

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Presiding Court Judge

Case No. 2013-CP-26-5009

K. N S Foundation, LLC, d/b/a Elite *Appellant,*

v.

City of Myrtle Beach *Respondent.*

RECORD ON APPEAL

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RECEIVED
AUG 27 2014
SC COURT OF APPEALS

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Attorneys for Appellant

INDEX

I. ORDERS AND JUDGMENTS

Order Granting Temporary Restraining Order Rule to Show Cause signed by Judge Larry Hyman June 14,2013 and filed on June 14, 2013 0001

Order for Suspension of Business Licenses signed only by the Mayor Pro Temp Wayne Gray on July 9, 2013 0003

Order Denying Amended Appeal of KNS Foundation, LLC, d/b/a Elite, signed by Judge William Seals, Jr. dated September 23,2013 and filed September 30, 2013 0010

Form 4 Order signed by Judge William Seals dated September 18, 2013 and filed September 20, 2013 0014

Order Denying Motion to Reconsider Amended Appeal of KNS Foundation, LLC, d/b/a Elite, pursuant to Rules 52 and 59, SCRCF, signed by Judge William Seals, Jr. filed on November 6, 2013 0016

II. PLEADINGS AND MOTIONS

Appeal from the City of Myrtle Beach's Order Revoking Appellant's Three Business Licenses #26941, #26942, #26943 dated July 18, 2013 and filed July 19, 2013 0020

Respondent City of Myrtle Beach's response to Appellant's original Appeal to the circuit court dated July 26, 2013 0034

Amended Appeal from the City of Myrtle Beach's Order Revoking Petitioner's Three Business Licenses #26941, #26942, #26943 dated August 9, 2013 and filed August 9, 2013 0037

Response to KNS Foundation, LLC, d/b/a Elite's Amended Appeal from Order of City Council of Myrtle Beach dated September 13, 2013 0053

Notice of Motion and Motion to Reconsider, Alter and Amend the Court's Order Affirming the Revocation of Appellant's Three Business Licenses Pursuant to Rules 52 and 59(e), SCRCF dated October 11, 2013 and tiled October 11, 2013 0060

Respondent City of Myrtle Beach's response to Appellant's Motion to Reconsider dated October 22,2013 and filed on October 23, 2013 0068

Notice of Appeal to the Court of Appeals dated December 2, 2013 0074

Amended Notice of Appeal to the Court of Appeals received December 10, 2013 .. 0076

III. TRANSCRIPTS

Transcript of hearing before The City of Myrtle Beach Council Members, dated June 25, 2013 0084

Transcript of hearing before The Honorable Judge William Seals, Jr., dated September 17, 2013 0196

IV. EXHIBITS AND OTHER MATERIALS

KNS Foundation, LLC, d/b/a Elite's Application for Retail Beer, Wine, and Liquor filed with the State of South Carolina Department of Revenue signed by Kennedy and dated August 22,2012. Under section 8 of Form (ABL-901), it states nature of Business is a Restaurant0224

A copy of previous floor plan for Red's corner Pocket showing a DJ booth for playing music approved by the City of Myrtle Beach 0225

KNS Foundation, LLC, d/b/a Elite's three initial business licenses applications (dated March 25, 2013) for a drinking place under business license # 111 26942, for an eating place under business license # 111 26943, and for a pool hall/arcade under business license # 111 26941 0226

KNS Foundation, LLC, d/b/a Elite's three renewal business licenses applications (dated May 23, 2013) for a drinking place under business license # 111 26942, for an eating place under business license # 111 26943, and for a pool hall/arcade under business license # 111 269410234

Notice of business License Suspension from Mary McDowell suspending KNS Foundation, LLC, d/b/a Elite's business licenses #26941, #26942, and #26943 0237

Business narrative entry written by Mary McDowell dated April 4, 2013 0240

Photographs of Red 0241

Receipt for renewal licenses applications of \$853.60 0243

Memorandum of Law in Support of Petitioners' Amended Appeal Regarding the City of Myrtle Beach's revocation of its three business licenses 0244

Myrtle Beach, S.C., Business Licenses Code §§ 11-21 through 11-39, Article II

(1992) 0262
Myrtle Beach, S.C., Zoning Code §§ 204.1 through 204.1 30 (1992) 0320
Myrtle Beach, S.C., Zoning Code §§ 301 and 502.3 (1992) 0337
Myrtle Beach, S.C., Code §§ 1219.1 through 1219.10.3.2 (1992) 0346

V. CERTIFICATION

Appellant's Rule 210(g) Certification 0354

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2013-CP-26-04103

K & S Foundation, LLC, d/b/a Elite,)

Plaintiffs,)

vs.)

The City of Myrtle Beach,)

Defendant.)

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER RULE TO SHOW
CAUSE**

This matter comes before the Court upon the Motion of Plaintiff S & D Foundation, LLC, d/b/a Elite, seeking an Order issuing a temporary restraining order pursuant to Rule 65 of the South Carolina Rules of Civil Procedure.

After a review of the pleadings, including the Verified Complaint, Plaintiff's Motion is GRANTED.

IT IS THEREFORE ORDERED that Defendant the City of Myrtle Beach shall be restrained from:


- a. Suspending business licenses #26941, #26943, and 26942;
- b. Taking any steps to interfere with the operation of Elite on the basis of alleged issues with the company's business license;

FILED
HURRY COUNTY
2013 JUN 14 AM 9:07
MELANIE HUGGINS-WARD
CLERK OF COURT

IT IS FURTHER ORDERED that the Defendant, City of Myrtle Beach, appear at a hearing to be scheduled within 10 days to show cause why Plaintiff should not be granted the temporary injunction as requested in their Motion.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire in 10 days unless sooner ruled upon by the court.

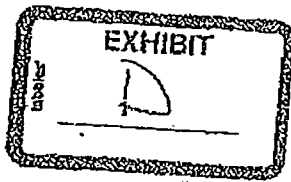
AND IT IS SO ORDERED.



Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

Dated: 6-18-13



JUL 12 2013

STATE OF SOUTH CAROLINA

COUNTY OF Horry

KNS Foundation, LLC, d/b/a Elite,

APPELLANT

vs.

Mary McDowell, Business License
Administrator for the City of Myrtle Beach,

RESPONDENT.

BEFORE MYRTLE BEACH CITY
COUNCIL

ORDER FOR SUSPENSION OF
BUSINESS LICENSES

STATEMENT OF APPEAL

This matter comes before the Myrtle Beach City Council upon the appeal of the City's Business License Administrator's suspension of certain business licenses, 3 business licenses # 26941, # 26942, and #26943, issued to Appellant KNS Foundation, LLC, d/b/a Elite. The business licenses were issued on April 5, 2013. By registered mail dated June 10, 2013, Respondent notified Appellant of the suspension and that the reason for the immediate suspension and proposed revocation of the business licenses for Elite was that it had been determined from police reports that the business licenses appear to have been obtained through misrepresentation, fraud, or deception which are grounds for revocation of a business license under § 11-35 (3). A revocation hearing was scheduled before City Council on June 25, 2013. Present at the hearing were Respondent and her attorney Michael W. Bartle together with several police witnesses and Ken May, the City's Zoning Administrator. Also present was Appellant's attorney Howell Bellamy, III, and Javon Kennedy who testified on behalf of Appellant. Appellant's appeal was heard on the merits and the hearing was recorded and transcribed by Sharon Brock of Prestige Court Reporting Services.

FINDINGS OF FACT

1. On March 25, 2013, K & S Foundation, LLC, d/b/a Elite, (Elite) obtained from Respondent Mary McDowell, Business License Administrator for the City of Myrtle Beach (McDowell), 3 business licenses to operate a drinking place, business license # 111 26942, an eating place, business license # 111 26943, and a pool hall/arcade, business license # 111 26941, at 641 Robert M Grissom Pky, Myrtle Beach, South Carolina, 29577, TMS # 181-01-01-004.
2. The premises upon which Elite is located is zoned C3-Commercial District. A C-3 Commercial zoning district does not allow night club uses among the uses that can be made of the property.
3. When the owner of Elite applied for the business licenses, Respondent informed Elite's owner that Elite was located in a C-3 Commercial zoning district that did not allow a night club use among the uses that could be made of the property. The owner of Elite falsely represented to McDowell and to Ken May, Zoning Administrator for the City of Myrtle Beach, that the premises would not be used for a night club. The owner of Elite represented to McDowell that the premises would be used primarily as a pool hall/arcade with secondary uses being serving alcohol and food. Those uses are permitted in a C-3 Commercial Zoning District. In reliance on those false representations, the City Zoning Administrator approved zoning compliance and Respondent issued the 3 business licenses to Elite.
4. Prior to opening for business and throughout the time it has been opened for business, Elite has held itself out to the public through social media such as Facebook as Elite Ultra Lounge offering Arts/Entertainment/Nightlife and it has operated at various times as a

night club as defined in the zoning ordinances of the City of Myrtle Beach advertising entertainment events, drink specials and other activities associated with the operation of a night club.

5. Elite obtained a special permit to serve alcohol after 2:00 a.m. and attracted a late night crowd of patrons.
6. After several cars were shot up in the parking lot of Elite, police officers of the City of Myrtle Beach investigated the shooting and thereafter began conducting walk throughs and visits to the premises of Elite.
7. On several visits, the police officers noticed that Elite's pool tables were often pushed away from their normal locations to positions against the outer walls of Elite. When the pool tables were moved it was not possible for the pool tables to be used for shooting pool games and a dance floor of 150 square feet or larger was provided for Elite's patrons. ~~The police officers observed D.J.'s who played loud music for patrons who~~
danced on the dance floor. The police officers did not observe anyone serving food or playing pool at Elite.
8. One police officer noticed the some patrons were smoking substances that he believed to be marijuana. However, the police officer did not make any arrests for officer safety reasons due to the large crowd of patrons present in Elite.
9. When Elite applied for a renewal of its business license it showed the gross receipts reported on the license renewal for the pool hall/arcade business constituted 17% of Elite's total gross, the gross receipts reported for Elite's food sales constituted 21 % of its total gross, and the gross receipts reported for its alcohol business constituted 62% of Elite's total gross.

10. On May 31, 2013, Warren Gall, Chief of Police for the City of Myrtle Beach, formally requested of Respondent an investigation of the facts surrounding the issuance of a business license to Elite. In his request he stated: "Based on my personal observations, and observations made and reported by members of the Myrtle Beach Police Department, this business appears to be operating as a night club or club which is not consistent with what I understand to be the requirements of the license that this business holds."

11. Respondent exercised her discretion and conducted an investigation of the facts surrounding the issuance of Elite's 3 business licenses and the advertisements and uses made of the premises. After weighing the evidence presented to her, Respondent determined that Elite had obtained its business licenses through misrepresentation, fraud, or deception, which are grounds for revocation of a business license under § 11-35 (3).

The various misrepresentations made by Elite included but are not limited to

~~representations that Elite would be used primarily as a pool hall/arcade and that it would~~
not be used as a night club. In addition, Elite's owner stated in writing on March 25, 2013, that Elite would not charge for admission or a cover charge. However, after March 25, 2013, police officers did observe Elite was used as a night club as defined by the zoning ordinances of the City of Myrtle Beach and its patrons were being charged money on occasion to enter Elite.

12. On June 10, 2013, Respondent sent Elite's owner Notice of Business License Suspension as required by the business license ordinances of the City of Myrtle Beach. Elite's owner was also notified that the matter was scheduled for June 25, 2013, at 11:00 am before City Council who would conduct a hearing on the merits and determine whether Elite's business license should be revoked.

13. A hearing was held on June 25, 2013 before City Council as indicated hereinabove.

14. After considering all of the evidence presented at the hearing, City Council has determined that Elite obtained its business licenses through misrepresentation, fraud, or deception which are grounds for revocation of a business license under § 11-35 (3). City Council has determined that such grounds are material and that Elite would not have obtained its 3 business licenses if had not made the representations or engaged in fraud or deception. Elite's 3 business licenses should be revoked.

CONCLUSIONS OF LAW

1. When the license inspector determines that a licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; the license inspector shall give written notice to the licensee or the person in control of the business within the city by personal service or certified mail that the license is suspended pending a hearing before city council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special council meeting within 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this article. *§11-35 The Code of Ordinances for the City of Myrtle Beach, South Carolina.*
2. Respondent acting in her capacity as the license inspector properly determined Appellant had obtained its business licenses in question through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of material facts in the license application.

3. Respondent properly notified Appellant of the suspension according to the requirements of §11-35, *Code of Ordinances for the City of Myrtle Beach, South Carolina*.
4. Appellants' business is located in a C3 General Commercial District. §1219, *Code of Ordinances of the City of Myrtle Beach, South Carolina*.
5. A night club is defined by the City of Myrtle Beach as a restaurant, dining room, or similar establishment where a dance floor of 150 square feet or larger is provided for guests. §204.82 *Night club, Code of Ordinances of the City of Myrtle Beach, South Carolina*.
6. The evidence presented at the revocation hearing proved that Appellants' business is operated as a night club.
7. Night clubs are not permitted uses in a C3 General Commercial District. §1219 *Code of Ordinances of the City of Myrtle Beach, South Carolina*.
8. ~~The evidence presented at the revocation hearing by Respondent in connection with~~
Respondents' applications for business licenses together with the advertisements in social media and the activities of Appellant in operating Elite throughout its existence proved that Appellant obtained its business licenses through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications.
9. Revocation of Appellants' business licenses is proper under the facts established at the revocation hearing according to the ordinances of the City of Myrtle Beach.

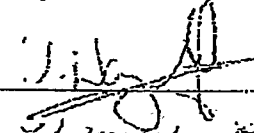
CONCLUSION

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED, Respondent's suspension of Appellants' business license was proper. Based on the evidence presented at the revocation hearing and based on the ordinances of the City of Myrtle Beach, business licenses #

26941, # 26942, and #26943, issued to Appellant KNS Foundation, LLC, d/b/a Elite are hereby
revoked because those business licenses were obtained by Appellant KNS Foundation, LLC,
d/b/a Elite through a fraud, misrepresentation, a false or misleading statement, evasion or
suppression of a material fact in the license applications.

July 9, 2013

City Council of the City of Myrtle Beach



Taylor R. Vass

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September 30, 2013

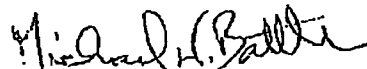
Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578

RE: K & S Foundation, LLC d/b/a Elite
C/A No.: 2013-CP-26-04103

Dear Howell:

Enclosed and served upon you by regular mail please find a clocked copy of the Order Denying Amended Appeal of KNS Foundation, LLC d/b/a Elite, together with a certificate of service in connection with the above matter.

Very truly yours,


Michael W. Battle
Enclosure: stated.

c. Tom Ellenburg

COPY

STATE OF SOUTH CAROLINA

COUNTY OF Horry

KNS Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

ORDER DENYING AMENDED APPEAL
OF KNS FOUNDATION, LLC, d/b/a
ELITE

FILED
1 SEP 30 AM 11:08
CLERK OF COURT
MYRTLE BEACH, SOUTH CAROLINA

Presiding Judge: The Honorable William H. Seals, Jr.

Hearing Date/Time: September 17, 2013 at 2:00 p.m.

ORDER

KNS Foundation, LLC, d/b/a Elite (Elite) has appealed from the decision of the Myrtle Beach City Council to revoke Elite's business licenses # 26941, # 26942, and #26943. In a hearing on the merits held before City Council on July 9, 2013, City Council decided Elite's business licenses should be revoked because those business licenses were obtained by Elite through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications.

A hearing before this Court was held on Elite's appeal on September 17, 2013. Elite and its attorneys, Howell Bellamy, III, and Howell Bellamy, Jr., together with the City's attorney, Michael W. Battle, were present and presented oral arguments to the Court. After reviewing the record on appeal and considering standard of review for such appeals, I find that the decision of the Myrtle Beach City Council should be affirmed on the grounds that there is evidence in the record to support City Councils' decision.

The S.C. Appellate Courts have held that where the city council of a municipality has made a finding after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). A decision of City Council will not be disturbed if there is evidence in the record to support its decision. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (CLApp.1994). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952).

The record on appeal in the present case contains sufficient evidence to support the finding of City Council that Elite's business licenses should be revoked because those business licenses were obtained by Elite through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications. The Court finds that City Council's decision was not arbitrary, unreasonable, or an obvious abuse of its discretion and therefore City Council's order is hereby affirmed.

AND IT IS SO ORDERED.



The Hon. William H. Seals, Jr.
Resident Judge, Fifteenth Judicial Circuit

September 23, 2013

STATE OF SOUTH CAROLINA
COUNTY OF Horry

K & S Foundation, LLC, d/b/a Elite,
Plaintiff,

vs.


City of Myrtle Beach,
Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

CERTIFICATE OF SERVICE

I, Sherri Benninga, Paralegal for Battle & Vaught, P.A., hereby certify that I have this
September 30, 2013 have served a copy of *the Order Denying Amended Appeal of KNS
Foundation, LLC d/b/a Elite* upon all counsel of record in this action, by depositing the same in
the United States mail, first-class postage pre-paid, to the following address(es):

Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578


Sherri Benninga Paralegal
to Michael W. Battle
BATTLE LAW FIRM, LLC
1200 Main Street
PO Box 530
Conway, SC 29528

September 30, 2013

9-17-13
#21

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2605009

K & S Foundation LLC Elite	Myrtle Beach City Of
----------------------------	----------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: CLERK OF COURT	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 43(k), SCRPC (Settled);
 - Rule 12(b), SCRPC;
 - Rule 41(e), SCRPC (Vol. Nonsuit);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

FILED
HORRY COUNTY
13 SEP 20 AM 9:50
CLERK OF COURT

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

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

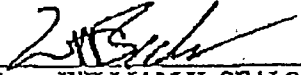
APPEAL AFFIRMED. ATTY MIKE BATTLE TO SUBMIT FORMAL ORDER WITHIN 10 DAYS.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge **WILLIAM H. SEALS** **2157** **9/18/2013**
Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

**Howell Vaught Bellamy III PO Box 357 Myrtle Beach, SC
29578**

ATTORNEY(S) FOR THE PLAINTIFF(S)

**Michael Warner Battle PO Box 530 Conway, SC
295280530**

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter FRANCES BAKIS-RAY

Melanie Huggins-Ward - Clerk of Court

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CONWAY, SOUTH CAROLINA 29528
TELEPHONE (843) 248-4321
FACSIMILE (843) 248-4512
www.battlevaught.com

KJV 12 2013

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JAMES R. BATTLE, II
E-Mail Address: jbattle@battlevaught.com

M. KIRK BATTLE
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November 8, 2013

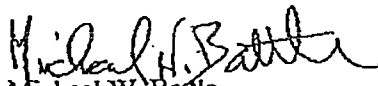
Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578

RE: K & S Foundation, LLC d/b/a Elite
C/A No.: 2013-CP-26-04103

Dear Howell:

Enclosed and served upon you by mail please find a clocked copy of the Order Denying Plaintiff's Motion to Reconsider, together with a certificate of service in connection with the above matter.

Sincerely,


Michael W. Battle
Enclosure: stated.

c. Tom Ellenburg

COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K & S Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER

2013 NOV - 6 PM 1:09
15-COURTY
APPELLATE JUDICIAL CIRCUIT
CLERK OF COURT

Plaintiff has moved to have the Court reconsider the original order issued in the above captioned lawsuit and to make individual findings of fact and conclusions of law on subjects as requested in Plaintiff's Motion to Reconsider. Plaintiff's motion mischaracterizes the nature of the appellate proceeding that was before this Court. Appeals to Circuit Court from City Council are not actions tried upon the facts without a jury or with an advisory jury. *Rule 52, SCRPC*. The standard of review does not require a *de novo* review of the record on appeal. An appeal from a city council decision is a request for a review of city council's decision to determine whether that decision is unreasonable, arbitrary or capricious. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App., 2005).

Requests for findings are not necessary for purposes of review. The findings of city council in its order, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact and conclusions of law appear therein. *Rule 52, SCRPC*.

After reviewing the record on appeal and considering standard of review for such appeals, I find that the decision of the Myrtle Beach City Council should be affirmed on the

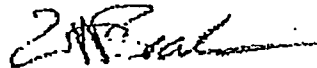
ZMB

grounds that there is evidence in the record to support City Councils' decision. In addition, I find that the individual findings of fact and the conclusions of law contained City Council's order are not arbitrary or capricious and the order supports the revocation of Plaintiff's business license.

Where the city council of a municipality has acted after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). A decision of City Council will not be disturbed if there is evidence in the record to support its decision. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Cl.App.1994). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952).

NOW THEREFORE, IT IS HEREBY ORDERED, Plaintiffs' Motion to reconsider is hereby denied and the Order of the City Council of the City of Myrtle Beach is hereby affirmed.

AND IT IS SO ORDERED.



The Hon. William H. Seals, Jr.
Presiding Judge, Fifteenth Judicial Circuit

November 29, 2013

RECEIVED
DEC 10 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K & S Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

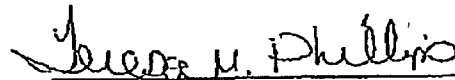
Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

CERTIFICATE OF SERVICE

I, Teresa M. Phillips, Legal Assistant for Battle Law Firm, LLC hereby certify that I have this November 8, 2013 have served a copy of an *Order Denying Plaintiff's Motion to Reconsider* upon counsel of record in this action, by depositing the same in the United States mail, first-class postage pre-paid, to the following address(es):

Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578



Teresa M. Phillips, Legal Assistant
to Michael W. Battle
BATTLE LAW FIRM, LLC
1200 Main Street
PO Box 530
Conway, SC 29528

November 8, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Horry)

K & S Foundation, LLC d/b/a/ Elite)

CIVIL ACTION COVERSHEET

Plaintiff)

2013 -CP-26

vs.)

The City of Myrtle Beach)

Defendant)

2013 CP 26 5009

Submitted By: Howell V. Bellamy, III
1000 29th Ave. N.
Address: Myrtle Beach, S. C. 29577

SC Bar #: 66575
Telephone #: 843-448-2400
Fax #: 843-448-3022
Other:
E-mail: hvearl@bellamyllaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

FILED
Horry County
2013 JUL 19
PM 4:47
MELANIE HUGHES
CLERK OF COURT

- | | | | |
|---|--|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| <input type="checkbox"/> Constructions (100) | <input type="checkbox"/> Dental Malpractice (200) | <input type="checkbox"/> Assault/Slander/Label (300) | <input type="checkbox"/> Claims & Damages (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Eminent Domain (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | 20__-CP-_____ | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice/File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Reinstatement License (800) ((800)(8)(R)) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Permanent Injunction (830) | <input checked="" type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Transcript Judgment (740) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> SCDOT (950) |
| | <input checked="" type="checkbox"/> Other (899) | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Worker's Comp (960) |
| | <input type="checkbox"/> Temporary Injunction | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Zoning Board (970) |
| Special/Complex/Other | | <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) | <input type="checkbox"/> Public Service Comm. (980) |
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceutical's (630) | <input type="checkbox"/> Other (799) | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640) | | <input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Out-of-State Depositions (650) | | |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | <input type="checkbox"/> Sexual Predator (670) | | |

Submitting Party Signature: Howell V. Bellamy III

Date: 7-19-2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SORCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note:

You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2013- CP-26-

K & S Foundation, LLC, d/b/a Elite
Petitioner,

v.
The City of Myrtle Beach,

Respondent.

) APPEAL FROM THE CITY OF MYRTLE
) BEACH'S ORDER REVOKING
) PETITIONER'S BUSINESS LICENSES
) # 26941, # 26942, #26943

FILED
HORRY COUNTY
2013 JUL 19 PM 4:44
CLERK OF COURT
LANIE HUBBINS-WARD

Petitioner K & S Foundation, LLC, d/b/a Elite, complaining of Respondent the City of Myrtle Beach, would show and allege unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Petitioner, K & S Foundation, LLC, d/b/a Elite, is now, and at all times material in this action was, a Limited Liability Company organized and existing under the laws of the State of South Carolina, engaged in the business of operating as a drinking place, a eating place, and pool hall/arcade, with its principal place of business located at 641 Robert Grissom Parkway, in the City of Myrtle Beach, Horry County, South Carolina.

2. Respondent the City of Myrtle Beach ("City") is a municipal corporation and a political subdivision of the State of South Carolina which is located in Horry County, South Carolina.

3. This action seeks to review an Order of the City Council of Myrtle Beach, made

and entered on Tuesday, July 9, 2013, revoking Elite's business licenses # 26941, #26942, and # 26943 on the grounds that Petitioner had obtained these licenses through misrepresentation, fraud or deception.

4. Petitioner maintained at the hearing held on June 25, 2013, and still maintains that Petitioner is not guilty of obtaining its business licenses # 26941, # 26942, and # 26943 through misrepresentation, fraud or deception as prescribed under § 11-35(3) of the City of Myrtle Beach Code of Ordinances.

5. This Honorable Court maintains personal jurisdiction over the parties hereto and jurisdiction over the subject matter of this action pursuant to Rule 72, SCRPC.

6. Venue is proper in the Court of Common Pleas for Horry County, South Carolina.

FACTUAL AND PROCEDURAL HISTORY

7. On August 22, 2012, Petitioner applied for Elite's Retail Beer, Wine, and Liquor License with the South Carolina Department of Revenue. ~~Petitioner indicted on its license~~ application that the nature of the business was a restaurant not a nightclub¹. Specifically, Petitioner never submitted any business license applications, nor represented to anyone with the City's business licensing department that it wanted to operate Elite as a nightclub².

8. This facility previously operated, under different ownership as a drinking place, an eating place, and a pool hall/arcade.

¹See Appellant's Application for Retail Beer, Wine, and Liquor filed with the State of South Carolina Department of Revenue signed by Appellant and dated August 22, 2012. Under section 8 of Form (ABL-901), it states nature of Business is a Restaurant. Appellant's application was included in Elite's Book of Exhibits placed into evidence by Respondent's counsel at the business license revocation hearing on June 25, 2013.

²See Elite's Book of Exhibits placed into evidence by Respondent's Attorney at the business license revocation hearing on June 25, 2013.

9. In order to operate this business, Petitioner signed a 3 year lease with the building owner and purchased all the equipment from the previous tenant.

10. When Petitioner was attempting to open this business, the Respondent, through its various agents, required Petitioner to make several changes to the facility prior to granting the Petitioner's 3 business licenses. These requirements and/or changes included the following: (a) increasing the number of pool tables in the facility from three tables to eight tables, (b) employing private security, and (c) installing a surveillance system.

11. After complying with each of the City's required conditions on or before March 28, 2013, Mary McDowell, Business License Administrator for the City of Myrtle Beach (McDowell), issued 3 business licenses to Petitioner to operate the facility a drinking place, business license # 111 26942, an eating place, business license # 111 26943, and a pool hall/arcade, business license # 111 26941, at 641 Robert M. Grissom Parkway, Myrtle Beach, South Carolina, 29577, TMS #181-01-01-004.³

12. The City, further, approved the Petitioner's business licenses based on a previous floor plan showing a DJ booth for playing music, and after conducting a physical site inspection. Petitioner has not changed the floor plan since the previous inspection and approval.

13. The premises upon which Elite is located is zoned C-3 Commercial District. Elite is operating as "*a drinking place, an eating place, and a pool hall/arcade*" which are permitted uses in a C-3 zone.

14. Elite obtained a special permit to serve alcohol after 2:00 a.m.

³ (Respondent's proposed Order For Suspension of Business Licenses, p. 2 ¶ 1).

15. Elite operated for approximately 63 days as *"a drinking place, an eating place, and a pool hall/arcade"* without incident, citation, or violation of the City of Myrtle Beach Code of Ordinances, or even a warning from McDowell regarding Elite's operation. Specifically, McDowell never charged Elite with violating §11-35(1)(2)(4)(5)(6)(7) of the Business Licenses Ordinance as set forth below:

- (1) A license *has been mistakenly or improperly issued or issued contrary to law*; or
- (2) A licensee *has breached any condition upon which his license was issued or has failed to comply with the provisions of this article*; or
- (4) A licensee *has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods*; or
- (5) licensee *has engaged in an unlawful activity or nuisance arising from, or related, connected, associated with or to the operation of the business*, or
- (6) A licensee *has failed to pay any liens, taxes, fees or charges due and owing to the city*.
- (7) A licensee *has failed to maintain or produce properly completed Employment Eligibility Verification forms I-9 for every employee as required by the United States Department of Justice*.

16. On or about May 23, 2013, the Petitioner applied for the renewal of its 3 business licenses # 26941, # 26942, and # 26943. However, McDowell refused to renew Elite's 3 business licenses on the grounds that its *"gross receipts reported reflect[ed] the primary business is coming from the sale of alcohol and not billiards."*⁴ Petitioner contends that McDowell incorrectly interprets Business Licenses Code of Ordinances for City of Myrtle Beach to create a primary business classification based on its volume of sales or percentages of sales. However, a clear reading

⁴ See (Exhibit A).

of the language of Article II, § 11-21 et seq. Business Licenses Code of Ordinances for City of Myrtle Beach does not address or provide any guidance, standards, or fixed rules for determining a business' primary classification or type based on its volume of sales or percentages of sales. For example, at the revocation hearing, Petitioner's Expert Witness Matthew R. Patz CPA ("Patz") opined that Article II, § 11-21 et seq., did not create a primary business classification based on a business' volume of sales or percentages of sales. See City of Columbia v. Niagra Fire Ins. Co., 154 S. E. 2d 674 (1967)(Court held that scope of license ordinance which was a tax measure could not by implication be extended beyond the clear import of its language). Specifically, Petitioner asserts McDowell has exceeded her jurisdiction, discretion, and her lawfully delegated power as the City's Business License inspector by incorrectly interpreting and implying that Business Licenses Code of Ordinances, Article 11, § 11-21 et seq., creates a primary business classification based on a business' volume of sales or percentages of sales. McDowell argued this expanded and incorrect interpretation of Article II, § 11-21 et seq., to the Petitioner's undue prejudice at the hearing before City Council to Show that Elite had been operating as a nightclub instead of a pool hall.

Based on a plain reading of Article II, § 11-21 et seq., Business Licenses Ordinance, McDowell's gross receipts argument is beyond the scope and clear import of the ordinance's language, and is contrary to its legislative intent and purpose.

17. On June 10, 2013, Petitioner received by certified mail a Notice of Business License Suspension Letter from McDowell. McDowell suspended Elite's 3 business licenses # 26941, # 26942, and # 26943 without affording the Petitioner any prior notice and a hearing on the merits. Petitioner asserts this was a violation of its procedural due process rights under the South Carolina and United States Constitutions. A copy of Respondent's Notice of Business License Suspension

Letter is attached hereto as (Exhibit A). The stated ground was as follows:

The reason for the immediate suspension and proposed revocation of the business licenses for Elite is that it has been determined from *police reports* that the business licenses appear to have been obtained through *misrepresentation, fraud, or deception* which are grounds for revocation of a business license under § 11-35 (3). The business licenses were issued for a pool hall/arcade that serves food and alcohol when the business has been observed by Myrtle Beach Police Officers to be operating as a nightclub/lounge. Additionally, the business is being marketed and advertised to the public as Elite Ultra Lounge. The gross receipts reported on the license renewal for the pool hall/arcade business constitute 17% of your total gross, the gross receipts reported for your food sales constitute 21% of your total gross, and the gross receipts reported for the alcohol business constitute 62% of your total gross. The gross receipts reported reflect the primary business is coming from the sale of alcohol and not billiards.

18. At the revocation hearing held on June 25, 2013 before City Council, McDowell together with several police witnesses failed to produce any police reports referred to in (Exhibit A), or present any pictures "*that Elite's [eight] pool tables were often pushed away from their normal locations to positions against the outer walls of Elite,*"⁵ for dancing in support of their assertions that Petitioner's "business licenses appear to have been obtained through misrepresentation, fraud or deception ... under § 11-35 (3)". See (Exhibit A).

19. Furthermore, Petitioner's Expert Witness Patz testified at the hearing that he had reviewed the following relevant documentation and information pertaining to this matter, including, but not limited to the following: (a) City of Myrtle Beach's Notice of Business License Suspension issued to Brooke Kennedy regarding Elite's business licenses # 26941, # 26943, and # 26942; (b) the Business Licenses Code of Ordinances of the City of Myrtle Beach, South Carolina; (c) the Forms

⁵See Affidavit of Rod Witherspoon marked as (Exhibit B). He states it is impossible to push the pool tables away from their normal locations based on their individual weight of 670 lbs a piece. And, further, the inside pictures of Elite's floor space, marked as (Exhibit C) show that it is virtually impossible to push the 8 pool tables against the outer walls of the building based on the stepped up 14" Platform sitting area adjacent to the outer walls and the location of the bar.

for Business License Renewal Applications submitted to the City of Myrtle Beach Business Licenses Division on May 23, 2013, and (d) Respondent's documents and exhibits in support of the revocation produced initially at the hearing to Petitioner's Counsel.

20. Based on Patz's review of the above documents and exhibits, he opined to the following:

- a. that Elite did not materially misrepresent any financial information provided on the business license renewal applications in order to calculate and pay the business license fee due and to renew its respective licenses;
- b. that the Business Licenses Code of Ordinances of the City of Myrtle Beach, South Carolina, does not state or provide any guidance on determining a business' primary classification or type based on volume of sales or percentages of sales; and
- c. that Elite was not provided any type of warning or notice of violation from the City of Myrtle Beach Business Licenses Division regarding its primary business classification as a Pool Hall/Arcade⁶

21. Further, in support of Patz's above stated opinions, the uncontroverted evidence in the record shows that McDowell never charged the Petitioner for submitting "*a false application for a business license, ... or filing of any false information with respect to the license or fee required by this article-*" under §11-27 entitled False application unlawful, which is somewhat confusing and contrary to McDowell's basis and reasoning for revoking the Petitioner's 3 business licenses in the first place under § 11-35(3).

22. Next, no definition for pool hall exists in the City of Myrtle Beach's Zoning Ordinance. See § 203-Terms and words used in Zoning Ordinance of the City of Myrtle Beach,

⁶ See Affidavit of Petitioner's Expert Witness Matthew R. Patz CPA attached hereto as (Exhibit E).

South Carolina. This was admitted to by Zoning Administrator Ken May at the hearing. Further, Ken May acknowledged on the record at the hearing that the City's Zoning Ordinance is silent on whether a pool hall can allow the following activities or uses: (a) dancing on a floor space less than 150 square feet, (b) charging an admissions fee or cover charge to pay for security, and (c) playing live music. See §202 *Purpose and interpretation of the Zoning Ordinance of the City of Myrtle Beach, South Carolina.*

23. On July 9, 2013, City Council voted 3-2 to revoke Elite's business licenses # 26941, # 26942, and # 26943 with Councilmen Wayne Gray and Mike Lowder and Councilwomen Susan Grissom Means voting for revocation while Councilmen Randal Wallace and Michael Chestnut voting against it. However, Mayor John Rhodes and Councilman Philip Render did not vote because they were not present for the revocation hearing on June 25, 2013. A copy of City Council's Revocation Order is attached hereto as (Exhibit D).

~~24. There is no evidence in the Record on Appeal to support the incorrect~~
findings and conclusions of law from McDowell's testimony at the hearing and later adopted and incorporated into Paragraph 9 and 11 of City Council's Revocation Order. On the Contrary, City Council's adoption of McDowell's improper findings and conclusions of law are unreasonable, arbitrary and capricious, and an obvious abuse of process for the following reasons. First, the evidence presented at the revocation hearing by McDowell and the police officers in connection with Petitioner's applications for business licenses # 26941, # 26942, and # 26943 together with the advertisements and the activities of Petitioner in operating Elite throughout its existence failed to prove that Petitioner obtained its *"business licenses through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications"* as

prescribed under § 11-35(3). Second, contrary to McDowell's interpretation and implication that Article II, § 11-21 et seq., Business Licenses Ordinance, creates a business' primary classification or type based on volume of sales or percentages of sales, (which she relied upon in suspending Elite's 3 business licenses), the ordinance's language does not support her expanded interpretation because no guidelines, standards or fixed rules exist for determining a business' primary classification or type based on volume of sales or percentages of sales. See Pee Dee Chair Co. V. City of Camden, 162 S. E. 771 (1932)(Court held Ordinances requiring business license or imposing license or occupation tax must be construed liberally in favor of the citizen). This interpretation was argued by Petitioner's Expert Witness Patz at the revocation hearing in opposition to McDowell's suspension of Elite's 3 business licenses under Article II, § 11-21 et seq., Business Licenses Ordinance. Third, City Council's decision to revoke the Petitioner's 3 business licenses was unreasonable, arbitrary and capricious, and an abuse of discretion because: (1) Elite's punishment is so disproportionate to the alleged violation charged by the City as to be shocking to one's sense of fairness; and (2) no prior notice and hearing on the merits occurred before Elite's 3 business licenses were suspended by McDowell. The case law provides that administrative penalty of a license revocation may be set aside *when the punishment is so disproportionate to the offense as to be shocking to one's sense of fairness*. 51 Am. Jur. 2d. Licenses and Permits §56 (2013). For example, in the case of City of Mankato V. Mahoney, 542 N. W. 2d 689 (Minn. Ct. App. 1996), the Court found a City's decision to revoke a landlord's rental license under a city code provision for the revocation or suspension of a license after three instances of disorderly use of a premises was *arbitrary and capricious*, where the landlord acted responsibly in evicting the previous tenants and attempted to prevent further disruption by warning the new tenants that a third noise violation would

jeopardize the rental license. Id. Here, Petitioner contends it was *arbitrary and capricious* to revoke Elite's 3 business licenses # 26941, # 26942, and # 26943 when no prior violations had occurred, and no warnings were issued prior to the suspension of the 3 licenses. Petitioner's contention is supported by the Court's reasoning and holding in the case of City of Mankato V. Mahoney, supra. Furthermore, the Petitioner has always acted responsibly in complying with any of the City's additional requirements for licenser, such as employing private security, and installing a surveillance system at great expense for the purpose ensuring the welfare and safety of its customers.

25. Adoption of McDowell's improper findings and conclusions of law by City Council denied Petitioner a fair hearing, and constituted an obvious abuse process and its discretion.

26. The Respondent's Order revoking the Petitioner's business licenses # 26941, # 26942, and # 26943 is not based on any legally admissible evidence as a result of McDowell's incorrect interpretation and application of Article II, § 11-21 et seq., Business Licenses Ordinance, ~~to the facts and circumstances of this case to show Petitioner was operating as a nightclub instead~~

of a pool hall. As such, City Council's Revocation Order should be vacated by the Court on the grounds that its decision to revoke Elite's 3 business licenses was unduly influenced and prejudiced by McDowell's improper gross receipts argument. Accordingly, City Council's decision to revoke Petitioner's 3 business licenses was arbitrary, unreasonable, and an obvious abuse of process, and denied the Petitioner a fair hearing based on its adoption of McDowell's improper gross receipts argument.

27. Prior to the Order of Revocation, Petitioner was engaged in the operation of substantial business under 3 licenses issued by the Respondent. By virtue of the Order, it will become necessary for Petitioner to close the business during the its busiest time of year and suffer

irreparable damage from lost sales and business, which will continue if City Council's Revocation Order is enforced against Petitioner pending the determination of the Order's validity by this Court. Furthermore, Petitioner has spent large sums of monies in the business to comply with the City's previous conditions for obtaining the 3 business licenses in April 2013, and unless the revocation is stayed by an Order of this Court the Petitioner will go into default of its lease agreement with its landlord.

28. The evidence presented at the revocation hearing on June 25, 2013 failed to prove that Petitioner violated §11-35(3), or operated the business as a nightclub.

29. All conditions precedent to the bringing of this Appeal have occurred or been performed.

30. Petitioner has no plain, speedy, or adequate remedy of law for the harm to be caused by the Respondent's arbitrary and capricious, and unreasonable revocation of its 3 business licenses # 26941, # 26942, and # 26943 as prescribed under § 11-35(3).

31. Petitioner is entitled to a Temporary Restraining Order and Temporary Injunction staying Respondent's Order revoking Petitioner's 3 business licenses # 26941, # 26942, and # 26943, until such time as the Court determines the Order's validity at a scheduled hearing on the merits.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Elite prays for the following relief:

1. That the Court stay the Respondent's Order revoking Petitioner's 3 business licenses # 26941, # 26942, and # 26943, by and through the issuance of a Temporary Restraining Order and Temporary Injunction until such time as a determination can be made of the Revocation Order's validity by the Court;

2. Respondent file, by August 15, 2013, a complete transcript of the hearing that led to revocation of Petitioner's 3 business licenses # 26941, # 26942, and # 26943;
3. That City Council's Revocation Order was tainted by its adoption of McDowell's incorrect findings and interpretation/application of Article II, §11-21 et seq., Business Licenses Ordinance to the facts of this case in suspending the Petitioner's 3 business licenses. This denied Petitioner a fair hearing, and, therefore, violated its procedural due process rights under the South Carolina and United States Constitutions;
4. That Respondent's Order made and entered on July 9, 2013 revoking the Petitioner's 3 business licenses # 26941, # 26942, and # 26943 be vacated and set aside on the grounds that City Council's decision was arbitrary, unreasonable, and an obvious abuse of process. Specifically, the evidence presented during the revocation hearing failed to establish: (1) that Elite had obtained its 3 business licenses through "*misrepresentation, fraud, or deception*" as prescribed under § 11-35(3) of the Business Licenses Ordinance; and (2) that Elite operated as a nightclub instead of a Pool hall; and
5. Awarded all cost and fees, and such other and further relief that this Court deems just and proper.

BELLAMY, RUTENBERG, COPELAND, EPPS,

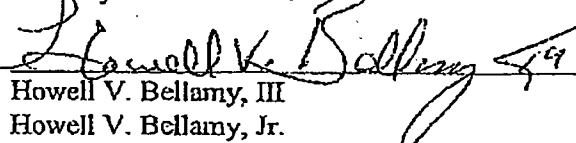
GRAVELY & BOWERS, P.A.

Post Office Box 357

Myrtle Beach, SC 29578-0357

843-448-2400

Attorneys for the Petitioner


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Howell V. Bellamy, Jr.

Myrtle Beach, South Carolina

July 18, 2013

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VICTORIA T. VAUGHT (1959-2012)

July 26, 2013

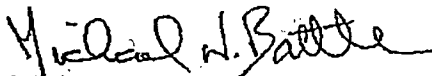
Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578

RE: K & S Foundation, LLC d/b/a Elite
C/A No.: 2013-CP-26-04103

Dear Howell:

Enclosed and served upon you by regular mail please find a copy of the City of Myrtle Beach's Response to Appeal in connection with the above matter.

Very truly yours,


Michael W. Battle
Enclosure: stated.

c. Tom Ellenburg

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K & S Foundation, LLC, d/b/a Elite,

Petitioner,

vs.

City of Myrtle Beach,

Respondent.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-05009

**CITY OF MYRTLE BEACH'S
RESPONSE TO APPEAL**

Respondent City of Myrtle Beach, responding to the Appeal of Petitioner would respectfully show unto this Honorable Court:

PARTIES AND JURISDICTION

1. Respondent is informed and believes the proper name for Petitioner is KNS Foundation, LLC, and Petitioner operates a night club under the guise of a drinking place, eating place, and pool hall/arcade at 641 Grissom Parkway, in the City of Myrtle Beach, South Carolina.
2. Respondent admits the allegations in paragraphs 2 – 3.
3. Respondent denies the allegations in paragraph 4.
4. Responding to the allegations in paragraph 5, Respondent is informed and believes the appeal in the above captioned matter is governed by Rule 74, SCRCPP and Venue is proper in Horry County.

FACTUAL AND PROCEDURAL HISTORY

5. Respondent denies each and every allegation in paragraphs 6 – 30 and Respondent would further show that a correct factual and procedural history is stated in Respondent's Order for Suspension of Business Licenses and attached to Petitioner's Appeal as Exhibit D.

6. Each and every allegation of the Appeal not herein expressly admitted is hereby denied.

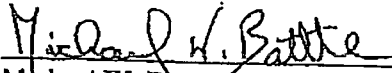
OBJECTION TO EXHIBITS

7. Respondent objects to the exhibits attached to Petitioner's Appeal except for the copy of the order of City Council. The record for the appeal will be provided by the Clerk of the City of Myrtle Beach pursuant to the South Carolina Rules of Civil Procedure governing appeals to circuit court.

CONCLUSION

Respondent respectfully requests that the Circuit Court dismiss the appeal and affirm the decision of the Respondent City of Myrtle Beach to revoke Petitioner's business license.

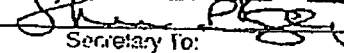
BATTLE & VAUGHT, P.A.


Michael W. Battle
Attorney for Respondent City of Myrtle Beach
P.O. Box 530
Conway, SC 29528
(843) 248-4321

July 26, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 26 day of July, 2013


Secretary To:
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Conway, SC 29528
Attorney's for City of MS

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August 9, 2013

VIA Hand Delivery
Michael Battle, Esq.
1200 Main Street
Conway, SC 29528

Re: K&S Foundation, LLC, d/b/a/ Elite vs. The City of Myrtle Beach
Civil Action No. 2013-CP-26-5009

Dear Mike:

Enclosed for filing please find a copy of the Amended Appeal from the City of Myrtle Beach's Order Revoking Petitioner's Business Licenses #26941, #26942, and #26943, which we filed with the Horry County Court of Common Pleas this afternoon.

With kindest regards, I remain

Sincerely,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

Howell V. Bellamy, III
Howell V. Bellamy, III

/lh
Enclosure

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2013- CP-26- 5009
)	
K & S Foundation, LLC, d/b/a Elite)	
)	
Petitioner,)	
)	
v.	)	AMENDED APPEAL FROM THE CITY OF
	)	MYRTLE BEACH'S ORDER REVOKING
	)	PETITIONER'S 3 BUSINESS LICENSES
The City of Myrtle Beach,	)	# 26941, # 26942, # 26943
)	
Respondent.)	
)	

MELANIE J. JOHNSON
 CLERK OF COURT
 13 AUG - 9 PM 2:01
 HORRY COUNTY

Petitioner K & S Foundation, LLC, d/b/a Elite, complaining of Respondent the City of Myrtle Beach, would show and allege unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Petitioner, K & S Foundation, LLC, d/b/a Elite, is now, and at all times material in this action was, a Limited Liability Company organized and existing under the laws of the State of South Carolina, engaged in the business of operating as a drinking place, a eating place, and pool hall/arcade, with its principal place of business located at 641 Robert Grissom Parkway, in the City of Myrtle Beach, Horry County, South Carolina.
2. Respondent the City of Myrtle Beach ("City") is a municipal corporation and a political subdivision of the State of South Carolina which is located in Horry County, South Carolina.
3. This action seeks to review an Order of the City Council of Myrtle Beach, made

and entered on Tuesday, July 9, 2013, revoking Elite's business licenses # 26941, # 26942, and # 26943 on the grounds that Petitioner had obtained these licenses through misrepresentation, fraud or deception.

4. Petitioner maintained at the hearing held on June 25, 2013, and still maintains that Petitioner is not guilty of obtaining her business licenses # 26941, # 26942, and # 26943 through misrepresentation, fraud or deception as prescribed under § 11-35(3) of the City of Myrtle Beach Code of Ordinances.

5. This Honorable Court maintains personal jurisdiction over the parties hereto and jurisdiction over the subject matter of this action pursuant to Rule 72, SCRPC.

6. Venue is proper in the Court of Common Pleas for Horry County, South Carolina.

FACTUAL AND PROCEDURAL HISTORY

7. On August 22, 2012, Petitioner applied for Elite's Retail Beer, Wine, and Liquor License with the South Carolina Department of Revenue. Petitioner indicated on its license application that the nature of the business was a restaurant not a nightclub¹. Specifically, Petitioner never submitted any business license applications, nor represented to anyone with the City's business licensing department that she wanted to operate Elite as a nightclub².

