) clerks assigned to the Sheriff's Substation on Hilton Head Island for the purpose of performing administrative duties such as correspondence and record keeping.
9. VICTIM'S ADVOCATE. The BCSO shall provide one deputy sheriff who is assigned as the Victim's Advocate to work with victims of crimes occurring within the Town Boundaries in compliance with state statutes.
10. COMMAND OFFICER. At all times during the Term, BCSO shall employ a Command Officer to exercise authority over the Southern Enforcement Branch of

the Enforcement Division. The Command Officer shall meet and confer with the Town Manager or his designee as needed, for the purpose of maintaining the viability and vitality of this Agreement.

AGREEMENT FOR POLICE SERVICES

SCHEDULE "2"

DESCRIPTION OF ANCILLARY SERVICES

As indicated under definition 1.1.2 *Ancillary Services* any and all auxiliary and support services to include:

- > Lab services
- > K-9 support
- > Special Response Team (SWAT)
- > Crisis Negotiations
- > Animal Control
- > Airport Security
- > School Resource Officer
- > D.A.R.E.
- > Civil Service
- > Warrant Service
- > Records Management
- > Command

And other support services as currently provided to the Town of Hilton Head Island.

SCHEDULE 3
VEHICLE FLEET

Unit #	Year	Make	Model	Vin#
123	1997	Ford	Crown Vic	2FALP71W9VX126862
125	1997	Ford	Crown Vic	2FALP71W7VX126896
127	1997	Ford	Crown Vic	2FALP71W7VX126891
129	1997	Ford	Crown Vic	2FALP71W7VX126925
137	1997	Ford	Crown Vic	2FALP71W8VX226970
141	1997	Ford	Crown Vic	2FALP71W7VX226940
142	1997	Ford	Crown Vic	2FALP71W2VX226964
144	1997	Ford	Crown Vic	2FALP71W4VX226920
154	1998	Ford	Explorer	1FMZU32P1WU384451
160	1998	Seapro	21'	PIOMB161B898
161	1997	Seapro	23'	PIOJS111C797
163	1999	Ford	Crown Vic	2FAFP71W3XX188001
165	1999	Ford	Crown Vic	2FAFP71W9XX188004
166	1999	Ford	Crown Vic	2FAFP71W7XX188003
167	1999	Ford	Crown Vic	2FAFP71W9XX187998
168	1999	Ford	Crown Vic	2FAFP71W1XX188000
169	1999	Ford	Crown Vic	2FAFP71W3XX187995
170	1999	Ford	Crown Vic	2FAFP71W5XX187996
171	1999	Ford	Crown Vic	2FAFP71W0XX187999
172	1999	Ford	Crown Vic	2FAFP71W5XX188002
176	1998	Ford	Crown Vic	2FAFP71W7VX130935
183	1999	Ford	F-250	1FTPX28L7XNC05879
184	2000	Ford	Crown Vic	2FAFP71W6YX115562
185	2000	Ford	Crown Vic	2FAFP71WXYX115564
186	2000	Ford	Crown Vic	2FAFP71W4YX115561
187	2000	Ford	Crown Vic	2FAFP71W8YX115563
188	2000	Ford	Crown Vic	2FAFP71W0YX157236
189	2000	Ford	Crown Vic	2FAFP71W9YX157255
190	2000	Ford	Crown Vic	2FAFP71W2YX157257
193	2000	Ford	Crown Vic	2FAFP71W4YX157258
194	2000	Kawasaki	4 Wheeler	JKAVF8B15YB514266
195	2000	Kawasaki	4 Wheeler	JKAVF8B184B513287
196	2000	Ford	Explorer	1FMZU73E3YU881570
200	2001	Ford	Explorer	1FMZU63P81UB14566
205	2001	Ford	Crown Vic	2FAFP71W71X135888
206	2001	Ford	Crown Vic	2FAFP71W61X135889
213	2001	Ford	Crown Vic	2FAFP71W51X143228
214	2001	Ford	Crown Vic	2FAFP71W31X143230
215	2001	Ford	Crown Vic	2FAFP71W71X143229

South Carolina Court Administration

South Carolina Supreme Court Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355

MEMORANDUM

TO: Clerks of Court, Registers of Deed, Masters-In-Equity

CC: Circuit Court Judges, Family Court Judges, Summary Court Judges

FROM: Rosalyn W. Frierson

RE: Fraudulent Documents

DATE: August 25, 2010

I thank all who provided examples of fraudulent documents received by your court. We have completed reviewing the documents and Samuel Finklea of SLED has provided the attached communication as a reference tool in the handling of sham or fraudulent documents that are presented for filing or court action. The communication includes examples of the common elements to assist you in identifying fraudulent documents or a sham legal process and assist court personnel in distinguishing between fraudulent documents proffered by "sovereign citizens" or tax protesters from legitimate pro se filings.

We provide the following guidance concerning the acceptance or filing of fraudulent documents.