8. This facility previously operated, under different ownership as a drinking place, an eating place, and a pool hall/ arcade.

¹See Appellant's Application for Retail Beer, Wine, and Liquor filed with the State of South Carolina Department of Revenue signed by Appellant and dated August 22, 2012. Under section 8 of Form (ABL-901), it states nature of Business is a Restaurant. Appellant's application was included in Elite's Book of Exhibits placed into evidence by Respondent's counsel at the business license revocation hearing on June 25, 2013.

²See Elite's Book of Exhibits placed into evidence by Respondent's Attorney at the business license revocation hearing on June 25, 2013.

9. In order to operate this business, Petitioner signed a 3 year lease with the building owner and purchased all the equipment from the previous tenant.

10. When Petitioner was attempting to open this business, the Respondent, through its various agents, required Petitioner to make several changes to the facility prior to granting the Petitioner's 3 business licenses. These requirements and/or changes included the following: (a) increasing the number of pool tables in the facility from three tables to eight tables, (b) employing private security, and (c) installing a surveillance system.

11. After complying with each of the City's required conditions on or before March 28, 2013, Mary McDowell, Business License Administrator for the City of Myrtle Beach (McDowell), issued 3 business licenses to Petitioner to operate the facility a drinking place, business license # 111 26942, an eating place, business license # 111 26943, and a pool hall/arcade, business license # 111 26941, at 641 Robert M. Grissom Parkway, Myrtle Beach, South Carolina, 29577, TMS #181-01-01-004.³

12. The City, further, approved the Petitioner's 3 business licenses based on a previous floor plan showing a DJ booth for playing music, and after conducting a physical site inspection. Petitioner has not changed the floor plan since the previous inspection and approval.

13. The premises upon which Elite is located is zoned C-3 Commercial District. Elite is operating as "*a drinking place, an eating place, and a pool hall/arcade*" which are permitted uses in a C-3 zone.

14. Elite obtained a special permit to serve alcohol after 2:00 a.m.

³ (Respondent's proposed Order For Suspension of Business Licenses, p. 2 ¶ 1).

15. Elite operated for approximately 63 days as *"a drinking place, an eating place, and a pool hall/arcade"* without incident, citation, or violation of the City of Myrtle Beach Code of Ordinances, or even a warning from McDowell regarding Elite's operation. Specifically, McDowell never charged Elite with violating §11-35(1)(2)(4)(5)(6)(7) of the Business Licenses Ordinance as set forth below:

- (1) A license *has been mistakenly or improperly issued or issued contrary to law*; or
- (2) A licensee *has breached any condition upon which his license was issued or has failed to comply with the provisions of this article*; or
- (4) A licensee *has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods*; or
- (5) licensee *has engaged in an unlawful activity or nuisance arising from, or related, connected, associated with or to the operation of the business*, or
- (6) A licensee *has failed to pay any liens, taxes, fees or charges due and owing to the city*.
- (7) A licensee *has failed to maintain or produce properly completed Employment Eligibility Verification forms I-9 for every employee as required by the United States Department of Justice*.

16. On or about May 23, 2013, the Petitioner applied for the renewal of her 3 business licenses # 26941, # 26942, and # 26943. However, McDowell refused to renew Elite's 3 business licenses on the grounds that its *"gross receipts reported reflect[ed] the primary business is coming from the sale of alcohol and not billiards."*⁴ Petitioner contends that McDowell incorrectly interprets Business Licenses Ordinance for City of Myrtle Beach to create a primary

⁴ See (Exhibit A).

business classification based on a businesses' volume of sales or percentages of sales. However, a clear reading of the language of Article II, § 11-21 et seq. Business Licenses Code of Ordinances for City of Myrtle Beach does not address or provide any guidance, standards, or fixed rules for determining a business' primary classification or type based on its volume of sales or percentages of sales. For example, at the revocation hearing, Petitioner's Expert Witness Matthew R. Patz CPA ("Patz") opined that Article II, § 11-21 et seq., did not create a primary business classification based on a business' volume of sales or percentages of sales. See City of Columbia v. Niagra Fire Ins. Co. 154 S. E. 2d 674 (1967)(Court held that scope of license ordinance which was a tax measure could not by implication be extended beyond the clear import of its language). Specifically, Petitioner asserts McDowell has exceeded her jurisdiction, discretion, and her lawfully delegated power as the City's Business License inspector by incorrectly interpreting and implying that Business Licenses Code of Ordinances, Article 11, § 11-21 et seq., creates a primary business classification based on a business' volume of sales or percentages of sales. McDowell argued this expanded and incorrect interpretation of Article II, § 11-21 et seq., to the Petitioner's undue prejudice at the hearing before City Council to Show that Elite had been operating as a nightclub instead of a pool hall. Based on a plain reading of Article II, § 11-21 et seq., Business Licenses Ordinance, McDowell's gross receipts argument is beyond the scope and clear import of the ordinance's language, and is contrary to its legislative intent and purpose.

17. On June 10, 2013, Petitioner received by certified mail a Notice of Business License Suspension Letter from McDowell. McDowell suspended Elite's 3 business licenses # 26941, # 26942, and # 26943 without affording the Petitioner any prior notice and a hearing on the merits. Petitioner asserts this was a violation of its procedural due process rights under the South Carolina

and United States Constitutions. A copy of Respondent's Notice of Business License Suspension Letter is attached hereto as (Exhibit A). The stated ground was as follows:

The reason for the immediate suspension and proposed revocation of the business licenses for Elite is that it has been determined from *police reports* that the business licenses appear to have been obtained through *misrepresentation, fraud, or deception* which are grounds for revocation of a business license under § 11-35 (3). The business licenses were issued for a pool hall/arcade that serves food and alcohol when the business has been observed by Myrtle Beach Police Officers to be operating as a nightclub/lounge. Additionally, the business is being marketed and advertised to the public as Elite Ultra Lounge. The gross receipts reported on the license renewal for the pool hall/arcade business constitute 17% of your total gross, the gross receipts reported for your food sales constitute 21% of your total gross, and the gross receipts reported for the alcohol business constitute 62% of your total gross. The gross receipts reported reflect the primary business is coming from the sale of alcohol and not billiards.

18. At the revocation hearing held on June 25, 2013 before City Council, McDowell together with several police witnesses failed to produce any police reports referred to in (Exhibit A), or present any pictures *"that Elite's [eight] pool tables were often pushed away from their normal locations to positions against the outer walls of Elite,"*⁵ for dancing in support of their assertions that Petitioner's "business licenses appear to have been obtained through *misrepresentation, fraud or deception ...* under § 11-35 (3)". See (Exhibit A).

19. Furthermore, Petitioner's Expert Witness Patz testified at the hearing that he had reviewed the following relevant documentation and information pertaining to this matter, including, but not limited to the following: (a) City of Myrtle Beach's Notice of Business License Suspension issued to Brooke Kennedy regarding Elite's business licenses # 26941, # 26943, and # 26942; (b)

⁵See Affidavit of Rod Witherspoon marked as (Exhibit B). He states it is impossible to push the pool tables away from their normal locations based on their individual weight of 670 lbs a piece. And, further, the inside pictures of Elite's floor space, marked as (Exhibit C) show that it is virtually impossible to push the 8 pool tables against the outer walls of the building based on the stepped up 14" Platform sitting area adjacent to the outer walls and the location of the bar.

the Business Licenses Code of Ordinances of the City of Myrtle Beach, South Carolina; (c) the Forms for Business License Renewal Applications submitted to the City of Myrtle Beach Business Licenses Division on May 23, 2013, and (d) Respondent's documents and exhibits in support of the revocation produced initially at the hearing to Petitioner's Counsel.

20. Based on Patz's review of the above documents and exhibits, he opined to the following:

- a. that Elite did not materially misrepresent any financial information provided on the business license renewal applications in order to calculate and pay the business license fee due and to renew its respective licenses;
- b. that the Business Licenses Code of Ordinances of the City of Myrtle Beach, South Carolina, does not state or provide any guidance on determining a business' primary classification or type based on volume of sales or percentages of sales; and
- c. that Elite was not provided any type of warning or notice of violation from the City of Myrtle Beach Business Licenses Division regarding its primary business classification as a Pool Hall/Arcade⁶

21. Further, in support of Patz's above stated opinions, the uncontroverted evidence in the record shows that McDowell never charged the Petitioner for submitting "*a false application for a business license, ... or filing of any false information with respect to the license or fee required by this article-*" under §11-27 entitled False application unlawful, which is somewhat confusing and contrary to McDowell's basis and reasoning for revoking the Petitioner's 3 business licenses in the first place under § 11-35(3).

22. Next, no definition for pool hall exists in the City of Myrtle Beach's Zoning

⁶ See Affidavit of Petitioner's Expert Witness Matthew R. Patz CPA attached hereto as (Exhibit E).

Ordinance. See § 203-Terms and words used in Zoning Ordinance of the City of Myrtle Beach, South Carolina. This was admitted to by Zoning Administrator Ken May at the hearing. Consequently, the City's Zoning Ordinance is silent on whether a pool hall can allow the following activities or uses: (a) dancing on a floor space less than 150 square feet, (b) charging an admissions fee or cover charge to pay for security, and (c) playing live music. See §202 Purpose and interpretation of the Zoning Ordinance of the City of Myrtle Beach, South Carolina.

23. On July 9, 2013, City Council voted 3-2 to revoke Elite's business licenses # 26941, # 26942, and # 26943 with Councilmen Wayne Gray and Mike Lowder and Councilwomen Susan Grissom Means voting for revocation while Councilmen Randal Wallace and Michael Chestnut voting against it. However, Mayor John Rhodes and Councilman Philip Render did not vote because they were not present for the revocation hearing on June 25, 2013. A copy of City Council's Revocation Order is attached hereto as (Exhibit D).

24. There is no evidence in the Record on Appeal to support the incorrect findings and conclusions of law from McDowell's testimony at the hearing and later adopted and incorporated into Paragraph 9 and 11 of City Council's Revocation Order. On the Contrary, City Council's adoption of McDowell's improper findings and conclusions of law are unreasonable, arbitrary and capricious, and an obvious abuse of process for the following reasons. First, the evidence presented at the revocation hearing by McDowell and the police officers in connection with Petitioner's applications for business licenses # 26941, # 26942, and # 26943 together with the advertisements and the activities of Petitioner in operating Elite throughout its existence failed to prove that Petitioner obtained its "business licenses through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications" as

prescribed under § 11-35(3). Second, contrary to McDowell's interpretation and implication that Article II, § 11-21 et seq., Business Licenses Ordinance, creates a business' primary classification or type based on volume of sales or percentages of sales, (which she relied upon in suspending Elite's 3 business licenses), the ordinance's language does not support her expanded interpretation because no guidelines, standards or fixed rules exist for determining a business' primary classification or type based on volume of sales or percentages of sales. See Pee Dee Chair Co. V. City of Camden, 162 S. E. 771 (1932)(Court held Ordinances requiring business license or imposing license or occupation tax must be construed liberally in favor of the citizen). This interpretation was argued by Petitioner's Expert Witness Patz at the revocation hearing in opposition to McDowell's suspension of Elite's 3 business licenses under Article II, § 11-21 et seq., Business Licenses Ordinance. Third, City Council's decision to revoke the Petitioner's 3 business licenses was unreasonable, arbitrary and capricious, and an abuse of discretion because: (1) Elite's punishment is so disproportionate to the alleged violation charged by the City as to be shocking to one's sense of fairness; and (2) no prior notice and hearing on the merits occurred before Elite's 3 business licenses were suspended by McDowell. The case law provides that administrative penalty of a license revocation may be set aside *when the punishment is so disproportionate to the offense as to be shocking to one's sense of fairness*. 51 Am. Jur. 2d. Licenses and Permits §56 (2013). For example, in the case of City of Mankato V. Mahoney, 542 N. W. 2d 689 (Minn. Ct. App. 1996), the Court found a City's decision to revoke a landlord's rental license under a city code provision for the revocation or suspension of a license after three instances of disorderly use of a premises was *arbitrary and capricious*, where the landlord acted responsibly in evicting the previous tenants and attempted to prevent further disruption by warning the new tenants that a third noise violation would

jeopardize the rental license. Id. Here, Petitioner contends it was *arbitrary and capricious* to revoke Elite's 3 business licenses # 26941, # 26942, and # 26943 when no prior violations had occurred, and no warnings were issued prior to the suspension of the 3 licenses. Petitioner's contention is supported by the Court's reasoning and holding in the case of City of Mankato V. Mahoney, supra. Furthermore, the Petitioner has always acted responsibly in complying with any of the City's additional requirements for licenser, such as employing private security, and installing a surveillance system at great expense for the purpose ensuring the welfare and safety of its customers.

25. Adoption of McDowell's improper findings and conclusions of law by City Council denied Petitioner a fair hearing, and constituted an obvious abuse process and its discretion.

26. The Respondent's Order revoking the Petitioner's business licenses # 26941, # 26942, and # 26943 is not based on any legally admissible evidence as a result of McDowell's incorrect interpretation and application of Article II, § 11-21 et seq., Business Licenses Ordinance, to the facts and circumstances of this case to show Petitioner was operating as a nightclub instead of a pool hall. As such, City Council's Revocation Order should be vacated by the Court on the grounds that its decision to revoke Elite's 3 business licenses was unduly influenced and prejudiced by McDowell's improper gross receipts argument. Accordingly, City Council's decision to revoke Petitioner's 3 business licenses was arbitrary, unreasonable, and an obvious abuse of process, and denied the Petitioner a fair hearing based on its adoption of McDowell's improper gross receipts argument.

27. Prior to the Order of Revocation, Petitioner was engaged in the operation of substantial business under 3 licenses issued by the Respondent. By virtue of the Order, it will become necessary for Petitioner to close the business during the its busiest time of year and suffer

irreparable damage from lost sales and business, which will continue if City Council's Revocation Order is enforced against Petitioner pending the determination of the Order's validity by this Court. Furthermore, Petitioner has spent large sums of monies in the business to comply with the City's previous conditions for obtaining the 3 business licenses in April 2013, and unless the revocation is stayed by an Order of this Court the Petitioner will go into default of its lease agreement with its landlord.

28. The evidence presented at the revocation hearing on June 25, 2013 failed to prove that Petitioner violated §11-35(3), or operated the business as a nightclub.

29. Furthermore, on or about April 5, 2013, McDowell acknowledged in a written narrative⁷ her objection with zoning's approval of Elite's 3 business licenses #26941, #26942, and #26943. For example, McDowell stated in her notes, that *"Tom was a bit unclear as to the change of opinion [of Zoning], but it is what it is and if zoning approved, then zoning will have to stand behind their position should anything with the use of the business change after [Elite] open[s]."*

Furthermore, McDowell *"stated that Zoning would have to take the primary position on any action related to the business use."* She noted that the City Attorney Tom Ellenburg ("Ellenburg") agreed with her position. However, the Record in this matter reflects that Zoning was not allowed

⁷ "According to Ken, zoning is fine with the business license applications for food, bar, and billiards. Called Tom Ellenburg for advice as the 3 business license applications reflect the largest gross income coming from bar sales and not billiards. Tom E. conferenced in me and Ken to discuss. Ken explained that he could not approve or disapprove a use based upon assumptions and that the applicant had moved in a total of 8 pool tables and moved out tables and chairs. ... Ken affirmed to Tom E. that he was comfortable with his approval. Tom E. acknowledged, but had questioned Ken on the change of opinion from the meeting that was held on Mar. 26, 2013. Phone call ended then Tom E. called me back. Tom was a bit unclear as to the change of opinion, but it is what it is and if zoning approved, then zoning will have to stand behind their position should anything with the use of the business change after they open. I further stated that Zoning would have to take the primary position on any action related to the business use. Tom E. agreed. mem." (Emphasis added.) (Business narrative written by McDowell on April 5, 2013, attached hereto as (Exhibit F).)

or failed to take the primary action against Elite's alleged non-conforming use of operating as a Nightclub, as required under § 301, City of Myrtle Beach Zoning Ordinance.

30. §301, Administration and enforcement, provides in pertinent part:

If the zoning administrator or other appropriate code enforcement officer determines that any of the provisions of this ordinance are being violated. He shall enforce the requirements of the ordinance by notifying in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it; or by ordering in writing the person responsible to discontinue the illegal use ... ; or by issuing an ordinance summons⁸; or by taking any other action authorized by law to ensure compliance with or to prevent violation of the ordinance. Delivery of the written notice of violation and order to correct or discontinue address; or by hand delivery to a person of suitable age and responsibility at the address; or by affixing the notice of violation to the structure or on a sign at the address. § 301, Zoning Ordinance of the City of Myrtle Beach.

31. Based on Zoning's failure "to take the primary position ... [and] action⁹" related to Elite's non-conforming business use violation since it was the controlling department per McDowell and City Attorney Ellenburg and provide a warning, the Petitioner's procedural due process rights were violated under the South Carolina and United States Constitutions. Specifically, the Petitioner was not afforded any notice or hearing prior to the suspension of her 3 business licenses for an alleged business use violation as required under § 301, City of Myrtle Beach Zoning Ordinance. Accordingly, the Respondent's Revocation Order should be set aside by the Court due

⁸ "[T]he ordinance summons shall also serve as official notice of the zoning administrator's interpretation of the zoning ordinance and determination of the applicability of the ordinance to the land use." § 301, City of Myrtle Beach Zoning Ordinance.

⁹ Sec n 7.

to the Zoning's non-compliance with the mandatory requirements under § 301, City of Myrtle Beach Zoning Ordinance.

32. Next, on June 18, 2013, Petitioner's counsel Mark Goddard ("Goddard") sent an email to attorney Mike Battle requesting production of information and names of witnesses to be presented at the revocation hearing on June 25, 2013. Specifically, Goddard requested the following discovery: (a) witnesses the city plans to call, (b) and any evidence the city plans to submit to the City Council to support its position. (E-mail from attorney Mark Goddard to Attorney Mike Battle on June 16, 2013 attached as (Exhibit G).) However, no information, names of witnesses, or documents were produced by Respondent's counsel until the day of the revocation hearing before City Council. Prior to the hearing, Respondent's counsel Battle produced a Book Exhibits titled "Elite's Exhibits" by Respondent. But "Elite's Exhibits" failed to include any police reports referred to 10 June 2013 suspension letter from McDowell to Petitioner known as (Exhibit A).

33. At the revocation hearing, McDowell testified that she was provided with a report from Officer Stephanie James, another report from the Chief of Police Warren Gall, and some incident reports which her testimony evidenced that she relied upon in reaching her decision to suspend the Petitioner's 3 business licenses #26941, #26942, and #26943. (Tr. of Hr'g before City Council dated June 25, 2013, p. 26, lines 2-5; p. 30, lines 24-25; p. 31, lines 1-25; p. 32, lines 1-5; (Exhibit H).)

34. The failure of the Respondent to provide the Petitioner with the above-mentioned Police Reports referred to in (Exhibit A), and previously requested by her counsel in (Exhibit G), deprived her of a fair hearing because she had no ability to challenge the information contained in

the Reports. As such, Petitioner's procedural due process rights were violated under the South Carolina and United States Constitutions.

35. All conditions precedent to the bringing of this Appeal have occurred or been performed.

36. Petitioner has no plain, speedy, or adequate remedy of law for the harm to be caused by the Respondent's arbitrary and capricious, and unreasonable revocation of its 3 business licenses # 26941, # 26942, and # 26943 as prescribed under § 11-35(3).

37. Petitioner is entitled to a Temporary Restraining Order and Temporary Injunction staying Respondent's Order revoking Petitioner's 3 business licenses # 26941, # 26942, and # 26943, until such time as the Court determines the Order's validity at a scheduled hearing on the merits.

PRAYER FOR RELIEF


WHEREFORE, Petitioner Elite prays for the following relief:

1. That the Court stay the Respondent's Order revoking Petitioner's 3 business licenses # 26941, # 26942, and # 26943, by and through the issuance of a Temporary Restraining Order and Temporary Injunction until such time as a determination can be made of the Revocation Order's validity by the Court;
2. Respondent file, by August 15, 2013, a complete transcript of the hearing that led to revocation of Petitioner's 3 business licenses # 26941, # 26942, and # 26943;
3. That City Council's Revocation Order was tainted by its adoption of McDowell's incorrect findings and interpretation/application of Article II, §11-21 et seq., Business Licenses Ordinance to the facts of this case in suspending the Petitioner's 3 business licenses. This denied Petitioner a fair hearing, and, therefore, violated its procedural due process rights under the South Carolina and United States Constitutions;
4. That Respondent's Order made and entered on July 9, 2013 revoking the

Pctitioner's 3 business licenses # 26941, # 26942, and # 26943 be vacated and set aside on the grounds that City Council's decision was arbitrary, unreasonable, and an obvious abuse of process. Specifically, the evidence presented during the revocation hearing failed to establish: (1) that Elite had obtained its 3 business licenses through "*misrepresentation, fraud, or deception*" as prescribed under § 11-35(3) of the Business Licenses Ordinance; and (2) that Elite operated as a nightclub instead of a Pool hall;

5. Additionally, Petitioner's procedural due process rights were violated under the South Carolina and United States Constitutions because she was not afforded notice and a hearing regarding an alleged non-conforming use violation prior to the suspension her 3 business licenses. Notice is a requirement of § 301, Zoning Ordinance of the City of Myrtle Beach. Accordingly, for these reasons the Court should set aside the City Council's revocation Order.
5. Awarded all cost and fees, and such other and further relief that this Court deems just and proper.

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Post Office Box 357
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843-448-2400
Attorneys for the Petitioner



Howell V. Bellamy, III
Howell V. Bellamy, Jr.

Myrtle Beach, South Carolina

August 9, 2013

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September 13, 2013


Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578

RE: K & S Foundation, LLC d/b/a Elite
C/A No.: 2013-CP-26-04103

Dear Howell:

Enclosed and served upon you by regular mail please find a copy of the City of Myrtle Beach's Response to Amended Appeal from Order of City Council in connection with the above matter.

Very truly yours,


Michael W. Battle
Enclosure: stated.

c. Tom Ellenburg

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K & S Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

RESPONSE TO AMENDED APPEAL
FROM ORDER OF CITY OF MYRTLE
BEACH CITY COUNCIL

Defendant City of Myrtle Beach (City) responding to the amended appeal of Plaintiff K & S Foundation, LLC, d/b/a Elite (Elite) would respectfully show to the Court:

STATEMENT OF APPEAL

Elite appeals from the decision of City Council to revoke Elite's business licenses # 26941, # 26942, and #26943. City Council found Elite's business licenses should be revoked because those business licenses were obtained by Elite through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications. City Council's findings were based upon the evidence presented at a hearing on the merits held June 25, 2013. Elite and its attorney, Howell Bellamy, III, together with the business license administrator, Mary McDowell, and her attorney Michael W. Battle were present and participated in the hearing before City Council. On July 9, 2013, City Council voted in open session to revoke Elite's business licenses.

STANDARD OF REVIEW

Where the city council of a municipality has acted after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious

abuse of its discretion. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). A decision of City Council will not be disturbed if there is evidence in the record to support its decision. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Cl.App.1994). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952).

ARGUMENT

Elite claims the evidence presented during the revocation hearing failed to establish: (1) that Elite had obtained its 3 business licenses through "*misrepresentation, fraud, or deception*" as prescribed under § 11-35(3) of the Business Licenses Ordinance; and (2) that Elite operated as a nightclub instead of a pool hall. The question for the Circuit Court is whether there is any evidence in the record that supports City Council's finding that Elite had obtained its 3 business licenses through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications. § 11-35(3) Ordinance of the City of Myrtle Beach, South Carolina. The City contends there is ample evidence in the record to support City's Council's findings.

a) Elite's application.

On March 25, 2013, Brooke Kennedy applied for three business licenses to operate a drinking place, eating place and pool hall/arcade on one premises under the trade name Elite in a C3 zoning district adjoining Grissom Parkway in Myrtle Beach, SC. Ms. Kennedy was made aware during the application process that her husband had tried to hold himself out as being her and that it was important that the integrity of the business license application process be

observed. [R 23/3-19]. During the application process Ms. Kennedy was also informed that a C3 zoning district did not permit night clubs and that she could not operate a night club at that location. The difference between a night club and a drinking place, eating place and pool hall/arcade is focused on the primary purpose of the business and the size of any dance floors that are provided for customers. A restaurant, dining room, or similar establishment where a dance floor of 150 square feet or larger is provided for guests is defined as a night club in the City's zoning ordinance. § 204.82 Ordinances of the City of Myrtle Beach, South Carolina.

Ms. Kennedy appeared to understand limitations for the C3 zoning district and completed the applications for a drinking place, eating place and pool hall/arcade. She represented that the premises had 2 coin operated pool tables from Rosemary Coin, two pool tables that did not take money and they anticipated installing a bowling alley. [Ex. 3] Ms. Kennedy was asked if she planned to collect a cover charge for entrance to her business. Ms. Kennedy stated that she would not collect a cover charge and she signed a statement on March 25, 2013, which contained the following statement: "I Brooke Kennedy state that Elite will not charge admission or a cover charge." [R. 23 - 8/13; Ex. 1].

b) Elite's misrepresentation, false or misleading statement, evasion or suppression of a material fact.

Soon after the business license was issued, Elite held itself out to be a night club in its advertising and in its presence in the social media. See *Elite Ultra Lounge Facebook page*. [R. 118 - 5-12]. The police witnesses who testified during the hearing before City Council stated, during their observations of the operation of Elite they noticed the pool tables on the premises had been pushed aside to the walls leaving open a center space where a dance floor of 150 square feet or larger was provided for guests; a DJ was used to play music at loud volumes and at times

a cover charge was collected for admission to Elite. The witnesses identified one of the face book photos which showed a long line of customers waiting to get inside Elite and which showed security barriers that had been installed to direct the flow of people in line waiting to get inside Elite. The zoning administrator testified that Elite was being operated as a night club in violation of the City's zoning ordinances. [R 82 - 2/3]. The manager of Elite testified he could not have a successful business at that location if he did not have a DJ and the Facebook advertising for D.J. and party promotions for Elite. [R 116 - 21/25]

City Council found that the evidence proved that Elite obtained its business licenses through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications. The evidence presented at the revocation hearing by the business license administrator in connection with Elite's applications for business licenses together with the police officers' testimony, the advertisements in social media and the activities of the applicant in operating Elite as a night club throughout its existence show City Council's finding is supported by the evidence in the record.

c) Due process.

Elite claims that its due process rights were violated when its business licenses were revoked. Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 232-36, 642 S.E.2d 565, 566-68 (2007). Elite was provided all of the requirements of due process in the hearing held June 25, 2013. Elite was given written notice of the June 25, 2013, hearing by certified mail dated June 10, 2013. In the notice Elite was notified of the business license suspension, the cause of the suspension, the

date and location of the revocation hearing and Elite was given a copy of the ordinance it had violated.

Elite appeared at the hearing represented by its attorney, Howell Bellamy, III. On Elite's behalf, Mr. Bellamy participated in the hearing, presented evidence and his client's case and he cross examined the witnesses who testified on behalf of the business license administrator. The basis of Elite's due process claim focuses on the business license administrator's suspension of its license. Elite's claim of a due process violation arising from the suspension by the business license administrator was made moot by the merits hearing in which City Council decided that Elite had obtained its business license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications. Elite's due process claims are meritedless.

d) Elite's appeal is not based on the record.

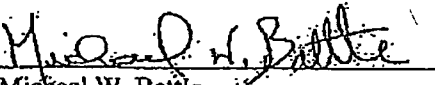
Elite has approached the appeal as if it were a trial de novo on the merits of City Council's Order. Elite seeks to introduce new evidence and new theories in its amended notice of appeal. The City objects to Elite's attempt to introduce new evidence in the form of exhibits and documents by attaching those items to its notice of appeal and amended notice of appeal. Appeals to Circuit Court are governed by Rule 75, SCRPC. Rule 75 requires appeals to the circuit court to be made upon the original record in the lower court or administrative agency or tribunal. *Rule 75, SCRPC.* (Emphasis added).

The City would respectfully repeat the above stated standard of review. A decision of City Council will not be disturbed if there is evidence in the record to support its decision. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Ct.App.1994). (Emphasis added). A court will refrain from substituting its judgment for that of the reviewing

body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952).

CONCLUSION

For the forgoing reasons, the City respectfully requests that the Court dismiss Elite's appeal and affirm the decision of the City Council of Myrtle Beach. The record amply supports City Council's decision to revoke Elite's business licenses on the grounds that they were obtained through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications. § 11-35(3) Ordinance of the City of Myrtle Beach, South Carolina.


Michael W. Battle
BATTLE & VAUGHT, P.A.
P.O. Box 530
Conway, SC 29528
(843)248-4321
Attorney for Defendant City of Myrtle Beach

September 13, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

COUNTY OF Horry

CASE NO. 2013-CP-26-5009

K & S Foundation, LLC d/b/a K100
Plaintiff

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

The City of Myrtle Beach
Defendant

HORRY COUNTY
13 OCT 11 PM 4:02
MELANIE HUGHES-WARD
CLERK OF COURT

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORMAL MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____	Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for Plaintiff <u>[Signature]</u>	Date submitted <u>10-19-2013</u>
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause or Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency or Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order filed at request of the court; or, <input type="checkbox"/> Proposed order filed at request of the court per judge's instructions Name of Court: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. JUDGE CODE _____ <input type="checkbox"/> Other Date: _____	
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUES \$ _____	

SCCA 233 (1/2004)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2013- CP-26- 5009
)	
K & S Foundation, LLC, d/b/a Elite)	
)	
Appellant,)	
	)	NOTICE OF MOTION AND MOTION
v.	)	TO RECONSIDER, ALTER AND AMEND
	)	THE COURT'S ORDER AFFIRMING THE
	)	THE REVOCATION OF 'S APPELLANT'S
The City of Myrtle Beach,	)	THREE BUSINESS LICENSES PURSUANT
	)	TO RULES 52 AND 59(E), SCR
)	
Respondent.)	

HORRY COUNTY
 CLERK OF COURT
 11 PM 4:00
 2013-07-09

TO: ATTORNEY MIKE BATTLE ON BEHALF OF THE RESPONDENT THE CITY OF MYRTLE BEACH.

YOU WILL PLEASE TAKE NOTICE that the Appellant, K & S Foundation, LLC, d/b/a Elite, hereby moves the Court to Reconsider, Alter or Amend its Order affirming City Council's Order revoking its 3 business licenses because no probative and competent evidence exists in the record to support City Council's unanimous¹ decision. Specifically, there is no evidence in the record to support City Council's findings and conclusions that Appellant had obtained its 3 business licenses through a *"fraud or misrepresentation or a false or misleading statement or evasion or suppression of a material fact in license application[s]"* under §11-35(2) of the Business License Ordinance. Accordingly, City Council's decision was arbitrary, unreasonable, and an obvious abuse of process because no probative and competent evidence existed in the record on appeal to support

¹On July 9, 2013, City Council voted 3-2 to revoke Elite's business licenses # 26941, # 26942, and # 26943 with Councilmen Wayne Gray and Mike Lowder and Councilwomen Susan Grissom Means voting for revocation while Councilmen Randal Wallace and Michael Chestnut voting against it. However, Mayor John Rhodes and Councilman Philip Render did not vote because they were not present for the revocation hearing on June 25, 2013.

its revocation of Appellant's 3 business licenses # 26941, # 26942, and # 26943.

The Court's Order was filed on September 30, 2013, and received by Appellant's counsel on Monday, October 3, 2013.

This Motion is made pursuant to Rules 52 and 59(e), SCRCF, based on the Court's failure to decide or explicitly rule on issues raised and argued by the Appellant in its Amended Appeal filed on Friday, August 9, 2013, and, further, raised and argued at hearing before the Court on Tuesday, September 17, 2013.

The Appellant's specific exceptions² to the Court's Order as follows:

1. The Court erred in failing to find and conclude what the Appellant did that constituted a violation of the ordinance. It held only that the Appellant was guilty of fraud or misrepresentation or a false or misleading statement or evasion or suppression of a material fact in the license application. That is not a finding of a violation of the ordinance, but just a statement of different requirements of the ordinance.

2. The Court erred in failing to find and conclude that the Respondent's Revocation Order failed to comply with the case law and the requirements of Rule 52 SCRCF³. Specifically, the Revocation Order failed to "*find the facts specially*" for each of the elements of fraud or misrepresentation establishing the Appellant's guilt under §11-35(3) of the City of Myrtle Beach

²The Appellant incorporates all issues raised and argued in its Amended Appeal filed on August 23, 2013, Memorandum of Law in Support of its Amended Appeal filed on September 18, 2013, and, lastly, presented and argued at the hearing before your Court on September 17, 2013.

³Rule 52, SCRCF provides that "[i]n all actions tried upon the facts without a jury ... the court shall find facts specially and state separately its conclusions of law thereon..." Rule 52, SCRCF. The requirement for appropriately detailed findings "is designed ... to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system." *Id.* at 132, 568 S.E.2d at 343, citing *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (N.C.1980). A lower court is not required to set out findings on all the myriad factual questions arising in a particular case, but the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below. *Id.*

Business License Ordinance.

3. The Court erred in failing to "*find the facts specially*" for each of the elements of fraud or misrepresentation in its order establishing the Appellant's guilt under §11-35(3) of the Beach Business License Ordinance as required by Rule 52, SCRPC.

4. The Court erred in failing to find and conclude what degree of evidence had to be shown to support a charge of violation of the ordinance, in particular whether a claim of fraud or misrepresentation requires a heightened standard of proof.

5. The Court erred in failing to find and conclude what evidence supported its finding of fraud or misrepresentation by the Appellant.

6. The Court erred in failing to find and conclude that the City is required to prove all 9 elements of common law fraud or misrepresentation to support a violation of the ordinance by the Appellant.

7. The Court erred in failing to find and conclude that the alleged fraud or misrepresentation was not connected with statements made in the Appellant's 3 business license applications submitted on March 25, 2013.

8. The Court erred in failing to find and conclude that the Appellant had complied with all expressed conditions of its 3 business licenses. Specifically, the Appellant was not charged with violating §11-35(2) of the Business Licenses Ordinance. This subsection applies only when "A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article." §11-35(2) of the City of Myrtle Beach Business License Ordinance.

9. The Court erred in failing to find and conclude that the Appellant had complied with all provisions of the ordinance.
10. The Court erred in failing to find and conclude no evidence of intent to deceive exists in the record on appeal to support a violation of the ordinance by the Appellant.
11. The Court erred in failing to find and conclude that the Appellant had not submitted a "*false application[s] for a business license[s], ... or filed] ... any false information with respect to the license[s] or fee[s] required by this article-*" under §11-27 entitled False application unlawful, of the Business License Ordinance. McDowell never charged the Appellant with violating §11-27 of the Business License Ordinance.
12. The Court erred in failing to decide what the City's zoning and licensing ordinances mean, or whether they are clear rather than vague, and whether they were interpreted clearly, consistently, objectively, uniformly and in a way that gave Appellant fair notice of their meaning and its obligations.
13. The Court erred in failing to find and conclude what in fact was the evidence in the record to support the finding that Appellant's March, 25, 2013 license applications were obtained through fraud or misrepresentation.
14. The Court erred in failing to address and rule on Appellant's claim of disparate enforcement of the ordinances.
15. The Court erred in failing to address and rule on Appellant's argument that the City's procedures and arbitrary findings violated due process.
16. The Court erred in failing to find and conclude that McDowell ("McDowell") exceeded her jurisdiction, discretion, and lawful authority as the City's business license inspector.

by incorrectly interpreting and implying that the ordinance creates a primary business classification based on a business' volume of sales or percentages of sales⁴ when no guidelines, standards or fixed rules exist to support her expanded and unreasonable interpretation that the ordinance. As such, her primary business classification interpretation is contrary to the scope and intent of the ordinance's clear language.

17. The Court erred in failing to find and conclude that McDowell's incorrect interpretation and application of the ordinance in suspending the Appellant's 3 business licenses # 26941, # 26942, and # 26943 was an obvious abuse of process.

18. The Court erred in failing to find and conclude that City Council's decision was arbitrary, unreasonable, and an obvious abuse of process because it was based on McDowell's improper "primary business classification argument"⁵ which she relied on in suspending the Appellant's 3 business licenses # 26941, # 26942, and # 26943.

19. The Court erred in failing to find and conclude that the Business License Ordinance

⁴For example, no guidelines, standards or fixed rules exist in any of Code Ordinance for the City of Myrtle Beach for determining a business' primary classification or type based on volume of sales or percentages of sales. See Pea Dee Chair Co. v. City of Camden, 162 S. E. 771 (1932) (Court held Ordinances requiring business license or imposing license or occupation tax must be construed liberally in favor of the citizen).

⁵ Respondent's Notice of Business License Suspension letter provides in pertinent part as follows:

The reason for the immediate suspension and proposed revocation of the business licenses for Elite is that it has been determined from *police reports* that the business licenses appear to have been obtained through *misrepresentation, fraud, or deception* which are grounds for revocation of a business license under § 11-35 (3).

.....
The gross receipts reported on the license renewal for the pool hall/arcade business constitute 17% of your total gross, the gross receipts reported for your food sales constitute 21% of your total gross, and the gross receipts reported for the alcohol business constitute 62% of your total gross. The gross receipts reported reflect the primary business is coming from the sale of alcohol and not billiards.

does not state or provide any guidance on determining a business' primary classification or type based on volume of sales or percentages of sales.

20. The Court erred in failing to find and conclude that Appellant did not materially misrepresent any financial information provided on its business license renewal applications in order to calculate and pay the business license fee due and to renew its respective licenses.

21. The Court erred in failing to find and conclude that no evidence existed in the Record on Appeal that Appellant violated §11-35(3) of the Business Licenses Ordinance.

22. The Court erred in failing to find and conclude that City Council's decision was arbitrary, unreasonable, and an obvious abuse of process because no evidence existed in the Record on Appeal to support its revocation of Appellant's 3 business licenses # 26941, # 26942, and # 26943.

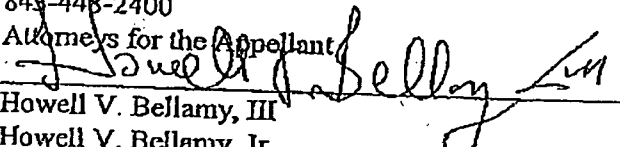
CONCLUSION

WHEREFORE based on the foregoing reasons and exceptions, and upon such other arguments and submissions of counsel as may be reviewed by the Court, the Appellant respectfully requests the following relief from its order:

1. Reconsidering and vacating your Order filed on September 30, 2013;
2. Alternatively, altering and amending your Order to specifically consider the questions, issues, arguments and grounds raised by Appellant and make a ruling thereon; and
3. For such other and further relief as this Court deems reasonable and proper.

YOU WILL PLEASE TAKE FURTHER NOTICE that this Motion is based on the the record heretofore made in this matter, together with any and all applicable laws, ordinances,

statutes, rules, regulations, judicial decisions or other matters, which may constitute controlling or persuasive on any issues raised in the record herein, and argued at the hearing on September 17, 2013.

BELLAMY, RUTENBERG, COPELAND, EPPS.,
GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, SC 29578-0357
843-448-2400
Attorneys for the Appellant

Howell V. Bellamy, III
Howell V. Bellamy, Jr.

Myrtle Beach, South Carolina

October 11, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 K & S Foundation, LLC, d/b/a Elite)
)
 Appellant,)
)
 v.)
)
 The City of Myrtle Beach,)
)
 Respondent.)

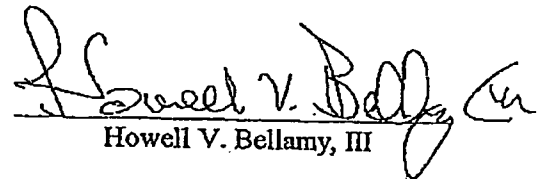
IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2013- CP-26- 5009

MYRTLE BEACH COUNTY
 13 OCT 11 PM 4:02
 MELBA HIGGINS-WARREN
 CLERK OF COURT

I, Howell V. Bellamy, III, of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., Counsel for the Appellant, in the above-captioned action, certify that I have this day HAND DELIVERED a copy of Appellant's Notice Motion and Motion to Reconsider, Alter or Amend the Court's Order affirming City Council's Order revoking its 3 business licenses to the following address:

VIA Hand Delivery

Michael Battle, Esq.
 1200 Main Street
 Cortway, SC 29528


 Howell V. Bellamy, III

Myrtle Beach, S. C. 29577
 October 11, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K & S Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

CITY OF MYRTLE BEACH'S
RESPONSE TO PLAINTIFFS'
MOTION TO RECONSIDER

Defendant City of Myrtle Beach (City) responding to the Plaintiff's Motion to Reconsider would respectfully show to the Court:

Plaintiff has requested the Circuit Court make individual findings of fact and conclusions of law in Plaintiff's Motion to reconsider. Plaintiff has mischaracterized the nature of the appellate proceeding before the Circuit Court. Appeals to Circuit Court from City Council are not actions tried upon the facts without a jury or with an advisory jury. Rule 52, SCRCP. An appeal from a city council decision is a request for a review of city council's decision to determine whether that decision is arbitrary or capricious. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005). Requests for findings are not necessary for purposes of review. The findings of city council, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Rule 52, SCRCP. The Court's Order plainly states: "After reviewing the record on appeal and considering standard of review for such appeals, I find that the decision of the Myrtle Beach City Council should be affirmed on the

grounds that there is evidence in the record to support City Councils' decision." Plaintiff has not raised any material new evidence or points of law in its motion to justify reconsidering, altering or amending the Court's original Order.

Where the city council of a municipality has acted after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). A decision of City Council will not be disturbed if there is evidence in the record to support its decision. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Cl.App.1994). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952).

CONCLUSION

Defendant City of Myrtle Beach contends that the Court need not make the additional individual findings requested by Plaintiff because it is obvious from the Court's Order that the findings and conclusions of City Council have been affirmed by the Court. Defendant requests that the Circuit Court dismiss Plaintiff's Motion to Reconsider.

s/ Michael W. Battle
Michael W. Battle
BATTLE & VAUGHT, P.A.
P.O. Box 530
Conway, SC 29528
(843)248-4321
Attorney for Defendant City of Myrtle Beach

October 22, 2013

Common Pleas
 Clerk : Melanie Huggins-Ward
 PO Box 677
 Conway, SC 29528
 (843) 915-5080

DUPLICATE

Received From: Bellamy, Howell V III

Date: 6/26/2013
 Receipt #: 905093
 Clerk: c26tturner

Paying for: K & S Foundation LLC,

Transaction Type: Payment

Payment Type: Check

Total Paid:

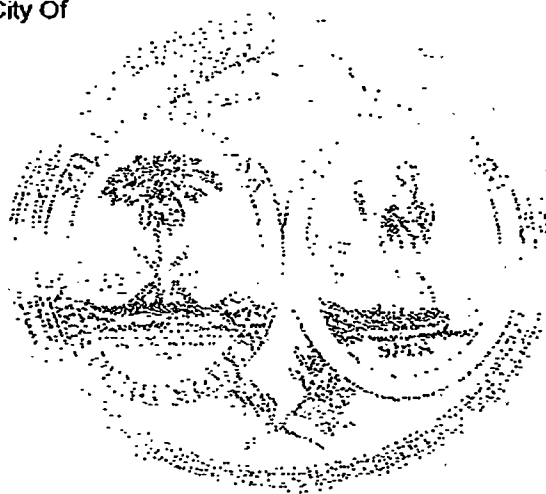
\$25.00

\$25.00

Reference #: 55632

Comment:
 Non-Refundable

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2013CP2604103	K & S Foundation LLC , plaintiff, et al VS Myrtle Beach City Of	\$25.00	\$25.00	\$0.00



Total Cases:	1	\$25.00	\$25.00	\$0.00
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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K. & S Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

**CITY OF MYRTLE BEACH'S
RESPONSE TO PLAINTIFFS'
MOTION TO RECONSIDER**

Defendant City of Myrtle Beach (City) responding to the Plaintiff's Motion to Reconsider would respectfully show to the Court:

Plaintiff has requested the Circuit Court make individual findings of fact and conclusions of law in Plaintiff's Motion to reconsider. Plaintiff has mischaracterized the nature of the appellate proceeding before the Circuit Court. Appeals to Circuit Court from City Council are not actions tried upon the facts without a jury or with an advisory jury. Rule 52, SCRPC. An appeal from a city council decision is a request for a review of city council's decision to determine whether that decision is arbitrary or capricious. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005). Requests for findings are not necessary for purposes of review. The findings of city council, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Rule 52, SCRPC. The Court's Order plainly states: "After reviewing the record on appeal and considering standard of review for such appeals, I find that the decision of the Myrtle Beach City Council should be affirmed on the

grounds that there is evidence in the record to support City Councils' decision." Plaintiff has not raised any material new evidence or points of law in its motion to justify reconsidering, altering or amending the Court's original Order.

Where the city council of a municipality has acted after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). A decision of City Council will not be disturbed if there is evidence in the record to support its decision. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (CLApp.1994). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952).

CONCLUSION

Defendant City of Myrtle Beach contends that the Court need not make the additional individual findings requested by Plaintiff because it is obvious from the Court's Order that the findings and conclusions of City Council have been affirmed by the Court. Defendant requests that the Circuit Court dismiss Plaintiff's Motion to Reconsider.

s/ Michael W. Battle
Michael W. Battle
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(843)248-4321
Attorney for Defendant City of Myrtle Beach

October 22, 2013

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2013-CP-26-04103

K N S Foundation, LLC, d/b/a Elite Appellant
v.

City of Myrtle Beach Respondent

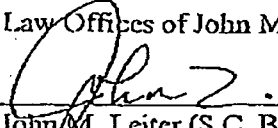
NOTICE OF APPEAL

K N S Foundation, LLC d/b/a Elite appeals the first order of the Honorable William H. Seals, Jr. denying its amended appeal filed on September 30, 2013. Appellant received written notice of entry of this order on October 1, 2013. Further, K N S Foundation, LLC d/b/a Elite appeals the second order of the Honorable William H. Seals, Jr. denying its motion to reconsider pursuant to Rules 52 and 59(e), SCRCP, filed on November 6, 2013. Appellant received written notice of entry of this order on November 8, 2013.

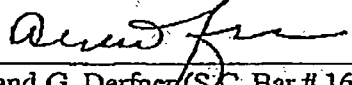
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December 2, 2013

Myrtle Beach, S. C. 29577

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***CERTIFIED MEDIATOR
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*****ELIM TAKATION
*****MEMBER OF NC BAR ONLY

December 9, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
S. C. Judicial Department
1015 Sumter Street
Columbia, South Carolina 29210

Re: KNS Foundation, LLC d/b/a Elite vs City of Myrtle Beach
Case No. 2013-CP-26-04103

Dear Ms. Kitchings:

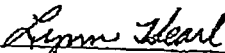
Enclosed for filing, is the Appellant's Amended Notice of Appeal in the above-referenced matter. Please file the original and return a clocked copy to me in the enclosed self-addressed, stamped envelope. Also, enclosed is our check for \$100.00 made payable to South Carolina Court of Appeals, dated December 4, 2013 and our proof of service of each document.

We are serving a copy of this letter on counsel for the Respondent. I appreciate your assistance in this matter and should you have any questions or concerns, please give us a call at 843-282-5393.

With kindest regards, I remain

Sincerely,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.



Lynn Hearl

Assistant to Howell V. Bellamy, III

/lh
cc:

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DEC 10 2013

Page 1 of 2

SC Court of Appeals

JAN 14 2014

May 15, 2013
Page 2

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Thomas Eugene Ellenburg, Esquire
Thomas E. Leath
Melanie Huggins

Page 2 of 2

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SC Court of Appeals

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December 9, 2013

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

Re: KNS Foundation, LLC d/b/a Elite vs City of Myrtle Beach
Case Number: 2013-CP-26-04103

Dear Ms. Kitchings:

Enclosed for filing is Appellant's Amended Notice of Appeal in the above-referenced matter. Also enclosed are the following relevant documents:

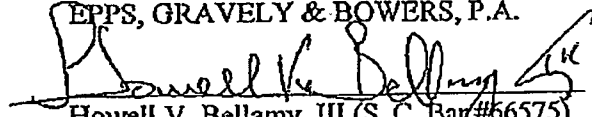
1. A copy of the divided order of the City of Myrtle Beach Council affirming the suspension decision of the business license department by revoking KNS Foundation, LLC's 3 business licenses on July 9, 2013. The revocation order was only signed by Mayor Pro Temp Wayne Gray;
2. A copy of Judge William H. Seals, Jr.'s order denying the amended appeal of KNS Foundation, LLC, d/b/a/ Elite filed September 30, 2013;
3. A copy of Judge William H. Seals, Jr.'s order denying KNS Foundation, LLC, d/b/a/ Elite's motion to reconsider its amended appeal, pursuant to Rules 52 and 59, SCRPC, filed November 6, 2013;
4. A copy of Appellant's original Notice of Appeal dated December 2, 2013;
5. Certificate of Mailing of Appellant's original Notice of Appeal to Mike Battle, and Tom Ellenburg;
6. Certificate of Delivery of Appellant's Amended Notice of Appeal to Mike Battle, and Thomas E. Leath;

7. Certificate of Mailing of Appellant's Amended Notice of Appeal to Tom Ellenburg;
8. Certificate of Mailing of Appellant's Amended Notice of Appeal to the Horry County Clerk of Court Melanie Huggins;
9. Check made payable to the Court of Appeals in the amount of \$100.00;
10. Proof of Service of the Notice of Appeal and orders on the Respondent; and
11. Proof of Service of the Amended Notice of Appeal and orders on the Respondent.

Should you have any questions or concerns, please do not hesitate to give us a call at (843)-282-5393.

Sincerely,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.



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Attorneys for Appellant

HVBIII/lh

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cc:

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Myrtle Beach, S. C. 29577

Attorney for Appellant

Page 2 of 3

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SC Court of Appeals

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Attorney for Respondent

Ms. Melanie Huggins
Horry County Clerk of Court
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SC Court of Appeals

AMENDED NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2013-CP-26-5009

K N S Foundation, LLC, d/b/a Elite Appellant

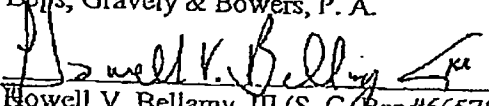
v.

City of Myrtle Beach Respondent

AMENDED NOTICE OF APPEAL

K N S Foundation, LLC d/b/a Elite appeals the divided order of the City Council of Myrtle Beach suspending its 3 business licenses signed only by Mayor Pro Temp Wayne Gray on July 9, 2013. Appellant received written notice of entry of this order on July 11, 2013. Next, K N S Foundation, LLC d/b/a Elite appeals the first order of the Honorable William H. Seals, Jr. denying its amended appeal filed on September 30, 2013. Appellant received written notice of entry of this order on October 1, 2013. Finally, K N S Foundation, LLC d/b/a Elite appeals the second order of the Honorable William H. Seals, Jr. denying its motion to reconsider pursuant to Rules 52 and 59(e), SCRCF, filed on November 6, 2013. Appellant received written notice of entry of this order on November 8, 2013.

Bellamy, Rutenberg, Copeland
Epps, Gravely & Bowers, P. A.


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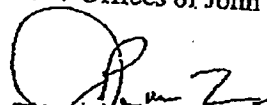
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SC Court of Appeals

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City Manager, City of Myrtle Beach
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December 5, 2013

Myrtle Beach, S. C.

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DEC 10 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF Horry

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO: 2013-CP-26-04103

K & S Foundation, LLC, et al.
Plaintiffs,

vs.

City of Myrtle Beach,
Defendant.

COPY

**THE HEARING HELD BEFORE THE
CITY OF MYRTLE BEACH
COUNCIL MEMBERS**

Tuesday, June 25, 2013
11:03 a.m. – 1:10 p.m.

The following is the hearing held before City of Myrtle Beach Council Members, at the City of Myrtle Beach, located at 937 Broadway Street, Myrtle Beach, South Carolina, on Tuesday, June 25, 2013.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

APPEARANCES:

FOR THE PLAINTIFF:

Howell V. Bellamy, Esquire
THE BELLAMY LAW FIRM
1000 29th Avenue North
Myrtle Beach, South Carolina 29577

FOR THE DEFENDANT:

Michael Battle, Esquire
BATTLE & VAUGHT
1001 Main Street
Conway, South Carolina 29527

COUNCIL MEMBERS:

W. Wayne Gray, Mayor Pro Tem
Michael Chestnut
Mike Lowder
Susan Means
Randal Wallace

CITY ATTORNEY:

Thomas Ellenburg, Esquire

COURT REPORTER:

Sharon B. Brock
Verbatim Court Reporter

Prestige Court Reporting, Inc.

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INDEX

EXAMINATION OF WITNESS: PAGE

MARY MCDOWELL

Direct Examination by Mr. Battle 19
Cross Examination by Mr. Bellamy 29
Examination by Councilman Wallace 40
Examination by Councilwoman Means 43
Examination by Councilman Lowder 44
Re-Examination by Councilman Wallace 45

OFFICER MIKE GAVRILIS

Direct Examination by Mr. Battle 46
Examination by Mayor Pro Tem Gray 52
Cross Examination by Mr. Bellamy 53
Examination by Councilman Lowder 59

OFFICER SHANNON CASTLE

Direct Examination by Mr. Battle 60
Cross Examination by Mr. Bellamy 63
Examination by Councilwoman Means 68

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OFFICER DAVID CLEVER

Direct Examination by Mr. Battle 69
Cross Examination by Mr. Bellamy 70

CHIEF WARREN GALL

Direct Examination by Mr. Battle 73
Cross Examination by Mr. Bellamy 76
Examination by Councilman Lowder 78
Examination by Councilwoman Means 79
Re-Examination by Councilman Lowder 79

KENNETH MAY

Direct Examination by Mr. Battle 80
Cross Examination by Mr. Bellamy 83
Examination by Councilman Lowder 88
Examination by Councilman Wallace 89

OFFICER STEPHANI JAMES

Direct Examination by Mr. Bellamy 95
Examination by Councilman Lowder 99

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MATTHEW PATZ

Direct Examination by Mr. Bellamy 100
Cross Examination by Mr. Battle 106
Examination by Councilman Lowder 107

JAVON KENNEDY

Direct Examination by Mr. Bellamy 114
Cross Examination by Mr. Battle 118
Certificate of Court Reporter 125

EXHIBITS

Defendant's Exhibit Number 1
Photograph 15/16
Defendant's Exhibit Number 2
Photograph 15/16
Defendant's Exhibit Number 3
Statement 27
Defendant's Exhibit Number 4
Map-Plat 29

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1 MR. BATTLE: OPENING STATEMENT.
2 MAYOR PRO TEM GRAY: I'M SORRY?
3 MR. BELLAMY: WE'LL GO AHEAD ---
4 MAYOR PRO TEM GRAY: OPENING STATEMENT.
5 MR. BELLAMY: --- GO AHEAD AND WAIVE THE
6 OPENING STATEMENT.
7 MAYOR PRO TEM GRAY: OKAY. SO YOU WAIVE YOUR
8 OPENING STATEMENT. NOW WE'LL MOVE TO THE
9 PARTIES REPRESENTING MS. MARY McDOWELL. IF
10 YOU'LL COME FORWARD AND BRING YOUR WITNESSES.
11 DIRECT EXAMINATION
12 BY MR. BATTLE:
13 Q: Ms. McDowell, just for the record, state your
14 full name, please.
15 A: Mary McDowell.
16 Q: And what is your position for the City of Myrtle
17 Beach in connection with this hearing?
18 A: I'm the Assistant Finance Director for the City,
19 and my position is also the license inspector, so
20 it's my, my duties to enforce the business
21 license ordinance for the City of Myrtle Beach.
22 MAYOR PRO TEM GRAY: AND JUST TO REEMPHASIZE,
23 LET ME INTERRUPT, YOU HAVE BEEN SWORN IN?
24 MS. McDOWELL: YES, I HAVE.
25 MAYOR PRO TEM GRAY: OKAY.

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1 Q: In your duties as a business license
2 administrator or enforcement of the article, do
3 you have duties with regard to suspension of
4 business licenses?

5 A: Yes.

6 Q: And are you required to exercise your discretion
7 as to whether or not you should suspend a
8 business license or revoke it or fail to renew
9 it?

10 A: Yes.

11 Q: Okay. With regard to Elite, did you so exercise
12 your discretion?

13 A: Yes, I did.

14 Q: Did you send out notice of that exercise of
15 discretion of a suspension to Brooke Kennedy?

16 A: Yes, I did.

17 Q: And did you do that by certified mail?

18 A: Yes, sir.

19 Q: And that is shown in the letter that's on the
20 screen and has been marked as Exhibit 1?

21 A: Correct.

22 Q: Now, I'm going to let you tell the story, your
23 reasons for why and what motivated you or what
24 discretion you exercised to make the decision
25 that Ms. Kennedy's business license should be

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1 suspended, and the notice, also, I believe, says
2 that it will not be renewed.
3 A: Correct. It initially started back on March 14th
4 when there was two business license applications
5 submitted for an eating place and drinking place
6 under the name of Elite Ultra Lounge. I received
7 information that it appeared that this business
8 was going to be operating as a nightclub and I
9 was informed by Zoning that a nightclub was not
10 permitted in that establishment. I contacted who
11 I understood to be Mr. Brooke Kennedy by phone
12 and a male answered and on, on the phone we
13 talked, and I indicated that I had information
14 that they could not be a nightclub, that the
15 businesses that formerly had been operating there
16 were billiard halls, you know, Corner Pocket
17 Billiard, which is a billiard hall, and when it
18 closed, a business by the name of Red came in,
19 stating they were doing the same as a pool hall.
20 He said he understood and he came back in and he
21 made his application for a pool hall and he still
22 had his eating place or food license and a
23 drinking place license, because to serve liquor,
24 you have to have a full menu, so we proceeded
25 along and went through the process. All the

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1 departments, Zoning, Fire Department, went
2 through, did their approvals. I received copies
3 of the DHEC inspection of the normal items that
4 have to be submitted for the approval of the
5 license, and at the, at the point that we got to,
6 we were getting ready to issue the business
7 license, the person that I believe to be Mr.
8 Brooke Kennedy came into our office and asked, we
9 asked for identification, because we don't
10 release a business license or any records unless
11 we have the person properly identified, and the,
12 the male gentleman in my office could not produce
13 identification, and we soon learned that he was,
14 in fact, not Mr. Brooke Kennedy, he was Mr. Javon
15 Kennedy, the husband of Brooke Kennedy, and the
16 entire time I spoke to him, he held himself out
17 to me as to be Brooke Kennedy.

18 I then also found that he signed his
19 wife's name on all the documents and forged all
20 the documents. I immediately stopped that entire
21 process. I would not issue anything because it
22 had been done, in my opinion, under a false
23 pretense. Those business license applications
24 were all denied.

25 Immediately, the next, I believe it was

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1 the next day or it was March 25th. Ms. Brooke
2 Kennedy came into the office. identified herself
3 as being Ms. Brooke Kennedy. She reapplied for
4 the three business licenses, and I spoke with her
5 very candidly and told her that I did not
6 appreciate being lied to and that I didn't
7 appreciate her husband holding himself out to be
8 her. I asked her how she was going to operate
9 the business, asked her if there was any cover
10 charge going to be charged, she emphatically said
11 no, she signed a statement to that, submitted
12 that as a part of her business license and,
13 again, the business license goes through the
14 process all over again. Zoning has to review,
15 Fire Department has to review, and so the
16 business, as I understood by Zoning, was set up
17 as a pool hall with pool tables. and Fire
18 Department went in, and so everyone did their
19 reviews and the business licenses were issued.

20 When we get into the month of May and
21 start getting into the latter part of May, I
22 start receiving information that there's really
23 not a pool hall going on, there's a nightclub
24 going on, and that was totally opposite from the
25 way the business licenses were issued; as a

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1 matter-of-fact, on May 24th, that was a Thursday.
2 I received a phone call from Lieutenant Marty
3 Brown, asking me, "Can this, can Elite charge a
4 cover charge?"

5 And I said, "No." I said, "They've
6 flatly stated in their record that they do not
7 charge a cover charge, they're a pool hall."

8 He said, "Well, they're a nightclub." He
9 said, "There's people lined up trying to get in,
10 they're charging a cover charge." He said,
11 "There's, you know, dancing, all kinds of stuff
12 going on."

13 And I said, "Well, that's not how it's
14 supposed to be operated." On the following day,
15 which was May 25th, I happened to be out of the
16 office and I received a phone call from my
17 business license office stating that Ms. Kennedy
18 had made contact and she wanted to rescind her
19 statement about charging a cover charge, that --
20 and she was told that, "No, ma'am, you put, you
21 put that as a part of your, your business
22 license."

23 And she made the comment to my staff
24 that, "It's a big weekend, I want to make a lot
25 of money." And so my instructions to my staff

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1 was if she chose to rescind her statement, that
2 would change the conditions upon which her
3 business license was issued. it would open
4 herself up to whatever action may or may not be
5 taken.

6 So then it was after the Memorial Day
7 weekend, I received a police report. It was on
8 May 31st, as a matter-of-fact. I received a note
9 or a memo and a police report from Chief Warren
10 Gall, and in his report, it was a formal, you
11 know, request for me to investigate this
12 particular business, because first off, the
13 license was issued as Elite, and I would like to
14 add one thing. When the first applications came
15 in, it was Elite Ultra Lounge, and when I see the
16 word, "Lounge," that tells me it's a, it's a
17 lounge, it's a bar, and that language, when we
18 issued the license, was removed, it was issued
19 strictly in the name Elite, there was no lounge,
20 there was no club, there was no nightclub. And
21 another point that I'd like for Council to
22 understand, when I do a business license for a
23 nightclub, it is one business license under a
24 drinking place classification and it clearly
25 states in the description, "Nightclub." This one

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1 has nothing to that sort on it. So when I
2 received the report, I reviewed the information.
3 I reviewed the police reports that had been
4 submitted and prepared by Officer Stephanie
5 James. I also went out and personally viewed
6 their Facebook page, Youtube videos, and
7 everything I saw. their advertising is Elite
8 Ultra Lounge, and to this day it's still Elite
9 Ultra Lounge. They also indicate they are unique
10 nightlife. They also show pictures on their
11 Facebook page of pool tables obviously being
12 moved around and a lot of dancing, a lot of
13 posing as to some picture that I think are
14 questionable, personally, and it shows me that it
15 -- it's not a pool hall. I don't see pool being
16 done, I mean, I see a pool table, but I don't see
17 people actively shooting pool. So for the
18 reasons and the information that was provided to
19 me, I believe that I was, you know, I, I believe
20 I was deceived. I believe they intended to
21 operate as a nightclub. They came in and, and
22 obtained their business licenses as to what the
23 zoning would allow, and it started at one type of
24 business, but it has turned in to be a nightclub,
25 and for those reasons, I suspended the business

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(843) 248-5252

1 license. and I ask that Council uphold my
2 suspension and revoke the business licenses.
3 MAYOR PRO TEM GRAY: THANK YOU. MS. McDOWELL.
4 Q: Let me ask you just a couple of questions, if I
5 could. Is this a copy that was a condition of
6 the business license?
7 A: Yes, sir. This is the statement, "I, Brooke
8 Kennedy. state that Elite will not charge
9 admission or cover charge."
10 Q: And it was reported to you and part of your
11 decision-making process?
12 A: Yes, sir.
13 MAYOR PRO TEM GRAY: LET ME JUST INTERRUPT
14 AGAIN. BOTH OF YOU HAVE SAID YOU HAVE NO
15 OBJECTIONS TO ANY EVIDENCE THAT IS GIVEN TO THE
16 CLERK. SO I'M NOT GOING TO ASK THIS QUESTION
17 ANYMORE. ARE WE OKAY WITH WHAT EITHER SIDE
18 OFFERS TO THE CLERK AS A MATTER OF EVIDENCE?
19 MR. BELLAMY: THAT'S FINE.
20 MAYOR PRO TEM GRAY: OKAY, JUST WANT TO MAKE
21 SURE.
22 DEFENDANT'S EXHIBIT NUMBER 3
23 ADMITTED INTO EVIDENCE.
24 Q: So it's been reported to you that, and you held a
25 meeting ---

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1 A: Yes.
2 Q: --- and met with all the police officers and the
3 Zoning Administrator, and based on information
4 that was provided to you, you made your decision?
5 A: Yes, sir.
6 Q: Okay. Now, as part of that report to you, were
7 you informed that they were charging admission at
8 some points in time?
9 A: Yes.
10 Q: And then other times they weren't?
11 A: Correct.
12 Q: And is it also your understanding that they're
13 having a dance floor there that is in excess of a
14 hundred and fifty square feet?
15 A: Yes, sir.
16 Q: They have a DJ?
17 A: Yes, sir.
18 Q: And how about the pool tables, were there any
19 pool balls on the pool tables?
20 A: I didn't observe any, any information.
21 Q: What was reported to you?
22 A: It was reported that the pool tables had been
23 moved around to the sides and the edges to open
24 up a central area to where people could dance and
25 congregate in the form of a ---

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(843) 248-5252

1 Q: And they had disc jockeys?
2 A: Large speakers set up.
3 Q: Okay. Now, does this club have a sprinkler
4 system that would be required for a nightclub?
5 A: No, sir.
6 Q: So you have an unsprinkled building that's being
7 used as a nightclub?
8 A: Yes, sir.
9 Q: Please answer any questions that Council may have
10 or Mr. Bellamy may have.
11 MAYOR PRO TEM GRAY: MR. BELLAMY, CROSS-EXAMINE?
12 CROSS EXAMINATION
13 BY MR. BELLAMY:
14 Q: Ms. McDowell, let me show you what's already in
15 evidence.
16 MR. BELLAMY: LET'S GO AHEAD AND MARK
17 THAT REAL QUICK, JUST NUMBER IT FOR PURPOSES OF
18 IDENTIFICATION.
19 DEFENDANT'S EXHIBIT NUMBER 4
20 MARKED FOR IDENTIFICATION.
21 Q: We've got Defendant's Evidence Number 4. Would
22 you take a minute to look at it? Have you ever
23 seen this before?
24 A: Yes. I saw it in a meeting, yes.
25 Q: And you don't deny this was approved by the City?

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(843) 248-5252

1 A: I didn't approve it. I leave it to Zoning to, to
2 approve.
3 Q: But you don't deny that Zoning approved it,
4 correct?
5 A: No, I don't deny that, no, sir.
6 Q: Okay. And I'm going to show you right here,
7 would you read for the record what that says
8 right there?
9 A: "Fourteen inch raised DJ platform."
10 Q: And the time that the City approved this, nobody
11 objected to the raised DJ platform, did they?
12 A: I'm not aware.
13 Q: And do you know of your own knowledge -- Well,
14 obviously, you weren't there when they allegedly
15 moved the pool tables, correct?
16 A: No, sir.
17 Q: And you don't know if there was at least a
18 hundred and fifty square feet of open space, do
19 you?
20 A: I've been provided information by officers that
21 said there was more than that, more than a
22 hundred and fifty when the pool tables were
23 pushed out to the sides.
24 Q: Did they provide you with any reports?
25 A: Verbal.

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1 Q: Verbal reports?
2 A: Verbal reports.
3 Q: They didn't write it down?
4 A: I don't recall having that in any actual report.
5 It was discussed in the meeting.
6 Q: It wasn't important enough for them to write an
7 incident report explaining what happened?
8 A: I don't have ---
9 Q: And the reason why I ask, did they take any
10 measurements?
11 A: I don't know if they did or not, sir.
12 Q: So basically, hearsay, you're relying upon what
13 they say? Did you ask them if they measured?
14 A: I, I relied upon the reports that were provided
15 by the chief of police.
16 Q: Okay. What reports? You said that they didn't
17 make any reports.
18 A: I've got a report from the chief of police, plus
19 some incident reports that had been provided to
20 me.
21 Q: Did any of the incident reports or the report
22 from the chief of police set out they took
23 measurements regarding ---
24 A: Can I, can I look?
25 Q: Right, because I haven't seen this. This is

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(843) 248-5252

1 obviously the first time I've had a chance to
2 look at this today, so.
3 A: I don't believe there's anything in here that
4 states that they took any actual measurements. I
5 believe theirs were visual.
6 Q: Okay. Now, right here, we see we've got three
7 pool tables. When this was approved, I think,
8 sometime in 2012, were you aware of the fact that
9 there are only three and there are eight pool
10 tables in there?
11 A: Yeah, and this was, I believe, the plan for
12 Corner Pocket ---
13 Q: Right.
14 A: --- and Red, which is the businesses that where
15 there previously.
16 Q: Right, essentially the same plan they're
17 operating under right now?
18 A: Uh-huh (affirmative response).
19 Q: All right. What I've got right here, Ms.
20 McDowell, I've got the -- This was the
21 application for alcohol, as far as a drinking
22 place, that was approved by the City. It's
23 signed -- For the record, let me identify. It's
24 signed by Brooke Kennedy. It's dated March 25th,
25 2013, and just take a minute to look at it.

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- 1 A: Uh-huh (affirmative response). Okay.
- 2 Q: Now, no question that the City approved, on this
3 date approved a business license for a drinking
4 place, correct?
- 5 A: For selling alcohol, uh-huh (affirmative
6 response).
- 7 Q: Now, is there any limitation on this business
8 license regarding the amount of alcohol that can
9 be sold?
- 10 A: The primary business activity is a pool hall,
11 which is what they've indicated, and as I've
12 already stated to Council, if something is
13 primarily a drinking establishment, it has one
14 business license, but this establishment was
15 issued three.
- 16 Q: Correct, and what I'm asking you ---
- 17 A: And the alcohol would be an accessory use, it
18 would not be a primary use.
- 19 Q: But is there anything in here informing the
20 licensee that they can only sell so much alcohol?
- 21 A: They were provided that information when they
22 applied, that they could not be primarily serving
23 alcohol. The applicant was provided that
24 information at the time.
- 25 Q: Do you have copies of what you provided them?

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1 A: It was verbal. We ---
2 Q: It was verbal?
3 A: We explained that to -- we explained that to the
4 applicant.
5 Q: All right. Just listen to me, okay. I'll give
6 you a chance to respond? Is there anything in
7 this business license application explaining to
8 the applicant, that they can read, saying that --
9 based upon what you're saying is, is it limits
10 the amount of alcohol they can sell based upon
11 the gross receipts that are generated by the,
12 what you say, the primary business occupation,
13 which would be pool or gaming, correct?
14 A: On that application, no, sir.
15 Q: Okay. So if somebody were to read this, there's
16 nothing they can sit there and say that basically
17 would limit the amount of alcohol they could
18 sell, correct?
19 A: Not looking at that form, no, sir.
20 Q: Now, what I've got right here is I've got the
21 business licensing statute. This is my copy. If
22 you want to use your copy, feel comfortable to do
23 that, okay? Is there anything in the business
24 license statute that, as far as business
25 classification, that provides that if you got

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1 three business licenses, and you take the
2 position that the primary business license was
3 the gaming license, that if the gross receipts
4 for gaming are less than the gross receipts of
5 alcohol, that basically turns or converts it into
6 a pool hall or from a pool hall to a -- it's
7 obviously not a lounge, but a nightclub, so to
8 speak? What I'm asking you is, is there anything
9 in the language right here -- Your interpretation
10 is -- Let me back up for a second. Let me get
11 your letter right here, just a second. I'll read
12 it into the record right here. This is the
13 letter that you wrote on June 10, 2013. That's
14 your signature, correct?

15 A: Correct.

16 Q: And you state, "The purpose, the reasons for the
17 immediate suspension, the proposed revocation of
18 the business license for Elite is that it's been
19 determined from the police reports that the
20 business license," and you write the word,
21 "appear to have been obtained through
22 misrepresentation, fraud and deceit." Let me ask
23 you what you mean by "Appear"?

24 A: It appears to be.

25 Q: And you say as opposed to -- there's

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(843) 248-5252

1 uncontroverted evidence, and you use the word,
2 "Appear." Okay. And you go on to say that. "The
3 gross receipts reported reflect the primary
4 business is coming from the sale of alcohol and
5 not billiards." So what I understand -- and you
6 go on to say, "that the gross receipts reported
7 on the license renewal for the pool hall
8 constitutes seventeen percent of" -- Let's see,
9 let me read it one second. Right here, you say,
10 "The gross receipts reported on the license
11 renewal for a pool hall arcade business
12 constitutes seventeen percent of your total
13 gross, and the gross receipts reported for food
14 sales constitutes twenty-one percent of your
15 total gross, and the gross receipts reported for
16 alcohol consumption constitutes sixty percent of
17 your total gross;" is that correct?

18 A: Yes, sir.

19 Q: Let me ask you this. If you had, let's say,
20 gross receipts -- Is it your position that every
21 time the gross receipts of alcohol exceed the
22 gross receipts for gaming, then the business is a
23 nightclub and not a pool hall; is that your
24 interpretation?

25 A: Repeat that question.

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1 Q: All right. Is it your position that every time a
2 business, you got three business licenses for
3 generating sources of income that the City is
4 getting business license fees from, is it your
5 position in determining the use of a business
6 that if the gross receipts, let's say from
7 operating as a pool hall or gaming hall, are less
8 than the gross receipts of alcohol, the amount of
9 what percentage it is, at that point in time it
10 becomes a nightclub?

11 A: When I reviewed ---

12 Q: Please answer my question and you can explain.

13 A: I don't think I really understood your question,
14 to be honest with you.

15 Q: Well, all I'm saying is -- I'm trying to
16 understand your letter, in fairness to me. My
17 point is, if the alcohol gross receipts are
18 greater than the gross receipts for billiards, is
19 it your position at that point in time, it
20 becomes a nightclub and it's no longer a pool
21 hall?

22 A: It appeared to me that the primary business
23 activity is coming from the alcohol when the
24 primary activity that was explained to me was
25 going to come from billiards.

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1 Q: Is there anything in the business licensing
2 statute that limits the amount of alcohol a pool
3 hall can serve its customers?
4 A: That would be in Zoning, not in business license.
5 Q: Well, let me ask you about zoning. Are you
6 familiar with the zoning statute?
7 A: I'm not going to answer for the zoning aspect.
8 The Zoning Administrator can answer those
9 questions.
10 Q: Okay. Let me ask this. There's nothing in the
11 business license statute that limits the amount
12 of alcohol that the pool hall can serve?
13 A: I'm not going to answer zoning questions.
14 Q: That's not a zoning ---
15 A: A business license, as the ordinance reads, a
16 separate license is required for each place of
17 business and for each classification of business.
18 Q: My question is, is there anything in the business
19 license application that was approved by the City
20 for a drinking place, that serves alcohol, that
21 limits the amount of alcohol that can be sold?
22 A: Let me look at their initial to see what the
23 notes were quoted from, if there were any notes
24 from Zoning.
25 Q: Well, I'm asking you.

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1 A: I would have to refer to my records, sir, if
2 that's okay. ---
3 Q: Okay.
4 A: --- because I don't approve based on zoning.
5 Zoning indicated that all zoning ordinances of
6 the City of Myrtle Beach must be adhered to. So
7 if within the zoning that there is a percentage
8 that must be adhered to, that business would have
9 to adhere.
10 Q: You're passing the buck to Zoning?
11 A: I cannot issue a business license unless Zoning
12 approves the use of the business at that place.
13 Q: All I'm asking you is -- I'm getting this from
14 the business license statute, okay, I'm not
15 talking about zoning. Is there anything in the
16 business license statute that limits the amount
17 of alcohol that can be sold ---
18 A: In the business license statute, no.
19 Q: Thank you. That's all I've got. Thank you.
20 A: You're welcome.
21 MAYOR PRO TEM GRAY: IS THAT ALL YOU HAVE, MR.
22 BELLAMY? IS THAT ALL YOU HAVE FOR THIS
23 WITNESS?
24 MR. BELLAMY: THAT'S ALL I HAVE.
25 MAYOR PRO TEM GRAY: DO YOU WISH TO RE-DIRECT?

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1 MR. BATTLE: NO.
2 MAYOR PRO TEM GRAY: OKAY, NO RE-DIRECT. SO DO
3 YOU HAVE ANY OTHER WITNESSES THAT YOU'D LIKE TO
4 CALL?
5 MR. BATTLE: I DO. I DO.
6 MAYOR PRO TEM GRAY: OKAY. MS. McDOWELL, YOU
7 MAY STAND DOWN. COUNSEL, THE PANEL GETS TO ASK
8 A QUESTION FROM ANYONE ---
9 MR. BATTLE: SURE.
10 MAYOR PRO TEM GRAY: --- AT ANY TIME. AT ANY
11 TIME. MARY, IF YOU WOULDN'T MIND COMING BACK
12 IN YOUR PLACE. MR. BATTLE, BEFORE WE DO THAT,
13 I'M GOING TO ASK MARY TO COME BACK.
14 MR. BATTLE: SURE.
15 MAYOR PRO TEM GRAY: MARY, I JUST REMIND YOU
16 THAT YOU ARE -- MS. McDOWELL, YOU ARE UNDER
17 OATH, YOU'VE BEEN SWORN IN. I THINK THERE MAY
18 BE SOME QUESTIONS THAT WANT TO BE ASKED OF YOU
19 FROM MEMBERS OF THIS PANEL. ANY OBJECTION TO
20 THAT, HOWELL, EXCUSE ME, MR. BELLAMY?
21 MR. BELLAMY: NO OBJECTION, MAYOR PRO TEM
22 GRAY.
23 MAYOR PRO TEM GRAY: GO AHEAD, RANDALL.
24 EXAMINATION
25 BY COUNCILMAN WALLACE:

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1 Q: I just. I just kind of wanted to understand
2 something. In this letter here you went through
3 the percentages, that seventeen percent of the
4 gross came from billiards and sixty-two percent
5 came from alcohol, and twenty-one percent came
6 from food. that that somehow another made them a
7 drinking establishment rather than a billiards
8 place, and I guess my question is, because I --
9 just, just going through what I know about
10 shooting pool and drinking beer, which
11 unfortunately might be a little more than I
12 probably ought to admit to, but if a beer is
13 3.25, I'm going to guess what a bar is, and a
14 game of pool is a dollar twenty-five, and the
15 restaurant or the place in front of my house, it
16 does have pool, sells cheeseburgers for five
17 dollars apiece, if you figure up three beers in
18 an hour per person playing, you've spent twenty
19 bucks, if you play three games of pool during
20 that hour, you've spent three dollars and
21 seventy-five cents, if you buy two cheeseburgers
22 apiece, you've spent ten dollars, so aren't these
23 percentages in line for what any place that
24 shoots pool, has restaurants would have, and if
25 not, I just don't know how you can operate a pool

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1 hall and expect to sell anything other than the
2 pool games and not make more money off of
3 everything else?
4 A: In the former businesses that were there and the
5 original Corner Pocket, their gross receipts was
6 very obvious that billiards was where their
7 income was coming from. When the business
8 license renewals came in, I just simply looked at
9 where the gross receipts were being reported and
10 I was just showing that that was another part of
11 my determination that it appeared that the
12 alcohol portion of their business was the heavy
13 side and the food and the billiard was, was very,
14 very low when they were supposed to be primarily
15 a pool hall, I mean, that's what they held
16 themselves out to me, was that they, you know,
17 when they found that Zoning did not allow the
18 nightclub, they said they were going to operate
19 exactly how the former businesses had, had
20 operated.
21 Q: I just don't know how you would -- how that
22 percentage wouldn't be about there if that's the
23 kind of price range but I don't know.
24 A: I don't know what it costs to shoot pool, to be
25 honest with you.

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1 MAYOR PRO TEM GRAY: ANYMORE QUESTIONS?

2 Q: I mean. I guess I'm just -- I just -- that sounds
3 right, and, and I guess under -- but as far as
4 pool, how would you run a billiards place and
5 keep your alcohol sales down below, 'cause it
6 doesn't cost that much to rent a pool table, so
7 if you're selling anything else, food or drinks,
8 I would think your percentage would be higher on
9 the alcohol and/or higher on the food than you
10 would bring in on billiards in any pool hall
11 anywhere; am I not right in that?

12 A: My, you know, my determination was based on, I
13 believe I was deceived. I, I honestly believe
14 that, that they came in and, and received
15 licenses to operate one type of a business
16 activity and it has turned out to be a different
17 activity that clearly the zoning does not permit.

18 MAYOR PRO TEM GRAY: GO AHEAD. GO TO MS. MEANS.
19 GO AHEAD, MS. MEANS.

20 COUNCILWOMAN MEANS: THANK YOU.

21 EXAMINATION

22 BY COUNCILWOMAN MEANS:

23 Q: My understanding is that this percentage of sales
24 thing was not the deciding factor, there were a
25 whole lot of other things that applied to this.

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1 and one being, you know, creating a dance floor,
2 charging a cover charge, all these different
3 things. Those were the main things that pushed
4 you to this decision?

5 A: Yes, ma'am.

6 Q: Okay.

7 MAYOR PRO TEM GRAY: MR. LOWDER?

8 EXAMINATION

9 BY COUNCILMAN LOWDER:

10 Q: How long have you been in the position you're in?

11 A: Twenty years.

12 Q: In the twenty years that you've been there, there
13 have been other businesses that opened in the
14 City of Myrtle Beach that were pool halls?

15 A: Yes, sir.

16 Q: And as a result of those businesses opening up,
17 there would've been possibly alcohol sales in
18 those businesses, as well?

19 A: (Indicates affirmatively).

20 Q: And so from your experience in these previous
21 places that would've opened up and operated as a
22 billiard hall/pool hall, did they operate the way
23 this place is operated and was the alcohol sales
24 volume far higher than their other sales?

25 A: In my twenty years, I've not had another -- we

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1 haven't had that many billiard rooms, to be
2 honest with you.

3 Q: I know that.

4 A: And Miscue was, you know, long gone, and then
5 when Corner Pocket came along. I mean, they were
6 very -- their, their gross information was very
7 heavily billiards and the lesser part was food. I
8 mean, I think alcohol a little bit more than the
9 food. I can't tell you exact percentages, but it
10 was heavily -- it was a billiard.

11 Q: Thank you. Thank you.

12 MAYOR PRO TEM GRAY: LET ME JUST -- EXCUSE ME
13 JUST A MINUTE. LET ME REMIND THE FOLKS, THE
14 PUBLIC THAT'S IN THE CROWD, I CONSIDER IT TO BE
15 DISRUPTION WHEN YOU'RE SHAKING YOUR HEAD AND
16 YOU SIGN AND YOU'RE NODDING. PLEASE, YOU'RE
17 GOING TO HAVE AN OPPORTUNITY TO HAVE YOUR CASE
18 PRESENTED. THERE'S CROSS-EXAMINATION, THERE'S
19 RE-DIRECT AND THERE'S CROSS-EXAMINATION AND RE-
20 DIRECT. THANK YOU. ANYTHING FOR MS. McDOWELL?

21 COUNCILMAN WALLACE: YEAH.

22 RE-EXAMINATION

23 BY COUNCILMAN WALLACE:

24 Q: The percentages here was not your main ---

25 A: No, sir.

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1 Q: --- focus?
2 A: No. sir.
3 Q: Okay.
4 MAYOR PRO TEM GRAY: OKAY. THANK YOU, MS.
5 McDOWELL. MR. BATTLE, YOUR NEXT WITNESS?
6 MR. BATTLE: MR. GAVRILIS. OFFICER
7 GAVRILIS WILL BE THE NEXT WITNESS.
8 MAYOR PRO TEM GRAY: IF YOU'D COME SIT DOWN,
9 SIR. IF YOU WOULD STATE YOUR NAME AND SPELL IT
10 FOR THE RECORD.
11 OFFICER GAVRILIS: SURE.
12 MAYOR PRO TEM GRAY: AND BEFORE YOU DO THAT, LET
13 ME JUST MAKE SURE. YOU WERE SWORN IN; IS THAT
14 CORRECT?
15 OFFICER GAVRILIS: THAT'S CORRECT.
16 MAYOR PRO TEM GRAY: OKAY.
17 OFFICER GAVRILIS: IT'S MIKE GAVRILIS. LAST
18 NAME G-A-V-R-I-L-I-S.
19 MAYOR PRO TEM GRAY: OKAY. YOU MAY HAVE A SEAT,
20 SIR.
21 OFFICER GAVRILIS: THANK YOU.
22 DIRECT EXAMINATION
23 BY MR. BATTLE:
24 Q: Officer, how long have you been with the Myrtle
25 Beach Police Department?

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1 A: Going on two and a half years.

2 Q: Two and a half years, and have you had occasion
3 in your performance of your duties as a police
4 officer to go to the Elite Ultra Lounge?

5 A: Yes, several times.

6 Q: Several times. Would you tell Council what you
7 witnessed was going on at Elite Ultra Lounge the
8 times that you visited, just kind of give them a
9 history? They're more interested in a narrative
10 than the questions, hearing me give the questions
11 to you, so if you'd just tell them what you went
12 through. Do you think it's operated as a
13 nightclub, Ultra Lounge?

14 A: What I know is Club Elite and I'll be more than
15 happy to tell you. Basically, I've done several
16 key checks, which is they -- they're anywhere
17 from a walk-through or just driving through the
18 parking lot. On the several occasions that I
19 have been there, most of them were weekends,
20 which is the busiest time. I observed on one
21 particular walk-through, and I've been there so
22 much, I'm not -- I don't recall the exact dates
23 and times, but it's, it's on paper. One
24 particular walk-through there was a line out the
25 door, okay. I approached the entry door, okay.

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1 with another officer. The security of Club Elite
2 kind of stepped in front of me as if I'm a
3 consumer not a police officer. I said, "Can you
4 step to the side, please?" He did, and I. I
5 entered. The first thing I observed was the --
6 it was a podium set up, a line at the podium,
7 some kind of transactions, I would assume, were
8 going on there. I walked past the podium on the
9 other side and what I observed was a dance floor.
10 To paint a picture, if I will, it -- all the pool
11 tables were pushed up against the walls. There
12 was a DJ. There were two pool tables, one on
13 each side of the DJ, one far left, the other one
14 was up against a -- it's a stand-up kind of bar,
15 the, the kind you wouldn't sit down at, but you
16 would place a drink, kind of table. Those pool
17 tables were pushed up against that, and there is
18 one more towards the back of the club where the
19 actual bar is.

20 The dance floor -- prior to my policing
21 career, I was a general contractor for fifteen
22 years, so a pool table is about eight to ten
23 feet, correct? Would you guys agree with that?
24 Well, it was about two pool tables in length or
25 more by two, two and a half pool tables in width.

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1 Looking at it from the front entrance as you walk
2 in, there, there was numerous people dancing, I
3 guess having a good time. I observed other
4 individuals throughout the club sitting on pool
5 tables. The pool tables, I also noticed, they
6 were used as drink holders. I did not observe
7 any pool playing. I remember it quite clearly,
8 'cause one individual said some things to me,
9 were, were not appropriate, but due to officer
10 safety, actually, no police, you know, I didn't
11 take any enforcement action and I just continued
12 to walk out. I didn't observe any food being
13 served or, or any food out, for that matter. So
14 as far as the dance floor, again, it was about
15 two table lengths by two table lengths, ten by --
16 that's at least ten by another ten feet right
17 there. There was over a hundred and fifty feet.
18 I, I can't make it any clearer, but there was a
19 lot of people in there, and they were all
20 congregated.

21 Q: All right, sir. Let me just ask you ---

22 A: Sure.

23 Q: --- some questions, kind of help you clear up
24 this stuff. It's your testimony based on, as a
25 contractor, in your estimation, that there was

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1 more than a hundred and fifty square feet out
2 there? Ten by fifteen would be a ---
3 A: Absolutely.
4 Q: --- hundred and fifty square feet, and what size
5 is this room here?
6 A: This room has to be at least twelve by thirty-
7 five feet, just, just guesstimating.
8 Q: Give the size of the dance floor in comparison to
9 this room.
10 A: Very compatible.
11 Q: About the same as this room?
12 A: A little -- it would be a little wider and a
13 little -- the length, yes, a little shorter.
14 Q: Now, does this have a late night license for
15 opening past two o'clock in the morning or twelve
16 o'clock at night?
17 A: I believe it does.
18 Q: And did the owner of this club make any comments
19 to you or the manager of this club, someone
20 representing the club?
21 A: He did. Due to the shooting incident, you know,
22 we were trying to keep people safe, so we, we
23 continue to drive-through the area, and that one
24 particular walk-through, the gentleman on my
25 right, which introduced himself as Brooke Kennedy

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1 that night as the owner. told me ---
2 Q: He introduced himself as Brooke Kennedy?
3 A: Correct. And the reason -- I found that out,
4 because I, I put it in my statement, and then I
5 was told by another officer, "That's not Brooke
6 Kennedy, that's Javon Kennedy," so. So anyway,
7 he told me, you know, "This is bad," and he was
8 real upset with our presence, and he said, "This
9 is bad for business," you know. You know, so I
10 said, "We're just doing our job, you know, just
11 trying to keep everybody safe."
12 Q: Was there a DJ at any of those times?
13 A: There was.
14 Q: And was the music loud?
15 A: Yeah.
16 Q: Did it have the appearances, in your mind -- Have
17 you been in nightclubs before?
18 A: Absolutely.
19 Q: And did it appear to be a nightclub?
20 A: Yes.
21 Q: Okay. That's all I have.
22 MAYOR PRO TEM GRAY: MR. BELLAMY, BEFORE YOU
23 CROSS-EXAMINE, I WANT TO ASK A COUPLE OF
24 QUESTIONS, BUT YES, MR. LOWDER.
25 COUNCILMAN LOWDER: WHAT IS SIXTEEN BY SIXTEEN?

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1 MAYOR PRO TEM GRAY: SIXTEEN BY SIXTEEN, WHO
2 KNOWS WHAT IT IS; ANY GOOD MATH PEOPLE?
3 COUNCILMAN LOWDER: SIXTEEN BY SIXTEEN, WHAT'S
4 THE SQUARE FOOT?
5 MAYOR PRO TEM GRAY: WELL, TEN BY TEN ---
6 MR. BATTLE: TEN BY FIFTEEN IS A HUNDRED
7 AND FIFTY.
8 MAYOR PRO TEM GRAY: RIGHT.
9 COUNCILMAN LOWDER: THANK YOU.
10 EXAMINATION
11 BY MAYOR PRO TEM GRAY:
12 Q: The night in question that you went there and
13 visited and you witnessed all this, when was
14 that?
15 A: I believe it was the 23rd of May at 03:45 hours,
16 so 3:45 in the morning.
17 Q: So 3:45 in the morning ---
18 A: Yes, sir.
19 Q: --- on May 23rd, and there had been a shooting in
20 the vicinity of this nightclub prior to that?
21 A: Either right after it or before it.
22 Q: Right after 5/23 or before 5/23?
23 A: I don't recall.
24 MAYOR PRO TEM GRAY: ANY OTHER QUESTIONS BEFORE
25 WE HAVE CROSS-EXAMINATION?

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1 (NO RESPONSE).

2 MAYOR PRO TEM GRAY: MR. BELLAMY.

3 CROSS EXAMINATION

4 BY MR. BELLAMY:

5 Q: Officer, what's your first name again?

6 A: It's Mike.

7 Q: Mike, let me ask, how many times have you been
8 out to Elite?

9 A: Probably more than seven.

10 Q: And how many times did you observe a dance floor?

11 A: At least three.

12 Q: Three times out of seven?

13 A: Correct.

14 Q: Now, you're aware they've been in operation
15 roughly, I think, about eighty-five days, ---

16 A: (Indicates affirmatively).

17 Q: --- starting, I think, April 5th all the way up,
18 give or take a day or two, but do you have any
19 other reports that indicate they were operating
20 as a dance floor any other days?

21 A: I believe I. I did document in the notes on
22 another occasion.

23 Q: And the reason why I'm asking, I was not privy to
24 your information. Mr. Battle just provided that
25 today to us, so I'm kind of new and you were

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1 prejudiced by that. What I'm asking you is, all
2 I'm trying to confirm is, out of about eighty-
3 five days of operation, about four days, roughly
4 four or five days they allegedly operated as a
5 dance floor, correct?

6 A: From what I observed.

7 Q: From what you observed.

8 A: I've observed at least three or four times, you
9 know.

10 Q: That's what I'm saying, about three or four
11 times?

12 A: Yeah, and, and it was not documented on paper,
13 correct.

14 Q: Okay. So we're talking about three or four times
15 over a period of eighty ---

16 A: Give or take, I mean, you can imagine how many
17 different clubs we go to, you know, but this
18 particular one, that's correct. I, I, I do
19 remember it.

20 Q: So it wasn't something they were abusing during
21 every single night, correct, allegedly?

22 A: Well, I don't know, I wasn't there every night.

23 Q: But you don't have any reports of anybody saying,
24 anybody else, you know -- Let me ask you this.
25 Do you have any reports that Club Elite or the

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1 management or people going to Club Elite,
2 anything regarding an alleged unlawful conduct or
3 amounting to a nuisance as far as what's
4 occurring inside the premises?

5 A: Oh, sure. Yeah. I mean, when I conducted my key
6 checks there were several people in the parking
7 lots that were going back to their vehicles, and
8 I said, "Why are you leaving?"

9 And they're like, "They're, they're
10 smoking marijuana in there."

11 Q: Well, inside the club?

12 A: Yes, sir.

13 Q: Did you observe anybody doing anything unlawfully
14 inside the club?

15 A: Absolutely.

16 Q: Did you charge them?

17 A: Of course not.

18 Q: Why not?

19 A: Because there was a officer safety issue.

20 There's, there's ---

21 Q: Let me ask you this. You've been in the club
22 four or five times?

23 A: Yes, sir.

24 Q: And you never charged anybody in the club?

25 A: For violating a ---

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1 Q: For anything?

2 A: --- state law or ---

3 Q: Anything?

4 A: No.

5 Q: And every time you've gone in the club, did you
6 go in there by yourself or did anybody accompany
7 you?

8 A: Sure.

9 Q: At that time, did you see any violations
10 occurring?

11 A: Absolutely.

12 Q: Did you charge them at that point in time?

13 A: No.

14 Q: As far as the shooting, didn't the security with
15 Club Elite help Myrtle Beach police out, provide
16 them information about who the shooters were?
17 Didn't they assist y'all?

18 A: Actually, since you bring it up, it was like
19 pulling teeth, I mean, it was very hesitant. The
20 owner did not come out, do not recall Management.
21 We were, pretty much, dealing with a security or
22 somebody at the door, and I remember myself and
23 some other officers, we made several attempts to
24 contact the victims inside to come outside,
25 'cause their cars were shot up, and half of them

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1 did come out ---
2 Q: When you say the cars were shot up, where were
3 they shot up at?
4 A: Right outside the club.
5 Q: Were they in the parking lot?
6 A: Yeah. right out, uh-huh (affirmative response).
7 Q: What happened as far as the perpetrators or the
8 shooters, did y'all ever find them?
9 A: I. I do not know about the investigation, sir.
10 Q: Do you have any information that they were
11 allowed, that the security allowed them to go
12 inside Club Elite?
13 A: Who? Who are you referencing?
14 Q: I'm talking about the shooters. My understanding
15 was, is that they had tried to get into Elite and
16 the security said, "We're not going to let you
17 in."
18 A: Okay. I do not know with reference to the
19 investigation. I, I don't know the details of
20 that or what the outcome was. I'm, I'm more of a
21 reporting officer, first one on scene, what
22 happened, you know.
23 Q: Okay. My understanding is that I thought that
24 security had provided some information to help
25 Myrtle Beach Police try to locate these guys.