1. Documents that are determined to be illegitimate court documents should not be accepted for filing. S.C. Code § 30-9-30(B)(1) provides statutory guidance for handling such documents. If the document bears the elements indicating a fraudulent filing (for example, alleging a fictional court such as a federal tribal circuit court or status derived from entities not recognized by the United States) and the clerk of court or the register of deeds reasonably believes that the document is materially false or fraudulent or is a sham legal process, the clerk of court or register of deeds may refuse to accept the document for filing.
2. If a clerk of court or register of deeds is not clear as to whether the document is fraudulent, it should be accepted for filing and subject to review by the court.
3. Section 30-9-30(B)(2) provides that a document previously accepted and filed but subsequently determined to be a fraudulent document may be removed from

the public record after giving 30 days written notice to the person on whose behalf the document was filed.

4. Finally, persons knowingly presenting documents in connection with a sham legal process may be subject to criminal prosecution, not only under the Federal Mail Fraud Statute, but also under S.C. Sham Legal Documents Statute (Section 16-17-735), and such action may amount to obstruction of justice if they purport to prevent a South Carolina court from exercising its jurisdiction.

I hope this information is helpful in screening such filings. S. C. Code Ann. § 30-9-30 is provided below for your reference.

SECTION 30-9-30. Filing of written instruments concerning real or personal property; false or fraudulent documents

(A) Except as otherwise provided by statute, each clerk of court and register of deeds in this State shall keep a record, in the office in which he files all conveyances, mortgages, judgments, liens, contracts, and papers relating to real and personal property required by statute to be kept by him, by entering in the record the names of the grantor and grantee, mortgagor and mortgagee, obligor and obligee, or other parties to the written instruments, date of filing, and nature of the instrument immediately upon its lodgment for record. The filing is notice to all persons, sufficient to put them upon inquiry of the purport of the filed instrument and the property affected by the instrument. A return address must be provided on each conveyance, mortgage, judgment, lien, contract, or other document submitted for filing with the clerk of court or register of deeds. A document may be refused for filing if it lacks a complete return address.

(B)(1) If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may refuse to accept the document for filing if he reasonably believes that the document is materially false or fraudulent or is a sham legal process. Within thirty days of a written notice of such refusal, the person presenting the document may commence a suit in a state court of competent jurisdiction requiring the clerk of court or the register of deeds to accept the document for filing.

(2) If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is materially false or fraudulent, or is a sham legal process, the clerk of court or the register of deeds may remove the document from the public records after giving thirty days' written notice to the person on whose behalf the document was filed at the return address provided in the document. Within thirty days written notice of the proposed removal, the person providing the notice may commence a suit in a state court of competent jurisdiction preventing the clerk of court or the register of deeds from removing the document.

(3) If a clerk of court or a register of deeds improperly refuses to accept for filing or recording or improperly removes from the public records a conveyance, mortgage, judgment, lien, contract, or other document pursuant to this section, the clerk of court or register of deeds is not liable for damages, personally or in his official capacity, for the improper refusal or removal.

(4) For purposes of this subsection:

(a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.

(b) "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of

**THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS**

**APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS**

MARVIN H. DUKES, III, MASTER-IN-EQUITY

APPELLATE CASE NO.: 2014-000636

BEAUFORT COUNTY,

Respondent,

vs.

MARE BARACCO,

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion for an Order to Dismiss Appeal, Without Prejudice, to Allow Appellant to File Writ of Mandamus, if Jurisdiction is confirmed, or in the Alternative, for an Order Reversing the Administrative Agency's Department's Determination on the Respondent by depositing a copy of it in the United States Mail, certified mail, return receipt requested, postage prepaid, on October 10, 2014, addressed to their attorneys of record, as follows:

**Mary Bass Lohr
Post Office Box 40
Beaufort, South Carolina 29901-0040**

**Allison Coppage
Joshua Gruber
Beaufort County Attorneys
Post Office Box 1228**

RECEIVED

OCT 10 2014

SC Court of Appeals

**Beaufort, South Carolina 29901-1228
(843) 255-2059**

Attorneys for Respondent.

A handwritten signature in black ink, appearing to read "Mare Baracco", written in a cursive style.

**Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935**

Date: October 10, 2014.

MARE BARACCO
1006 Madrid Avenue
Port Royal, South Carolina 29935
(843) 592-1062

October 9, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

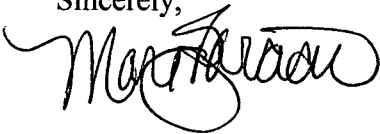
RE: Beaufort County vs. Mare Baracco
Appellate Case No.: 2014-000636

Dear Ms. Kitchings:

Enclosed please find for filing an original and eight (8) copies of Appellant's Motion for an Order to Dismiss Appeal, Without Prejudice, to Allow Appellant to File Writ of Mandamus, if Jurisdiction is confirmed, or in the Alternative, for an Order Reversing the Administrative Agency's Department's Determination, along with proof of service thereof. I am also enclosing a check in the sum of \$25.00 for the filing fee and a self-addressed, stamped envelope for the return of a clocked copy.

If you require anything further, please contact me. Thank you for your assistance.

Sincerely,



Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935

Other Counsel of Record:
Mary Bass Lorh
Allison Coppage
Joshua Gruber
Attorneys for Respondent.

RECEIVED

OCT 10 2014

SC Court of Appeals