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1 A: Right.
2 Q: Okay. Now, I just want to make sure I'm correct
3 on this. There're no incident reports issued by
4 the Myrtle Beach Police Department regarding any
5 unlawful activity or anything that would be
6 tantamount to the nuisance activity that occurred
7 inside the premises as far as the store, Elite,
8 pool hall?
9 A: Again, I can only reference to what I wrote, what
10 I observed.
11 Q: Right.
12 A: I wrote here that the first observation was
13 obvious smell of marijuana.
14 Q: What I'm saying is -- Let me be more specific
15 with my question. You haven't charged anybody,
16 have you?
17 A: No.
18 Q: No tickets or citations have been issued for any
19 unlawful conduct; is that correct?
20 MAYOR PRO TEM GRAY: MR. BELLAMY, YOU'VE ALREADY
21 ESTABLISHED THAT ---
22 MR. BELLAMY: OKAY.
23 MAYOR PRO TEM GRAY: --- HE HASN'T CHARGED
24 ANYONE THERE.
25 MR. BELLAMY: OKAY. NO FURTHER

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1 QUESTIONS.

2 MR. LOWDER: I HAVE A QUESTION.
3 MAYOR PRO TEM GRAY: BEFORE YOU ASK A QUESTION,
4 MR. BATTLE, WOULD YOU LIKE TO RE-DIRECT?
5 MR. BATTLE: NO, YOUR HONOR.
6 MAYOR PRO TEM GRAY: OKAY. MR. LOWDER HAS A
7 QUESTION ---
8 OFFICER GAVRILIS: YES, SIR.
9 MAYOR PRO TEM GRAY: --- FOR THE OFFICER.

10 EXAMINATION

11 BY COUNCILMAN LOWDER:
12 Q: Officer, I understand that you didn't make any
13 charges of any kind in the bar ---
14 A: No, there was ---
15 Q: --- or in this location, correct?
16 A: --- too many people. It was just too dangerous.
17 Q: You've been a police officer for two and a half
18 years?
19 A: Correct.
20 Q: In that two and a half years, have you seen a
21 number of speeders running up and down the
22 highway?
23 A: Absolutely.
24 Q: Did you charge any of them?
25 A: Yes, sir.

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1 Q: Did you charge every one of them?
2 A: No, sir.
3 Q: Thank you.
4 A: You're welcome.
5 MAYOR PRO TEM GRAY: ANY OTHER QUESTIONS OF THE
6 OFFICER?
7 (NO RESPONSE).
8 MAYOR PRO TEM GRAY: NO FURTHER EXAMINATION AND
9 RE-EXAMINATION, OKAY. YOU CAN STAND DOWN, SIR.
10 MR. BATTLE, YOUR NEXT WITNESS.
11 MR. BATTLE: OFFICER CASTLE, CALL HIM.
12 MAYOR PRO TEM GRAY: WE'VE BEEN IN THIS CASE
13 FOR, I MEAN, IN THIS REVOCATION HEARING FOR
14 ABOUT AN HOUR NOW, SO EVERYONE THAT'S
15 TESTIFYING, LET'S MOVE THE STORY ALONG, LET'S
16 BE CAREFUL ABOUT OUR REPETITION.
17 MR. BATTLE: AND I WILL VOUCH THAT
18 EVERYONE I CALL, I SAW COME IN HERE AND RAISE
19 THEIR RIGHT HAND AND SWEAR AND THAT.
20 MAYOR PRO TEM GRAY: OKAY. STATE YOUR NAME FOR
21 THE RECORD, SIR.
22 OFFICER CASTLE: SHANNON CASTLE.
23 DIRECT EXAMINATION
24 BY MR. BATTLE:
25 Q: Officer Castle, would you tell the Council how

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1 long you've been a police officer here?
2 MAYOR PRO TEM GRAY: BEFORE YOU DO THAT, SIR,
3 SPELL YOUR NAME, I'M SORRY.
4 OFFICER CASTLE: IT'S C-A-S-T-L-E.
5 MAYOR PRO TEM GRAY: OKAY. THANK YOU.
6 Q: Tell Council how long you've been a police
7 officer.
8 A: Here at Myrtle Beach for eleven years.
9 Q: And have you had any occasion to go out to Club
10 Elite?
11 A: I have, yes, sir.
12 Q: Tell Council what you saw, what you observed at
13 Club Elite.
14 A: Well, I'm the supervisor over the nighttime
15 patrol shift. I, myself, have been out a few
16 times to Club Elite. When I went out and had
17 interaction with, with the club in doing key
18 checks through the parking lot and, and through
19 the club, I'm not going to, like I say, I'm not
20 going to be repetitious on what you've already
21 heard, but just to confirm what Officer Gavrilis
22 had said, that, I, too, have went into the, the
23 club. It, it -- I saw and witnessed the dance
24 floor, what I considered to be a dance floor in
25 front of a DJ booth and people there drinking and

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1 pool tables up against the walls and away from --
2 to, to open up a large area in the middle of the
3 floor.

4 The -- one of the nights that I went
5 through there, there was the same podium set up,
6 a couple of females at the door talking to
7 customers coming in. I had one observation of a
8 gentleman come in with about another three or
9 four person party with him. He was asking what
10 the, the charge was to get into the club, I mean,
11 and they said there was no charge, but he had to
12 tip them, they, they had to tip. So in my mind,
13 there was a charge without saying there was a
14 charge. I have observed the outside of, of the
15 establishment on heavy weekends and days these
16 crowd barriers where people are routed since
17 there was such a large crowd coming to the
18 establishment, people being wanded, as far as
19 metal wanded, you know, before they go into the,
20 the club. Everything that, in my recollection of
21 it, it appeared to me that it was a club
22 atmosphere and it was operating as a nightclub.

23 Q: All right, sir. And would you confirm, also, as
24 to what you believe the size of the dance floor
25 to be?

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- 1 A: Well, I think Officer Gavrilis painted a pretty
2 good picture. It's, in my estimation, and I
3 didn't take -- I didn't lay out a measurement,
4 but just in, in eye view, I would say at least a
5 twenty to twenty-five by twenty area, quite
6 large.
- 7 Q: And would you confirm, also, that they operate
8 with a night license or after hours license?
- 9 A: You would have to check with the regulatory, but
10 I am -- my, my mind tells me, yes, I believe they
11 do have a night license.
- 12 Q: If the report was made at 3:45 in the morning,
13 could they be operating after the regular time,
14 at 3:45 in the morning?
- 15 A: Well, again, that's a regulatory question, per
16 se, but it depends on what day of the week it is,
17 the weekend, I mean, it's, it's ---
- 18 Q: Very good. Answer any questions Mr. Bellamy may
19 have ---
- 20 A: Yes.
- 21 Q: --- or Council, I'm sorry.
- 22 MAYOR PRO TEM GRAY: MR. BELLAMY.
- 23 CROSS EXAMINATION
- 24 BY MR. BELLAMY:
- 25 Q: Officer, I didn't get your first name.

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1 A: Shannon.

2 Q: Shannon. Shannon, how many times have you gone
3 out to Elite? How many times have you ---

4 A: I would say, estimation, five times, if I had to
5 guess.

6 Q: And every time you've gone out there, have you
7 observed an alleged dance floor?

8 A: Yes, sir. I, I have never seen pool tables in
9 the middle of that, of that area where I've seen
10 that people were dancing.

11 Q: Well, could you show me how they move the pool
12 tables around? There were eight pool tables, if
13 you could kind of ---

14 A: Well, if -- let's see ---

15 Q: Let me get you to draw something for the record.
16 I just want you to -- Shannon, if you'd go by
17 this. This just shows three pool tables, but I
18 understand that this was approved by the
19 predecessor in title. Now they've got eight.
20 Would you kind of show the configuration, how the
21 pool tables were, you know, located?

22 A: Well, I can ---

23 Q: Without drawing on this, ---

24 A: Right.

25 Q: --- but if you'd use that as a ---

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1 A: Right. Well, I'll tell you, this being the front
2 door into the establishment. ---

3 Q: Sure.

4 A: --- once you go in there is a slight partition
5 right here that you go into. Along -- let's see,
6 I'm not much of an artist here. ---

7 Q: That's all right.

8 A: --- but about midway back in this area here
9 (indicating) is a DJ stand. ---

10 Q: Right here.

11 A: --- I would. I would, I would call it. The pool
12 tables in this area here, I have never seen any
13 pool tables at all any time that I've been in, in
14 that club. Actually, all the way back -- the
15 only pool table that I have ever observed was
16 maybe one in this area right here (indicating).
17 All the other pool tables are pushed against this
18 wall (indicating).

19 Q: This wall right here (indicating)?

20 A: No, it's actually back here completely against
21 the, the glass to the outer wall.

22 Q: Now, let me ask you this. What days did you
23 normally go by? Was it weekends, weekdays?

24 A: It was sporadic. I mean, the way we work, we work
25 different -- we work some days in the middle of

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1 the week, some days on the weekends, and we, you
2 know, so it's no set days that we go by.
3 Q: Did Elite ever exceed the capacity of people that
4 are allowed pursuant to the ---
5 A: I can't answer that question. I don't know how
6 many people that were in there.
7 Q: Y'all never did a headcount or anything?
8 A: Never did a headcount, no, sir, I mean, it's,
9 it's not, it's not myself or any people that are
10 working on my shift to go in and start saying,
11 you know, "Let's take a headcount of your
12 patrons."
13 Q: Well, the reason why I say that is two or three
14 officers described how the people were lined up
15 around the building, and I understand the fire
16 code permits two hundred and sixty-five people
17 inside the premises?
18 A: I. I ---
19 Q: You don't know?
20 A: I don't know.
21 Q: All right. And is it your position that when you
22 were in there -- did you see food being served?
23 A: At no time, except one time, I saw one person
24 eating inside that establishment that I've been
25 there. A lot of drinks being served, but no ---

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1 Q: Did you see anybody that actually was, I guess,
2 would say was acting disorderly, that had too
3 much to drink?
4 A: No, everybody was acting like they were having a
5 good time at a nightclub, I mean, that was ---
6 Q: Did it look like the security had everything
7 under control?
8 A: Inside the club?
9 Q: Yes, inside the club?
10 A: 'Cause there's two different security ---
11 Q: Right, security inside the club.
12 A: As far as when I observed, it looked like
13 everyone was having a good time and there was no,
14 nothing that I saw that would say that there,
15 that there was any disturbances or anything
16 inside the club.
17 Q: Would it be a fair statement to say that people
18 that were in the club were well behaved?
19 A: From what I observed, the few minutes that I did
20 the walk-through, I didn't see anything -- any
21 disturbances.
22 Q: Okay. No further questions.
23 MAYOR PRO TEM GRAY: ALL RIGHT. DO YOU WISH TO
24 RE-DIRECT, SIR?
25 MR. BATTLE: NO.

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1 MAYOR PRO TEM GRAY: ANY QUESTIONS FOR OFFICER
2 CASTLE?
3 EXAMINATION
4 BY COUNCILWOMAN MEANS:
5 Q: You and the prior officer, Mike, had both used
6 the word, "Podium," in talking about the inside.
7 Are you referring to the DJ stand or ---
8 A: Yeah, it's a, it's a stand. It's probably, I
9 want to guess, a four by eight and raised.
10 Q: And that's where the DJ is?
11 A: And that's where the DJ is.
12 Q: Oh, okay. Okay.
13 A: That's where he's playing music.
14 Q: 'Cause I think when -- yeah, okay, that's fine.
15 That clears it up. Thank you.
16 MAYOR PRO TEM GRAY: OKAY. ANY FURTHER
17 QUESTIONS? OKAY. THANK YOU OFFICER. NEXT
18 WITNESS.
19 MR. BATTLE: YES, SIR. I HAVE TWO
20 WITNESSES LEFT.
21 MAYOR PRO TEM GRAY: OKAY. OFFICER. YOU WERE
22 SWORN IN. CORRECT?
23 OFFICER CLEVER: YES, SIR.
24 MR. BATTLE: HAVE A SEAT RIGHT THERE.
25 MAYOR PRO TEM GRAY: IF YOU'LL HAVE A SEAT RIGHT

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HERE. THIS IS OUR STAND, OUR WITNESS STAND.
IF YOU WILL STATE YOUR NAME AND SPELL IT FOR
THE RECORD, PLEASE.

OFFICER CLEVER: MY NAME IS DAVID CLEVER,
LAST NAME C-L-E-V-E-R.

MAYOR PRO TEM GRAY: OKAY. THANK YOU. SIR.

OFFICER CLEVER: THANK YOU.

DIRECT EXAMINATION

BY MR. BATTLE:

Q: Officer Clever, how long have you been with the
Myrtle Beach Police Department?

A: Total law enforcement, fourteen years, twelve
with the City.

Q: Twelve with the City. All right. Now, we've had
reports with regard to Club Elite. Have you ever
been in Club Elite?

A: Yes, one time.

Q: One time. And rather than go through what
everybody has described about that, did anyone
make any comments about the dance floor while you
were at Club Elite?

A: Yes. It was during one of my key checks where an
employee advised that their, "Dance floor was
packed".

Q: That's all I have. Thank you.

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CROSS EXAMINATION

1
2 BY MR. BELLAMY:

3 Q: Is it Officer Clever?

4 A: Very good. Yes, sir.

5 Q: All right. Officer Clever, how long have you
6 been -- Let me ask this, how long have you been
7 employed with the Myrtle Beach Police Department?

8 A: Fourteen years, total, twelve with the City.

9 Q: Did you ever respond to what was previously
10 known, I think, as Club Red?

11 A: Club Red?

12 Q: Yes, this same premises, I think it was formerly
13 known as Club Red?

14 A: In what capacity?

15 Q: It was a pool hall?

16 A: No, no, you asked did I ever respond ---

17 Q: In reporting to a call or, you know, I mean, did
18 you ever, being on patrol, did you ever show up
19 based upon a call or do any type of investigation
20 at Club Red?

21 A: Yes.

22 Q: And Club Red was a pool hall, correct?

23 A: I can't comment or I don't recall exactly how
24 they were zoned through a business license for
25 that other establishment.

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1 Q: Well, as an officer, I'll represent to you that
2 they were a pool hall, okay?

3 A: Okay.

4 Q: And I'll represent to you they served alcohol and
5 beer. Did you ever observe any dancing occurring
6 as far as Red's?

7 A: That -- no, I don't recall any dancing.

8 Q: Let me show you what I've got. This is one that
9 says, "Red, Relax, Eat and Dance." This is the
10 same premises, and it's got November 5th, 2012.
11 There's dancing occurring right there. This is
12 another one that says, "Red, Relax, Eat, Dance."
13 This is another one. This may be similar. It
14 says, "Red, Relax, Eat and Dance." I mean,
15 basically the pictures, two or three people are
16 dancing, correct?

17 A: Well, it looks like they're running; however,
18 that might be a form of dance, yes.

19 Q: Well, they're running, but they're not one
20 hundred and fifty square feet, correct?

21 A: Sure. Sure.

22 COUNCILWOMAN MEANS: I'M NOT SURE WHY WE'RE
23 TALKING ABOUT CLUB RED. THEY'RE NOT A RELEVANT
24 TO THIS CASE WE'RE DISCUSSING TODAY.

25 MR. BATTLE: MADAM COUNCILWOMAN, WHAT

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1 I'M SAYING IS. IS CLUB RED WAS A POOL HALL AND
2 THEY SERVED ALCOHOL. BEER. AND OCCASIONALLY,
3 THEY DANCED ON THE DANCE FLOOR AND NOBODY MADE
4 A BIG DEAL ABOUT IT. NOBODY, YOU KNOW, BROUGHT
5 AN ACTION ---
6 COUNCILWOMAN MEANS: BUT AGAIN, WE'RE NOT
7 TALKING ABOUT CLUB RED TODAY.
8 MR. BATTLE: --- BROUGHT AN ACTION TO
9 REVOKE OR SUSPEND, YOU KNOW, THE BUSINESS
10 LICENSE.
11 COUNCILWOMAN MEANS: BUT THEY'RE NOT AT THE
12 HEARING HERE TODAY.
13 MR. BELLAMY: ALL RIGHT. THEY'RE A PART
14 OF THE RECORD, AND I WAS JUST ASKING THE
15 OFFICER ABOUT IT. WITH ALL DUE RESPECT, I'VE
16 ESTABLISHED MY POINT THAT CLUB RED, WHICH WAS
17 THE CLUB THAT WAS BEING OPERATED BEFORE MY
18 CLIENT TOOK IT OVER, THEY'VE GOT PICTURES WHERE
19 THEY MOVED POOL TABLES AND THEY DANCED AND IT
20 WASN'T A BIG DEAL AT THAT POINT IN TIME. THANK
21 YOU. THAT'S ALL I'VE GOT.
22 MAYOR PRO TEM GRAY: THANK YOU, MR. BELLAMY.
23 ANYTHING ELSE?
24 MR. BATTLE: NOTHING FURTHER.
25 MAYOR PRO TEM GRAY: ANY QUESTIONS FOR OFFICER

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1 CLEVER FROM THE PANEL?
2 (NO RESPONSE).
3 MAYOR PRO TEM GRAY: THANK YOU, SIR, AND YOU MAY
4 STEP DOWN.
5 OFFICER CLEVER: THANK YOU.
6 MAYOR PRO TEM GRAY: YOU SAID YOU HAVE ONE LAST
7 WITNESS?
8 MR. BATTLE: CHIEF GALL.
9 MAYOR PRO TEM GRAY: OKAY. CHIEF, IF YOU WOULD
10 DO THE SAME, SIR. YOU HAVE BEEN SWORN IN?
11 CHIEF GALL: YES, SIR.
12 MAYOR PRO TEM GRAY: IF YOU WOULD STATE YOUR
13 NAME AND SPELL IT FOR THE RECORD.
14 CHIEF GALL: WARREN S. GALL. G-A-L-L.
15 CHIEF OF POLICE, CITY OF MYRTLE BEACH.
16 MAYOR PRO TEM GRAY: YOU MAY PROCEED, SIR.
17 DIRECT EXAMINATION
18 BY MR. BATTLE:
19 Q: Chief Gall, Council is familiar with who you are,
20 they've worked with you for a long time, so I'm
21 just going to ask you to get straight to the
22 point. Did you make a request for an
23 investigation of the Business License
24 Administrator to consider the business license or
25 investigate the business license for Elite Ultra

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1 Lounge?
2 A: Yes. I did.
3 Q: Could you tell the Council why you did?
4 A: They were -- we were looking at them because of
5 some issues that had been occurring on their
6 property, specifically the shooting in the
7 parking lot. and as I recall, the information
8 that was presented by the investigators to me on
9 the night of the shooting was that police were
10 arriving and trying to investigate, no -- no one
11 from the management or ownership would come out
12 the door and actually couldn't find them on the
13 property for a time being. I don't know that
14 they ever did find them that morning. So we
15 started making walk-throughs of the clubs, like
16 we do all the clubs.

17 On the early morning of the 26th of May
18 at 1:15, which is a Sunday morning, Captain Hines
19 and I went to Club Elite. We had previously
20 driven through the parking lot about ten o'clock
21 Saturday night, there was nobody there, and came
22 in about one -- drove through about 1:15, we
23 noticed there was a small line at the door.
24 There was about twenty people standing in line.
25 We noticed a couple of outdoor vendors set up

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1 next to the building, one was in a tent, one was
2 not, so they appeared to be serving food in
3 Styrofoam boxes and cookers and everything going
4 on. So we entered the club, and the club was --
5 they had some security people standing in the
6 front, they had a cue line, kind of waving
7 through. We got through the line, went in the
8 door, in the front door, people were handing over
9 money to people standing at the front door,
10 employees standing there. They'd hand over the
11 money, then they'd allow them to go through the
12 door.

13 When we first walked, noticed the pool
14 tables were all pushed to the side, several
15 pushed in corners. All the other ones from what
16 would ideally be the area where you shoot pool
17 were all pushed up against the side. There were
18 Styrofoam containers, food containers, on the
19 pool tables. No one was playing pool. The pool
20 cue rack was sitting way off in the corner.
21 People were sitting on the pool tables. They had
22 a DJ, loud music, about forty to fifty people in
23 the club. The dance floor was approximately as
24 big as this room right here, maybe a little bit
25 larger. In my opinion, just from visualizing it,

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1 it, it was about this big, I'd say maybe, you
2 know, a little larger. The music was very loud.
3 One person was dancing in the middle of the
4 floor, and when we walked in, somebody from
5 Management, I don't know who it was, yelled at
6 them to get off the dance floor. So Captain
7 Hines took some photos. He spoke with the
8 manager, I did not. We went back outside. We
9 had conversations with the two vendors. They
10 were not permitted, so they were asked to close
11 up and leave, and they did, did so, and we
12 proceeded on. Shortly thereafter, had some
13 conversations about their license and
14 understanding that they were a pool hall, and
15 based upon that, wrote the letter asking that the
16 Business License Administrator investigate their
17 license and the issuance of their license.

18 MR. BATTLE: NOTHING FURTHER.

19 MAYOR PRO TEM GRAY: ANY QUESTIONS, MR. BELLAMY?

20 WOULD YOU LIKE TO CROSS-EXAMINE CHIEF GALL?

21 CROSS EXAMINATION

22 BY MR. BELLAMY:

23 Q: Chief Gall, how are you doing?

24 A: I'm doing fine.

25 Q: Is there anything based upon your investigation

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1 as far as that leads you to believe that the
2 activity or conduct which is occurring out at
3 Elite is tantamount to a nuisance or anything
4 unlawful that's occurring inside the premise,
5 except for dancing?

6 A: I mean, at this time, based upon the shooting
7 that we had, that certainly generated an
8 investigation into a nuisance, but we're not at
9 that point, yet.

10 Q: Okay. They have other clubs in Myrtle Beach
11 where shootings and things occur. Is that the
12 only incident, as far as the shooting, is that
13 the thing that obviously has basically gotten
14 your attention as far as looking at what's
15 happening in the club? Are there any other
16 things that have occurred, unlawful activity,
17 anything over a period of eighty-eight days?

18 A: I'm, I'm not aware of any illegal activities that
19 have raised the level of arrests, but certainly,
20 again, because of the, the circumstances and
21 because of what has been reported, you know, I
22 have asked them to investigate the issuance of
23 that license.

24 Q: Were you aware of the fact that the alleged
25 shooters were not permitted access into the

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1 inside premises of the Elite, they were turned
2 away?

3 A: No, I'm. I'm not aware of a lot of the
4 information. I mean, a lot of the information
5 we're getting has been pretty, pretty sketchy.
6 cooperation-wise.

7 Q: Okay. No further questions.

8 MAYOR PRO TEM GRAY: THANK YOU. MR. BATTLE?

9 MR. BATTLE: I HAVE NO FURTHER
10 QUESTIONS.

11 MAYOR PRO TEM GRAY: OKAY. MR. LOWDER?

12 EXAMINATION

13 BY COUNCILMAN LOWDER:

14 Q: Chief, you've been a police officer at Myrtle
15 Beach for close forty years?

16 A: Thirty-three years at the City.

17 Q: Prior to you being chief of police, you worked on
18 the street?

19 A: Yes.

20 Q: You've been in and around Myrtle Beach a long
21 time, and during that time, as you were the
22 street police officer, you've been in pool halls?

23 A: I've been in pool halls, nightclubs, every --
24 everything you can imagine.

25 Q: The pool halls you've been into, did they look

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1 and operate the same way as Club Elite did?
2 A: The pool halls I've been in are not operated the
3 same way that Club Elite was the night I walked
4 in there on the 26th.
5 Q: Thank you.
6 MAYOR PRO TEM GRAY: MS. MEANS?
7 EXAMINATION
8 BY COUNCILWOMAN MEANS:
9 Q: You said there were two vendors set up outside,
10 one was selling food. What was the other one
11 selling?
12 A: Both were selling food.
13 Q: Oh, okay.
14 COUNCILMAN LOWDER: I HAVE ONE QUESTION.
15 MAYOR PRO TEM GRAY: YOU HAVE ANOTHER QUESTION?
16 COUNCILMAN LOWDER: YEAH.
17 RE-EXAMINATION
18 BY COUNCILMAN LOWDER:
19 Q: Chief, when you were inside the establishment,
20 did you see any food being sold inside or did it
21 look like all the food that was in there was from
22 outside?
23 A: Everything, everything that I saw, food-wise, was
24 in those Styrofoam containers which were similar
25 to what was being sold outside.

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1 Q: Thank you.
2 MAYOR PRO TEM GRAY: THANK YOU. ANY FURTHER
3 QUESTIONS FROM THIS PANEL?
4 (NO RESPONSE).
5 MAYOR PRO TEM GRAY: MR. BELLAMY, MR. BATTLE,
6 ANY FURTHER QUESTIONS OF CHIEF GALL?
7 CHIEF GALL: THANK YOU.
8 MR. BATTLE: MS. McDOWELL REMINDED ME
9 THAT I'M NOT DOING MY BEST JOB. I APOLOGIZE. I
10 CALL KEN MAY. I THINK Y'ALL PROBABLY WANT TO
11 HEAR FROM THE ZONING ADMINISTRATOR AS TO WHAT'S
12 ALLOWED IN THIS ZONE FOR THE RECORD.
13 MAYOR PRO TEM GRAY: THAT'LL BE FINE. KEN, MR.
14 MAY.
15 MR. MAY: YES, SIR.
16 MAYOR PRO TEM GRAY: YOU'VE BEEN SWORN IN,
17 CORRECT?
18 MR. MAY: YES, SIR.
19 MAYOR PRO TEM GRAY: IF YOU'LL STATE YOUR NAME
20 AND SPELL IT FOR THE RECORD, PLEASE.
21 MR. MAY: KENNETH MAY. K-E-N-N-E-T-H,
22 M-A-Y.
23 DIRECT EXAMINATION
24 BY MR. BATTLE:
25 Q: Mr. May, you are the Zoning Administrator for the

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1 City of Myrtle Beach?
2 A: Yes, sir.
3 Q: Are you familiar with the zoning code for the
4 City of Myrtle Beach?
5 A: Yes, sir.
6 Q: Let's talk about Club Elite, and are you familiar
7 with the operations of Club Elite?
8 A: Yes, sir.
9 Q: Does it meet the zoning requirements there?
10 A: No, sir.
11 Q: Explain to Council what is required in the C-3
12 Commercial Zone, which is in those books, and why
13 it doesn't meet the zoning there.
14 A: It may be easier to say what's not allowed in C-
15 3, which is bars and nightclubs. A billiard
16 parlor is allowed in the C-3 zoning
17 classification, and upon inspection of the
18 property, there were eight pool tables on the
19 property set up from side to side and two by the
20 front door. That's what I used to make my
21 determination to sign off on it as a pool hall or
22 a billiard parlor.
23 Q: What's changed your mind?
24 A: The reports and incidents of the pool tables
25 being pushed to the side, so it's no longer

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1 operating as a pool hall.
2 Q: What is it operating as?
3 A: It would be a bar/nightclub.
4 Q: And also, as a bar/nightclub, you have to have a
5 sprinkler system?
6 A: Based off the information that the building code
7 officials have, a previous conversation, yes.
8 sir.
9 Q: All right. Did you have any conversations with
10 anybody from Club Elite as to the requirements
11 for it being a billiard hall?
12 A: Whenever the business license was first applied
13 for, it was mentioned there only being four pool
14 tables in there and, you know, it was set up
15 based off that, told them that that did not meet
16 the requirements of a billiard parlor, and then
17 that's when they added the additional pool
18 tables.
19 Q: Who did you talk with, do you recall?
20 A: A gentleman that -- it wasn't -- not Brooke.
21 Q: Mr. Javon Kennedy?
22 A: Yes, sir.
23 Q: And the point I want to make, were they clear
24 that this had to be operated as a pool ---
25 A: Yes, sir.

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1 Q: --- table, pool hall, and the pool tables had to
2 be kept in a certain configuration?

3 A: They were told that was the only way that I could
4 sign off on the business license.

5 Q: That's all I have. Thank you.

6 MAYOR PRO TEM GRAY: MR. BELLAMY, DO YOU WISH TO
7 CROSS-EXAMINE?

8 MR. BELLAMY: SURE.

9 CROSS EXAMINATION

10 BY MR. BELLAMY:

11 Q: Is it all right to call you Ken?

12 A: Perfect.

13 Q: As far as in the zoning part of the code, is
14 there a definition for a pool hall or a
15 billiard's room?

16 A: Not really. We, we rely on Webster's.

17 Q: On Webster's? There's not a definition, okay.
18 So as far as a billiard's room or a pool hall,
19 there's nothing saying that you have to have
20 eight tables as opposed to fifteen, correct?

21 A: Correct.

22 Q: Is there anything in the zoning code part of the
23 code that says that you can't dance in a pool
24 hall?

25 A: No, sir.

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- 1 Q: Okay. And there's not anything in the zoning
2 code with respect to pool halls that says you
3 can't serve alcohol, correct?
- 4 A: Correct.
- 5 Q: And it doesn't limit the amount of alcohol you
6 can serve in a pool hall, correct?
- 7 A: That's where the fine line comes into play. You
8 got to look at the code as being from the idea
9 sometimes the code tells you more what you cannot
10 do than what you can do.
- 11 Q: Let me ask this. We've talked about the whole
12 issue about, you know, moving pool tables and
13 dancing and all that, but my real question is
14 that if the gross receipts of the alcohol and
15 food exceed the gross receipts of the gaming and
16 pool, does that change the use from a pool hall
17 to a nightclub?
- 18 A: You got to factor in more than that.
- 19 Q: Well, does the zoning code for the City of Myrtle
20 Beach provide any guidance on that?
- 21 A: A bar or nightclub is not allowed as a primary
22 use in that zoning classification.
- 23 Q: Why?
- 24 A: If the majority of your income is coming from
25 alcohol, then that's going to deem it to be your

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1 primary use.

2 Q: But you have three business licenses, you got a
3 business license for a drinking establishment,
4 you got a business license to serve food, and you
5 got a business license for pool.

6 A: Correct.

7 Q: How do you determine which one -- I understand
8 you're saying the bar is not permitted in the C-3
9 zoning district, but as far as, you know, a
10 restaurant is deemed to permit use, correct?

11 A: Yes, sir.

12 Q: And when you signed off on the business license
13 for alcohol, it wasn't limited or conditioned
14 that the gross receipts of alcohol would not
15 exceed the gross receipts for gaming, correct?

16 A: Correct.

17 Q: And the code doesn't really address that, does
18 it?

19 A: Again, you're just looking at one facet of it,
20 you know, you've got to look at the primary use.
21 The primary use of that property was as a pool
22 hall.

23 Q: Okay.

24 A: Okay. So if the primary use is pushed up against
25 the wall, then your primary use is no longer

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1 primary use.

2 Q: Can the primary use of this property be a
3 restaurant?

4 A: Yes, sir, and then that's when your alcohol and
5 food sales is going to come into play if it was
6 licensed solely as a restaurant.

7 Q: Were you familiar with the two businesses that
8 operated at this location?

9 A: I knew they were there, never, never went in them
10 or anything along those lines.

11 Q: Do you know what happened to them?

12 A: I guess they shut down for not making -- for not
13 being profitable.

14 Q: That's right. Have you ever known a situation
15 where the gross receipts of gaming, such as
16 billiards, exceeded alcohol and food?

17 A: I rely on Business License to keep me informed.

18 Q: No. I'm talking as far as being informed in any
19 business whether -- How long have you been
20 employed with the City of Myrtle Beach?

21 A: Seven years.

22 Q: Seven years?

23 A: They've had several cases in regard to
24 restaurants. Like I said, there's not a whole
25 lot of billiard parlors in the City of Myrtle

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1 Beach. We've had several cases regarding
2 restaurants where the alcohol sales have exceeded
3 the food sales.

4 Q: But as far as billiards, do you know of any
5 occasion where a pool hall, the gross receipts of
6 gaming exceeded alcohol and food?

7 A: I think the gross receipts of gaming at the
8 previous thing that was there exceeded that.

9 Q: They went out of business, didn't they?

10 A: Must've been a bad business plan.

11 Q: Do you know how much they charge to play pool in
12 there?

13 A: I have no idea. There's several ways to charge.
14 You can charge by the hour, you can charge by the
15 game.

16 Q: Well, let's say you charge a dollar by the game.
17 correct?

18 A: Uh-huh (affirmative response).

19 Q: And you play six games an hour, and you got seven
20 hours that you operate, if you do the
21 calculations, it comes out to be three hundred
22 and thirty-six dollars a night.

23 A: Uh-huh (affirmative response).

24 Q: And let's say you've got the lease, which is part
25 of the record, you've got to pay four thousand

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1 MAYOR PRO TEM GRAY: MR. WALLACE.

2 EXAMINATION

3 BY COUNCILMAN WALLACE:

4 Q: Just out of curiosity, if we did not have a
5 number of other issues going on here and this was
6 eight pool tables in there and the alcohol sales
7 were sixty-two percent, would that be reason to
8 close it down according to the -- I guess I'm
9 trying to figure out what, what role these
10 percentages have in any, in any of this?

11 A: Well, that's a good question, but then, again, I
12 don't think the percentages even need to come
13 into play where they've got the pool tables
14 pushed up against the pool hall, no matter what
15 your numbers are, you're not operating as a pool
16 hall, when there's pool tables pushed up against
17 the wall.

18 Q: But if that were not an issue, would that matter
19 in C-3 if sixty-two percent of your alcohol
20 instead of billiards could -- more money coming
21 in from the alcohol and the pool games?

22 A: That's something I'd really have to look into.
23 It would definitely be a factor, and again, you
24 just got to look at all the regulations, I mean,
25 I could even say there you're operating more as a

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1 bar than you are a pool hall, you know, you got
2 -- as Mr. Lowder mentioned earlier, all the pool
3 halls I've been into were mainly in a real small
4 place. they shot a lot of pool, they had a whole
5 lot of pool tables, you know. So as far as the
6 sixty percent goes, I know that applies a hundred
7 percent -- I'm sure that applies in regard to the
8 food and alcohol in regard to a restaurant, and
9 again, that would make that the primary use the
10 bar and the alcohol.

11 MAYOR PRO TEM GRAY: ANY FURTHER QUESTIONS?
12 MR. BATTLE: NOTHING FURTHER.
13 MAYOR PRO TEM GRAY: NOTHING FURTHER FROM MR.
14 BATTLE. MR. BELLAMY, WOULD YOU LIKE TO ASK THE
15 WITNESS A QUESTION?
16 MR. BELLAMY: THANK YOU, MAYOR PRO TEM
17 GRAY.

18 RE-CROSS

19 BY MR. BELLAMY;
20 Q: Ken, is there anything that really explains or
21 defines primary use versus what or tell you what
22 primary use is as far as the business licensing
23 code in conjunction with the zoning code? I read
24 it and I didn't see ---
25 A: There's a, there's a lot of things that come into

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1 play. I know a lot of it is interpretation and
2 you've got to provide how it's operated.
3 Q: What I'm saying specifically, I mean, I
4 understand you can take it all together and look
5 at it as a whole but ---
6 A: Yeah. It's my opinion you have to.
7 Q: I understand, but there's nothing that
8 specifically addresses or provides guidance of
9 how you sit down and determine what the primary
10 use is or if you've got three business licenses,
11 ---
12 A: Uh-huh (affirmative response).
13 Q: --- you know, two are lawful, the restaurant/
14 pool hall. You could serve alcohol in a pool
15 hall.
16 A: Uh-huh (affirmative response).
17 Q: And where you draw the line between where too
18 much, where you can't serve enough alcohol, it's
19 the whole thing about gross receipts. The thing,
20 what this really boils down to, the way I see
21 what's happening based upon the testimony is, is
22 the City is really upset with Elite, the
23 management of Elite and the owners of Elite.
24 based upon the fact they moved the pool tables at
25 three, four o'clock in the morning against the

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1 walls and were dancing, correct?
2 A: I'm not upset with anybody.
3 Q: Well. I mean, as far as the -- What I'm saying is
4 the City, but, I mean, as far as the suspension
5 and revocation of their business license, that's
6 what it really boils down to?
7 A: No, what it boils down to is you got a permit to
8 be a pool hall ---
9 Q: Right.
10 A: --- based on what zone classification is, zone
11 classification does not allow a restaurant, does
12 not allow a nightclub. You were permitted as a
13 pool hall, okay?
14 Q: Right.
15 A: And, and everybody is just trying to say on
16 money, money, there's several factors that come
17 into play. You can't be a pool hall with all
18 your tables pushed up against the wall, you know,
19 it's not -- it doesn't say you got to be a pool
20 hall seventy-five percent of the time, you're a
21 pool hall one hundred percent of the time.
22 Q: But I think you answered my question earlier,
23 there's nothing in the zoning as far as
24 definitions or use restrictions that say you
25 can't dance in a pool hall, correct?

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1 A: Correct, I mean, there's nothing that says you
2 can't dance anywhere, because you got -- it comes
3 down to my interpretation, and my interpretation
4 is with the pool tables pushed up against the
5 wall, you're not operating as, as a billiard
6 parlor or a pool hall.

7 Q: Do you know how many times they pushed the tables
8 up against the wall based upon your
9 investigation?

10 A: Once is enough. That puts you in violation. One
11 time puts you in violation.

12 Q: Just one time, as I understand it. ---

13 A: A violation, violation ---

14 Q: -- it's your testimony that if they push the
15 table up one time, the City has a right to go in
16 there and suspend and -- or suspend their
17 license?

18 A: I deal with zoning. I don't deal with business
19 license operation procedures.

20 Q: Would you give them an opportunity to come into
21 compliance, assuming that was a violation?

22 A: I mean, I can cite you for a violation, you can
23 come into compliance, but I'll still cite you for
24 a violation.

25 Q: Okay. No further questions.

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413 Paul Street
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1 MAYOR PRO TEM GRAY: THANK YOU, MR. BELLAMY.
2 MR. BATTLE: NOTHING FURTHER. AND THAT
3 CONCLUDES OUR PRESENTATION.
4 MAYOR PRO TEM GRAY: THAT CONCLUDES PRESENTATION
5 OF THE ATTORNEY REPRESENTING THE BUSINESS
6 LICENSE. MR. BELLAMY, DO YOU HAVE ANY
7 WITNESSES THAT YOU WOULD LIKE TO PLACE IN THE
8 STAND AND GIVE TESTIMONY, SIR?
9 MR. BELLAMY: YES, MAYOR PRO TEM GRAY.
10 COULD WE TAKE A FIVE MINUTE RECESS?
11 MAYOR PRO TEM GRAY: WE CAN TAKE A THREE MINUTE
12 RECESS.
13 MR. BELLAMY: THAT'S FINE, AND THEN WE'LL
14 BE QUICK.
15 MAYOR PRO TEM GRAY: OKAY. WE STAND ADJOURNED
16 FOR THREE MINUTES.
17 *****OFF THE RECORD*****
18 (ON THE RECORD.)
19 MR. BELLAMY: MIKE?
20 MAYOR PRO TEM GRAY: ALL RIGHT, MR. BELLAMY.
21 MR. BATTLE: YES, SIR.
22 MR. BELLAMY: I WOULD LIKE TO CALL
23 STEPHANI JAMES, BUT IN FAIRNESS, I DON'T THINK
24 SHE WAS SWORN IN BUT ---
25 OFFICER JAMES: I WAS.

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1 MR. BATTLE: SHE WAS.
2 MR. BELLAMY: OKAY. ALL RIGHT.
3 MAYOR PRO TEM GRAY: DO YOU HAVE ANY OBJECTION,
4 SIR.
5 MR. BATTLE: I HAVE NO OBJECTION, ---
6 MAYOR PRO TEM GRAY: OKAY, NO OBJECTION.
7 MR. BATTLE: --- ANYBODY YOU WANT TO
8 CALL.
9 MR. BELLAMY: OKAY, COME ON.
10 MAYOR PRO TEM GRAY: IF YOU WILL, STATE YOUR
11 NAME AND SPELL IT FOR THE RECORD, PLEASE.
12 OFFICER JAMES: STEPHANI JAMES, S-T-E-P-H-
13 A-N-I, LAST NAME JAMES, J-A-M-E-S.
14 MAYOR PRO TEM GRAY: AND YOU WERE SWORN IN,
15 CORRECT?
16 OFFICER: YES. CORRECT.
17 MAYOR PRO TEM GRAY: OKAY. GO AHEAD, MR.
18 BELLAMY.
19 DIRECT EXAMINATION
20 BY MR. BELLAMY:
21 Q: Officer James, how long have you worked for the
22 Myrtle Beach Police Department?
23 A: Twelve and a half years, sir.
24 Q: Okay. And could you briefly or explain your
25 involvement with Elite?

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1 A: Okay. I was advised on a Monday briefing that a
2 shooting incident had occurred over the weekend,
3 but you guys are aware of that.
4 Q: Right.
5 A: That's already been brought up. I met with the
6 owner, Brooke Kennedy, her general manager, and
7 two detectives from the Myrtle Beach ---
8 Q: Right here?
9 A: Yes. Yes. I basically photographed the inside
10 of the location. At that time, shortly after the
11 detectives arrived on scene, the general manager
12 was able to provide information to the
13 detectives, a possible lead for possible
14 suspects.
15 Q: Regarding the shooters?
16 A: Yes. Correct, the shooters, yes, and that
17 information was conveyed on to the detectives.
18 Q: All right. Now, I see you took some pictures,
19 too.
20 A: Yes. These are not my pictures. These are the
21 pictures of Officer Clever of what he observed.
22 I don't know if he was able to show these to you
23 earlier or not. Yes, if you'll please pass them
24 to the council members.
25 MAYOR PRO TEM GRAY: DO YOU OBJECT TO THOSE

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1 PICTURES BEING PASSED AROUND?

2 MR. BELLAMY: NO. NO.

3 MR. BATTLE: NO.

4 A: But these are the pictures that I have right
5 here. This is the one -- there's three -- when
6 you first walk into the establishment there was a
7 pool table off to the left in the corner.
8 There's three pool tables along the side this
9 wall here (indicating), one over here in this
10 corner (indicating), and then on the other side
11 of where the DJ stage is at.

12 Q: Right here, are you saying that these pictures,
13 the reason they were taken is to show there was a
14 dance floor, there wasn't a dance floor? What do
15 they depict?

16 A: I just wanted to show where the tables were
17 located.

18 Q: Right.

19 A: And when I went back in and on a cleanup morning,
20 the tables were in the exact same location,
21 because I had received information from officers
22 that the tables were pushed against the wall.

23 Q: Right.

24 A: But when I went in at 10:30 in the morning, they
25 were in the same location as what I observed on

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1 Tuesday; however, that's where Officer Clever
2 comes into play. He went in the next morning at
3 five something in the morning. That's where it
4 shows those pictures over there, the pool tables
5 pushed against the wall, speakers in front of
6 them, speakers on top, and that's when the
7 cleaning guy or the helper to the DJ made the
8 utterance to him about the dance floor was
9 packed.

10 Q: Okay.

11 A: I was just wanting to show what I'm observing
12 when I go versus what other officers were
13 observing. And the placement of what I observed
14 and photographed, they were in a position to
15 where it would lead one to believe there was
16 plenty of room to play pool; however, I'm getting
17 from other officers that when they noticed them,
18 they were not in a position to where somebody
19 could play pool, they were pushed against the
20 wall.

21 Q: Okay. So actually, when you went out there, you
22 observed ---

23 A: They were in a position to where you could play
24 pool.

25 Q: Okay. How many times did you have an occasion to

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go to Elite?

A: Twice, once with the detectives and then that --
the morning. Friday morning at around 10:30 in
the morning.

Q: And on both occasions that you had a chance to go
out there. did you observe the pool tables in a
location where you could play pool?

A: Yes, sir.

Q: Okay. Thank you. I have no further questions.

MAYOR PRO TEM GRAY: THANK YOU. MR. BATTLE?

MR. BATTLE: NO QUESTIONS.

MAYOR PRO TEM GRAY: MR. LOWDER?

EXAMINATION

BY COUNCILMAN LOWDER:

Q: Officer James, but you saw this in the morning
time?

A: Correct.

Q: So you didn't see anything about the pool tables
or anything during the hours of operation at
night?

A: No, sir.

Q: Thank you.

MAYOR PRO TEM GRAY: ANY OTHER QUESTIONS OF
OFFICER JAMES?

(NO RESPONSE).

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1 MAYOR PRO TEM GRAY: THANK YOU, MA'AM. YOU MAY
2 STEP DOWN.
3 OFFICER JAMES: DID YOU WANT TO KEEP THOSE
4 PICTURES?
5 MR. BATTLE: YES, THEY'RE IN EVIDENCE.
6 MAYOR PRO TEM GRAY: THEY ARE ENTERED INTO
7 EVIDENCE. EVERYONE OKAY WITH THAT? MR.
8 BELLAMY?
9 MR. BELLAMY: OKAY. CALL MATTHEW PATZ.
10 MAYOR PRO TEM GRAY: SIR. AGAIN, YOU WERE SWORN
11 IN. CORRECT?
12 MR. PATZ: YES, SIR.
13 MAYOR PRO TEM GRAY: IF YOU WILL STATE YOUR NAME
14 AND SPELL IT FOR THE RECORD.
15 MR. PATZ: MATTHEW PATZ, P-A-T-Z.
16 DIRECT EXAMINATION
17 BY MR. BELLAMY:
18 Q: Matt, would you give the Council Members the
19 benefit of your educational background?
20 A: I'm a graduate from the Citadel, a CPA, been a
21 CPA for twenty years, Charleston and Myrtle
22 Beach, Conway. I've been in public practice the
23 whole time. Now I focus primarily on forensic
24 accounting and business consulting.
25 Q: Matt, have you ever been qualified as an expert

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1 by any courts in the State of South Carolina as a
2 forensic accountant?

3 A: Yes, sir.

4 Q: Which court?

5 A: In Charleston and in Horry County.

6 Q: Okay. Now, when did you get involved in this
7 matter?

8 A: Just Friday, when I received a phone call from
9 you.

10 Q: That's when I got involved, too.

11 A: Nice to meet you, come listen and see what I can
12 assist you with.

13 Q: What I want to do is kind of speed things along.
14 Could you kind of explain to the Council Members,
15 based upon your investigation, what the facts,
16 circumstances, revealed about the financial
17 matters?

18 A: Yeah. You asked me to review the business
19 license application process and the figures and
20 numbers and look at the letter and report to you
21 my determination or what I thought or could
22 report on it, and experience with the business
23 license process, you know, when you are first
24 initially applying you don't have history of
25 sales, so you have to estimate your sales in

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1 order to apply for your license. When you renew
2 it, you use your real numbers after twelve months
3 and then you make a -- if you shorted it or, you
4 know, when you initially applied. There's no
5 history on financial information to apply for the
6 initial license, they estimated it. They were
7 only in business from April 5th until -- I
8 believe they applied May 23rd, so there's roughly
9 forty-eight ---

10 Q: March, I think, March, and then the application
11 was issued on ---

12 A: I have forty-nine days they were actually in
13 business that they used to estimate the upcoming
14 year, so there wasn't twelve months there; of
15 course, you had to take -- according to the
16 license application, you take the time frame you
17 were there, if it's a couple of months, you can
18 divide it by the number of months you're actually
19 in business times that by the twelve and that
20 gives you twelve months.

21 According to review of the application,
22 that was done, and that's where you get the
23 percentages of the food, alcohol and pool sales.
24 Nothing did I see in any of the code that
25 stipulates a primary business license or

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1 controlling license, whether it's a pool hall or,
2 or alcohol controls the -- but according
3 financially, I can see where they applied and
4 they paid the license, according to the
5 classification rates, you know, the way they were
6 supposed to.

7 Q: All right. I'm going to ask you ---

8 A: That's really it, financial-wise on the license.

9 Q: Was there anything to lead you to believe that
10 they falsified any financial information?

11 A: No. Like I said, based on the forty-nine days
12 they're actually in business, if you take the
13 actual true sales and you ran it through the
14 formula, I got a variance of nine hundred dollars
15 versus what they actually put on the application,
16 so that's a immaterial variance to try and
17 investigate why they're off the calculation. So
18 in my opinion, no, there's no misrepresentation
19 of financial information at all. They did it
20 according to guidelines.

21 Q: Based upon a conversation you had with Javon
22 Kennedy and Brooke Kennedy, did you recalculate
23 or re-compute as far as what the numbers were,
24 percentages, as far as dealing with alcohol, food
25 and game?

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1 A: Well, the question comes to is the pool, income
2 from the pool, pool revenue. They lease the
3 tables from a company, so they actually get fifty
4 percent of what the pool revenues is, but what
5 comes in question is, is the revenues earned in
6 their establishment, so does a hundred percent of
7 those revenues get reported on the business
8 license or does fifty percent? That fifty
9 percent is theirs and fifty percent is the actual
10 leasing company, you know, I, I told you I think
11 that's a question we would have to address to the
12 business license and say, "What is the proper
13 reporting, you know, for that?" I'm sure there's
14 factors to consider as to, what does the leasing
15 company do with their revenues? You wouldn't
16 want to pay it twice. I don't know if that's the
17 way you guys initially, you know, initially
18 wanted it, but if they reported it at a hundred
19 percent of pool revenues, of course, the ratios
20 and percentages would change dramatically. Their
21 pool income would be twenty-eight percent of the
22 total revenues, their alcohol would be fifty-
23 three percent of the total revenues, and the food
24 would be 17.9 percent of the total revenues as
25 compared to pool being seventeen percent, alcohol

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1 being sixty-two, and food being twenty-one as
2 stipulated in the ---

3 Q: Matt, did you have an opportunity to talk to
4 Brooke Kennedy as far as what their expenses were
5 to operate Elite?

6 A: Yeah. I, I did run a hypothetical analysis as to
7 a break even. If, if they had to break even
8 strictly off the pool revenue, not alcohol sales
9 and food sales, based on having eight tables, we
10 estimated ten minutes per game, that's about six
11 games per hour at eight tables at fifty -- fifty
12 cents a game, their revenue. Their nightly
13 income just from pool is a hundred and sixty-
14 eight dollars. Their nightly expenses is six
15 hundred dollars. So we have a hundred and sixty-
16 eight to six hundred dollars in expenses, but
17 they would have to have twenty-nine tables at one
18 dollar games splitting it fifty percent, to break
19 even at six hundred dollars or they'd have to
20 charge thirteen dollars a game. That's
21 considering it takes ten minutes to play a game,
22 so there would have to be other revenue sources
23 in order for a business to be profitable in that
24 establishment.

25 Q: No further questions.

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1 MAYOR PRO TEM GRAY: MR. BATTLE, DO YOU WISH TO
2 CROSS-EXAMINE?

3 MR. BATTLE: JUST BRIEFLY.
4 CROSS EXAMINATION

5 BY MR. BATTLE:

6 Q: Would you say they can't make it as a pool hall?

7 A: If strictly pool income is your source, I would
8 say it would be very tough, given the fact that
9 they'd have to have a lot more tables or a lot --
10 charge a lot more per games.

11 Q: And do you know what this area is zoned for?

12 A: Only off of what I've read on the letter.

13 Q: And it was permitted to be a pool hall?

14 A: Right.

15 Q: And you say that's not a viable business?

16 A: Well, ---

17 Q: If they wanted to run a nightclub ---

18 A: --- it also permitted for food and alcohol sales.
19 If you had auxiliary sales, then you would have
20 to supplement that pool source of income,
21 correct, but strictly off of a pool table only,
22 no other income, like a door charge or anything,
23 again, you would have to have twenty-nine tables
24 or charge thirteen dollars a game and eight
25 tables.

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1 Q: So there's no way it can make it as a pool hall?
2 A: It would be tough.
3 Q: Right. And these figures and numbers that were
4 provided and provided to you, have they been
5 audited?
6 A: No.
7 Q: That's all I have. Thank you.
8 MAYOR PRO TEM GRAY: WOULD YOU LIKE TO RE-DIRECT
9 THAT, SIR?
10 MR. BELLAMY: NO.
11 MAYOR PRO TEM GRAY: OKAY. ANY QUESTIONS FROM
12 THIS PANEL FOR ---
13 MR. LOWDER: YES.
14 MAYOR PRO TEM GRAY: OKAY. MR. LOWDER?
15 EXAMINATION
16 BY COUNCILMAN LOWDER:
17 Q: Understanding what your being here today is for,
18 it's about finance and about all this, but other
19 than that, you don't know anything about what the
20 operation was of this place, establishment, at
21 night, then, do you?
22 A: No, sir.
23 Q: Thank you.
24 MAYOR PRO TEM GRAY: NO FURTHER QUESTIONS? YOU
25 MAY STEP DOWN, SIR. DO YOU HAVE ANYMORE

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1 WITNESSES. MR. BELLAMY?
2 MR. BELLAMY: JAVON KENNEDY.
3 MAYOR PRO TEM GRAY: IF YOU WOULD, STATE YOUR
4 NAME AND SPELL IT FOR THE RECORD. SIR.
5 MR. KENNEDY: MY NAME IS JAVON KENNEDY,
6 J-A-V-O-N, LAST NAME IS K-E-N-N-E-D-Y.
7 MAYOR PRO TEM GRAY: AND YOU WERE SWORN IN
8 EARLIER, SIR?
9 MR. KENNEDY: YES, SIR.
10 MAYOR PRO TEM GRAY: OKAY. THANK YOU, SIR. YOU
11 MAY PROCEED, MR. BELLAMY.
12 MR. KENNEDY: I'LL BE BRIEF. FROM THE
13 VERY BEGINNING, MY WIFE WENT TO LEASE A
14 BUILDING THAT WAS CALLED RED OR THE CORNER
15 POCKET. THIS FLOOR PLAN YOU'RE LOOKING AT IS
16 THE FLOOR PLAN OF THAT ESTABLISHMENT. THIS IS
17 IT. IT HAS THREE POOL TABLES, A KITCHEN,
18 COUCHES, A DJ BOOTH, EVERYTHING. THIS WAS
19 APPROVED BY THE PLANNING AND ZONING COMMISSION
20 FOR RED TO OPERATE AS A POOL HALL, EATING PLACE
21 AND DRINKING PLACE. SO WHEN WE WENT TO APPLY
22 FOR THE BUSINESS LICENSE, MY WIFE IS A R.N.,
23 SHE SIGNED THE APPLICATIONS AND SHE SEND ME IN.
24 THIS IS OUR FIRST TIME. WE -- I WALKED IN
25 THERE, GOT A WATER BILL. TOOK IT OVER TO THE

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1 BUSINESS LICENSE. AND THE YOUNG LADY SAYS, "YOU
2 HAVE TO APPLY FOR A EATING AND A DRINKING
3 PLACE." OKAY, I APPLIED. WENT HOME. WE'RE
4 GOING BACK. WE WERE WORKING ON A LIQUOR
5 LICENSE. I GO BACK UP THERE TO TAKE THEM A
6 COPY OF THE LIQUOR LICENSE. SHE SAYS, "YOU ALSO
7 NEED A BILLIARD'S LICENSE, BECAUSE THIS PLACE
8 WAS LICENSED AS A POOL HALL, AS WELL." OKAY,
9 WE HAVE FOUR POOL TABLES. SO WE APPLY FOR THE
10 THIRD LICENSE. OKAY? NOW, TWO WEEKS WENT BY.
11 I'M TAKING HER EVERYTHING THEY NEED. THEY
12 TELLING ME STUFF, "OH, YOU, YOU CAN'T BE CALLED
13 THIS, YOU CAN'T" -- SO WE'RE COMPLYING WITH
14 EVERYTHING. SO I GO IN ON THAT FRIDAY TO PICK
15 UP THE LICENSE, SHE ASKED FOR MY ID AND I GAVE
16 HER MY DRIVER'S LICENSE. SHE SAID, "WELL,
17 YOU'RE NOT BROOKE KENNEDY."

18 I SAID, "I KNOW I'M NOT BROOKE
19 KENNEDY, HER NAME IS BROOKE ANN KENNEDY, I'M
20 JAVON KENNEDY." THEY ASSUMED I WAS BROOKE
21 KENNEDY THE ENTIRE TIME. I NEVER TOLD THEM I'M
22 BROOKE KENNEDY. I'LL CALM DOWN. I NEVER
23 STATED THAT. SO THEY DENIED THE LICENSE. SO
24 MY WIFE WENT IN ON MONDAY AND APPLIED FOR THE
25 LICENSE AS BROOKE KENNEDY. NOW, TAKE IN MIND

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THAT THIS PLAN WAS ALREADY APPROVED BY ZONING, BY THE FIRE MARSHAL AND EVERYBODY, BUT ONCE THEY GOT UPSET AND THEY THOUGHT I TRIED TO DECEIVE THEM, THERE WAS A ISSUE. THEY SAID, "WELL, NOW WE HAVE A PROBLEM WITH THE WAY THAT PLACE IS ZONED." WE DIDN'T KNOW THAT LAST FRIDAY WHEN I WAS PICKING UP THE LICENSE, AND I'M SORRY THAT I, I MADE SOMEONE UPSET OR Y'ALL FEEL THAT I TRIED TO DECEIVE YOU. THAT'S NOT MY -- THAT WAS NOT MY, THAT WAS NOT MY GOAL.

SO THREE WEEKS WENT BY. I CALLED THE FIRE MARSHAL. "MR. ARNELL, WHAT'S GOING ON, YOU KNOW, WE SIGNED OFF ON IT TWO WEEKS AGO?"

HE SAID, "WELL, YOU GOT A PROBLEM WITH ZONING." OKAY. I CALLED OVER TO ZONING, MR. MAY, WHAT'S GOING ON?"

"YOU GOT A PROBLEM WITH THE FIRE MARSHAL."

"OKAY, WHAT'S THE PROBLEM?" I CALLED MR. ARNELL BACK, HE SAID, YOU KNOW, "IT'S NOT WITH ME, IT'S WITH MR. MAY." SO I CALLED BACK, HE GOES, "WELL, WE GOT A PROBLEM WITH THE POOL TABLES."

I SAID, "SIR, WHAT'S THE PROBLEM, YOU KNOW, THERE WAS THREE IN THERE, WE HAVE FOUR."

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1 HE SAID, "WELL, WE NEED YOU, WE NEED
2 YOU TO HAVE EIGHT."

3 "IS THAT WHAT WE NEED TO OPEN UP? WE
4 NEED EIGHT POOL TABLES, OKAY." SO WE GOT THE
5 EIGHT POOL TABLES. THE FIRE MARSHAL CAME OUT
6 AND APPROVED WHERE THE TABLES WERE. HE CAME
7 BACK AND APPROVED WHERE THE TABLES WERE AND
8 THEY, THEY GAVE US THE BUSINESS LICENSE. THE
9 VERY FIRST DAY WE WERE OPEN, THE VERY FIRST
10 DAY, NO CUSTOMERS, NO ONE, TWO POLICE CAME IN.
11 ONE GUY TESTIFIED EARLIER, HE CAME IN, AND THE
12 FIRST THING HE SAID WAS, "NOW, WHEN I COME
13 BACK, I DON'T WANT TO SEE NOBODY IN HERE
14 DANCING."

15 "OFFICER," I SAID, "WE JUST OPENED UP,
16 WE GOT A LICENSE TO SERVE FOOD AND SERVE
17 ALCOHOL AND TO PLAY POOL, WHAT'S THE PROBLEM?"

18 "I'M JUST LETTING YOU KNOW THAT WHEN
19 WE COME BACK IN HERE AND WE SEE SOMEONE
20 DANCING, WE'LL HAVE A ISSUE WITH YOUR BUSINESS
21 LICENSE, WE'RE GOING TO SHUT YOU DOWN," HIS
22 EXACT WORDS. SO WE STARTED DOING BUSINESS.

23 NOW, I WANT YOU TO UNDERSTAND THE
24 NIGHT THAT THEY WERE TALKING ABOUT THIS
25 SHOOTING, THE SHOOTING OCCURRED BECAUSE SOME

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1 GENTLEMEN TRIED TO ENTER OUR ESTABLISHMENT AND
2 WE TOLD THEM, "YOU'RE NOT DRESSED ACCORDINGLY,
3 WE KNOW YOU'RE TROUBLEMAKERS. WE'RE NOT GOING
4 TO LET YOU IN." THEY WENT TO THE BACK OF THE
5 PARKING LOT AND THEY SHOT AT FIVE CARS. 'CAUSE
6 WE WOULD NOT LET THEM IN OUR ESTABLISHMENT. WE
7 CALLED THE POLICE. THEY CAME OUT AND DID A
8 REPORT. BOTH MANAGERS WENT OUT. GAVE THEM
9 THEIR NAME, FILL OUT THE REPORTS. THE NEXT
10 DAY. MY WIFE WENT AND MET WITH EVERYONE. WE
11 PUT IN A VIDEO SURVEILLANCE SYSTEM. WE HIRED
12 OUTSIDE PARKING LOT SECURITY. WE PAID TWENTY-
13 FIVE DOLLARS AN HOUR TO MAKE SURE WE HAVE NO
14 PROBLEMS, AND WE HAD NO PROBLEMS SINCE, AND THE
15 WEEKEND THAT EVERYONE CAME INTO THIS
16 ESTABLISHMENT AND, AND MADE ALL THESE
17 ACCUSATIONS ABOUT US MOVING POOL TABLES WAS
18 BLACK BIKE WEEK, IT WAS MEMORIAL DAY WEEKEND.
19 WE NEVER, I REPEAT, NEVER MOVED THE POOL
20 TABLES. THE PICTURES THAT SHE SHOWED YOU WERE
21 PICTURES OF BEFORE WE OPENED UP AND AFTER AT
22 FIVE O'CLOCK IN THE MORNING. THE POOL TABLES
23 WERE IN THE SAME EXACT PLACE, NEVER MOVED THEM.
24 THERE WAS ONE INCIDENT WHERE ONE TABLE WAS
25 MOVED BECAUSE A DJ USED IT AND PUT A SPEAKER ON

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1 IT, BUT THE OTHER ONES WERE FULLY FUNCTIONAL
2 EVERY TIME, AND IT'S AMAZING TO ME THAT AS MANY
3 TIMES AS ALL THESE OFFICERS CAME INTO THAT
4 ESTABLISHMENT, NONE OF THEM TOOK PICTURES OF
5 THE, OF THE TABLES ON THE WALLS, NONE OF THEM,
6 BUT THEY SAYING THEY SAW IT, THEY MAKING VERBAL
7 STATEMENTS. ABOUT WHAT? NO PICTURES, NO
8 EVIDENCE. EVERYTHING IS VERBAL. SO WE GET A
9 LETTER, A CERTIFIED LETTER IN THE MAIL SAYING
10 THAT OUR LICENSE WAS SUSPENDED IMMEDIATELY,
11 EFFECTIVE IMMEDIATELY. FOR WHAT? THEY SENT US
12 THE LETTER, AND THEY SAID BASED ON OUR GROSS
13 RECEIPTS. WELL, TWO PRIOR BUSINESSES WENT
14 UNDER THAT DID THE SAME EXACT THING THAT WE'RE
15 DOING, THE SAME ADVERTISEMENT, THE SAME FLOOR
16 PLAN, THE ONLY DIFFERENCE WAS THEY HAD THREE
17 TABLES AND WE GOT EIGHT TABLES, BUT WHY DID THE
18 POLICE NEVER GO VIEW THEM? WHY DID THEY NEVER
19 MADE A REPORT ABOUT RED OR THE CORNER POCKET?
20 WHAT IS THE DIFFERENCE? WE'RE JUST BUSINESS
21 PEOPLE. ALL WE WANT TO DO IS MAKE MONEY AND
22 PAY OUR TAXES. THE REST OF THE THINGS, WE
23 DON'T UNDERSTAND WHAT THE ISSUE IS, BUT THEY'RE
24 TELLING US THE ISSUE IS THE POOL TABLES. WE
25 NEVER MOVED THE POOL TABLES. THE PICTURES THAT

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1 THE OFFICER TESTIFIED TO. SHE SHOWED YOU, WAS
2 AT 10:30 IN THE MORNING AFTER WE WERE OPENED
3 WHILE THE CLEANING CREW WAS THERE. AND SHE
4 STATED THE TABLES WERE NOT MOVED. SHE TALKED
5 TO MY WIFE ON THE PHONE THAT DAY AND, AND
6 STATED THAT. "I SEE THAT YOU DID NOT MOVE THE
7 TABLES." SHE TOLD MY WIFE THAT THERE WERE TWO
8 DIFFERENT REPORTS FROM TWO DIFFERENT OFFICERS
9 THE PREVIOUS NIGHT. ONE SAID WE MOVED THEM,
10 ONE SAID WE DIDN'T. ONE SAID HE SAW FOOD, ONE
11 SAID HE DIDN'T. WHAT IS THE DIFFERENCE? I
12 JUST WANT TO KNOW WHAT'S. WHAT'S FAIR AND
13 WHAT'S JUST. IF WE'RE, IF WE'RE BREAKING THE
14 LAW AND WE'RE DOING WRONG, THEN WE'LL MOVE ON,
15 BUT IF WE'RE ABIDING BY THE LAW, THEY GAVE US
16 THE BUSINESS LICENSES, WE'RE PAYING OUR TAXES,
17 WE'RE TRYING TO BE SUCCESSFUL AND DO GOOD
18 BUSINESS. WHAT ARE WE DOING WRONG?

19 DIRECT EXAMINATION

20 BY MR. BELLAMY:

21 Q: Javon, have you done everything that the police
22 have asked you or your wife?

23 A: She's done everything. We put in video
24 surveillance inside, the, the entire parking lot.
25 We have more than enough security where I have

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1 armed security and outside. We pat and search
2 everybody that enters. We take it very seriously
3 about safety. None of us wants to be in a
4 situation where we're going to be nuisance or a
5 problem. So everything they've asked us to do,
6 we complied with.

7 Q: Okay. Are you aware of any other clubs, not
8 clubs, but any other nightclubs located within
9 the City of Myrtle Beach that have problems with
10 shootings and other things?

11 A: Three weeks ago. a guy got shoot, three girls got
12 hit with bottles on the inside.

13 Q: Which club are you talking about?

14 A: Kono Lounge. It's not a club, it's a restaurant.
15 It's another one of those places that they're,
16 they're, they're a restaurant, but they --
17 they're Konk Lounge. Just like Mykonos was a
18 restaurant that was closed for a year and a half,
19 but they operated as a club for a year and a half
20 with no food being served. I can go on and on.
21 And, and the crazy thing about it is the, the,
22 the weekend they're talking about, you know,
23 you're talking about two hundred people outside
24 trying to get into my establishment, out-of-
25 towners. I want everybody to be safe, so at 1:30

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1 in the morning you know what I told my security.
2 "Move the pool. pool sticks."
3 Q: Let me ask you this. Do you have a problem if we
4 could -- Let me ask you this. Would you be
5 willing as far as operating in the future, could
6 you operate with making sure -- The point I'm
7 trying to ---
8 A: Yes, sir. Yes, sir. We, we make a great revenue
9 off the pool table, in fact, I'm glad that they
10 made us put the tables in there, because I can't
11 even keep enough quarters in there. From ten
12 o'clock to three o'clock in the morning, my
13 tables are utilized.
14 Q: Would you take appropriate measures to ensure
15 that no dancing occurs in your establishment in
16 the future?
17 A: If that's possible, but, you know, my people will
18 dance in a cornfield you play music. I'm sorry,
19 I can't stop them from dancing.
20 Q: Well, I mean ---
21 A: Come on. I mean, I don't know, I, I, I don't
22 know what they want us to do, I mean, if you want
23 me to say, "Okay, I'm going to kill my DJ, I'm
24 going to stop advertising, stop promoting," you
25 want me to go out of business, I'm not going to

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1 do that, because I have a wife and a family, we
2 have to support them. There were two previous
3 businesses there that could not make it. All I'm
4 doing is I'm taking the same format that they
5 had. I paid that man's taxes so I could open up,
6 so I bought that business from him. The format
7 that he gave me, I took his format that only had
8 three pool tables, and the City told me that I
9 couldn't work that way, I had to have eight. So
10 I put the eight in there and I'm working that
11 way. I, I pay my taxes. My pool -- I have video
12 surveillance. I can bring in the cameras and
13 show you guys twenty to thirty hours of nothing
14 but pool playing in my establishment right now,
15 time stamped. I've got it on there for a reason.
16 What we don't understand is, what is it they want
17 us to do?

18 Q: I think what they want you to do is they want you
19 to stop the dancing, alleged dancing, you know.

20 A: I don't know how I can stop people from dancing.
21 I, I don't know. If that's, that's what I have
22 to do, then I guess -- I don't know how to stop
23 people from dancing. I, I don't know. I have no
24 idea.

25 MAYOR PRO TEM GRAY: ANYTHING ELSE, MR. BELLAMY?

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1 MR. BELLAMY: NO.
2 MAYOR PRO TEM GRAY: DO YOU WISH TO ---
3 MR. BATTLE: YES, I DO, JUST BRIEFLY.
4 CROSS EXAMINATION
5 BY MR. BATTLE:
6 Q: Mr. Kennedy, is this y'all's promotion through
7 the Facebook?
8 A: Yes, sir.
9 Q: And so all these pages, these twenty-eight pages
10 are part of your Facebook?
11 A: Yes, sir.
12 Q: That's all I have. Thank you.
13 MR. BATTLE: THAT'S BEEN INTRODUCED AS
14 ONE OF OUR EXHIBITS.
15 MAYOR PRO TEM GRAY: YES. ANY OBJECTION TO THAT
16 EXHIBIT, MR. BELLAMY? DO YOU HAVE ANYTHING
17 THAT YOU'D LIKE TO ---
18 MR. BELLAMY: WE PREVIOUSLY AGREED. IT'S
19 ALL RIGHT.
20 MR. BATTLE: IT'S ALREADY IN. IT'S A
21 PART OF THIS BOOK THAT WAS INTRODUCED.
22 MAYOR PRO TEM GRAY: WOULD YOU LIKE TO CROSS-
23 EXAMINE ON THE RE-DIRECT?
24 MR. BELLAMY: MAYOR PRO TEM GRAY, NO.
25 MAYOR PRO TEM GRAY: DO YOU HAVE ANY FURTHER

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1 WITNESSES, MR. BELLAMY?
2 MR. BELLAMY: THAT WOULD BE THE
3 LICENSEE'S SHOWING.
4 MR. BATTLE: NO OTHER WITNESSES.
5 MAYOR PRO TEM GRAY: NO OTHER WITNESSES?
6 MR. BELLAMY: NO OTHER WITNESSES.
7 MAYOR PRO TEM GRAY: THAT'S ANOTHER WAY OF
8 SAYING THAT HE'S PRESENTED HIS CASE, OKAY. IS
9 THERE ANY MEMBER OF THE PUBLIC WHO WISHES TO BE
10 SWORN IN TO TESTIFY?
11 (NO RESPONSE).
12 MAYOR PRO TEM GRAY: MR. BATTLE, DO YOU HAVE ANY
13 CLOSING REMARKS?
14 MR. BATTLE: NO, YOUR HONOR. WE'LL
15 SUBMIT PROPOSED ORDERS, AS I UNDERSTAND WE'LL
16 DO, AND I THINK COUNCIL UNDERSTANDS THE
17 SITUATION. THEY KNOW THE RULES BETTER THAN I
18 DO, SO I HAVE NO CLOSING REMARKS.
19 MAYOR PRO TEM GRAY: MR. BELLAMY, ANY CLOSING
20 REMARKS?
21 MR. BELLAMY: GIVE ME ONE SECOND. IT'S
22 BEEN A LONG AFTERNOON, SO I WON'T BELABOR THE
23 POINT. I THINK THE ISSUE IN THIS CASE IS IT'S
24 KIND OF CHANGED AND EVOLVED. IT WAS THAT
25 ALCOHOL CONSUMPTION GROSS RECEIPTS EXCEEDED THE

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1 GROSS RECEIPTS FOR GAMING. NOW IT'S KIND OF
2 BECOME THE ISSUE OF THE POOL TABLES AND
3 DANCING. WE MAY HAVE SOME ARGUMENTS AS FAR AS
4 A CONSTRUCTION OF WHETHER THE ZONING STATUTE
5 REALLY -- IT DOESN'T DEFINE WHAT A POOL HALL
6 IS, WHETHER YOU CAN DANCE. IF YOU CAN DANCE,
7 AND IT'S A LOT OF UP TO INTERPRETATION. OUR
8 POSITION IS WE TAKE THAT THIS PARTICULAR. THE
9 ZONING LICENSING STATUTE IS A PENAL STATUTE
10 BECAUSE IT PRESCRIBES AS FAR AS PENALTIES AND
11 SO ON AND SO FORTH BASED UPON IT'S STRICTLY
12 CONSTRUED.

13 WHAT I AM PROPOSING AT THIS POINT IN
14 TIME, WHAT I WOULD LIKE TO SAY IS THAT HIS
15 SITUATION IS, IF THE WORSE THING THAT HE'S DONE
16 IS ALLOWED HIS CUSTOMERS TO DANCE ON HIS DANCE
17 FLOOR AND THERE'S BEEN NO ACTIVITY AS FAR AS
18 NUISANCE, UNLAWFUL, ANYTHING THAT WOULD RISE TO
19 THE SITUATION, BE TANTAMOUNT TO A NUISANCE
20 WHERE THE CITY WOULD HAVE THE RIGHT TO SHUT
21 THEM DOWN. ON THAT BASIS, WHAT I AM PROPOSING
22 IS -- THAT'S THE WORSE THING HE'S DONE. HE'S
23 PAID HIS TAXES, HE'S PAID HIS, YOU KNOW, HIS
24 BUSINESS LICENSE FEES. WHAT I'M RECOMMENDING
25 IS THAT HE WOULD BE WILLING TO CONFORM HIS

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1 CONDUCT TO NOT ALLOW DANCING IN THE FUTURE, AND
2 I WOULD ASK THE COUNCIL MEMBERS TO CONSIDER
3 THAT. BECAUSE IT'S A VERY ARBITRARY AND HARSH
4 MEASURE TO REVOKE HIS LICENSE, AND WE WOULD
5 LIKE THE OPPORTUNITY TO CONFORM, TO HAVE HIM
6 COME IN CONFORMANCE, BECAUSE I UNDERSTAND THAT
7 THE CITY ATTORNEY AND MR. BATTLE, THE COUNCIL
8 MEMBERS TAKE THE POSITION THAT DANCING IS NOT A
9 PERMITTED USE WITH RESPECT TO THE POOL HALL;
10 ALBEIT, YOU CAN MAKE SOME ARGUMENTS AS FAR AS
11 INTERPRETATION, BUT WHAT WE WOULD LIKE TO SAY
12 IS WE WOULD LIKE TO WORK WITH THE CITY TO DEAL
13 WITH THAT ISSUE, AND I TALKED TO HIM AND I
14 SAID, "THEY LOOK AT IT VERY STRONGLY." AND HE
15 INDICATED TO ME HE'S WILLING IN THE FUTURE NOT
16 TO PERMIT ANYBODY TO DANCE, AND IF HE DOES,
17 IT'S A NO TOLERANCE POLICY, AND THEN AT THAT
18 POINT IN TIME WE WOULD AGREE TO ENTER IN AN
19 AGREEMENT TO SAY IF IT HAPPENS IN THE FUTURE,
20 THEN THE CITY WOULD HAVE THE RIGHT TO REVOKE
21 HIS LICENSE. AT LEAST GIVE HIM AN OPPORTUNITY
22 TO GET THIS RESOLVED, BECAUSE THERE'S NOTHING
23 ON HIS -- AS FAR AS, YOU KNOW, HIS PRIOR
24 ACTIONS TO WHERE THAT I THINK AS FAR AS HIS
25 WIFE, MS. KENNEDY, THAT WOULD, YOU KNOW, SO

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1 DETRIMENTAL TO SAY THAT, "NOT ONLY WE'RE GOING
2 TO SUSPEND IT, WE'RE GOING TO REVOKE HIS
3 LICENSE." AND I THINK AT LEAST THEY DESERVE AN
4 OPPORTUNITY TO TRY TO COME IN COMPLIANCE, AND
5 WE WOULD ASK THE COUNCIL MEMBERS TO TAKE THAT
6 IN CONSIDERATION, AND WE WOULD BE WILLING TO
7 ENTER INTO A WRITTEN AGREEMENT TO RESOLVE THIS
8 ISSUE, SO THAT THERE'S NO MISUNDERSTANDING. IF
9 IT HAPPENS IN THE FUTURE, IT'S LIKE, HOW CAN I
10 SAY, THERE'S NO EXCEPTIONS. IT'S KIND OF LIKE
11 YOU GET AN OPPORTUNITY AND WE'LL MAKE IT
12 HAPPEN. THEN OBVIOUSLY, HE CAN PROBABLY CONTROL
13 THE DANCING IN THERE AND STOP IT. WE'D JUST
14 LIKE TO HAVE AN OPPORTUNITY IN THE FUTURE, AT
15 LEAST GIVE HIM AN OPPORTUNITY TO DO THAT, AND
16 THANK YOU.

17 MAYOR PRO TEM GRAY: THANK YOU, MR. BELLAMY.

18 ASK BOTH THE ATTORNEYS, YOU KNOW, YOU'RE OKAY
19 WITH THE EXHIBITS THAT ARE IN ORDER. DO YOU
20 WANT TO CHECK WITH THE CLERK TO MAKE SURE THAT
21 ALL THE EXHIBITS ARE IN ORDER?

22 MR. BATTLE: I BELIEVE THEY'RE CORRECT.

23 MAYOR PRO TEM GRAY: ARE YOU OKAY WITH THAT, MR.
24 BELLAMY?

25 MR. BELLAMY: I'M FINE.

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1 MAYOR PRO TEM GRAY: AS I STATED EARLIER, AS THE
2 PRESIDING OFFICER, I'M GOING TO REQUIRE THE
3 PARTIES TO SUBMIT PROPOSED ORDERS CONTAINING
4 FINDINGS OF FACT AND CONCLUSIONS OF LAW, ALONG
5 WITH ANY SUPPORTING MEMORANDA OF LAW TO THIS
6 BODY THROUGH ITS CLERK, MS. JOAN GROVE. BY NOON
7 JULY 5, 2013. I'M NOT SURE WHAT DAY OF THE
8 WEEK THAT IS, I THINK THAT'S A FRIDAY.

9 MR. LOWDER: IT'S ON A FRIDAY.

10 MAYOR PRO TEM GRAY: ON OR ABOUT 1:00 P.M. ON
11 JULY 5TH, 2013, THE CLERK SHALL CAUSE ANY SUCH
12 MEMORANDUM OR ORDERS TO BE HAND-DELIVERED TO
13 MEMBERS. MEMBERS OF THIS PANEL FOR THEIR
14 REVIEW. DO I HAVE THE CONSENT OF COUNSEL?

15 (ALL COUNCILMEMBERS): UH-HUH (AFFIRMATIVE
16 RESPONSE).

17 MAYOR PRO TEM GRAY: LET IT BE NOTED THAT I HAVE
18 CONSENT OF COUNSEL. AS STATED EARLIER, THIS BODY
19 WILL DELIBERATE AND ACT ON THE MATTER BY WAY OF
20 MOTION ON JULY 9TH, 2013 AT 2:00 P.M. AT ITS NEXT
21 REGULARLY SCHEDULED MEETING, WHICH IS USUALLY IN
22 THE COUNCIL CHAMBERS OF THE LAW ENFORCEMENT
23 CENTER ON OAK STREET. I WANT TO THANK THE
24 ATTORNEYS AND THE WITNESSES FOR THE DILIGENCE IN
25 THIS MATTER, AND WITH UNANIMOUS CONSENT. I

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DECLARE THESE PROCEEDINGS CLOSED.
(The hearing adjourned at 1:40 p.m.)

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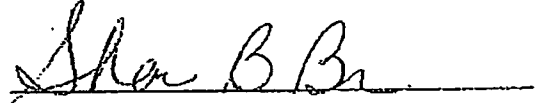
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CERTIFICATE

This is to certify that the foregoing transcript of the hearing held before City of Myrtle Beach Council Members, consisting of ONE HUNDRED TWENTY-FIVE (125) pages is a true and correct transcript of the testimony given at said hearing. The hearing was reported by method of stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto **COPY** signed and seal this 19TH day of JULY, 2013.



Sharon B. Brock
Verbatim Court Reporter
Notary in and for the State of
South Carolina
My Commission Expires: 5/31/2021

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STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

COURT OF COMMON PLEAS

KNS FOUNDATION, LLC,)
D/B/A ELITE)

PLAINTIFF,)

v.)

TRANSCRIPT OF RECORD
13-CP-26-5009

THE CITY OF MYRTLE BEACH)

DEFENDANT.)

September 17, 2013
Conway, South Carolina

B E F O R E :

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

A P P E A R A N C E S:

HOWELL V. BELLAMY, III, ESQ.
HOWELL V. BELLAMY, JR., ESQ.
Attorneys for the Plaintiff

MICHAEL W. BATTLE, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

INDEX

	Page
Remarks by Mr. Bellamy, III	3
Remarks by Mr. Bellamy, Jr.	21
Remarks by Mr. Battle	14

EXHIBITS

PLAINTIFF'S:

No.	Description	ID/EVD
1	Articles on business licenses	27/27
2	Section cites	27/27

1 MR. BELLAMY, III: Your Honor, may it
2 please the Court, my name is Howell V. Bellamy, III
3 and my father Howell V. Bellamy, Jr. Your Honor, we
4 represent the petitioner Brook Kennedy.

5 Mrs. Kennedy, would you please stand up.
6 And her husband Johnathan Kennedy right
7 there.

8 MR. BATTLE: And my name is Mike Battle,
9 and I'm the attorney for the City of Myrtle Beach.

10 THE COURT: I'm ready whenever you are.

11 MR. BELLAMY, III: Your Honor, I'm handing
12 up — and this is already in the record. This is a
13 narrative by Mary McDowell, and this is the notice
14 for license suspension. I'm gonna read from those.

15 THE COURT: All right.

16 MR. BELLAMY, III: Your Honor, before I
17 start, have you had an opportunity to read my brief?

18 THE COURT: I did.

19 MR. BELLAMY, III: Okay. Your Honor, the
20 issue in this case is simply this, the City of
21 Myrtle Beach, the response for which contends that
22 our client Brook Kennedy, licensee, obtained her
23 licenses for a eating place, a drinking place, a
24 gaming place specifically pulled through fraud,
25 misrepresentation, a false or misleading statement,

1 sup— invasion or suppression of material fact in
2 her license applications as prescribed under Section
3 11-35. That's the exact language they charged her
4 with. What's important is the City, the response of
5 Myrtle Beach alleging that my client Brook Kennedy
6 made false representations in her license
7 applications. And Your Honor, we submit there's no
8 evidence in the record to support that. As Your
9 Honor is aware, fraud is presumed, is not presumed.
10 You have to prove fraud through clear, convincing,
11 and cogent evidence. And as Your Honor is aware
12 there are nine elements for the fraud. In this
13 particular case we're not going to go through all
14 nine elements from which I'll simply says there's no
15 representation, there's no false representation and
16 then the resulting damages. And let me explain what
17 I mean by that.

18 The business license ordinance, the
19 purpose for the business license ordinance is to
20 insure the regulations that revenue from license
21 fees is properly paid in the general fund, which is
22 known as a privilege tax. In the — Mary McDowell
23 is the business Myrtle Beach City license
24 administrator, it's her job to go out there and
25 inspect and conduct audits to make sure people are

1 not underreporting, okay. In this particular case,
2 the revocation hearing, no evidence was presented by
3 the City that alleged that our client had
4 underreported or misrepresented her license fees as
5 far as the amount. We, at the revocation hearing
6 that took place on June 25th, 2013, Your Honor, when
7 we had the chance to present our case we called our
8 expert Matthew Patch who's the forensic accountant
9 who has been previously qualified as an expert in
10 the circuit court of State of South Carolina. He
11 looked at the receipts that were generated by our
12 client during the months of April and May and opined
13 that she had not falsified or presented any false
14 information which is important, again, because the
15 City has to show if they're alleging fraud or
16 misrepresentation in the applications that they'd
17 been injured or damaged in some way. And they can't
18 show that; they didn't present any evidence.

19 What this basically is if you boil it all
20 down, is the City is alleging a use violation. What
21 is the use violation? They're saying that because
22 my client allegedly moved pool tables on one or two
23 occasions during black bike weekend, they committed
24 a violation, and as a result of that, the business
25 license department had a right to suspend their

1 license in perpetuity.

2 What's important to note is our client,
3 Mrs. Kennedy, was issued her license on April —
4 excuse me, let me back up for a second. She applied
5 for the license on March 25th, 2013. And the three
6 applications that she applied for were one, again,
7 it was for a drinking place, an eating place, and a
8 gaming place. And what I'd like to do right now is
9 publish what's been marked as exhibit number 11
10 which is part of the memorandum of law that I had
11 furnished Your Honor earlier today. And for the
12 record, I have furnished a copy of that to Mr.
13 Battle. And let me read for the record what it
14 says. "This is a narrative that was produced by
15 Mary McDowell who is the City of Myrtle Beach
16 business license administrator, and it says — and
17 basically it's four — let me kind of set the table.
18 She's referring to conversations that she had with
19 Ken Maye who is the zoning administrator, and she's
20 also referring to Tom Ellenburg who is the City
21 attorney. And what they're discussing is, is they
22 just received that they — basically they're
23 discussing my client's applications for business
24 license. Let me start out. It says, "Per Ken Maye
25 business has placed eight pool tables in the

1 facility, and the applicant states to Ken he is a
2 pool hall. According to Ken zoning is fine with
3 business license applications for food, bar, and
4 billiards. Call Tom Ellenburg for advice. As the
5 three business license applications reflect the
6 largest gross income coming from bar sales, not
7 billiards." That's important. From the inception
8 my client never represented that the gaming receipts
9 or gross income would exceed the alcohol receipts,
10 never said that. And that's a big contention
11 because the City takes a position that if the gross
12 receipts from alcohol or food exceed the gross
13 receipts for gaming; therefore, it converts it from
14 a pool hall into a night club. Your Honor, and I
15 think that interpretation is clearly wrong. I think
16 the City that's — and what I would like to point
17 out is, before I finish I would like to hand up and
18 make the business license ordinance and the zoning
19 ordinance a part of the record. And if Your Honor
20 takes — if you went through and read the business
21 license ordinance and zoning ordinance, it's based
22 upon clear unmistakable language, there's no way you
23 can come to the conclusion that either both of them
24 separately or combined create a classification
25 system based upon a primary or secondary.

1 classification system.

2 Now let me go ahead and finish. "Tommy
3 had a conference meeting and Ken to discuss. Ken
4 explained that he cannot approve or disapprove a use
5 based upon assumption that the Applicant had moved
6 in a total of eight pool tables and moved out the
7 tables and chairs. Ken stated there was no dance
8 floor space and the interior of the business looked
9 like a pool hall. Ken affirmed to Tom Ellenburg
10 that he was comfortable with his approval. Tommy
11 acknowledged but had questioned Ken on the change of
12 opinion from the meeting that was held on
13 March 26th, 2013." Your Honor, what I think they're
14 referring to is they had a meeting after my client
15 submitted the three business license applications
16 where Tom Ellenburg, Ken Maye, the zoning
17 administrator, Mary McDowell met, and they initially
18 polled where they were going to deny the licenses
19 from inception. Subsequently Ken Maye, the zoning
20 administrator, changes his opinion.

21 Then it goes on to say, "Tommy was a bit
22 unclear as to the change of opinion; but it is what
23 it is, it is what it is. And if zoning approved
24 that zoning will have to stand behind their
25 position. Should anything with the use of business

1 change after they open. I further stated that
2 zoning would have to take the primary position on
3 any action related to the business use." My
4 interpretation of that is, if it's a use violation
5 zoning has to deal with it.

6 If Your Honor reads pursuant to my
7 memorandum under Section 301, any use violation
8 obviously the zoning ordinance will take control. I
9 don't think Mr. Battle would disagree with me the
10 main thing that they're alleging as far as one of
11 the reasons why they revoked my client's business
12 license is, is allegedly they moved pool tables, and
13 they did it maybe during black bike week and on two
14 or three different occasions and that's the sole
15 reason basically they suspended her business license
16 and subsequently the City affirmed the revocation of
17 the business license direct to Mary McDowell.

18 And what we're arguing is, is based upon
19 this narrative we assert that our client at least,
20 and what's important is, during the whole time my
21 client has been operating over a period of 68 days,
22 aside from the notice of suspension she had never
23 been charged for any violation under the zoning or
24 business license ordinance of the City of Myrtle
25 Beach, not at all. The first time that she received

1 any resistance from the City is when she re-applied
2 for her three licenses on May 23rd. And normally
3 the procedure is you go in there — and
4 incidentally, the City, she paid 803-dollars, and
5 since they revoked the licenses they've not refunded
6 the money, interestingly. And at that point in time
7 usually when you go in there and apply for your
8 licenses and you pay the money, they usually at that
9 point in time will sign off on them and give them
10 back. In this particular case they didn't. She
11 gets a letter on June 14th, which I just handed up
12 to Your Honor. It's marked as exhibit 5 to the
13 memorandum on our memoranda. And it says right
14 here — this is what I'm holding up for the record
15 is, it's dated June 10th, 2013. It says notice of
16 business license suspension. And it's signed by
17 Mary McDowell, license inspector. And, Your Honor,
18 I'm not gonna read through the whole notice, but
19 I'll read, publish the pertinent part. "The reason
20 for the immediate suspension and proposed revocation
21 of the business license for Elite is that it has
22 been determined from police reports that the
23 business license appear to have been attained
24 through misrepresentation, fraud, deception which
25 are grounds for revocation of a business license

1 under 11-33 subsection 3.

2 Now what's important, Your Honor, and one
3 of the things I raised in my memorandum of law is,
4 we never received copies of the police reports. And
5 before I had the pleasure of representing
6 Mrs. Kennedy she was represented by another lawyer,
7 Mark Goddard with Turner Padget, and Mark Goddard
8 sent a letter to Mike Battle requesting what
9 information that we were going to rely upon at the
10 revocation hearing. And at the revocation hearing
11 Mike was kind enough to provide me with a copy of
12 the Elite business license revocation hearing; and
13 it goes, exhibits. And he did it before the
14 hearing. But if you go through this book which is
15 part of the record, there are no police reports in
16 here. There are no incident reports in here, which
17 I find disturbing, because if you go back and read
18 the transcript of the revocation hearing, Mary
19 McDowell distinctly and expressly said she relied
20 upon the police report in forming her opinion to
21 suspend my client's license. And I don't know why
22 they didn't publish them or make them a part of the
23 record. It causes me a little bit of concern as a
24 former prosecutor is that one of the arguments
25 obviously concerning exculpatory information,

1 information that would be favorable to our clients.

2 And Your Honor, essentially what we're
3 saying is, is that when the City basically made the
4 determination if there was a future use violation
5 which moving the pool tables is a use violation
6 under the zoning ordinance, that our client had the
7 right under Section 301 at least be afforded notice
8 and to come in compliance. During the revocation
9 hearing I had the opportunity to cross-examine Ken
10 Maye, the zoning administrator, and when I asked
11 him -- give me one second, let me pull -- what I'd
12 like to do is publish a part of the
13 cross-examination. I said, "I think you answered my
14 question earlier. There's nothing in the zoning as
15 far as definition or use restrictions that say you
16 can't dance in a pool hall, correct?" His response,
17 "Correct. I mean, there's nothing that says you
18 can't dance anywhere because you've got -- it comes
19 down to my interpretation. My interpretation is
20 that when pool tables are pushed up against the wall
21 you're not operating as a billiard parlor or pool
22 hall." Question, "Do you know how many times they
23 pushed the tables up against the wall based upon
24 your investigation." Response, answer, "Once is
25 enough. That puts you in violation one time, puts

1 you in violation. Just one time as I understand it.
2 A violation is a violation." "It's your testimony
3 that if you push the table one time up one time the
4 City has the right to go in there and suspend or
5 suspend your license." His response, "I deal with
6 zoning. I do not deal with business license
7 operation procedures." "Would you give them an
8 opportunity to come into compliance assuming that
9 was a violation?" "I mean, I can cite you for a
10 violation. You can come in compliance, but I'll
11 still cite you for a violation." The point being,
12 that both Tom Ellenburg and Mary McDowell
13 immediately said that if it's use violation zoning
14 would control, client had the right to receive prior
15 notice before they suspend her license giving her
16 opportunity to come in compliance with any alleged
17 use violation. And when the City failed to do that
18 we assert that Mary McDowell who suspended the
19 license initially, was acting in arbitrary,
20 capricious manner and abusing her discretion as
21 zoning administration which further violated my
22 client's constitutional, her what I would say her
23 due process right under the South Carolina United
24 States Constitution. And at least she was afforded,
25 she should have been afforded an opportunity to have

1 prior notice of any alleged use violation and an
2 opportunity to have a hearing to challenge that or
3 take the position that she has not done anything
4 wrong before they, the pre-suspension hearing. And
5 Your Honor, at this point in time that's our
6 position and I'll let Mr. Battle.

7 THE COURT: Thank you.

8 Mr. Battle.

9 MR. BATTLE: Thank you, Your Honor. First
10 of all, I would point out this is an appeal. It's
11 not a temporary injunction; it's not something along
12 those lines. The standard of review on appeal is
13 there any evidence to support the finding of the
14 city council. The city council conducted a full
15 hearing on the merits, and they made their
16 determination — it wasn't unanimous — but they had
17 made their determination that the plaintiff or the
18 petitioner, and for the record, it's shown in the
19 record as being K&S. It's KNS, N as in normal.
20 Isn't that correct?

21 MR. BELLAMY, III: Yes.

22 MR. BATTLE: So if you want to get their
23 name correct that's the name it should be. But in
24 any event, the city council heard all the evidence
25 and so the question that you have is, is there any

1 evidence in the record under Rule 75 — that'd be
2 the record that went before city council — in the
3 record to support their finding. Now let me just
4 say that you have the record; it's been supplied to
5 you. Do you have a copy of the amended response to
6 the amended appeal? I filed it last week before I
7 received it. If you haven't I'll be glad to submit
8 you a second one.

9 THE COURT: Go ahead and give me one if
10 you would.

11 MR. BATTLE: I don't have it with me now,
12 but I will before the end of the day or before
13 tomorrow. But in any event, the — you could boil
14 this case down to one. KNS comes in, applies for a
15 business license. They're told they cannot operate
16 a nightclub because nightclubs are not permitted in
17 this zoning district. And actually there's evidence
18 in there that the husband applied saying that he was
19 the wife, and he said there was a mix up but that
20 the point of all this is that he was specifically
21 told and Mrs. Kennedy was specifically told, cannot
22 operate a nightclub in this zoning district, it's
23 not permitted. And they said, that's fine, we'll do
24 it. They even went to point of where she wrote out,
25 I will not charge admission charge to this, to get

1 into this particular establishment. Well, if you
2 look at the exhibits — and really, all you have to
3 do is look at the social media as the way they
4 advertise themselves. You can see they're holding
5 themselves out to the public as a night club, Elite
6 Ultra Lounge.

7 MR. BELLAMY, III: Your Honor, I
8 respectfully object to the way that Mr. Battle is
9 describing the, as far as the pictures that were
10 obtained from the Facebook page. I think if you go
11 back and read those, essentially what they're
12 arguing is, is free drinks and things like that,
13 lady's night. And the only thing I would point out,
14 their predecessor entitled RED, this is what they
15 used. That's their advertisement. They were a pool
16 hall too.

17 THE COURT: I'll give you a chance to
18 respond.

19 Go ahead.

20 MR. BATTLE: So you even look in there and
21 you see where there is a long line of customers
22 trying to get in to what Mr. Bellamy would tell you
23 is a pool hall. They have barricades out there.
24 They have security guards. They advertise DJs.
25 They have special drink nights and things. They had

1 a late night permit to go from 12 — or 2 to 4 or
2 whatever it is to go to late night. And so what
3 city council found is you represented yourself to us
4 as being a pool hall, restaurant, and nightclub, I
5 mean, and drinking establishment. But what you
6 really are is a nightclub, we can see that, and we
7 feel like when you represented yourself that you
8 were not going to be one, you made a material
9 misrepresentation because nightclubs are not
10 permitted in that zone.

11 If you would look at the record, we didn't
12 put any police reports in because we put in the live
13 testimony of four separate police officers. In
14 addition, we put in the chief police who was out
15 there. They all said it was a night club. Also,
16 you have in the definition of the zoning ordinance
17 you have, what is the difference between a night
18 club and some other area. Well, in a zoning
19 ordinance it says that if you have a dance floor in
20 excess of a 150 square feet you are a nightclub,
21 defined in the zoning ordinance. All four officers
22 who were out there said the dance floor was in
23 excess of 150 feet; it was a nightclub. City
24 council considered all the facts. They weighed —
25 we're not in the business of trying to put people

1 out of business; but we don't have the right to let
2 clubs come in and say, well, we're going to do this
3 but really we're doing that, we're really going to
4 be a pool hall, I mean, we want to be, we're going
5 to tell you we're a pool hall but we're really going
6 to push these pool tables aside and be a nightclub,
7 and when that happens, you know, we'll push them
8 back together if you tell us we're violating the
9 use. That's not the point of the business license
10 and that's not the point about the representation.

11 And what brought this to the attention,
12 what brought this to the attention of City of Myrtle
13 Beach is she had a shooting out there where somebody
14 just shot off a whole bunch of cars. That's when it
15 came up on the radar screen, and that's when the
16 police says, well, what is going on out there. And
17 they went in, they did the investigation, and they
18 found that there was a nightclub going on there. It
19 wasn't any — they say, well, did you see any food
20 being served out from the restaurant, no, there
21 were Styrofoam coolers, I mean, some Styrofoam
22 plates that were taken outside from the parking lot
23 outside is all we saw. And then you had the issue
24 where people were dancing; you had the dance floor.
25 And those things are — that is some evidence that

1 they are operating a nightclub. In addition to
2 that, one police officer was an eyewitness to the
3 nightclub people, whoever the staff was, charging
4 admission to get in. It's in the testimony in the
5 record. And as they're charging admission, that is
6 in direct violation of the statement that
7 Mrs. Kennedy that you'll see in the record, wrote
8 out and says we will not charge admission to get
9 into this establishment. All of these facts given
10 the any other evidence standard as if it were a jury
11 verdict is conclusive in my opinion of the appeal
12 and would ask you to affirm what City Council did.

13 THE COURT: All right, reply?

14 MR. BELLAMY, III: Your Honor, in
15 response. I didn't — my clients didn't have the
16 opportunity to tell the City how to charge them,
17 okay. And Your Honor, right here Section 11-35
18 suspension revocation of license, and it states
19 right here, a license has, it says licensee has
20 obtained license through fraud, misrepresentation or
21 fraud or misleading statement conveyed or
22 suppression of material fact in the license
23 application. There was no evidence presented at the
24 hearing, revocation hearing, regarding a false
25 representation by my client in her license

1 application. That's what they charged her with.
2 Now he wants to expand it and say includes a lot of
3 other things, but really what they're arguing about
4 is because they moved the pool tables. Well, that's
5 a use violation. That has nothing to do with fraud
6 or misrepresentation. And Your Honor, you know,
7 what I would say Mr. Battle and the City of Myrtle
8 Beach, let's be fair. The predecessor entitled RED
9 and the former predecessor entitled the Corner
10 Pocket ---

11 MR. BATTLE: Your Honor ---

12 MR. BELLAMY, III: This is in the record,
13 Mike.

14 MR. BATTLE: Let me make an objection.

15 MR. BELLAMY, III: This is in the record.

16 THE COURT: I'll let you respond.

17 MR. BELLAMY, III: Here's what this says.

18 This is an advertisement. It says RED, relax, eat,
19 and dance. It says, happy hour, half price drinks,
20 appetizer. Then it goes on to say live DJ, guest
21 DJ, starting at 10:00 live DJ expanding through the
22 hottest house, lounge, and Top 40. This is what RED
23 was doing. Now I want to, now I want to -- Your
24 Honor, I'm gonna, one thing before I finish my day
25 I'd like to make a couple of comments, but one point

1 I want to make clear is the zoning ordinance does
2 not define a nightclub. I mean, I back up, strike
3 that. The zoning ordinance does not define a pool
4 hall, okay. Further, the zoning ordinance, and if
5 you go back and look at the transcript, does not
6 prohibit drinking alcohol or the amount alcohol in a
7 pool hall. The zoning ordinance does not prohibit
8 or restrict charging of an admissions fee in a pool
9 hall. Now understand, where my client signed a
10 letter saying she would agree not to charge a cover
11 charge, the City basically told her that she had to
12 do that before they would issue the license. If you
13 go back and read the zoning ordinance, there's
14 nothing in the zoning ordinance that says you cannot
15 charge a cover charge at a pool hall. There's
16 nothing in the zoning ordinance that says you cannot
17 dance in a pool hall. And what this case boils down
18 is really deals with a use restriction which is
19 better suited for, better suited for the zoning
20 department of the City of Myrtle Beach to deal with
21 as opposed to the licensing department.

22 Your Honor, I'm gonna sit down for a
23 second. My dad would like to make a couple of
24 comments and then...

25 MR. BELLAMY, JR.: Your Honor, thank you.

1 Very briefly. There is a distinction between the
2 business license ordinance and the zoning ordinance.
3 The normal course of the City -- I represented them
4 many, many, many years ago. In the normal course of
5 dealing with matters before you get a business
6 license you got to come in compliance with the
7 zoning ordinance. Apparently the previous owner
8 only had two pool tables at that location. The City
9 required that he increase the number of pool tables
10 from two to eight, which took up a substantial
11 portion of the area. They also required that he --
12 that she employ security guard. She put in
13 surveillance cameras. The thing that I thought that
14 sort of tainted the application was, or the way they
15 dealt with it, is normally if there are no cited
16 violations, and I think Howell pointed out to you
17 that there were no violations, no arrests and
18 whatever. Mr. Battle said there was a shooting or
19 somebody shot a gun; but that was out in the street
20 not in the club, let me make that clear. And those
21 people did not come in the club or gain access to
22 the club and they weren't even admitted. But the
23 fact that you operate for four months or
24 thereabouts, not charged with single violations,
25 because usually that's the way revokes a license

1 violation you got somebody out there that does
2 something and gets arrested and got all those things
3 going on. But I mean, they get blindsided. They
4 come in and apply for a renewal of their business
5 license not knowing that there was one thing wrong
6 and they're told we're gonna revoke it because of
7 material misrepresentation and your application for
8 the license.

9 Now what would have been fairer, and I
10 submit the questions on the license are questions of
11 the law, do they meet the test, did they meet the
12 test to comply with the nine elements of fraud.
13 Answer is no. So if you get blindsided, what they
14 would have done is under a zoning violation -- and
15 we tried to argue this with them, or Howell did, was
16 under the zoning violation they would sit down and
17 say, you know, you got eight pool tables in there,
18 if you move them or you let everybody dance in
19 there, and he's covered the dancing argument with
20 you, we're gonna find that you have a zoning
21 violation and we're gonna revoke your business
22 license 'cause you're in nonconformity. And for
23 that reason, and obviously that part he read between
24 Mary McDowell and Ken Maye and Tom Ellenburg about
25 the deal, the zoning administrator said they're in

1 compliance. Well, had they been afforded a zoning
2 compliance hearing with Ken Maye, then he would have
3 told them if you move the pool tables, that's fine.
4 But even when Mike told you about the police
5 testifying, they didn't ever bring in a citation or
6 whatever. That was opinion, and they're not experts
7 as to what a dance hall is or wasn't a dance hall.
8 But the point is they never had a citation. And you
9 had one officer who contradicted her own officers.
10 Stephanie Hansen said she went in there and never
11 saw pool tables moved. So what the City said is
12 we're going to shut it down, and the way we're going
13 to shut it down is that we're going to revoke their
14 business license but not be fair and give them an
15 opportunity under the zoning ordinance 'cause you
16 can't revoke it until you give them an opportunity
17 to come into conformance. This individual had
18 signed a lease which she was financially obligated
19 herself to pay, and she's gone into other things
20 that had put her in a financial bind.

21 Had they dealt with this as they said in
22 their statement as a zoning violation and would have
23 told them either you don't move the pool tables
24 anymore or we're going to -- or you're in
25 noncompliance. And so what happens is, they get

1 blindsided by the City and when they attempted to
2 handle it in this fashion. And sometimes when we
3 talk about the law it ain't fair. The way this
4 thing was unfairly handled, it was fine. Usually
5 through my years you see that the applicant has done
6 something wrong, sold marijuana or cocaine, or
7 something out there like that. None of that is in
8 the record. It's just, they didn't like the
9 configurations of the pool table so it becomes a
10 question of law and what Howell has told you is they
11 didn't meet the test imposed by the law of fraud.

12 THE COURT: All right.

13 MR. BELLAMY, III: And Your Honor, one
14 last thing. I would like to go ahead and subject to
15 Mike, make a part of the as far as the zoning
16 ordinance and the business license ordinance part of
17 the record.

18 THE COURT: You may.

19 MR. BELLAMY, III: Okay.

20 MR. BATTLE: If you represent that is a
21 accurate —

22 MR. BELLAMY, III: I do represent it as
23 accurate.

24 THE COURT: All right.

25 MR. BATTLE: My only response is, Judge,

1 you are decide this on the record in front of you.
2 There's a lot of things and what they told you and
3 there's a lot of things in Mr. Bellamy's amended
4 notice of appeal that was not in front of the
5 record. You have a transcript that was done by a
6 court reporter of the entire record, what was that.
7 In addition to that you have all the exhibits and
8 that's the basis upon which city council made this
9 decision. And just because they claim that somebody
10 else was treated differently, two wrongs don't make
11 a right.

12 THE COURT: All right.

13 MR. BELLAMY, III: Your Honor, one last
14 thing. Based upon the financial information that
15 was presented on the record, the argument is that my
16 client over a period of 67 days played over two
17 thousand games of pool. Then if you go back and
18 read the testimony of Mary McDowell, her big gripe
19 was I just don't believe anybody is playing pool.
20 Well, if you go back and read the transcript, when
21 you back and work the numbers regarding the renewal
22 applications, it'll show that there were in excess
23 of over two thousand games of pool being played
24 which is a lot of pool at that one location.

25 THE COURT: All right, I'll take it under

1 advisement.

2 (WHEREUPON, Plaintiff's Exhibits Nos. 1
3 and 2 were marked for identification and
4 received into evidence.)

5

6

7 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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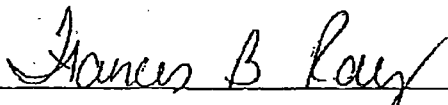
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 6th day of January, 2014.


FRANCES BAKIS-RAY, RPR



2109
3.25.13

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR

ABL 901
(Rev. 02/28/10)
4280

Mail to: SC Department of Revenue, ABL Section, Columbia, SC 29214-0907
Telephone: (803) 898-5864 DOR Website: www.scdor.com

File Number: _____

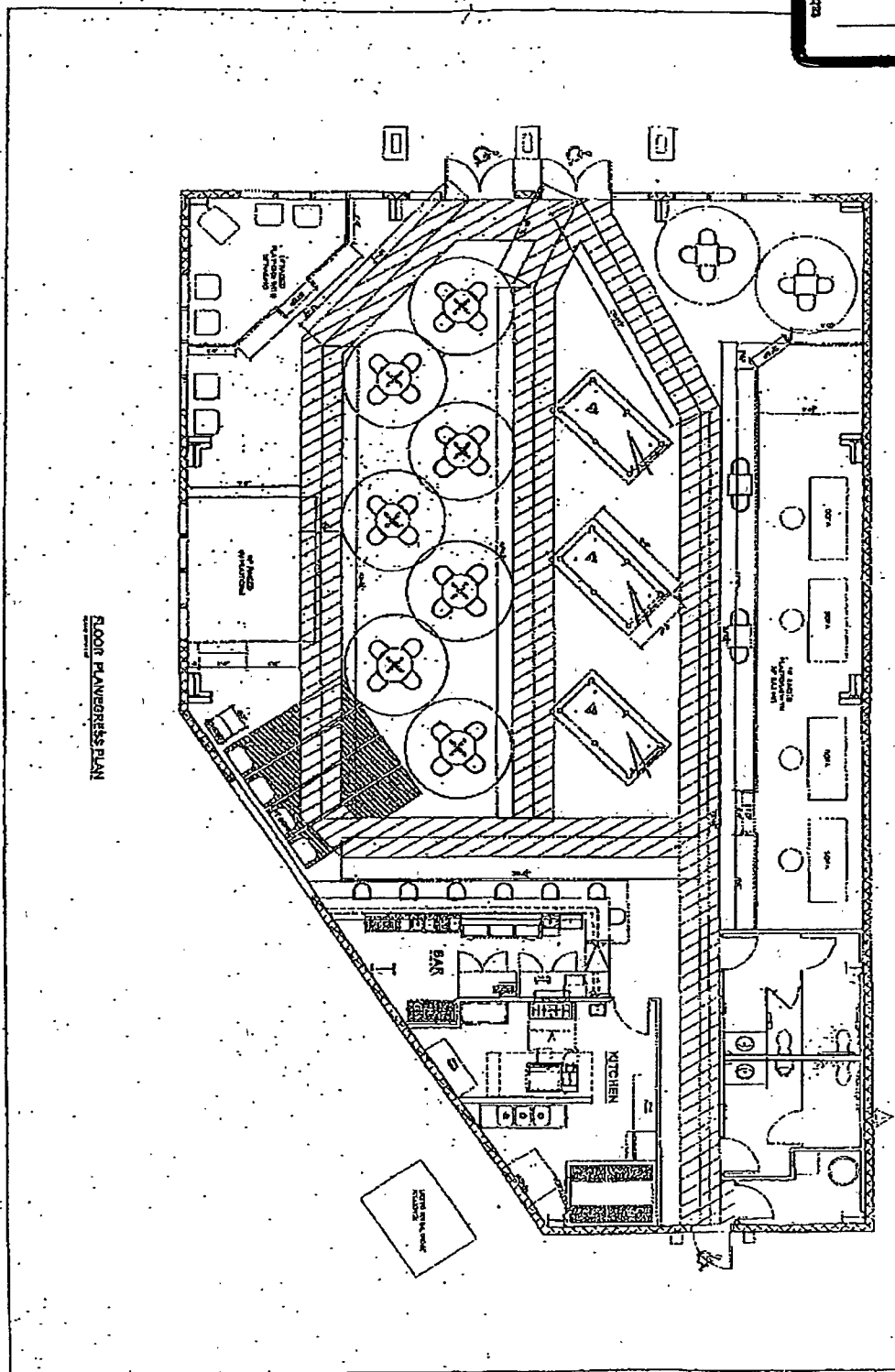
License Type	Nonrefundable Filing Fee	License Fee
<input type="checkbox"/> On premises beer & wine	\$ 300.00	\$ 800.00 biennially
<input type="checkbox"/> Off premises beer & wine	\$ 300.00	\$ 600.00 biennially
<input type="checkbox"/> Brewpub	\$ 300.00	\$ 2,200.00 biennially
<input type="checkbox"/> 7-day off premises beer & wine	\$ 300.00	\$ 2,200.00 biennially
<input type="checkbox"/> Sunday/Sabbath beer & wine	\$ 300.00	\$ 650.00 biennially
<input type="checkbox"/> Business (restaurant/hotel/motel) liquor by the drink	\$ 200.00	\$ 1,700.00 biennially
<input type="checkbox"/> Nonpublic/private club liquor by the drink	\$ 200.00	\$ 1,700.00 biennially
<input type="checkbox"/> Retail liquor store	\$ 200.00	\$ 1,400.00 biennially
<input type="checkbox"/> Alcoholic liquors (cooking license)	\$ -0-	\$ 250.00 biennially
<input type="checkbox"/> 120 day temporary beer & wine	\$ -0-	\$ 25.00
<input type="checkbox"/> 120 day temporary liquor by the drink	\$ -0-	\$ 25.00
<input type="checkbox"/> 120 day temporary retail liquor	\$ -0-	\$ 25.00
<input type="checkbox"/> Certification fee	\$ -0-	\$ 5.00

* Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell liquor by the drink or retail liquor. (R1-B-120)

PLEASE PRINT OR TYPE ALL INFORMATION

1. OWNER, PARTNER, OR CORPORATION'S CHARTER NAME Keys Foundation LLC		2. TRADE NAME (OCCASIONAL BUSINESS AS) ELITE Ultra Lounge	
3. PHYSICAL ADDRESS OF BUSINESS (REQUIRED 800 P.O. BOX) 601 Gasson Parkway STREET Myrtle Beach Hwy 55 29577 CITY COUNTY STATE ZIP		4. BUSINESS PHONE NUMBER DAYTIME PHONE NUMBER 843 421 3321 843 421 3321	
5. MAILING ADDRESS (FOR ALL CORRESPONDENCE) Babcock Kennedy STREET 617 Kin Drive Dr STREET Myrtle Beach Hwy 55 29588 CITY COUNTY STATE ZIP		7. FEDERAL IDENTIFICATION NUMBER AND/OR SOCIAL SECURITY NO	
6. TYPE OF OWNERSHIP <input type="checkbox"/> SOLE PROPRIETOR (one owner) <input type="checkbox"/> PARTNERSHIP (two or more owners) <input checked="" type="checkbox"/> LLC <input type="checkbox"/> SC CORPORATION DATE INC. _____ <input type="checkbox"/> FOREIGN CORPORATION STATE INC. SC DATE OF INC. 8/22/12 <input type="checkbox"/> NON-PROFIT ORGANIZATION <input type="checkbox"/> OTHER ENTITY		8. NATURE OF BUSINESS Restaurant	
9. IF THE CORPORATION IS PUBLICLY TRADED, YOU MUST DESIGNATE AN OFFICER OR OTHER PERSON TO HOLD THE ABOVE. THIS PERSON MUST BE OF GOOD MORAL CHARACTER, OVER THE AGE OF 21, AND A SC RESIDENT. THIS PERSON SHOULD BE INCLUDED ON THE CONSENT AND WAIVER FORMS WITH OTHER OFFICERS OF THE CORPORATION. Name of designated officer or other responsible person NA		9. WHAT IS YOUR RETAIL SALES TAX NUMBER? 026 009872	
		10. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, WHICH CITY? Myrtle Beach	

42801035



FLOOR PLAN/EGRESS PLAN

<p>A1.01</p> <p>Sheet</p>	<p>PROJECT: 00000</p> <p>DATE: 01/20/10</p> <p>SCALE: 1/4"=1'-0"</p> <p>DRAWN BY: EARTHWORKS</p> <p>CHECKED BY: [Signature]</p> <p>DATE: 01/20/10</p> <p>PROJECT: 00000</p>	<p>CORNER POCKET/RED</p> <p>641 ROBERT GRISCOM PKWY</p> <p>MYRTLE BEACH, SC 29579</p> <p>EGRESS/FLOOR PLAN</p>	<p>REVISION SCHEDULE</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> <td></td> </tr> <tr> <td>2</td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> </tr> <tr> <td>4</td> <td></td> <td></td> </tr> <tr> <td>5</td> <td></td> <td></td> </tr> <tr> <td>6</td> <td></td> <td></td> </tr> <tr> <td>7</td> <td></td> <td></td> </tr> <tr> <td>8</td> <td></td> <td></td> </tr> <tr> <td>9</td> <td></td> <td></td> </tr> <tr> <td>10</td> <td></td> <td></td> </tr> <tr> <td>11</td> <td></td> <td></td> </tr> <tr> <td>12</td> <td></td> <td></td> </tr> <tr> <td>13</td> <td></td> <td></td> </tr> <tr> <td>14</td> <td></td> <td></td> </tr> <tr> <td>15</td> <td></td> <td></td> </tr> <tr> <td>16</td> <td></td> <td></td> </tr> <tr> <td>17</td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION	1			2			3			4			5			6			7			8			9			10			11			12			13			14			15			16			17			18			19			20				<p>EARTHWORKS</p> <p>Architectural and Design Services</p> <p>1000 P. O. Box 1000 Myrtle Beach, SC 29579 Phone: 843-661-1000 Fax: 843-661-1001 www.earthworks.com</p>
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* start date from MAY 31, 2013

INSTRUCTIONS ON REVERSE
PAYMENT MUST ACCOMPANY APPLICATION
(Cash, Check, MasterCard, or Visa Accepted)

CITY OF MYRTLE BEACH
BUSINESS LICENSE DIVISION
P.O. BOX 2468
MYRTLE BEACH, SC 29578
921 N. OAK STREET
(843) 918-1200 FAX (843) 918-1210
www.cityofmyrtlebeach.com

FOR OFFICE USE		
200941	PROCESSED BY	DATE
RENEW	NEW	HOSP FEE: YES NO
TYPE: III	CLASS: 8	SIC: 799P
		PM
BL	\$	
BLD	\$	
BLP	\$	
RBL	\$	
FEE DUE	\$	
PEN DUE	\$	
NEW BUSINESS MUST COMPLETE A NEW APPLICATION DO NOT USE OLD BUSINESS RENEWAL FORM		

LICENSE RENEWAL DUE
JUNE 1
5% PER MONTH
PENALTY IS APPLIED
ON JULY 1ST

FORM FOR NEW LICENSE or RENEWAL
FOR THE LICENSE YEAR _____

BUSINESS LICENSE IS MAILED AFTER APPROVAL

IF BUSINESS IS PERMITTED OR LICENSED BY THE STATE OF SOUTH CAROLINA, A PHOTOCOPY OF THE LICENSE, PERMIT, OR ANY ADDITIONAL DOCUMENTATION MAY BE REQUIRED BY LICENSE INSPECTOR. ALL APPLICABLE SPACES MUST BE COMPLETE BEFORE THE LICENSE WILL BE ISSUED.

D/B/A or TRADE NAME: Elite
ATTENTION: Brooke Kennedy
MAILING ADDRESS: 617 Kindred Dr.
CITY, STATE, ZIP: Myrtle Beach SC 29598

LICENSE FEE: Do all steps in order to compute amount due. If line C is \$2 Million or less skip steps 3 through 8. See example on reverse.

GROSS INCOME for the	Calendar or Fiscal Year as Reported to IRS or Estimate if a New Business.	+	\$	A
MINUS: Gross income that is Exempt. Exemptions are stated on reverse side.		-	\$	B
GROSS INCOME for License Fee Computation.		=	\$ 1200	C
Step 1 The First \$2,000 from line C is covered by the Base Fee	\$ 2,000.00	Base Fee =	\$ 245.00	1
Step 2 Amount from line C between \$2,000 and \$2 MILLION	\$ _____ x <u>00495</u> (Rate Change)	=	\$ _____	2
Step 3 Amount from line C between \$2 MILLION and \$10 MILLION	\$ _____ X _____	=	\$ _____	3
Step 4 Amount from line C between \$10 MILLION and \$20 MILLION	\$ _____ X _____	=	\$ _____	4
Step 5 Amount from line C between \$20 MILLION and \$30 MILLION	\$ _____ X _____	=	\$ _____	5
Step 6 Amount from line C between \$30 MILLION and \$40 MILLION	\$ _____ X _____	=	\$ _____	6
Step 7 Amount from line C between \$40 MILLION and \$50 MILLION	\$ _____ X _____	=	\$ _____	7
Step 8 Amount from line C that is over \$50 MILLION	\$ _____ X _____	=	\$ _____	8
Step 9 ADD STEPS 1 through 8	GROSS INCOME = \$ _____	LICENSE FEE =	\$ _____	9
Step 10 DECALS: A @ \$2.50 B @ \$5.00 C @ \$12.50 Limo @ \$5.00 (see instructions)		DECAL FEE =	\$ _____	10
Step 11 ADD STEPS 9 and 10		SUBTOTAL =	\$ _____	11
Step 12 Plus Late Penalty: _____ month(s) or fraction thereof x 5% = _____ % x Step 11 (Max Penalty 30%)		PENALTY =	\$ _____	12
Step 13 ADD STEPS 11 and 12		TOTAL AMOUNT DUE =	\$ _____	13

14. LEGAL NAME OF BUSINESS ENTITY: KNS Foundation and LEGAL FORM OF ENTITY: LLC
15. PERSON RESPONSIBLE FOR CONDUCT OF BUSINESS: Brooke Kennedy and TITLE OF PERSON: Owner
16. DESCRIBE BUSINESS: Game BUSINESS PH: 843 712 2102 ALT PH: 843 421 3321
17. PHYSICAL ADDRESS: 111 Robert Firrison Parkway TMS # 181-D1-01-00y LANDLORD NAME: _____
18. PHYSICAL LOCATION: IN CITY OUT OF CITY IS BUSINESS A HOME OCCUPATION? YES NO ANTICIPATED START DATE: 3/28/13
19. SSN # _____ or FED EN # 461229937 SC RETAIL LIC # _____ CLOSED or SOLD and DATE: _____
20. CONTRACTOR _____ 335 _____ 555 STATE LIC# _____ GROUP # _____ EXP DATE _____ CITY TRADE EXP DATE: _____ # _____
21. E-MAIL _____ ACCOUNTANT/BOOKKEEPER _____ PH # _____

BY MY SIGNATURE BELOW, I AFFIRM UNDER OATH THAT ALL OF THE INFORMATION STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE THE AUTHORITY TO MAKE THIS APPLICATION. I AFFIRM UNDER OATH THAT ALL ASSESSMENTS, TAXES, FEES, AND PERSONAL PROPERTY TAXES DUE AND PAYABLE TO THE CITY HAVE BEEN PAID. I AFFIRM THAT THE BUSINESS WILL NOT EMPLOY ANY PERSON WHO FAILS TO MEET IDENTITY AND EMPLOYMENT ELIGIBILITY REQUIREMENTS TO WORK IN THE USA. I AFFIRM UNDER OATH THAT I WILL MAINTAIN ACCURATE CONTACT INFORMATION FOR RESPONSIBLE PERSONS ON FILE WITH THE CITY. I UNDERSTAND THAT EMPLOYER CHANGE PROVIDES FOR PENALTIES AND LICENSE REVOCATION FOR MAKING FALSE OR FRAUDULENT STATEMENTS ON THIS APPLICATION.

Brooke Kennedy APPLICANT SIGNATURE
Brooke Kennedy PRINTED NAME
President TITLE
3/25/13 DATE

Final Approval: _____ Original Form must accompany Payment



BUSINESS LICENSE PERSONS RESPONSIBLE FOR CONDUCT OF BUSINESS
 CITY OF MYRTLE BEACH, P O BOX 2468, MYRTLE BEACH, SC 29578
 PHONE (843) 918-1200 FAX (843) 918-1210

List of ALL Persons Responsible for the Conduct of Business, Agents, Officers, and Incorporators

Sec. 11-25. (b) Specifically in regards to the registration and/or application, the license inspector may request the full and legal name, birthdate, gender, personal addresses and contact information for any person, officer, landlord, tenant, property owner, lessor, sublessor, or agent pertaining to the business, or any other person who has ownership or financial interest in the business, or any other person who has decisional or management input, consultation, oversight or control of any portion of the business. In the case of a corporation, the license inspector may additionally request the true and complete name of the corporation, certified articles of incorporation, the incorporators, agents of service, officers, the state or county of its incorporation and its principal place of business.

Please make as many copies of this page as needed. List all incorporators, agents of service, and officers of this business. List all persons having decisional management input, oversight, or control of the business. Any person listed has the authority to make decisions for the business, make changes to and inquire on your business license.

Business Name: Elite Business License Number: 220941
 Name: Brooke Kennedy
 Title or Position with the Company: owner
 Phone Number: 843 421-3321 Date of Birth 5-15-79
 Personal Address: 617 Kindred Dr MB SC 29588

Name: _____
 Title or Position with the Company: _____
 Phone Number: _____ Date of Birth: _____
 Personal Address: _____

Name: _____
 Title or Position with the Company: _____
 Phone Number: _____ Date of Birth: _____
 Personal Address: _____

Name: _____
 Title or Position with the Company: _____
 Phone Number: _____ Date of Birth: _____
 Personal Address: _____

Signature Brooke Kennedy Date 3/25/13

City of Myrtle Beach Business License - P O Drawer 2468 - Myrtle Beach SC 29578
 Business License Phone (843) 918-1200 or Fax (843) 918-1210

Revised 2/16/2010



BUSINESS LICENSE POLICE CONTACT FORM
 MYRTLE BEACH POLICE DEPARTMENT, 1101 OAK STREET, MYRTLE BEACH SC 29577
 PHONE MBPD (843) 918-1362

BUSINESS LICENSE PHONE (843) 918-1200 FAX (843) 918-1210

PLEASE NOTIFY POLICE DEPARTMENT WITH ANY CHANGES

Please indicate contact persons in addition to the business information section. This form is forwarded from the Business License office to the Police Department for their use in case of an alarm, fire, etc. Please fax completed form to 843-918-1210 within two (2) days of submitting an application.

Business License Number: 26941
3.25.13

Business Name	Elite
Business Address	641 Robert Crissm Parkway MB
Business Phone Number	843 712-2102
Business Hours	

Contact Name	Brocke Kennedy
Contact Address	617 Kindred Dr MB SC 29598
Contact Phone Number	843 421 3321

Contact Name	
Contact Address	
Contact Phone Number	

Contact Name	
Contact Address	
Contact Phone Number	

*start date Mon May 31, 2015

INSTRUCTIONS ON REVERSE
 PAYMENT MUST ACCOMPANY APPLICATION
 (Cash, Check, MasterCard, or Visa Accepted)

CITY OF MYRTLE BEACH
 BUSINESS LICENSE DIVISION
 P.O. BOX 2408
 MYRTLE BEACH, SC 29578
 821 N. OAK STREET
 (843) 918-1200 FAX (843) 918-1210
 www.cityofmyrtlebeach.com

LICENSE RENEWAL DUE
JUNE 1
5% PER MONTH
PENALTY IS APPLIED
ON JULY 1ST

FORM FOR NEW LICENSE or RENEWAL
FOR THE LICENSE YEAR _____
BUSINESS LICENSE IS MAILED AFTER APPROVAL

FOR OFFICE USE		
ID#	PROCESSED BY	DATE
210942		
RENEW _____ NEW _____	HOSP FEE: YES _____ NO _____	
TYPE: III	CLASS: 8	SEC: 583
	PM _____	
BL	\$ _____	
BLO	\$ _____	
BLP	\$ _____	
RBL	\$ _____	
FEE DUE	\$ _____	
PEN DUE	\$ _____	

IF BUSINESS IS PERMITTED OR LICENSED BY THE STATE OF SOUTH CAROLINA, A PHOTOCOPY OF THE LICENSE, PERMIT, OR ANY ADDITIONAL DOCUMENTATION MAY BE REQUIRED BY LICENSE INSPECTOR. ALL APPLICABLE SPACES MUST BE COMPLETE BEFORE THE LICENSE WILL BE ISSUED.

D/B/A or TRADE NAME: Elite
 ATTENTION: Brooke Kennedy
 MAILING ADDRESS: 617 Kindred Dr
 CITY, STATE, ZIP: Myrtle Beach SC 29588

NEW BUSINESS MUST COMPLETE A NEW APPLICATION.
DO NOT USE OLD BUSINESS' RENEWAL FORM

LICENSE FEE: Do all steps in order to compute amount due. If line C is \$2 Million or less skip steps 3 through 8. See example on reverse.

GROSS INCOME for the Calendar of Fiscal Year as Reported to IRS or Estimate if a New Business.	+	\$	A
MINUS: Gross Income that is Exempt. Exemptions are listed on reverse side.	-	\$	B
GROSS INCOME for License Fee Computation.	=	\$ 1300.00	C
Step 1 The First \$2,000 from line C is covered by the Base Fee	=	\$ 2,000.00	1
Step 2 Amount from line C between \$2,000 and \$2 MILLION	X	Rate Charge 0.490	2
Step 3 Amount from line C between \$2 MILLION and \$10 MILLION	X		3
Step 4 Amount from line C between \$10 MILLION and \$20 MILLION	X		4
Step 5 Amount from line C between \$20 MILLION and \$30 MILLION	X		5
Step 6 Amount from line C between \$30 MILLION and \$40 MILLION	X		6
Step 7 Amount from line C between \$40 MILLION and \$50 MILLION	X		7
Step 8 Amount from line C that is over \$50 MILLION	X		8
Step 9 ADD STEPS 1 through 8	=	LICENSE FEE	9
Step 10 DECALS: A @ \$2.50 BP @ \$5.00 B @ \$12.50 Limo @ \$5.00 (see instructions)	=	DECAL FEE	10
Step 11 ADD STEPS 9 and 10	=	SUBTOTAL	11
Step 12 Plus Late Penalty: _____ month(s) or fraction thereof x 5% = _____ % x Step 11 (Max Penalty 30%)	=	PENALTY	12
Step 13 ADD STEPS 11 and 12	=	TOTAL AMOUNT DUE	13

GROSS INCOME FIGURE MUST BE PRESENT FOR PROCESSING.

14. LEGAL NAME OF BUSINESS ENTITY: KNS Foundation and LEGAL FORM OF ENTITY: LLC
 15. PERSON RESPONSIBLE FOR CONDUCT OF BUSINESS: Brooke Kennedy and TITLE OF PERSON: owner
 16. DESCRIBE BUSINESS: Alcohol BUSINESS PH# #12-2102 ALT PH# 421-3321
 17. PHYSICAL ADDRESS: 641 Robert Grissm Pkwy LANDLORD NAME _____
 18. PHYSICAL LOCATION: IN CITY OUT OF CITY IS BUSINESS A HOME OCCUPATION? YES NO ANTICIPATED START DATE: 3/28/13
 19. SSN # _____ or FED EIN # 411229937 SC RETAIL LIC # _____ CLOSED or SOLD and DATE: _____
 20. CONTRACTOR: _____ 333 _____ 555 STATE LIC# _____ GROUP # _____ EXP DATE _____ CITY TRADE EXP DATE _____
 21. E-MAIL _____ ACCOUNTANT/BOOKKEEPER _____ PH# _____

BY MY SIGNATURE BELOW, I AFFIRM UNDER OATH THAT ALL OF THE INFORMATION STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE THE AUTHORITY TO MAKE THIS APPLICATION. I AFFIRM UNDER OATH THAT ALL ASSESSMENTS, TAXES, FEES, AND PERSONAL PROPERTY TAXES DUE AND PAYABLE TO THE CITY HAVE BEEN PAID. I AFFIRM THAT THE BUSINESS WILL NOT EMPLOY ANY PERSON WHO FAILS TO MEET IDENTIFY AND EMPLOYMENT ELIGIBILITY REQUIREMENTS TO WORK IN THE USA. I AFFIRM UNDER OATH THAT I WILL MAINTAIN ACCURATE CONTACT INFORMATION FOR RESPONSIBLE PERSONS ON FILE WITH THE CITY. I UNDERSTAND THAT CITY ORDINANCE PROVIDES FOR PENALTIES AND LICENSE REVOCATION FOR MAKING FALSE OR FRAUDULENT STATEMENTS ON THIS APPLICATION.

APPLICANT SIGNATURE: Brooke Kennedy PRINTED NAME: Brooke Kennedy TITLE: President DATE: 3/25/13

Final Approval: _____ Original Form Must Accompany Payment Rev (2/12)



BUSINESS LICENSE PERSONS RESPONSIBLE FOR CONDUCT OF BUSINESS
 CITY OF MYRTLE BEACH, P O BOX 2468, MYRTLE BEACH, SC 29578
 PHONE (843) 918-1200 FAX (843) 918-1210

List of ALL Persons Responsible for the Conduct of Business, Agents, Officers, and Incorporators

Sec. 11-25. (b) Specifically in regards to the registration and/or application, the license inspector may request the full and legal name, birthdate, gender, personal addresses and contact information for any person, officer, landlord, tenant, property owner, lessor, sublessor, or agent pertaining to the business, or any other person who has ownership or financial interest in the business, or any other person who has decisional or management input, consultation, oversight or control of any portion of the business. In the case of a corporation, the license inspector may additionally request the true and complete name of the corporation, certified articles of incorporation, the incorporators, agents of service, officers, the state or county of its incorporation and its principal place of business.

Please make as many copies of this page as needed. List all incorporators, agents of service, and officers of this business. List all persons having decisional management input, oversight, or control of the business. Any person listed has the authority to make decisions for the business, make changes to and inquire on your business license.

Business Name: Elite Business License Number: 210942
 Name: Brooke Kennedy
 Title or Position with the Company: Owner
 Phone Number: 843 421 3321 Date of Birth 5-15-79
 Personal Address: 617 Kindred Dr MB SC 29589

Name: _____
 Title or Position with the Company: _____
 Phone Number: _____ Date of Birth _____
 Personal Address: _____

Name: _____
 Title or Position with the Company: _____
 Phone Number: _____ Date of Birth _____
 Personal Address: _____

Name: _____
 Title or Position with the Company: _____
 Phone Number: _____ Date of Birth _____
 Personal Address: _____

Signature Brooke Kennedy Date 3/25/13

City of Myrtle Beach Business License - P O Drawer 2468 - Myrtle Beach SC 29578
 Business License Phone (843) 918-1200 or Fax (843) 918-1210

Revised 2/16/2010



BUSINESS LICENSE POLICE CONTACT FORM
MYRTLE BEACH POLICE DEPARTMENT, 1101 OAK STREET, MYRTLE BEACH SC 29577
PHONE MBPD (843) 918-1382

BUSINESS LICENSE PHONE (843) 918-1200 FAX (843) 918-1210

PLEASE NOTIFY POLICE DEPARTMENT WITH ANY CHANGES

Please indicate contact persons in addition to the business information section. This form is forwarded from the Business License office to the Police Department for their use in case of an alarm, fire, etc. Please fax completed form to 843-918-1210 within two (2) days of submitting an application.

Business License Number: 210942
3.25.13

Business Name	Elite
Business Address	641 Robert Erissom Pkway
Business Phone Number	843 712 2102
Business Hours	4p - 2A

Contact Name	Brocke Kenney
Contact Address	617 Kindred P - MB SC 29588
Contact Phone Number	843 421 3321

Contact Name	
Contact Address	
Contact Phone Number	

Contact Name	
Contact Address	
Contact Phone Number	

Revised 4/18/2010

INSTRUCTIONS ON REVERSE
 PAYMENT MUST ACCOMPANY APPLICATION
 (Cash, Check, MasterCard, or VISA Accepted)

CITY OF MYRTLE BEACH
 BUSINESS LICENSE DIVISION
 P.O. BOX 2468
 MYRTLE BEACH, SC 29578
 921 N. OAK STREET
 (843) 918-1200 FAX (843) 918-1210
 www.cityofmyrtlebeach.com

* start date thru May 31, 13

LICENSE RENEWAL DUE
JUNE 7
5% PER MONTH
PENALTY IS APPLIED
ON JULY 1ST

FORM FOR NEW LICENSE or RENEWAL
FOR THE LICENSE YEAR _____
BUSINESS LICENSE IS MAILED AFTER APPROVAL

FOR OFFICE USE		
PROCESSED BY	DATE	
26043		
RENEW _____ NEW _____	HOSP FEE: YES _____ NO _____	
TYPE: 111	CLASS: 1	SK: 5812
	PM _____	
BL	\$ _____	
BLD	\$ _____	
BLP	\$ _____	
RBL	\$ _____	
FEE DUE	\$ _____	
PEN DUE	\$ _____	
NEW BUSINESS MUST COMPLETE A NEW APPLICATION. DO NOT USE OLD BUSINESS' RENEWAL FORM		

IF BUSINESS IS PERMITTED OR LICENSED BY THE STATE OF SOUTH CAROLINA A PHOTOCOPY OF THE LICENSE, PERMIT, OR ANY ADDITIONAL DOCUMENTATION MAY BE REQUIRED BY LICENSE INSPECTOR. ALL APPLICABLE SPACES MUST BE COMPLETE BEFORE THE LICENSE WILL BE ISSUED.

DBA or TRADE NAME: Elite
 ATTENTION: Brooke Kennedy
 MAILING ADDRESS: 617 Kindred Dr
 CITY, STATE, ZIP: Myrtle Beach SC 29588

LICENSE FEE: Do all steps in order to compute amount due. If line C is \$2 Million or less skip steps 3 through 8. See example on reverse.

DESCRIPTION	AMOUNT	STEP
GROSS INCOME for the Calendar or Fiscal Year as Reported to IRS or Estimate if a New Business.	+	\$ _____ A
MINUS: Gross Income that is Exempt. Exemptions are listed on reverse side.	-	\$ _____ B
GROSS INCOME for Licensee Fee Computation.	=	\$ <u>1000</u> C
Step 1 The First \$2,000 from line C is covered by the Base Fee	=	\$ <u>95.00</u> 1
Step 2 Amount from line C between \$2,000 and \$2 MILLION	=	\$ _____ 2
Step 3 Amount from line C between \$2 MILLION and \$10 MILLION	=	\$ _____ 3
Step 4 Amount from line C between \$10 MILLION and \$20 MILLION	=	\$ _____ 4
Step 5 Amount from line C between \$20 MILLION and \$30 MILLION	=	\$ _____ 5
Step 6 Amount from line C between \$30 MILLION and \$40 MILLION	=	\$ _____ 6
Step 7 Amount from line C between \$40 MILLION and \$50 MILLION	=	\$ _____ 7
Step 8 Amount from line C that is over \$50 MILLION	=	\$ _____ 8
Step 9 ADD STEPS 1 through 8 GROSS INCOME	=	\$ _____ LICENSE FEE 9
Step 10 DECALS: A @ \$2.50 B @ \$5.00 C @ \$12.50 Limo @ \$5.00 (see instructions)	=	\$ _____ DECAL FEE 10
Step 11 ADD STEPS 9 and 10	=	\$ _____ SUBTOTAL 11
Step 12 Plus Late Penalty: _____ month(s) or fraction thereof x 5% = _____ % x Step 11 (Max Penalty 30%)	=	\$ _____ PENALTY 12
Step 13 ADD STEPS 11 and 12	=	\$ _____ TOTAL AMOUNT DUE 13

GROSS INCOME FIGURE MUST BE PRESENT FOR PROCESSING.

14. LEGAL NAME OF BUSINESS ENTITY: KNS Foundation LLC and LEGAL FORM OF ENTITY: LLC
 15. PERSON RESPONSIBLE FOR CONDUCT OF BUSINESS: Brooke Kennedy and TITLE OF PERSON: Owner
 16. DESCRIBE BUSINESS: Food BUSINESS PH# 843 421 3321 ALT PH# 843 687 1164
 17. PHYSICAL ADDRESS: 141 Robert Frissom Parkway TMS # _____ LANDLORD NAME _____
 18. PHYSICAL LOCATION: IN CITY OUT OF CITY IS BUSINESS A HOME OCCUPATION? YES NO ANTICIPATED START DATE: 3/28/13
 19. SSN# _____ or FED EIN # 461229937 SC RETAIL LIC # _____ CLOSED or SOLD and DATE: _____
 20. CONTRACTOR: _____ 333 _____ 555 STATE LIC# _____ GROUP # _____ EXP DATE _____ CITY TRADE EXP DATE: _____ # _____
 21. E-MAIL _____ ACCOUNTANT/BOOKKEEPER _____ PH # _____

BY MY SIGNATURE BELOW, I AFFIRM UNDER OATH THAT ALL OF THE INFORMATION STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE THE AUTHORITY TO MAKE THIS APPLICATION. I AFFIRM UNDER OATH THAT ALL ASSESSMENTS, TAXES, FEES, AND PERSONAL PROPERTY TAXES DUE AND PAYABLE TO THE CITY HAVE BEEN PAID. I AFFIRM THAT THE BUSINESS WILL NOT EMPLOY ANY PERSON WHO FAILS TO MEET IDENTITY AND EMPLOYMENT ELIGIBILITY REQUIREMENTS TO WORK IN THE USA. I AFFIRM UNDER OATH THAT I WILL MAINTAIN ACCURATE CONTACT INFORMATION FOR RESPONSIBLE PERSONS ON FILE WITH THE CITY. I UNDERSTAND THAT CITY ORDINANCE PROVIDES FOR FINES AND LICENSE REVOCATION FOR MAKING FALSE OR FRAUDULENT STATEMENTS ON THIS APPLICATION.

Applicant Signature: Brooke Kennedy PRINTED NAME: Brooke Kennedy TITLE: President DATE: 3/25/13

Final Approval: _____ Original Form Must Accompany Payment Rev (2/12)



BUSINESS LICENSE POLICE CONTACT FORM
MYRTLE BEACH POLICE DEPARTMENT, 1101 OAK STREET, MYRTLE BEACH SC 29577
PHONE MBPD (843) 918-1382

BUSINESS LICENSE PHONE (843) 918-1200 FAX (843) 918-1210

PLEASE NOTIFY POLICE DEPARTMENT WITH ANY CHANGES

Please indicate contact persons in addition to the business information section. This form is forwarded from the Business License office to the Police Department for their use in case of an alarm, fire, etc. Please fax completed form to 843-918-1210 within two (2) days of submitting an application.

Business License Number: 20943
3.25.13

Business Name	Elite
Business Address	641 Robert Erissom Prkway
Business Phone Number	843 712 2102
Business Hours	4p - 2a

Contact Name	Brocke Kennea
Contact Address	617 Kindred Dr - MB SC 29588
Contact Phone Number	843 421 3321

Contact Name	
Contact Address	
Contact Phone Number	

Contact Name	
Contact Address	
Contact Phone Number	

Revised 4/16/2010

INSTRUCTIONS ON REVERSE
 PAYMENT MUST ACCOMPANY APPLICATION
 (Cash, Check, MasterCard, or Visa Accepted)

CITY OF MYRTLE BEACH
 BUSINESS LICENSE DIVISION
 P.O. BOX 2488
 MYRTLE BEACH, SC 29578
 921 N. OAK STREET
 (843) 918-1200 FAX (843) 918-1210
 www.cityofmyrtlebeach.com

LICENSE RENEWAL DUE
JUNE 1
5% PER MONTH
PENALTY IS APPLIED
ON JULY 1ST

FORM FOR NEW LICENSE or RENEWAL
 FOR THE LICENSE YEAR 2013-2014
 BUSINESS LICENSE IS MAILED AFTER APPROVAL

IF BUSINESS IS PERMITTED OR LICENSED BY THE STATE OF SOUTH CAROLINA, A PHOTOCOPY OF THE LICENSE PERMIT, OR ANY ADDITIONAL DOCUMENTATION MAY BE REQUIRED BY LICENSE INSPECTOR. ALL APPLICABLE SPACES MUST BE COMPLETE BEFORE THE LICENSE WILL BE ISSUED.

D/B/A or TRADE NAME: ELITE
 ATTENTION: BROOKE KENNEDY
 MAILING ADDRESS: 617 KINDRED DR
 CITY, STATE, ZIP: MYRTLE BEACH, SC 29588

(799P)

FOR OFFICE USE		
ID#	PROCESSED BY	DATE
111 26941	CMO	5.25.13
RENEW <input checked="" type="checkbox"/>	NEW <input type="checkbox"/>	HOSP FEE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
TYPE: 111	CLASS: 8	SIC: 799P
BL	\$	PM 290.17
BLD	\$	
BLP	\$	
RBL	\$	
FEE DUE	\$	
PEN DUE	\$	

EXHIBIT
 2

NEW BUSINESS MUST COMPLETE A NEW APPLICATION. DO NOT USE OLD BUSINESS RENEWAL FORM.

LICENSE FEE Do all steps in order to compute amount due. If line C is \$2 Million or less skip steps 3 through 8. See example on reverse.
 GROSS INCOME for the Calendar or Fiscal Year as Reported to IRS or Estimate if a New Business. + \$ _____ A
 MINUS: Gross Income that is Exempt. Exemptions are listed on the reverse side. GROSS INCOME FIGURE MUST BE PRESENT FOR PROCESSING. - \$ _____ B
 GROSS INCOME for License Fee Computation. = \$ 11,220.00 C

Step 1	The First \$2,000 from line C is covered by the Base Fee	\$ 2,000.00	Base Fee	\$ 245.00	1
Step 2	Amount from line C between \$2,000 and \$2 MILLION	\$ 9,220.00 x	.00490	\$ 45.17	2
Step 3	Amount from line C between \$2 MILLION and \$10 MILLION	\$ x	.00441	\$	3
Step 4	Amount from line C between \$10 MILLION and \$20 MILLION	\$ x	.00392	\$	4
Step 5	Amount from line C between \$20 MILLION and \$30 MILLION	\$ x	.00343	\$	5
Step 6	Amount from line C between \$30 MILLION and \$40 MILLION	\$ x	.00294	\$	6
Step 7	Amount from line C between \$40 MILLION and \$50 MILLION	\$ x	.00245	\$	7
Step 8	Amount from line C over \$50 MILLION	\$ x	.00123	\$	8
Step 9	ADD STEPS 1 through 8	GROSS INCOME = \$ 11,220.00	LICENSE FEE = \$	290.17	9
Step 10	DECALS: A @ \$2.50 BP @ \$5.00 B @ \$12.50 Limo @ \$5.00 (see instructions)	DECAL FEE = \$			10
Step 11	ADD STEPS 9 and 10		SUBTOTAL = \$		11
Step 12	Plus Late Penalty: ___ month(s) or fraction thereof x 5% = ___ % x Step 11 (Max Penalty 20%)		PENALTY = \$		12
Step 13	ADD STEPS 11 and 12		TOTAL AMOUNT DUE = \$	290.17	13

14. LEGAL NAME OF BUSINESS ENTITY: KNS FOUNDATION LLC and LEGAL FORM OF ENTITY: LLC
 15. PERSON RESPONSIBLE FOR CONDUCT OF BUSINESS: KENNEDY, BROOKE ANN and TITLE OF PERSON: OWNER
 16. DESCRIBE BUSINESS: POOL HALL/ARCADE BUSINESS PH# 843-712-2102 ALT PH# 843-421-3321
 17. PHYSICAL ADDRESS: 641 ROBERT M GRISSOM PKY TMS# 181-01-01-004 LANDLORD NAME
 18. PHYSICAL LOCATION: IN CITY OUT OF CITY IS BUSINESS A HOME OCCUPATION? YES NO ANTICIPATED START DATE: 3/28/2013
 19. SSN# _____ or FED EIN# *****9937 SC RETAIL # _____ CLOSED or SOLD and DATE: _____
 20. CONTRACTOR: 333 556 STATE LIC# _____ GROUP # _____ EXP DATE _____ CITY TRADE EXP DATE _____ # _____
 21. E-MAIL _____ ACCOUNTANT/BOOKKEEPER _____ PH# _____

BY MY SIGNATURE BELOW, I AFFIRM UNDER OATH THAT ALL OF THE INFORMATION STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE THE AUTHORITY TO MAKE THIS APPLICATION. I AFFIRM UNDER OATH THAT ALL ASSESSMENTS, TAXES, FEES, AND PERSONAL PROPERTY TAXES DUE AND PAYABLE TO THE CITY HAVE BEEN PAID. I AFFIRM THAT THE BUSINESS WILL NOT EMPLOY ANY PERSON WHO FAILS TO MEET IDENTIFY AND EMPLOYMENT ELIGIBILITY REQUIREMENTS TO WORK IN THE USA. I AFFIRM UNDER OATH THAT I WILL MAINTAIN ACCURATE CONTACT INFORMATION FOR RESPONSIBLE PERSONS ON FILE WITH THE CITY. I UNDERSTAND THAT CITY ORDINANCE PROVIDES FOR PENALTIES AND LICENSE REVOCATION FOR MAKING FALSE OR FRAUDULENT STATEMENTS ON THIS APPLICATION.

APPLICANT SIGNATURE _____ PRINTED NAME _____ TITLE _____ DATE _____

Final Approval: _____ Original Form Must Accompany Payment Hosp # _____ Rev (2/12)

INSTRUCTIONS ON REVERSE
 PAYMENT MUST ACCOMPANY APPLICATION
 (Cash, Check, MasterCard, or Visa Accepted)

LICENSE RENEWAL DUE
JUNE 1
5% PER MONTH
PENALTY IS APPLIED
ON JULY 1ST

CITY OF MYRTLE BEACH
 BUSINESS LICENSE DIVISION
 P.O. BOX 2468
 MYRTLE BEACH, SC 29578
 921 N. OAK STREET
 (843) 918-1200 FAX (843) 910-1210
 www.cityofmyrtlebeach.com

FORM FOR NEW LICENSE or RENEWAL
FOR THE LICENSE YEAR 2013-2014
BUSINESS LICENSE IS MAILED AFTER APPROVAL

FOR OFFICE USE		
ID#	PROCESSED BY	DATE
111 26942	OWNO	5.25.13
RENEW <input checked="" type="checkbox"/>	NEW <input type="checkbox"/>	HOSP FEE YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
TYPE 111	CLASS: 8	SIC: 5813
BL	\$	438.94
BLD	\$	
BLP	\$	
RBL	\$	
FEE DUE	\$	
PEN DUE	\$	
NEW BUSINESS MUST COMPLETE A NEW APPLICATION DO NOT USE OLD BUSINESS RENEWAL FORM.		

D/B/A or TRADE NAME: ELITE (5813)
 ATTENTION: BROOKE ANN KENNEDY
 MAILING ADDRESS: 617 KINDRED DR
 CITY, STATE, ZIP: MYRTLE BEACH, SC 29588

LICENSE FEE Do all steps in order to compute amount due. If line C is \$2 Million or less skip steps 3 through 8. See example on reverse.

GROSS INCOME for the Calendar or Fiscal Year as Reported to IRS or Estimate if a New Business. + \$ _____ A

MINUS: Gross income that is Exempt. Exemptions are listed on the reverse side. GROSS INCOME FIGURE MUST BE PRESENT FOR PROCESSING. - \$ _____ B

GROSS INCOME for License Fee Computation. = \$ 41,580.00 C

Step 1	The First \$2,000 from line C is covered by the Base Fee	\$ 2,000.00	Base Fee	\$ 205.00	1
Step 2	Amount from line C between \$2,000 and \$2 MILLION	\$ 39,580.00 x .00490	Rate Charge	\$ 193.94	2
Step 3	Amount from line C between \$2 MILLION and \$10 MILLION	X .00443		\$ 3	3
Step 4	Amount from line C between \$10 MILLION and \$20 MILLION	X .00392		\$ 4	4
Step 5	Amount from line C between \$20 MILLION and \$30 MILLION	X .00343		\$ 5	5
Step 6	Amount from line C between \$30 MILLION and \$40 MILLION	X .00294		\$ 6	6
Step 7	Amount from line C between \$40 MILLION and \$50 MILLION	X .00245		\$ 7	7
Step 8	Amount from line C over \$50 MILLION	X .00123		\$ 8	8
Step 9	ADD STEPS 1 through 8	GROSS INCOME = \$ 41,580.00	LICENSE FEE =	\$ 438.94	9
Step 10	DECALS: @ \$2.50 BP @ \$5.00 B @ \$12.00 Limo @ \$5.00 (see instructions)		DECAL FEE =	\$ 10	10
Step 11	ADD STEPS 9 and 10		SUBTOTAL =	\$ 11	11
Step 12	Plus Late Penalty: ___ month(s) or fraction thereof x 5% = ___ % X Step 11 (Max Penalty 30%)		PENALTY =	\$ 12	12
Step 13	ADD STEPS 11 and 12		TOTAL AMOUNT DUE =	\$ 438.94	13

14. LEGAL NAME OF BUSINESS ENTITY: KNS FOUNDATION LLC and LEGAL FORM OF ENTITY: LLC

15. PERSON RESPONSIBLE FOR CONDUCT OF BUSINESS: KENNEDY, BROOKE ANN and TITLE OF PERSON: OWNER

16. DESCRIBE BUSINESS: DRINKING PLACE BUSINESS PH# 843-712-2102 ALT PH# 843-421-3321

17. PHYSICAL ADDRESS: 641 ROBERT M GRISOM PKY TMS# 181-01-01-004 LANDLORD NAME:

18. PHYSICAL LOCATION: IN CITY OUT OF CITY IS BUSINESS A HOME OCCUPATION? YES NO ANTICIPATED START DATE: 3/28/2013

19. SSN # or FED EIN# *****9937 SECRETAL # CLOSED or SOLD and DATE:

20. CONTRACTOR: 333 555 STATE LIC# GROUP # EXP DATE CITY TRADE EXP DATE #

21. E-MAIL ACCOUNTANT/BOOKKEEPER PH#

BY MY SIGNATURE BELOW, I AFFIRM UNDER OATH THAT ALL OF THE INFORMATION STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE THE AUTHORITY TO MAKE THIS APPLICATION. I AFFIRM UNDER OATH THAT ALL ASSESSMENTS, TAXES, FEES, AND PERSONAL PROPERTY TAXES DUE AND PAYABLE TO THE CITY HAVE BEEN PAID. I AFFIRM THAT THE BUSINESS WILL NOT EMPLOY ANY PERSON WHO FAILS TO MEET IDENTITY AND EMPLOYMENT ELIGIBILITY REQUIREMENTS TO WORK IN THE USA. I AFFIRM UNDER OATH THAT I WILL MAINTAIN ACCURATE CONTACT INFORMATION FOR RESPONSIBLE PERSONS ON FILE WITH THE CITY. I UNDERSTAND THAT CITY ORDINANCE PROVIDES FOR PENALTIES AND LICENSE REVOCATION FOR MAKING FALSE OR FRAUDULENT STATEMENTS ON THIS APPLICATION.

APPLICANT SIGNATURE _____ PRINTED NAME _____ TITLE _____ DATE _____

Final Approval: _____ Original Form Must Accompany Payment Hosp # _____ Rev (2/12)

INSTRUCTIONS ON REVERSE
 PAYMENT MUST ACCOMPANY APPLICATION
 (Cash, Check, MasterCard, or Visa Accepted)

LICENSE RENEWAL DUE
JUNE 1
5% PER MONTH
PENALTY IS APPLIED
ON JULY 1ST

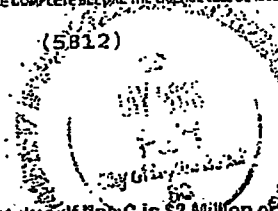
CITY OF MYRTLE BEACH
 BUSINESS LICENSE DIVISION
 P.O. BOX 2468
 MYRTLE BEACH, SC 29578
 921 N. OAK STREET
 (843) 918-1200 FAX (843) 918-1210
 www.cityofmyrtlebeach.com

FORM FOR NEW LICENSE or RENEWAL
FOR THE LICENSE YEAR 2013-2014
 BUSINESS LICENSE IS MAILED AFTER APPROVAL

FOR OFFICE USE		
ID#	PROCESSED BY	DATE
111 26943	WVW	5.23.13
RENEW <input checked="" type="checkbox"/>	NEW <input type="checkbox"/>	HOSP FEE: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
TYPE: 111	CLASS: 1	SIC: 5812
OL	\$	PM 124.49
EO	\$	
BLP	\$	
RBL	\$	
FEE DUE	\$	
PEN DUE	\$	
NEW BUSINESS MUST COMPLETE A NEW APPLICATION DO NOT USE OLD BUSINESS RENEWAL FORM.		

IF BUSINESS IS PERMITTED OR LICENSED BY THE STATE OF SOUTH CAROLINA, A PHOTOCOPY OF THE LICENSE, PERMIT, OR ANY ADDITIONAL DOCUMENTATION MAY BE REQUIRED BY LICENSE INSPECTOR. ALL APPLICABLE SPACES MUST BE COMPLETE BEFORE THE LICENSE WILL BE ISSUED.

D/B/A or TRADE NAME: ELITE (5812)
 ATTENTION: BROOKE ANN KENNEDY
 MAILING ADDRESS: 617 KINDRED DR
 CITY, STATE, ZIP: MYRTLE BEACH, SC 29588



LICENSE FEE Do all steps in order to compute amount due. If line C is \$2 Million or less skip steps 3 through 8. See examples on reverse.
 GROSS INCOME for the Calendar or Fiscal Year as Reported to IRS or Estimate if a New Business. + \$ _____ A

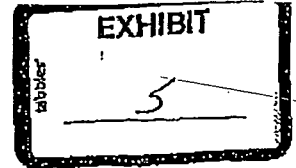
MINUS: Gross Income that is Exempt. Exemptions are listed on the reverse side. - \$ _____ B
GROSS INCOME FIGURE MUST BE PRESENT FOR PROCESSING. = \$ 14,040.00 C

Step	Description	Amount	Rate	Charge	Total
Step 1	The First \$2,000 from line C is covered by the Base Fee	\$ 2,000.00		\$ 95.00	1
Step 2	Amount from line C between \$2,000 and \$2 MILLION	\$ 12,040.00	X .00245	\$ 29.49	2
Step 3	Amount from line C between \$2 MILLION and \$10 MILLION	\$ _____	X .00221	\$ _____	3
Step 4	Amount from line C between \$10 MILLION and \$20 MILLION	\$ _____	X .00196	\$ _____	4
Step 5	Amount from line C between \$20 MILLION and \$30 MILLION	\$ _____	X .00172	\$ _____	5
Step 6	Amount from line C between \$30 MILLION and \$40 MILLION	\$ _____	X .00147	\$ _____	6
Step 7	Amount from line C between \$40 MILLION and \$50 MILLION	\$ _____	X .00123	\$ _____	7
Step 8	Amount from line C over \$50 MILLION	\$ _____	X .00062	\$ _____	8
Step 9	ADD STEPS 1 through 8	GROSS INCOME = \$ 14,040.00		LICENSE FEE = \$ 124.49	9
Step 10	DECALS: A @ \$2.50 BP @ \$5.00 B @ \$12.50 Lino @ \$5.00 (see instructions)			DECAL FEE = \$ _____	10
Step 11	ADD STEPS 9 and 10			SUBTOTAL = \$ _____	11
Step 12	Plus Late Penalty: _____ month(s) or fraction thereof x 5% = _____ % x Step 11 (Max Penalty 30%)			PENALTY = \$ _____	12
Step 13	ADD STEPS 11 and 12			TOTAL AMOUNT DUE = \$ 124.49	13

14. LEGAL NAME OF BUSINESS ENTITY: KNS FOUNDATION LLC and LEGAL FORM OF ENTITY: LLC
 15. PERSON RESPONSIBLE FOR CONDUCT OF BUSINESS: KENNEDY, BROOKE ANN and TITLE OF PERSON: OWNER
 16. DESCRIBE BUSINESS: EATING PLACE BUSINESS PH# 843-421-3321 ALT PH# 843-687-1164
 17. PHYSICAL ADDRESS: 641 ROBERT M GRISSOM PKY TMS# 181-01-01-004 LANDLORD NAME:
 18. PHYSICAL LOCATION: IN CITY OUT OF CITY IS BUSINESS A HOME OCCUPATION? YES NO ANTICIPATED START DATE: 3/28/2013
 19. SSN# _____ or FED EIN# *****9937 SC RETAIL # 26009872 _____ CLOSED or SOLD and DATE: _____
 20. CONTRACTOR: _____ 333 _____ 555 STATE LIC# _____ GROUP # _____ EXP DATE _____ CITY TRADE EXP DATE _____ # _____
 21. E-MAIL _____ ACCOUNTANT/BOOKKEEPER _____ PH# _____

BY MY SIGNATURE BELOW, I AFFIRM UNDER OATH THAT ALL OF THE INFORMATION STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE THE AUTHORITY TO MAKE THIS APPLICATION. I AFFIRM UNDER OATH THAT ALL ASSESSMENTS, TAXES, FEES, AND PERSONAL PROPERTY TAXES DUE AND PAYABLE TO THE CITY HAVE BEEN PAID. I AFFIRM THAT THE BUSINESS WILL NOT EMPLOY ANY PERSON WHO FAILS TO MEET IMMEDIATE EMPLOYMENT ELIGIBILITY REQUIREMENTS TO WORK IN THE USA. I AFFIRM UNDER OATH THAT I WILL MAINTAIN ACCURATE CONTACT INFORMATION FOR RESPONSIBLE PERSONS ON FILE WITH THE CITY. I UNDERSTAND THAT CITY ORDINANCE PROVIDES FOR PENALTIES AND LICENSE REVOCATION FOR MAKING FALSE OR FRAUDULENT STATEMENTS ON THIS APPLICATION.

APPLICANT SIGNATURE _____ PRINTED NAME _____ TITLE _____ DATE _____
 Final Approval: _____ Original Form Must Accompany Payment Hosp # _____ Rev (2/12)



City of Myrtle Beach
SOUTH CAROLINA

June 10, 2013

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Brooke Kennedy
Elite
617 Kindred Road
Myrtle Beach, SC 29588

NOTICE OF BUSINESS LICENSE SUSPENSION

RE: Elite Business License #26941, #26943, and #26942

Dear Ms. Kennedy:

This written notice of the immediate suspension and proposed revocation of business license # 26941, #26942, and #26943 for Elite is given to you as the licensee or person in control of Elite pursuant to §11-35 of the Code of Ordinances of the City of Myrtle Beach, South Carolina. A copy of that ordinance is enclosed herein. Business license # 26941, business license #26942, and business license #26943 is now suspended pending a hearing before city council for the purpose of determining whether the licenses should be revoked. The pending revocation hearing before city council may be waived if you surrender the business licenses prior to the hearing by notifying the City's License Inspector in writing of the business licensee's decision to surrender its business license.

The reason for the immediate suspension and proposed revocation of the business licenses for Elite is that it has been determined from police reports that the business licenses appear to have been obtained through misrepresentation, fraud, or deception which are grounds for revocation of a business license under §11-35 (3). The business licenses were issued for a pool hall/arcade that serves food and alcohol when the business has been observed by Myrtle Beach Police Officers to be operating as a nightclub/lounge. Additionally, the business is being marketed and advertised to the public as Elite Ultra Lounge. The gross receipts reported on the license renewal for the pool hall/arcade business constitute 17% of your total gross, the gross receipts reported for your food sales constitute 21% of your total gross, and the gross receipts reported for the alcohol business constitute 62% of your total gross. The gross receipts reported reflect the primary business is coming from the sale of alcohol and not billiards. Kenneth May, Zoning Administrator, advised you that a nightclub/lounge business could not be licensed at 641 Robert Grissom Parkway because it was not a permitted use in the C-3 zone. The Zoning Administrator approved the business license applications for the business to operate a pool hall/arcade that serves food and alcohol based upon the floor plan you submitted and a physical site inspection.

CITY OF MYRTLE BEACH / P.O. Box 2468 / MYRTLE BEACH, SOUTH CAROLINA 29578-2468



Unless waived in writing as set forth above, the revocation hearing before city council will be held on Tuesday, June 25, 2013 at 11:00 am at City Hall located at 937 Broadway in the City of Myrtle Beach, S.C.

Sincerely,

Mary C McDowell

Mary C McDowell
License Inspector

Cc: Tom Ellenburg, City Attorney; Chief Warren Gall, Myrtle Beach Police Department
Joan Grove, City Clerk; Michael W. Battle, Esq.

RECEIVED

JUN 12, 2013

BATTLE & VAUGHT, P.A.

Sec. 11-35. - Suspension or revocation of license.

When the license inspector determines that:

- (1) A licensee has been mistakenly or improperly issued or issued contrary to law; or
- (2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article; or
- (3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or
- (4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
- (5) A licensee has engaged in an unlawful activity or nuisance arising from, or related, connected, associated with or to the operation of the business, or
- (6) A licensee has failed to pay any liens, taxes, fees or charges due and owing to the city.
- (7) A licensee has failed to maintain or produce properly completed Employment Eligibility Verification forms I-9 for every employee as required by the United States Department of Justice;

the license inspector shall give written notice to the licensee or the person in control of the business within the city by personal service or certified mail that the license is suspended pending a hearing before city council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special council meeting within 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this article.

[Ord No 91-24, § 15 6-25-97, Ord. No 2002-9 3-26-02]

Elite

BL 26192

books

New World Systems Corporation
4/05/13

APPLICATION UTILITIES
Narrative File Maintenance

AU2210S2
Roll Up/Down

File....: BMMAST File Key: 000027691
Section.: Business Narrative

1 4/5/13

2 Per Ken May, business has placed 8 pool tables in the facility

3 and the applicant states to Ken he is a pool hall. According

4 to Ken, zoning is fine with the business license applications

5 for food, bar, and billiards. Called Tom Ellenburg for advice

6 as the 3 business license applications reflect the largest gross

7 income coming from bar sales and not billiards. Tom E.

8 conferenced in me and Ken to discuss. Ken explained that he

9 could not approve or disapprove a use based upon assumptions

10 and that the applicant had moved in a total of 8 pool tables and

11 moved out tables and chairs. Ken stated there was no dance

12 floor space and the interior of the business looked like a pool

13 hall. Ken affirmed to Tom E. that he was comfortable with his

14 approval. Tom E. acknowledged, but had questioned Ken on

15 the change of opinion from the meeting that was held on

16 Mar 26, 2013. Phone call ended then Tom E. called me back.

17 Tom was a bit unclear as to the change of opinion, but it is what

18 it is and if zoning approved, then zoning will have to stand behind

19 their position should anything with the use of the business change

20 after they open. I further stated that Zoning would have to take

21 the primary position on any action related to the business use.

22 Tom E. agreed. mcm

23

24

25

26

27

28

29

30

31

32

RED

RELAX BEAT DANCE

HAPPY HOUR HALF PRICE
DRINKS & APPETIZERS 4PM-7PM

MONDAY

INDUSTRY NIGHT HALF PRICE POOL AND FOOD
ALL DAY "DINE IN ONLY"

WEDNESDAY

▶ PING PONG

8PM-MIDNIGHT

THURSDAY

RED SQUARE INTERNATIONAL NIGHT
10PM-UNTIL

FRIDAY & SATURDAY

LIVE DJ & GUEST DJS

STARTING AT 10PM LIVE DJ SPINNING THE HOTTEST
HOUSE, LOUNGE, AND TOP 40 TRACKS







CITY OF MYRTLE BEACH

Original Copy
PAYMENT DATE/TIME: 5/23/2013 15:33
RECEIPT# . . . : 120267479

STATION.: DESK CASHIER.: DAYRES
RECEIVED FROM: ELITE

BUSLICENSE Lic#: 11128941	290.17
BUSLICENSE Lic#: 11126943	124.49
BUSLICENSE Lic#: 11128942	438.94
	<hr/>
	853.60

CHECK 1049 853.60

First In Service

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 K & S Foundation, LLC, d/b/a Elite)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2013- CP-26- 5009

HORRY COUNTY
 18 SEP 18
 MYRTLE BEACH
 CLERK OF COURT

Petitioner,)
)
 The City of Myrtle Beach,)
)
 Respondent.)

v. Their decision must be arbitrary - unreasonable - obvious abuse of discretion. - without evid support

MEMORANDUM OF LAW IN SUPPORT
 OF PETITIONERS' AMENDED APPEAL
 REGARDING THE CITY OF MYRTLE
 BEACHES' REVOCATION OF ITS
 THREE BUSINESS LICENSES

P 9/17 & 18
Ken Longuey

TO: ATTORNEY MIKE BATTLE ON BEHALF OF THE RESPONDENT THE CITY OF MYRTLE BEACH.

FACTUAL AND PROCEDURAL HISTORY

On August 22, 2012, Petitioner Brooke Kennedy ("Kennedy") d/b/a Elite applied for her Retail Beer, Wine, and Liquor License with the South Carolina Department of Revenue. Petitioner indicated on her license application that the nature of the business was a restaurant not a nightclub¹. Specifically, Kennedy never submitted any business license applications, nor represented to anyone with the City's business licensing department that she wanted to operate Elite as a nightclub². Elite's building was previously known as Red's Corner Pocket, and operated under a different ownership as a drinking place, an eating place, and a pool hall/ arcade.

¹ See Kennedy's Application for Retail Beer, Wine, and Liquor filed with the State of South Carolina Department of Revenue signed by Kennedy and dated August 22, 2012. Under section 8 of Form (ABL-901), it states nature of Business is a Restaurant. Kennedy's application was included in Elite's Book of Exhibits placed into evidence by Respondent's counsel at the business license revocation hearing on June 25, 2013. A copy of Kennedy's Application for Retail Beer, Wine, and Liquor is attached hereto as (Exhibit No. 1).

² See Elite's Book of Exhibits placed into evidence by Respondent's Attorney at the business license revocation hearing on June 25, 2013.

In order to operate this business, Kennedy signed a 3 year lease with the building owner and purchased all the equipment from the previous tenant. When Kennedy was attempting to open this business, the Respondent, through its various agents, required Kennedy to make several changes to the facility prior to granting Kennedy's 3 business licenses. These requirements and/or changes included the following: (a) increasing the number of pool tables in the facility from three tables to eight tables, (b) employing private security, and (c) installing a surveillance system.

After complying with each of the City's required conditions on or before March 28, 2013, Mary McDowell ("McDowell"), Business License Administrator for the City of Myrtle Beach, issued 3 business licenses to Kennedy to operate the facility a drinking place, business license # 111 26942, an eating place, business license # 111 26943, and a pool hall/arcade, business license # 111 26941, at 641 Robert M. Grissom Parkway, Myrtle Beach, South Carolina, 29577, TMS #181-01-01-004.³

The City, further, approved Kennedy's 3 business licenses based on a previous floor plan showing a DJ booth for playing music, and after conducting a physical site inspection. Kennedy has not changed the floor plan⁴ since the previous inspection and approval.

The premises upon which Elite is located is zoned C-3 Commercial District. Elite is operating as "*a drinking place, an eating place, and a pool hall/arcade*" which are permitted uses in a C-3 zone. Elite obtained a special permit to serve alcohol after 2:00 a.m. Elite has operated for

³ A copy of Kennedy's 3 initial business licenses (dated March 25, 2013) to operate Elite as a drinking place, business license # 111 26942, an eating place, business license # 111 26943, and a pool hall/arcade, business license # 111 26941, are attached hereto as (Exhibit No. 2).

⁴ A copy of previous floor plan for Red's Corner Pocket showing a DJ booth for playing music approved by the City is attached hereto as (Exhibit No. 3).

approximately 63 days as *"a drinking place, an eating place, and a pool hall/arcade"* without incident, citation, or violation of the City of Myrtle Beach Code of Ordinances. Kennedy had never received any presuspension notice or warning from McDowell regarding Elite's operation until June 10, 2013. Specifically, McDowell never cited Brooke Kennedy d/b/a Elite with violating § 11-35(1)(2)(4)(5)(6)(7) of the Business Licenses Ordinance as set forth below:

- (1) *A license has been mistakenly or improperly issued or issued contrary to law; or*
- (2) *A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article; or*
- (4) *A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or*
- (5) *licensee has engaged in an unlawful activity or nuisance arising from, or related, connected, associated with or to the operation of the business, or*
- (6) *A licensee has failed to pay any liens, taxes, fees or charges due and owing to the city.*
- (7) *A licensee has failed to maintain or produce properly completed Employment Eligibility Verification forms I-9 for every employee as required by the United States Department of Justice.*

On or about May 23, 2013, Kennedy applied for the renewal⁵ of her 3 business licenses # 26941, # 26942, and # 26943. However, McDowell refused to renew Elite's 3 business licenses on the grounds that its *"gross receipts reported reflect[ed] the primary business is coming from the sale of alcohol and not billiards."*⁶ Kennedy contends that McDowell incorrectly interprets Business Licenses Ordinance for City of Myrtle Beach to create a primary

⁵A copy of Kennedy's 3 renewal business licenses (dated May 23, 2013) to operate Elite as a drinking place, business license # 111 26942, an eating place, business license # 111 26943, and a pool hall/arcade, business license # 111 26941, including receipt for payment for the licenses in the amount of \$ 853.60, are attached hereto as (Exhibit No. 4).

⁶ See (Exhibit No. 5).

business classification based on a businesses' volume of sales or percentages of sales. However, a clear reading of the language of Article II, § 11-21 et seq. Business Licenses Code of Ordinances for City of Myrtle Beach does not address or provide any guidance, standards, or fixed rules for determining a business' primary classification or type based on its volume of sales or percentages of sales. For example, at the revocation hearing, Petitioner's Expert Witness Matthew R. Patz CPA ("Patz") opined that Article II, § 11-21 et seq., did not create a primary business classification based on a business' volume of sales or percentages of sales. See City of Columbia v. Niagra Fire Ins. Co. 154 S. E. 2d 674 (1967)(Court held that scope of license ordinance which was a tax measure could not by implication be extended beyond the clear import of its language). Specifically, Kennedy asserts McDowell has exceeded her jurisdiction, discretion, and her lawfully delegated power as the City's Business License inspector by incorrectly interpreting and implying that Business Licenses Code of Ordinances, Article 11, § 11-21 et seq., creates a primary business classification based on a business' volume of sales or percentages of sales. McDowell argued this expanded and incorrect interpretation of Article II, § 11-21 et seq., to Kennedy's undue prejudice at the hearing before City Council to Show that Elite had been operating as a nightclub instead of a pool hall. Based on a plain reading of Article II, § 11-21 et seq., Business Licenses Ordinance, McDowell's gross receipts argument is beyond the scope and clear import of the ordinance's language, and is contrary to its legislative intent and purpose.

On June 10, 2013, Kennedy received by certified mail a Notice of Business License Suspension Letter⁷ from McDowell. McDowell suspended Elite's 3 business licenses # 26941, # 26942, and # 26943 without affording Kennedy any prior notice and a hearing on the

⁷ A copy of Respondent's Notice of Business License Suspension Letter is attached hereto as (Exhibit No. 5).

merits. Kennedy asserts this was a violation of her procedural due process rights under the South Carolina and United States Constitutions. The stated ground was as follows:

The reason for the immediate suspension and proposed revocation of the business licenses for Elite is that it has been determined from *police reports* that the business licenses appear to have been obtained through *misrepresentation, fraud, or deception* which are grounds for revocation of a business license under § 11-35 (3). The business licenses were issued for a pool hall/arcade that serves food and alcohol when the business has been observed by Myrtle Beach Police Officers to be operating as a nightclub/lounge. Additionally, the business is being marketed and advertised to the public as Elite Ultra Lounge. The gross receipts reported on the license renewal for the pool hall/arcade business constitute 17% of your total gross, the gross receipts reported for your food sales constitute 21% of your total gross, and the gross receipts reported for the alcohol business constitute 62% of your total gross. The gross receipts reported reflect the primary business is coming from the sale of alcohol and not billiards.

On June 14, 2013, Judge Hyman granted K & S Foundation, LLC, d/b/a Elite's Motion for a temporary restraining order ("TRO"). The TRO restrained *"the City of Myrtle Beach from: (a) Suspending Elite's 3 business licenses # 26941, # 26942, and # 26943; and (b) Taking any steps to interfere with the operation of Elite on the basis of the issues with the company's business license."* The TRO⁸ expired on July 24, 2013.

At the revocation hearing held on June 25, 2013 before City Council, McDowell together with several police witnesses failed to produce any police reports referred to in (Exhibit No. 3), or present any pictures *"that Elite's [eight] pool tables were often pushed away from their normal locations to positions against the outer walls of Elite,"*⁹ for dancing in support of their assertions

⁸ A copy of the Order granting TRO filed on June 14, 2013 is attached hereto as (Exhibit No. 6).

⁹See Affidavit of Royce A. Green, VI, attached hereto as (Exhibit No. 7). He states it is impossible to push the pool tables away from their normal locations based on their individual weight

that Kennedy's "business licenses appear to have been obtained through *misrepresentation, fraud or deception* . . . under § 11-35 (3)".

Furthermore, Kennedy's Expert Witness Patz¹⁰ testified at the hearing that he had reviewed the following relevant documentation and information pertaining to this matter, including, but not limited to the following: (a) City of Myrtle Beach's Notice of Business License Suspension issued to Brooke Kennedy regarding Elite's business licenses # 26941, # 26943, and # 26942; (b) the Business Licenses Code of Ordinances of the City of Myrtle Beach, South Carolina; (c) the Forms for Business License Renewal Applications submitted to the City of Myrtle Beach Business Licenses Division on May 23, 2013, and (d) Respondent's documents and exhibits in support of the revocation produced initially at the hearing to Kennedy's Counsel.

Based on Patz's review of the above documents, information, and exhibits, he opined to the following:

- a. that Elite did not materially misrepresent any financial information provided on the business license renewal applications in order to calculate and pay the business license fee due and to renew its respective licenses;
- b. that the Business Licenses Code of Ordinances of the City of Myrtle Beach, South Carolina, does not state or provide any guidance on determining a business' primary classification or type based on volume of sales or percentages of sales; and

of 670 lbs a piece. And, further, the inside pictures of Elite's floor space, marked as (Exhibit No. 8), show that it is virtually impossible to push the 8 pool tables against the outer walls of the building, based on the stepped up 14" Platform sitting area adjacent to the outer walls and the location of the bar.

¹⁰ A copy of the Affidavit of Matthew Patz is attached hereto as (Exhibit No. 9).

- c. that Elite was not provided any type of warning or notice of violation from the City of Myrtle Beach Business Licenses Division regarding its primary business classification as a Pool Hall/Arcade

Further, in support of Patz's above stated opinions, the uncontroverted evidence in the record shows that McDowell never cited Kennedy for submitting "*a false application for a business license, ... or filing of any false information with respect to the license or fee required by this article-*" under §11-27 entitled False application unlawful, which is somewhat confusing and contrary to McDowell's basis and reasoning for revoking the Kennedy's 3 business licenses in the first place under § 11-35(3).

Next, no definition for pool hall exists in the City of Myrtle Beach's Zoning Ordinance. See § 203-Terms and words used in Zoning Ordinance of the City of Myrtle Beach, South Carolina. This was admitted to by Zoning Administrator Ken May at the hearing. Consequently, the City's Zoning Ordinance is silent on whether a pool hall can allow the following activities or uses: (a) dancing on a floor space less than 150 square feet, (b) charging an admissions fee or cover charge to pay for security, and (c) playing live music. See §202 Purpose and interpretation of the Zoning Ordinance of the City of Myrtle Beach, South Carolina.

On July 9, 2013, City Council voted 3-2 to revoke Elite's business licenses # 26941, # 26942, and # 26943 with Councilmen Wayne Gray and Mike Lowder and Councilwomen Susan Grissom Means voting for revocation while Councilmen Randal Wallace and Michael Chestnut voting against it. However, Mayor John Rhodes and Councilman Philip Render did not vote because they were not present for the revocation hearing on June 25, 2013. A copy of City Council's Revocation Order is attached hereto as (Exhibit No. 10).

ARGUMENT

- A. The Respondent's contention that the Petitioner Brooke Kennedy d/b/a Elite obtained her 3 business licenses through "a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact . . . [in her] license applications" is without merit, and contrary to the uncontroverted evidence in the Record on Appeal for the following reasons. First, no false representations were made by Kennedy in her 3 initial business license applications that were approved by the Respondent. Second, no evidence of Kennedy's intent to deceive exists in the record on appeal to show that she purposely induced Respondent's agents to approve her license applications based on fraudulent information. Third, no resulting damages were alleged and presented at the revocation hearing by McDowell to show a loss of license fees from fraudulent representations made in Kennedy's license applications.

§11-35 titled "Suspension or revocation of license," provides in pertinent part as follows:

When the *license inspector* determines that

- ...
- (3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; . . .

the license inspector shall give written notice to the licensee or the person in control of the business within the city by personal service or certified mail that the license is suspended pending a hearing before city council for the purpose of determining whether the license should be revoked.

§ 11-35(3) of the City of Myrtle Beach Business Licenses Ordinance

To establish actionable fraud¹¹, there first must be a false representation. Woodward v. Todd, 270 S.C. 82, 240 S.E.2d 641 (1978); Emerson v. Powell, 283 S.C. 293, 321 S.E.2d 629 (Ct. App.1984). The false representation, however, must be one of existing fact, not merely promises or

¹¹To establish a cause of action for fraud, the following elements must be proven by clear, cogent, and convincing evidence: (1) a representation of fact, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury. Austin v. Stokes-Craven Holding Corp., 691 S.E.2d 135 (2010).

statements as to future events which later were unfulfilled. Woods v. State, 314 S.C. 501, 506, 431 S.E.2d 260, 263 (Ct. App., 1993) (citing Schie v. Gay & Taylor, Inc., 290 S.C. 31, 347 S.E.2d 910 (Ct. App. 1986)).

In the instant case, no evidence exists that Kennedy made false representations in her 3 license applications for "*a drinking place, an eating place, and a pool hall/arcade*" in order to intentionally deceive the Respondent's agents for the purpose of obtaining approval for her 3 licenses. For example, McDowell's written narrative of the phone conversations on April 5, 2013 with Zoning Administrator Ken May, City Attorney Tom Ellenburg, and herself evidences that Kennedy had no intent to deceive the City based on the following exchange between them:

According to Ken [May], zoning is fine with the business license applications for *food, bar, and billiards*. Called Tom Ellenburg for advice as the 3 *business license applications reflect the largest gross income coming from bar sales and not billiards*. Tom E[llenburg] conferenced in me [Mary McDowell] and Ken [May] to discuss. *Ken explained that he could not approve or disapprove a use based upon assumptions and that the applicant had moved in a total of 8 pool tables and moved out tables and chairs. ... Ken [May] affirmed to Tom E[llenburg] that he was comfortable with his approval. (Emphasis added.) (Business narrative written by McDowell on April 5, 2013, attached hereto as (Exhibit No. 11).)*

Here, the record is devoid of any evidence that Kennedy made any false representations when she estimated license applications that her *largest gross income would come from bar sales instead of pool* on March 25, 2013. The truth or falsity of a representation must be determined as of the time it was made or acted on and not at some later date. Winburn v. Insurance Co. of North America, 287 S.C. 435, 339 S.E.2d 142 (Ct. App. 1985). (citations omitted.) Furthermore, Kennedy's Expert Patz, CPA, testified that "*in [his] opinion . . . there's no misrepresentation of financial information at all. [Kennedy] did it according to [the] guidelines*" as set out in Article II, § 11-21

et seq., of the City of Myrtle Beach business licenses ordinance. (Tr. of Hr'g before City Council dated June 25, 2013, p. 103, lines 18-20, attached hereto as (Exhibit No. 12).)

As a general rule, fraud cannot be predicated on a statement that constitutes an expression of an intention. Winburn v. Insurance Co. of North America, supra, 287 S.C. at 440, 339 S.E.2d at 145. (Citing 37 C. J. S. *Fraud* § 11 at 231 (1943); Greer Bank & Trust Co. v. Waldrop, 155 S.C. 47, 151 S. E. 920 (1930)).

While even if Kennedy's failed to keep her promise of not operating Elite as a nightclub, which is expressly denied, the mere nonperformance of a promise is not sufficient to establish either fraud, misrepresentation, or a lack of intent to perform on her part. See Winburn v. Insurance Co. of North America, supra, 287 S.C. at 441, 339 S.E.2d at 146. "Evidence of mere nonperformance of a promise is not sufficient to establish either fraud or a lack of intent to perform." Woods v. State, supra, 314 S.C. at 506, 431 S.E.2d at 263. (citations omitted.) Nonobservance of a promise may support an inference of a lack of intent to perform only when it is coupled with other evidence. Id. (citations omitted.)

Here, no other evidence of intent to deceive exist. Smith v. Hastie, 626 S.E.2d 13 (Ct. App. 2005)(The intent to deceive is an essential element of an action for fraud). Specifically, McDowell testified at the revocation hearing that "[she] believed [she] was deceived." However, this belief is not based on any fraudulent representation made by Kennedy in her license applications, but instead is based on her personal view that she thought no one was playing pool at Elite. This is evidenced by her following statements contained in the hearing transcript: (1) "*when the business license renewals came in [May 23, 2013] . . . it appeared that the alcohol portion of [Elite's] business was the heavy side and the food and the billiard was, very low when [Elite] was supposed*

to be primarily a pool hall,"¹² and (2), " They also show pictures on their Face book page . . . a lot of posing as to some picture that I think are questionable, personally, and it shows me that , – it's not a pool hall. I don't see pool being done. I mean, I see a pool table, but I don't see people actively shooting pool." McDowell's conclusions that Elite is not operating as a pool hall are without merit for the following reasons. First, Patz found Elite's pool income was 28% of its total revenues instead of just 14 % as argued by McDowell at the revocation hearing. Patz found that Kennedy was only receiving 50 % of her total pool revenue because she was leasing her tables from Rosemary Coin Machines, Inc.¹³ Second, Patz's recalculation of Elite's gross receipt numbers for pool at 28 % confirmed that more than 1,900 games of pool had been played at Elite since its opening on April 5, 2013."¹⁴

Finally, Respondent did not allege or present evidence of resulting damages at the revocation hearing. An action for damages based upon fraudulent misrepresentation will not exist in the absence of damages occasioned by the fraud. Woods v. State, 314 S.C. 501, 431 S.E.2d 260 (Ct. App. 1993) ; Turner v. Carey, 227 S.C. 298, 87 S.E.2d 871 (1955). For example, no resulting damages were asserted by the Respondent at the hearing based upon Kennedy's failure to pay the proper amount of licenses fee due and owing the City under §11-24 of the City of Myrtle Beach Business Licenses

¹² (Tr. of Hr'g before City Council dated June 25, 2013, p. 26, lines 15-17; p. 42, lines 7-15; p. 43, lines 12-17, attached hereto as (Exhibit No. 13).)

¹³ (Tr. of Hr'g before City Council dated June 25, 2013, p. 103, lines 21-25; p. 104, lines 1-25; p. 105, lines 1-2, attached hereto as (Exhibit No. 14).)

¹⁴ (Tr. of Hr'g before City Council dated June 25, 2013, p. 103, lines 21-25; p. 104, lines 1-25; p. 105, lines 1-2; attached hereto as (Exhibit No. 14) ; including Affidavit of Royce A. Green, IV, Vice President, of Rosemary Coin Machines, Inc., attached hereto as (Exhibit No. 15) .)

Ordinance. As such, the Respondent failed to prove¹⁵ by clear, cogent and convincing evidence each and every element of fraud or misrepresentation at the revocation hearing on June 25, 2013 before City Council in order to show that Kennedy had obtained her 3 business licenses through "fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact . . . [in her] license applications]" as required under §11-35(3). The failure to prove any element of fraud or misrepresentation is fatal to the claim. Austin v. Stokes-Craven Holding Corp., 691 S.E.2d 135 (2010).

Accordingly, City Council's decision to affirm McDowell's suspension by later revoking Kennedy's 3 business licenses on July 9, 2013 was arbitrary, unreasonable,¹⁶ and an obvious abuse of its discretion. As such, City Council's decision is without any evidentiary support, and runs

¹⁵ Evidence of fraud must be clear, cogent and convincing. Byars v. Cherokee County, 237 S.C. 548, 118 S.E.2d 324 (1961). See also DeHart v. Dodge City of Spartanburg, Inc., 311 S.C. 135, 427 S.E.2d 720 (Ct. App. 1993) (to prevail in a fraud action, a party must present clear, cogent and convincing evidence of the nine elements of fraud). A mere preponderance of the evidence is not sufficient; it must be established by evidence which is clear, definite, unequivocal and satisfactory, or such as to lead to but one conclusion. All v. Prillaman, 200 S.C. 279, 20 S.E.2d 741, 159 A.L.R. 981 (1942).

The party bringing an action for fraud must prove by clear, cogent and convincing evidence that a false, material representation was made with knowledge of the falsity or reckless disregard of the truth, an intent that it be acted upon, that the hearer was ignorant of the falsity and justifiably relied upon its truth, and that the hearer was consequently and proximately injured. Schie v. Gsy & Taylor, Inc., 290 S.C. 31, 347 S.E.2d 910 (Ct. App. 1986).

The plaintiff must prove every element of his case by this burden. Giles v. Lanford & Gibson, Inc., 285 S.C. 285, 328 S.E.2d 916 (Ct. App. 1985). Failure to prove any element is fatal to recovery. O'Shields v. Southern Fountain Mobile Homes, Inc., 262 S.C. 276, 204 S.E.2d 50 (1974); First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 451 S.E.2d 907 (Ct. App. 1994). Fraud is not presumed. King v. Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). See also Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993) (fraud is not presumed, but must be shown by clear, cogent, and convincing evidence).

¹⁶ "A governmental body's decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Deese v. South Carolina State Bd. of Dentistry, 286 S.C. 182, 184-5, 332 S.E.2d 539, 541 (Ct. App. 1985). The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary. See Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 516 S.E.2d 442 (1999) (stating an applicant seeking a variance from a zoning board bears the burden of proof). Pressley v. Lancaster County, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001).

counter to the clear preponderance of the evidence in the record for the following reasons. First, no evidence was presented at the revocation hearing that Kennedy had made false representations in her 3 initial business licenses applications. Specifically, McDowell did not testify at the hearing that Kennedy had represented the amount of her gross receipts for pool would be greater than her alcohol and food sales in order to obtain approval for her 3 business licenses applications. Second, McDowell's interpretation that Article II, § 11-21 et seq., City of Myrtle Beach Business License Ordinance created a business' primary classification based on volume of sales is contrary and not supported by a clear reading of the ordinance's language. No guidelines, standards or fixed rules exist in the Ordinance for determining a business' primary classification or type based on volume of sales. See Pee Dee Chair Co. V. City of Camden, 162 S. E. 771 (1932)(Court held Ordinances requiring business license or imposing license or occupation tax must be construed liberally in favor of the citizen). This interpretation was argued by Kennedy's Expert Patz, CPA, at the revocation hearing on June 25, 2013 in opposition to McDowell's expanded interpretation and reasoning for suspending Kennedy's 3 business licenses under Article II, § 11-21 et seq., Business Licenses Ordinance.

- B. Respondent's decision to revoke Brooke Kennedy's 3 business licenses was arbitrary, unreasonable, and an obvious abuse of its discretion because its agents failed to comply with its own requirements under the Zoning Ordinance. Specifically Kennedy was never afforded any notice or a hearing prior to the suspension of her 3 business licenses for an alleged non-conforming use violation as required by § 301, City of Myrtle Beach Zoning Ordinance. Both McDowell and Ellenburg admitted in the record on Appeal that the requirements of Zoning Ordinance controlled any future non-conforming use violation committed by Elite; however, the Zoning Department failed to take the primary action against Elite as required under § 301, City of Myrtle Beach Zoning Ordinance. Accordingly, the Respondent's Revocation Order should be set aside by the Court due to the Respondent's failure to comply with its**

own mandatory notice requirements under § 301, City of Myrtle Beach Zoning Ordinance.

The Respondent's contention that the suspension and revocation of Brooke Kennedy's 3 business licenses (without affording any prior notice and a hearing from the City's Zoning Department) was not arbitrary and capricious is without merit, and contrary to the uncontroverted evidence in the Record on Appeal before the circuit court for the following reasons.

First, on or about April 5, 2013, McDowell acknowledged in a written narrative¹⁷ her objection with the Zoning Department's approval of Elite's 3 business licenses # 26941, #26942, and # 26943. For example, McDowell's written narrative of phone conversations with Zoning Administrator Ken May and City Attorney Tom Ellenburg, provides as follows, "*Tom [Ellenburg] was a bit unclear as to the change of opinion [of Ken May], but it is what it is and if zoning approved, then zoning will have to stand behind their position should anything with the use of the business change after [Elite] open[s].*" Furthermore, McDowell "*stated that Zoning would have to take the primary position on any action related to the business use.*" She noted that the City Attorney Tom Ellenburg ("Ellenburg") agreed with her position. Second, the Record in this matter reflects that the Zoning Department was not allowed or failed to take the primary action against Elite

¹⁷ "According to Ken [May], zoning is fine with the business license applications for food, bar, and billiards. Called Tom Ellenburg for advice as the 3 business license applications reflect the largest gross income coming from bar sales and not billiards. Tom E[llenburg] conferenced in me [Mary McDowell] and Ken [May] to discuss. *Ken explained that he could not approve or disapprove a use based upon assumptions and that the applicant had moved in a total of 8 pool tables and moved out tables and chairs.* ... Ken [May] affirmed to Tom E[llenburg] that he was comfortable with his approval. Tom E[llenburg] acknowledged, but had questioned Ken [May] on the change of opinion from the meeting that was held on Mar. 26, 2013. Phone call ended then Tom E[llenburg] called me [Mary McDowell] back. Tom [Ellenburg] was a bit unclear as to the change of opinion [of Ken May], *but it is what it is and if zoning approved, then zoning will have to stand behind their position should anything with the use of the business change after they open. I further stated that Zoning would have to take the primary position on any action related to the business use.* Tom E[llenburg] agreed. mem [Mary McDowell]." (Emphasis added.) (Business narrative written by McDowell on April 5, 2013, attached hereto as (Exhibit No. 11).)

for its alleged non-conforming use violation: operating as a Nightclub, as required under § 301, City of Myrtle Beach Zoning Ordinance. §301 provides in pertinent part:

If the zoning administrator or other appropriate code enforcement officer determines that any of the provisions of this ordinance are being violated. He shall enforce the requirements of the ordinance by notifying in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it; or by ordering in writing the person responsible to discontinue the illegal use ... ; or by issuing an ordinance summons¹⁸; or by taking any other action authorized by law to ensure compliance with or to prevent violation of the ordinance. ... Delivery of the written notice of violation and order to correct or discontinue address; or by hand delivery to a person of suitable age and responsibility at the address; or by affixing the notice of violation to the structure or on a sign at the address.

§ 301, Administration and enforcement, of the Zoning Ordinance of the City of Myrtle Beach.

Here, based on the Zoning Department's failure "*to take the primary . . . action*"¹⁹ regarding Elite's alleged non-conforming use violation as required by § 301 City of Myrtle Beach Zoning Ordinance, the Respondent's enforcement of its ordinance can be characterized as arbitrary and capricious and violated Kennedy's procedural due process rights under the South Carolina and United States Constitutions. Specifically, under these facts and circumstances, Kennedy was not afforded opportunity to come into compliance as required by § 301, City of Myrtle Beach Zoning Ordinance, before her 3 business licenses were suspended for an alleged non-conforming use violation by McDowell. For example, Ken May testified at the revocation hearing, "*I can cite you*

¹⁸ "[T]he ordinance summons shall also serve as official notice of the zoning administrator's interpretation of the zoning ordinance and determination of the applicability of the ordinance to the land use." § 301, City of Myrtle Beach Zoning Ordinance.

¹⁹ See (Exhibit No. 11).

for a violation, you can come into compliance” (Tr. of Hr’g before City Council dated June 25, 2013, p. 93, lines 14-24, attached as Exhibit No. 16.)

Accordingly, the Respondent’s Revocation Order should be set aside by the Court due to the Respondent’s intentional non-compliance with its own mandatory notice and hearing requirements which deprived Kennedy of a presuspension notice and hearing under the provisions of § 301, City of Myrtle Beach Zoning Ordinance.

- C. Respondent’s decision to revoke Brooke Kennedy’s 3 business licenses was arbitrary, unreasonable, and an obvious abuse of its discretion because it failed to provide Kennedy’s with any Police Reports and other information previously requested by her counsel which information and reports were admittedly relied upon by McDowell in suspending the 3 business licenses. Accordingly, Respondent’s failure to produce this relevant information deprived Kennedy of a fair revocation hearing on the merits because she had no ability to challenge and dispute the unproduced information contained in the Reports, and, therefore, her procedural due process rights under the South Carolina and United States Constitutions were violated.**

The Respondent’s contention that the suspension and later revocation of Brooke Kennedy’s 3 business licenses (*without providing her with the Police Reports and other information previously requested by her counsel which information the City admittedly relied upon suspending and revoking her 3 business licenses*) was not unduly prejudicial is without merit, and contrary to the uncontroverted evidence in the Record on Appeal for the following reasons.

First, on June 18, 2013, Kennedy’s counsel Mark Goddard (“Goddard”) sent an email to Respondent’s attorney Mike Battle requesting the production of information and names of witnesses to be presented at the revocation hearing on June 25, 2013. Specifically, Goddard requested the following discovery: (a) witnesses the city plans to call, (b) and any evidence the city plans to submit to the City Council to support its position. (E-mail from attorney Mark Goddard to

Attorney Mike Battle on June 16, 2013, attached hereto as (Exhibit No. 17).) However, no information, names of witnesses, or documents were produced by Respondent's counsel until the day of the revocation hearing before City Council. Prior to the hearing, Respondent's counsel produced a Book Exhibits titled "Elite's Exhibits" prepared, upon information and belief, by him. But "Elite's Exhibits" failed to include any police reports referred to 10 June 2013 suspension letter from McDowell to Kennedy attached hereto as (Exhibit No. 7).

At the revocation hearing, McDowell testified before City Council that she was provided with a report from Officer Stephanie James, another report from the Chief of Police Warren Gall ("Gall"), and some incident reports which she testified she had relied upon in reaching her decision to suspend Kennedy's 3 business licenses # 26941, #26942, and # 26943. (Tr. of Hr'g before City Council dated June 25, 2013, p. 26, lines 2-5; p. 30, lines 24-25; p. 31, lines 1-25; p. 32, lines 1-5, attached hereto as (Exhibit No. 18).)

Second, the failure of the Respondent to provide Kennedy with the above-mentioned Police Reports and other information referenced in (Exhibit No. 7), unduly prejudiced her right to a fair hearing on the merits. Specifically, she had no ability to challenge and/or dispute the unproduced information contained in the Respondent's Police Reports even though this information was used to suspend her 3 business licenses # 26941, #26942, and # 26943.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4)


the right to confront and cross-examine witnesses." Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). To prevail on a claim of denial of due process, there must be a showing of substantial prejudice. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984).

Accordingly, the Respondent's Revocation Order should be set aside by the Court because Kennedy was unduly prejudiced by the City's failure to provide her with the, previously, requested Police Reports and other information by her counsel which the McDowell admittedly relied upon in suspending her 3 business licenses.

CONCLUSION

For the forgoing reasons, Brooke Kennedy respectfully request the Court to set aside the Respondent's Revocation Order, and reinstate her 3 business licenses # 26941, # 26943, and # 26942. And, furthermore, to order such other and further relief as this Court deems just and proper.

Respectfully submitted,


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September 16, 2013

ARTICLE II. BUSINESS LICENSES

Myrtle Beach, South Carolina, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 11 -
LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS >> ARTICLE II. BUSINESS LICENSES >>

ARTICLE II. BUSINESS LICENSES ⁽²⁾

Sec. 11-21. Required.

Sec. 11-22. Definitions.

Sec. 11-23. Purpose and duration.

Sec. 11-24. License fee.

Sec. 11-25. Registration required; contact information; proof of identity and employment eligibility.

Sec. 11-26. Deductions and exemptions.

Sec. 11-27. False application unlawful.

Sec. 11-28. Display and transfer.

Sec. 11-29. Administration of article.

Sec. 11-30. Inspection and audits.

Sec. 11-31. Assessments.

Sec. 11-32. Delinquent license fees.

Sec. 11-33. Notices.

Sec. 11-34. Denial of license.

Sec. 11-35. Suspension or revocation of license.

Sec. 11-36. Appeals to city council.

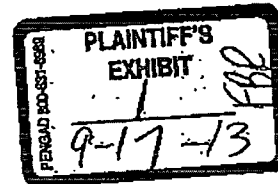
Sec. 11-37. Confidentiality.

Sec. 11-38. Violations.

Sec. 11-39. Classification rate schedules.

Sec. 11-40. Telecommunications.

Secs. 11-41—11-60. Reserved.



Sec. 11-21. Required.

Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index portion of this chapter, in whole or in part, within the limits of the city is required to pay an annual license fee and obtain a business license as provided in this article; provided however, a business license shall not be required for a promoter or vendor that is a participant in an event or convention that is contained within the interior meeting or convention space of a hotel or motel and where said event or convention is not open to the public and attendance is by registration only and a business license shall not be required for a promoter or vendor that is a participant in an special event, fund raising event, fair, or festival of a duration of 48 hours or less that is sponsored by or for the benefit of a charity, religious organization, 501(c)(3) corporation, civic group, fraternal organization or mutual benevolent aid association that is exempt from the payment of business licenses fees.

(Ord. No. 91-24, § 1, 6-25-91; Ord. No. 2005-85; 11-28-05; Ord. No. 2006-69, 7-11-06)

Sec. 11-22. 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:

Business means a calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. A charity, religious organization, 501(c)(3) corporation, civic group, fraternal organization and mutual benevolent aid association shall be exempt from the payment of business licenses fees. Appropriate official documentary proof shall be required to establish the exemption.

City means the City of Myrtle Beach.

Classification means that division of businesses by major groups subject to the same license rate as determined by a calculated index of ability to pay, burden on services, benefits, equalization of overall tax burden, relationships of services, or other factors deemed appropriate by city council.

Coin-operated when applied to any amusement device or vending machine means any device or machine operated by insertion of a coin or thing of value (including paper currency).

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected by a business located within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the state tax commission for income tax purposes, or the state insurance commission. In the case of brokers or agents, gross income shall mean gross commissions retained. ~~Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.~~

License inspector means the city finance director, or other person designated to administer this article.

Person means any individual, firm, partnership, cooperative nonprofit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principals.

(Ord. No. 91-24, § 2, 6-25-91; Ord. No. 93-35, 7-27-93; Ord. No. 96-41, 4-23-96; Ord. No. 2006-18, § 1, 3-21-06)
Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 11-23. Purpose and duration.

The business license levied by this article is for the purpose of providing such regulation as may be required by the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Except as otherwise specifically provided in this article, each license shall be issued for one fiscal year and shall expire on May 31. The provisions of this article and the rates herein shall remain in effect from year to year as amended by city council.

(Ord. No. 91-24, § 3, 6-25-91; Ord. No. 98-27, 6-9-98)

Sec. 11-24. License fee.

The required license fee shall be paid for each business subject hereto according to the applicable rate classification on or before June 1st in each year, except that license fees for insurance companies and brokers for non-admitted insurers shall be payable on or before May 31st in each year and license fees for telecommunications businesses SIC 481 shall be payable on or

before December 31 in each year without penalty. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license fee shall be computed on the combined gross income for the classification requiring the highest rate. A license fee based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a 12-month projected income based on the monthly average for a business in operation for less than one year. The fee for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license year.

(Ord. No. 91-24, § 4, 6-25-91; Ord. No. 93-35, 7-27-93; Ord. No. 98-27, 6-9-98)

Editor's note—

Pursuant to S.C. Code 1976, § 5-7-300, the attached agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from insurance companies and brokers for non-admitted insurers is approved and the city manager is authorized to execute it.

Sec. 11-25. Registration required; contact information; proof of identity and employment eligibility.

- (a) The owner, agent or legal representative of every business subject to this article, whether listed in the classification index or not, shall register the business and make application for a ~~business license on or before the due date of each year, except that a new business shall be~~ required to have a business license prior to operation within the city. Application shall be on a form provided by the license inspector which shall contain the social security number and/or the federal employer's identification number, the business name as reported on the state or federal income tax return, and all information about the applicant and the business deemed necessary to carry out the purposes of this article by the license inspector.
- (b) Specifically in regards to the registration and/or application, the license inspector may request the full and legal name, birth date, gender, personal addresses and contact information for any person, officer, landlord, tenant, property owner, lessor, sub-lessor, or ~~agent pertaining to the business, or any other person who has ownership or financial interest~~ in the business, or any other person who has decisional or management input, consultation, oversight or control of any portion of the business. In the case of a corporation, the license inspector may additionally request the true and complete name of the corporation, certified articles of incorporation, the incorporators, agents of service, officers, the state or county of its incorporation and its principal place of business.
- [(c) Reserved.]
- (d) The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments and personal property taxes due and payable to the city have been paid. Insurance agents and brokers shall report the name of each insurance company for which a policy was issued and the total premiums collected for each company for each type of insurance coverage on a form approved by the license inspector. An insurance agent not employed by a company shall be licensed as a broker.
- [(e) Reserved.]
- (f) Each business licensee, as a condition of issuance or renewal, must maintain full and accurate contact information for responsible persons on a form provided by the license inspector.

- (g) Notwithstanding any other provision of law pertaining to denial, suspension or revocation of a business license, the failure to comply with any provision of this section shall constitute grounds for denial, suspension or revocation of the license.

(Ord. No. 91-24, § 5, 6-25-91; Ord. No. 2004-32, 5-11-04; Ord. No. 2007-54, 8-28-07)

Sec. 11-26. Deductions and exemptions.

No deductions from gross income shall be made except income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county, or income which cannot be taxed pursuant to state or federal law. The applicant shall have the burden to establish the right to deduction by satisfactory records and proof. No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the city, unless exempted by state or federal law. The license inspector shall determine the appropriate classification for each business in accordance with the latest issue of the U.S. Office of Management and Budget Standard Industrial Classification Manual. No person shall be exempt from this article by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of the liability for the payment of any other tax by reason of the application of this article. State and federal sales and excise taxes, escrowed funds, and allowances given for trade-in vehicles are not deemed income and are exempt from license calculations under this article.

(Ord. No. 91-24, § 6, 6-25-91)

Sec. 11-27. False application unlawful.

It shall be unlawful for any person subject to the provisions of this article to make a false application for a business license, or to give or file, or direct the giving or filing of any false information with respect to the license or fee required by this article.

(Ord. No. 91-24, § 7, 6-25-91)

Sec. 11-28. Display and transfer.

All persons shall display the license issued to them on the original form provided by the license inspector in a conspicuous place, or as permitted herein, in the business establishment at the address shown on the license. A transient or nonresident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the city. Those rental properties, including condominiums, that are engaged in rental of accommodations on short-term basis shall post the license for each unit in the main office of the building or upon a bulletin-type board in an area viewable to the public, or shall post a sign informing the public that the business license for each unit is maintained in a file located on the premises, and can be produced upon demand for inspection. A single-family dwelling being lawfully rented on a short-term basis shall provide the name and address of the business license holder on a weather proof sign affixed near the front door. A change of address must be reported to the license inspector within ten days after removal of the business to a new location and the license will be valid at the new address upon written notification of the license inspector and compliance with zoning and building codes. Failure to obtain the approval of the license inspector for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable and a transfer of ownership shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

(Ord. No. 91-24, § 8, 6-25-91; Ord. No. 2009-56, 8-11-09)

Sec. 11-29. Administration of article.

The license inspector shall administer the provisions of this article, collect license fees, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the police department and assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this article, and perform such other duties as may be duly assigned.

(Ord. No. 91-24, § 9, 6-25-91)

Sec. 11-30. Inspection and audits.

For the purpose of enforcing the provisions of this article the license inspector or other authorized agent of the city is empowered to enter upon the premises of any person subject to this article to make inspections, examine and audit books and records, and it shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that false information has been filed by the licensee, the costs of the audit shall be added to the correct license fee and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license fee shall constitute a separate offense. The license inspector shall make systematic inspections of all businesses within the city to ensure compliance with the article. ~~Records of inspection and audits shall not be deemed public records, and the license inspector shall not release the reported gross income of any person by name without permission of the licensee, provided that statistics compiled by classifications may be made public.~~

(Ord. No. 91-24, § 10, 6-25-91)

Sec. 11-31. Assessments.

~~When any person shall have failed to obtain a business license or to furnish the information required by this article or the license inspector, the license inspector shall proceed to examine such records of the business or any other available records as may be appropriate and to conduct such investigations and statistical surveys as he may deem appropriate to assess a license tax and penalties as provided in this article. A notice of assessment shall be served by certified mail and an application for adjustment of the assessment may be made to the license inspector within five days after the notice is mailed or the assessment will become final. The license inspector shall establish by regulation the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment. A final assessment may be appealed to city council only by payment in full of the assessment under protest within five days and the filing of written notice of appeal within ten days after payment pursuant to the provisions of this article relating to appeals to city council.~~

(Ord. No. 91-24, § 11, 6-25-91)

Sec. 11-32. Delinquent license fees.

For nonpayment of all or any part of the correct license fee, the license inspector shall levy and collect a late penalty of five percent of the unpaid fee for each month or portion thereof after the due date until paid; provided however, that the late penalty to be collected for any one year's delinquent fee shall not exceed 30 percent of the fee due for that year. If any license fee shall

remain unpaid for 60 days after its due date, the license inspector shall issue an execution which shall constitute a lien upon the property of the licensee for the tax, penalties and costs of collection, and shall proceed to collect in the same manner as prescribed by law for the collection of other taxes.

(Ord. No. 91-24, § 12, 6-25-91; Ord. No. 94-77, 11-22-94)

Sec. 11-33. Notices.

The license inspector may, but shall not be required to, mail written notices that license fees are due, but if notices are not mailed there shall be published a notice of the due date in a newspaper of general circulation within the city three times prior to the due date in each year.

(Ord. No. 91-24, § 13, 6-25-91)

Sec. 11-34. Denial of license.

The license inspector shall deny a license to an applicant when

- (1) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact, or when
- (2) The activity for which a license is sought is unlawful or constitutes a public nuisance, or when
- (3) The applicant has unpaid liens, taxes, fees or charges due and owing to the city, or when
- (4) The applicant makes the application on behalf of a person, or uses or employs a person who has ownership or financial interest in the business, or has decisional or management input, consultation, oversight or control of any portion of the business, and that person is engaging or has engaged in conduct or business practices that would have provided grounds for suspension or denial.

A decision of the license inspector shall be subject to appeal to city council as herein provided. Denial shall be written with reasons stated.

(Ord. No. 91-24, § 14, 6-25-91; Ord. No. 2002-9, 3-26-02; Ord. No. 2004-32, 5-11-04)

Sec. 11-35. Suspension or revocation of license.

When the license inspector determines that:

- (1) A license has been mistakenly or improperly issued or issued contrary to law; or
- (2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article; or
- (3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or
- (4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
- (5) A licensee has engaged in an unlawful activity or nuisance arising from, or related, connected, associated with or to the operation of the business, or

- (6) A licensee has failed to pay any liens, taxes, fees or charges due and owing to the city.
- (7) A licensee has failed to maintain or produce properly completed Employment Eligibility Verification forms I-9 for every employee as required by the United States Department of Justice;

the license inspector shall give written notice to the licensee or the person in control of the business within the city by personal service or certified mail that the license is suspended pending a hearing before city council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special council meeting within 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this article.

(Ord. No. 91-24, § 15, 6-25-91; Ord. No. 2002-9, 3-26-02)

Cross reference— Suspension or revocation of lodging establishment license for violations, § 11-108.

Sec. 11-36. Appeals to city council.

- (a) Any person aggrieved by a final assessment or a denial of a business license by the license inspector may appeal the decision to city council by written request stating the reasons therefore filed with the license inspector within ten days after the payment of the assessment under protest or notice of denial is received.
- (b) An appeal or a hearing on revocation shall be held by city council within 30 days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice. At such hearing all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by council shall govern the hearing. City council shall by majority vote of members present render a written decision based on findings of fact and the application of the standards herein which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten days after service.
- (c) Reserved.

(Ord. No. 91-24, § 16, 6-25-91; Ord. No. 2006-51, 6-13-06)

Sec. 11-37. Confidentiality.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this article. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns.

(Ord. No. 91-24, § 17, 6-25-91)

Sec. 11-38. Violations.

Any person violating any provisions of this article shall be deemed guilty of an offense and shall be subject to punishment in accordance with section 1-9. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties and costs provided for herein.

(Ord. No. 91-24, § 18, 6-25-91)

Sec. 11-39. Classification rate schedules.

The license fee for each class of business shall be computed in accordance with the following rates. The major groups of businesses included in each class are listed with the major group number according to the Standard Industrial Classification Manual (SIC). The license inspector shall determine the proper class for a business according to the SIC.

RATES

Class	Income: 0-\$2,000.00 Minimum	All Over \$2,000.00 Rate per Thousand or Fraction Thereof
1	\$ 95.00	\$2.45
2	105.00	2.55
3	115.00	2.65
4	125.00	2.75
5	135.00	2.85
6	145.00	2.95
7	155.00	3.05
8	See individual business in class.	

NONRESIDENT RATES

Unless otherwise specifically provided, all minimum fees and rates shall be multiplied by 150 percent for nonresidents and itinerants having no fixed principal place of business within the municipality.

DECLINING RATES

Declining rate applies in all classes for gross income in excess of \$2,000,000.00 as follows:

Amount (in Millions) Gross Income		Percent of Rate for Each Additional \$1,000.00
0-2	.....	100%
2-10	.....	90%
10-20	.....	80%
20-30	.....	70%
30-40	.....	60%
40-50	.....	50%
Over 50	.....	25%

CLASS 8 RATES

SIC		Income	Minimum	Per \$1,000.00 or Fraction
15-17	Contractors, construction, all types			
	A. Resident (having permanent place of business within municipality)			
	First	\$2,000.00	\$115.00	plus
	Each additional	\$1,000.00		\$2.65
	B. Itinerant (no permanent place of business in the municipality or nonresident)			
	First	\$2,000.00	\$175.00	plus
	Each additional	\$1,000.00		\$3.95

Residents shall pay on all work in and out of city except that on which a license fee is paid to another entity. The total fee for the full amount of the contract shall be paid prior to commencement of work and shall entitle contractor to complete the job without regard to the normal license expiration date.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Subcontractors shall be licensed on the same basis as general or prime contractors for the same job and no deductions shall be made by a general or prime contractor for value of work performed by a subcontractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the building code have been filed and approved. Zoning permits must be obtained when required by the zoning ordinance.

Each prime contractor shall file with the license inspector a list of subcontractors furnishing labor or materials for each project and shall report in each case the contract amount.

At each job site the prime contractor shall post and maintain a subcontractor's roster card. This card shall be at the construction trailer or some other prominent place where it can be easily located and reviewed by city inspectors. This card will be furnished by the city and shall at all times during construction contain a current list of all subcontractors who have performed or are performing work on the site and shall list the business license number and phone number of each such subcontractor.

(Ord. No. 95-14, 3-14-95)

SIC		License Fee
40 —	Railroad companies	\$875.00
4121 —	Taxicabs: On gross income	Use Rate Class 7
	(Proof of insurance required)	
481 —	Telecommunications:	
	Pursuant to SC Code § 58-9-2220, the following business license tax schedule shall apply to the gross income from retain telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality.	

<p>Rate for license taxes due in the years 1999-2003</p>	<p>0.3%</p>
<p>Rate for license taxes due in the year 2004 and each year thereafter</p>	<p>0.75%</p>
<p>For a business in operation less than one year, the amount of business license tax authorized by this section shall be computed on a 12-month projected income. The telecommunications business license tax shall be due on January 1 in each year beginning in the year 2000. Declining rates shall not apply. Taxes are payable</p>	
<p>without penalty by January 31 following the due date. After January 31, the delinquent penalty shall be five percent of the tax due for each month, or portion thereof, after the due date until paid.</p>	
<p>Exemptions in the business license ordinance for income from business in interstate commerce shall be included in the gross income for every business subject to a business license tax. Nothing in this ordinance shall be interpreted to interfere with continuing obligations of any contractual agreement in the event that the franchise or contractual agreement should expire after</p>	

	December 31, 2003. Fees imposed by any franchise or contractual agreement with a telecommunications provider which expires prior to December 31, 2003 shall continue in effect until December 31, 2003.	
	All fees collected under such franchise agreement or contractual agreement shall be in lieu of fees or taxes which might otherwise be authorized by this ordinance. A business license tax ordinance, adopted prior to December	
	31, 1997, which levied a business license tax paid by a telecommunications company higher than that levied under this ordinance, shall remain in effect through December 31, 2003. As authorized by SC	
	Code § 5-7-300, the Agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to SC Code § 58-9-2200 if approved. (Ord. No. 99-34, 9-21-99)	
4899 —	Television, cable or pay	Franchise
491— 493 —	Electric and gas companies	Franchise

SIC		Income	Min.	Per \$1,000.00 or Fraction
5093 —	Junk or scrap dealers (nonresident rates apply):			
	First	\$2,000.00	\$240.00	plus
	Each additional	\$1,000.00		\$4.90
5271 —	Mobile home dealers, retail:			
	First	\$2,000.00	\$175.00	plus
	Each additional	\$1,000.00		\$3.15
55 —	Automotive and motor vehicle dealers and farm machinery, retail:			
	First	\$2,000.00	\$95.00	plus
	Each additional	\$1,000.00		\$2.45
5813 —	Drinking places (alcohol, beer and wine):			
	First	\$2,000.00	\$245.00	plus
	Each additional	\$1,000.00		\$4.90
5932 —	Pawnbrokers (used goods):			
	First	\$2,000.00	\$195.00	plus
	Each additional	\$1,000.00		\$3.90
5962 —	Vending machines; coin-operated automatic merchandising machines - mechanically operated machines (not electrically operated) selling only one product per machine:	\$2.50 per machine		

	Plus on first	\$2,000.00	\$105.00	plus
	Each additional	\$1,000.00		\$2.55
	(Not included in other business gross income)			
	(Nonresident rates apply)			
—	Vending machines; coin-operated automatic merchandising machines - electrically operated or selling more than one product per machine:	\$12.50 per machine		
	Plus on first	\$2,000.00	\$105.00	plus
	Each additional	\$1,000.00		\$2.55
	(Not included in other business gross income)			
	(Nonresident rates apply)			
5963	Peddler (direct retail sales— Nonresident rates apply):			
—	First	\$2,000.00	\$250.00	plus
	Each additional	\$1,000.00		\$2.60
	Exhibitors at an organized trade show, arts and crafts show, or festival held on a city-owned venue will not be required to pay a license fee for business conducted at such show or festival. Other exhibitors will be licensed as peddlers.			

SIC CODE or	NAICS CODE	
63	5241	Insurance companies: Except as to fire insurance, "gross premiums" means gross premiums written for policies for property or a risk located within the municipality. In addition, "gross premiums" shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company's office located in the municipality, (2) the insurance company's employee conducting business within the municipality, or (3) the office of the insurance company's licensed or

		appointed producer (agent) conducting business within the municipality, regardless of where the property or risk is located, provided no tax has been paid to another municipality in which the property or risk is located based on the same premium.	
		Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the municipality, regardless of whether or not an office is maintained in the municipality.	
		As to fire insurance, "gross premiums" means gross premiums (1) collected in the municipality, and/or (2) realized from risks located within the limits of the municipality.	
		Gross premiums shall include all business conducted in the prior calendar year.	
		Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.	
		Declining rates shall not apply.	
631, 632	52411	Life, health and accident .....	.1% of gross premiums
633- 635	524126	Fire and casualty .....	.2% of gross premiums
636	524127	Title insurance .....	.2% of gross premiums

SIC		Income	Min.	Per \$1,000.00 or Fraction
6411 —	Brokers for fire and casualty insurers—Non-admitted: On gross premiums collected on policies of companies not licensed in South Carolina, the broker shall pay annually, to the Municipal Association of South Carolina with a copy of the report required by the Insurance Commission showing location of the risks insured. ....2% of gross premiums			
	(Premiums for non-admitted business are not included in broker's gross commissions for other business. (Declining rates shall not apply.))			
70 —	Hotels, rooming houses, camps and lodging places:			
	First	\$2,000.00	\$145.00	plus
	Each additional	\$1,000.00		\$5.85
7993 —	Amusement machines, coin-operated (excluding video poker-type machines):	\$12.50 per machine		
	Plus on first	\$2,000.00	\$195.00	plus

	Each additional	\$1,000.00		\$3.90
	(Not included in other business gross income)			
	(Nonresident rates apply)			
7999 —	Billiard or pool rooms:			
	All types	\$5.00 per table		
	Plus on first	\$2,000.00	\$245.00	plus
	Each additional	\$1,000.00		\$4.90
7999 —	Bingo (state license required):			
	First	\$2,000.00	\$245.00	plus
	Each additional	\$1,000.00		\$4.90
7999 —	Carnivals and circuses:			
	First	\$2,000.00	\$245.00	plus
	Each additional	\$1,000.00		\$4.90
	(Nonresident rates apply)			
7999 —	Recreation equipment rental: Rental of all types of boats, bikes, fishing gear, vehicles, and equipment used for sports, bathing, the beach or recreation:			
	First	\$2,000.00	\$24.00	plus
	Each additional	\$1,000.00		\$9.75
	(Nonresident rates apply)			

RATE CLASSIFICATION INDEX

Rate Class 1

SIC	Business Group
20 --	Food and Kindred Products
31 --	Leather and Leather Products
32 --	Stone, Clay, Glass and Concrete Products
33 --	Primary Metal Industries
34 --	Fabricated and Metal Products (Except Machinery and
	Transportation Equipment)
52 --	Building Materials, Hardware, Garden Supply (Not otherwise classified)
53 --	General
	Merchandise Stores
54 --	Food Stores
553-554 --	Auto Supply Stores and Gasoline Service Stations
58 --	Eating Places
636-639 --	Insurance Companies (Except Life, Health, Fire & Casualty)

Rate Class 2

SIC	Business Group
01 --	Agricultural Production--Crops
24 --	Lumber and Wood Products (Except Furniture)
26 --	Paper and Allied Products
30 --	Rubber and Miscellaneous Plastic Products
36 --	Electrical and Electronic Machinery, Equipment and Supplies
37 --	Transportation Equipment
39 --	Miscellaneous Manufacturing Industries
44 --	Water Transportation
46 --	Pipelines (Except Natural Gas)
48 --	Communication (Except Telephone)
51 --	Wholesale Trade--Nondurable Goods
56 --	Apparel and Accessory Stores
59 --	Miscellaneous Retail (Except Vending Machines, Peddlers and Pawnbrokers)
83 --	Social Services

Rate Class 3

SIC	Business Group
07 -	Agricultural Service
08 -	Forestry
23 -	Apparel and Other Finished Products from Fabrics and Similar Materials
25 -	Furniture and Fixtures
29 -	Petroleum Refining and Related Industries
35 -	Machinery, Except Electrical
42 -	Motor Freight Transportation and Warehousing
50 -	Wholesale Trade—Durable Goods
57 -	Furniture, Home Furnishings and Equipment Stores
75 -	Automotive Repair, Services and Garages
78 -	Motion Pictures

Rate Class 4

SIC	Business Group
21 -	Tobacco Manufacture
22 -	Textile Mill Products
27 -	

		Printing, Publishing and Allied Products
45	-	Transportation by Air
49	-	Sanitary Services
62	-	Security and Commodity Brokers, Dealers, Exchanges and Services

Rate Class 5

SIC		Business Group
09	-	Fishing, Hunting and Trapping
38	-	Measuring, Analyzing and Controlling Instruments; Photographics, Medical and Optical Goods; Watches and Clocks
5271	-	Mobile Home Dealers
79	-	Amusement and Recreation Services (Except Motion Pictures, Amusement Machines, Billiards, Bingo, Carnivals, and Recreation Equipment Rental)

Rate Class 6

SIC	Business Group
28 --	Chemicals and Allied Products
61 --	Credit Agencies other than Banks
72 --	Personal Services

Rate Class 7

SIC	Business Group
41 --	Local and Suburban Transit and Interurban Highway Passenger Transportation
47 --	Travel Agencies
64 --	Insurance Agents, Brokers and Service
65 --	Real Estate
67 --	Holding and Other Investment Offices
73 --	Business Services
76 --	Miscellaneous Repair Services
80 --	Health Services
81 --	Legal Services
82 --	Educational Services
87 --	

	Engineering, Accounting, Research, Management and Related Services
89 --	Miscellaneous Services

Rate Class 8

SIC	Business Group
15-17 --	Contractors, Construction, All Types
40 --	Railroad Companies
41-11 --	Local and Suburban Transit
4121 --	Taxicabs
481 --	Telephone Communication
491-493 --	Electric and Gas Services
5093 --	Junk and Scrap Dealers
55 --	Automotive and Motor Vehicle Dealers and Farm Machinery, Retail (Except Auto Supply Stores--553 and Gasoline Service Stations--554)
5813 --	Drinking Places (Alcoholic Beverages)
5932 --	Pawnbrokers
5962 --	Vending Machines (Automatic Merchandising)
5963 --	Peddlers
631-635 --	Insurance companies, Fire

		and Casualty, Life and Health
6411	--	Brokers for Nonadmitted Insurers
70	--	Hotels, Roominghouses, Camps and Other Lodging
7993	--	Amusement Machines, Coin- Operated
7999	--	Billiard or Pool Tables, All Types
7999	--	Bingo
7999	--	Carnivals and Circuses
7999	--	Recreation Equipment Rental

NUMERICAL BUSINESS CLASSIFICATION INDEX

SIC Group	Name	Class
01	Agricultural Production-- Crops	2
07	Agricultural Services	3
08	Forestry	3
09	Fishing, Hunting and Trapping	5
15-17	Contractors, Construction, All Types	8
20	Food and Kindred Products	1
21	Tobacco Manufacture	4
22	Textile Mill Products	4
23	Apparel and Other Finished Products from	3

	Fabrics and Similar Materials	
24	Lumber and Wood Products (Except Furniture)	2
25	Furniture and Fixtures	3
26	Paper and Allied Products	2
27	Printing, Publishing and Allied Products	4
28	Chemicals and Allied Products	6
29	Petroleum Refining and Related Industries	3
30	Rubber and Miscellaneous Plastic Products	2
31	Leather and Leather Products	1
32	Stone, Clay, Glass and Concrete Products	1
33	Primary Metal Industries	1
34	Fabricated and Metal Products (Except Machinery and Transportation Equipment)	1
35	Machinery, Except Electrical	3
36	Electrical and Electronic Machinery, Equipment and Supplies	2
37	Transportation Equipment	2
38	Measuring, Analyzing and Controlling Instruments;	5

	Photographics, Medical and Optical Goods; Watches and Clocks	
39	Miscellaneous Manufacturing Industries	2
40	Railroad Companies	8
41	Local and Suburban Transit and Interurban Highway Passenger Transportation	7
4121	Taxi License	8
42	Motor Freight Transportation and Warehousing	3
44	Water	2
	Transportation	
45	Transportation by Air	4
46	Pipelines (Except Natural Gas)	2
47	Travel Agencies	7
48	Communication (Except Telephone)	2
481	Telephone Communication	8
49	Sanitary Services	4
491-493	Electric and Gas Services	8
50	Wholesale Trade—Durable Goods	3
5093	Junk and Scrap Dealers	8
51	Wholesale Trade— Nondurable Goods	2
52	Building Materials,	1

	Hardware, Garden Supply	
5271	Mobile Home Dealers	5
53	General Merchandise Stores	1
54	Food Stores	1
55	Automotive and Motor Vehicle Dealers and Farm Machinery, Retail (Except Auto Supply Stores—553 and Gasoline Service Stations—554)	8
553—554	Auto Supply Stores and Gasoline Service Stations	1
56	Apparel and Accessory Stores	2
57	Furniture, Home Furnishings and Equipment Stores	3
58	Eating Places	1
5813	Drinking Places (Alcoholic Beverages)	8
59	Miscellaneous Retail	2
5932	Pawnbrokers	8
5962	Vending Machines	8
5963	Peddlers	8
61	Credit Agencies Other Than Banks	6
62	Security and Commodity Brokers, Dealers Exchanges and Services	4
631—632		8

	Insurance Companies, Life and Health	
633-635	Insurance Companies, Fire and Casualty	8
636-639	Insurance Companies (Except Life, Health, Fire, and Casualty)	1
64	Insurance Agents, Brokers and Service	7
6411	Brokers for Nonadmitted Insurers	8
65	Real Estate	7
67	Holding and Other Investment Offices	7
70	Hotels, Roominghouses, Camps and Other Lodging	8
72	Personal Services	6
73	Business Services	7
75	Automotive Repair, Services and Garages	3
76	Miscellaneous Repair Services	7
78	Motion Pictures	3
79	Amusement and Recreation Services (Except Motion Pictures, Amusement Machines, Billiards, Bingo, Carnivals, and Rentals)	5
7993	Amusement Machines, Coin-Operated	8
7999		8

	Billiard or Pool Tables, Bingo, Carnivals, and Recreation Equipment Rental	
80	Health Services	7
81	Legal Services	7
82	Educational Services	7
83	Social Services	2
87	Engineering, Accounting, Research, Management and Related Services	7
89	Miscellaneous Services	7

**ALPHABETICAL
BUSINESS CLASSIFICATION INDEX**

This index is not intended to be a complete listing of all types of businesses. It is an aid in finding classifications by common name and reference to the Standard Industrial Classification Manual group number. All businesses not exempt by law which are in the major groups listed under each rate class are subject to a license tax whether found in the alphabetical index or not. The license inspector shall determine the proper classification of a business not listed.

Name	SIC	Class
A		
Abattoirs	2011	1
Abstract land title or warranty companies	6541	7
Accounting and bookkeeping services	8721	7
Acupuncture—except M.D.	8049	7
Administrative office	7389	7
Advertising agencies or agents	7311	7
Advertising novelties, signs, placards, etc	7319	7
	1711	8

Air conditioning contractor		
Air conditioning service and repair	7623	7
Aircraft supplies—retail	4581	4
Aircraft supplies—wholesale	5088	3
Airport limousine service	4111	7
Alterations, clothing	7219	6
Ambulance service	4119	7
Amusement and recreation services (NOC)	7999	5
Amusement machines, coin-operated	7993	8
Amusement parks	7996	5
Animal hospital	0742	3
Answering service	7399	7
Antenna installation—except household type	1799	8
Antenna sales—household	5731	3
Antenna system—satellite master	4841	2
Antiques, dealers in	5932	2
Appliances, household, dealers in	5722	3
Appliances, household, repair	7629	7
Appraisers, real estate	6531	7
Architects	8712	7
Armature rewinding shops	7694	7
Armored car services	7381	7
Art glass, dealers in	5999	2
Artificial flowers, dealers in	5999	2
Artist supplies, retail	5999	2
Artists, commercial	7336	7

Artists, portrait	8999	7
Artists, studios	8999	7
Assignment, purchasers of accounts, factors	6153	6
Astrologers	Prohibited	
Athletic arena	7941	5
Athletic clubs, admission charged	7991	5
Attorneys	8111	7
Auction houses	5999	2
Auctioneers—regulated by state law		
Automatic sprinklers—installation	1711	8
Automobile accessories, dealers in	5531	1
Automobile automatic car wash	7542	3
Automobile body and paint shop	7535	3
Automobile dealers, new or used—retail	5511	8
Automobile detailers	7542	3
Automobile leasing—long term	7515	3
Automobile—manufacturing	3711	2
Automobile parts—new—retail	5531	1
Automobile parts—new—wholesale	5013	3
Automobile parts—used—wholesale or retail	5015	3
Automobile rental—short term	7514	3
Automobile repairs and service	7538	3
Automobile salvage or scrap	5093	3
Automobile tires, recapping	7534	3
Automobile tires—retail	5531	1
	5014	3

Automobile tires— wholesale		
Automobile towing service	7549	3
Awning and tent makers	2394	3
Awning and tent rentals	7359	7
Awning and tent repair	7699	7
B		
Bags, bagging and ties, dealers in	5113	2
Bakery stores, sales— retail	5461	1
Bakery—wholesale	5149	2
Ballroom, leased or rented	7911	5
Barber schools	7241	6
Barber supplies— wholesale	5087	3
Barbershops	7241	6
Barrel and drum makers and dealers	5085	3
Bars—drinking places	5813	8
Baskets, boxes, crates, bags, etc., dealers	5113	2
Bath, Turkish, sauna or vapor	7299	6
Bathhouses	7999	5
Batteries, manufacture	3692	2
Batteries, vehicle— retail or wholesale	5531	1
Beach equipment rental	7999	8
Bearings, dealers in	5085	3
Beauty schools	7231	6
Beauty shops	7231	6
Beauty supplies, wholesale	5087	3
Bed and breakfast inns	7011	8
Beepers	4812	2
	5087	3

Beverage coolers—wholesale		
Bicycle rental	7999	5
Bicycle repair	7699	7
Bicycle supplies—wholesale	5091	3
Bicycles—retail	5941	2
Bill distributors, handbills	7319	7
Billboards, erection and lease	7312	7
Billiard or pool hall	7999	8
Bingo	7999	8
Blacksmith	7699	7
Blood bank	8099	7
Blueprinting	7334	7
Boat rental	7999	8
Boat yards, storage, repair and rental	4499	2
Boats, sightseeing operation	4489	2
Boats, supplies and accessories—retail	5551	8
Boats, supplies and accessories—wholesale	5091	3
Boiler, installation	1711	8
Boilermaker shop, repair of boilers	7699	7
Boilers, sale of	5074	3
Bondsman	7389	7
Book publisher	2731	4
Book store—retail	5942	2
Bookbinder	3555	3
Booking agent	7829	3
Bootblack, bootblack stand	7251	6
Bottlers of flavored milk	2087	1
Bottlers of soft drinks	2086	1
Bottlers supplies—wholesale	5085	3
Bowling apparel and accessories	5699	2

Bowling lane equipment and supplies	5941	2
Bowling lanes and centers	7933	5
Box manufacturing	2653	2
Boxing or wrestling matches	7941	5
Brick, agents for	5211	1
Brokers—see heading under type of broker		
Building construction—general contractors	1541	8
Building materials and supplies:		
Brick and stone—wholesale	5032	3
Construction materials—wholesale	5039	3
Retail	5211	1
Roofing, siding and insulation—wholesale	5033	3
Burglar alarms, installation only	1731	8
Burglar alarms, sale and installation	7382	7
Bus and motor coach company		Franchise
Bus, charter	4141	7
Bus terminal	4173	7
Business broker, selling businesses	7389	7
Business colleges	8244	7
Business consultant	8748	7
Business forms, manufacturing	2759	4
Business forms—retail	5943	2
Business services, not elsewhere classified	7389	7
C		
Cabarets (bars)	5813	8
Cabinet shop, custom order	5712	3
Cabinet shop, manufacturing	2434	2

Cafeteria	5812	1
Camera and photo supplies—retail	5946	2
Camera and photo supplies—wholesale	5043	3
Camera repair shop	7699	7
Camper space rental, campgrounds	7033	8
Candy—retail	5441	1
Candy—wholesale	5145	2
Canvassers	5963	2
Car rental—short term	7514	3
Car wash	7542	3
Carnivals	7999	8
Carpet and rug cleaning	7217	6
Carpet and rugs, dealers in	5713	3
Carpet layer	1752	0
Carpets—wholesale	5023	3
Carriages, horse-drawn for hire	4789	7
Cash register dealers—see office machines		
Caterers	5812	1
Cement manufacture (chemical adhesives)	2891	6
Cement products—wholesale	5032	3
Cemetery lots, agents or sales	6553	7
Cemetery lots, caretakers	0782	3
Charcoal, producers	2861	6
Chauffeurs and limousine tour services	4119	7
Cheese, manufacturers or processors	2022	1
Chemical and allied products, manufacture	2819	6
Chimney cleaners	7349	7

Chiropractors	8041	7
Christmas tree sales	5261	1
Cigar store or stand—retail	5993	2
Cigarettes or tobacco—wholesale	5194	2
Cigars, manufacture	2121	4
Circus	7999	8
Claim adjustment agent or agency	6411	7
Clay, stone and glass products, manufacture	3200	1
Clipping service, press	8999	7
Closing-out sale—see Code for regulations		
Clothing—retail	5651	2
Clothing, secondhand dealer	5932	2
Clothing—wholesale	5130	2
Coal, wood or coke—retail	5989	2
Coal, wood or coke—wholesale	5052	3
Coffee or tea stores—retail	5499	1
Coffee roasters and wholesale coffee dealers	5149	2
Coin shops—retail	5999	2
Cold storage warehouse	4222	3
Collection and claim agency	7322	7
Concrete, dry ready-mix—wholesale	3272	1
Concrete manufacture (paving)	2951	3
Concrete manufacture, ready-mixed	3273	1
Concrete products—wholesale	5032	3
Consultant, business	8748	7

Contractors, construction—all types 1500—1600—1700		8
Convalescent home	8052	7
Convention decorators	7389	7
Convention promoters	7389	7
Cosmetics— manufacture	2844	6
Cosmetics—retail	5999	2
Cosmetics— wholesale	5122	2
Cotton brokers	6221	4
Cotton mill	2211	4
Cotton presses and warehouses	4221	3
Cracker manufacture	2051	1
Credit reporting agency	7323	7
D		
Dairy products— retail	5451	1
Dairy products— wholesale	5143	2
Dairy supplies— wholesale	5084	3
Dance hall	7911	5
Dancing school	7911	5
Data processing service	7379	7
Data processing systems, supplies and equipment	7372	7
Day care—adult and handicapped	8322	2
Day care—child	8351	2
Decorator, interior	7389	7
Delicatessen	5411	1
Delivery service, messenger/courier	4215	3
Dental equipment and supplies—wholesale	5086	3
Dental laboratories	8072	7
Department store	5311	1

Design, machinery	8712	7
Detective agency (permit and bond required)	7381	7
Diaper service	7219	6
Directories	7389	7
Dog kennels and/or grooming	0752	3
Drayage	4212	3
Dressmakers for retail trade	5699	2
Drinking places— alcoholic	5813	8
Driver training school	8299	7
Drug store—retail	5912	2
Drugs—wholesale	5122	2
Dry cleaning—coin- operated	7215	6
Dry cleaning—retail or agents	7212	6
Dry cleaning— wholesale	7219	6
Dry goods—retail	5399	1
Dry goods— wholesale	5131	2
Dye house	7216	6
E		
Electric appliances and supplies—retail	5722	3
Electric appliances and supplies—wholesale	5064	3
Electric appliances, repair	7629	7
Electric power company	4900	8
Electric razor— repair	7629	7
Electric razor— retail	5999	2
Electrical contractors	1731	8
Electrical machinery, etc., manufacture	3600	2
Elevator dealer— wholesale	5084	3

Elevator maintenance	7699	7
Employment agency	7361	7
Engineering services	8711	7
Engraving, metal	3479	1
Entertainment	7929	5
Equipment rental—construction	7353	7
Equipment rental—recreational	7999	8
Escort service	7299	6
Explosives—wholesale	5169	2
Exterminators	7342	7
F		
Fabrics—retail	5949	2
Factors	6153	6
Farm and industrial machinery wholesale	5080	3
Farm machinery, retail	5599	8
Fertilizer factory	2874	6
Fertilizer—wholesale	5191	2
Field warehousing	7389	7
Film developers for general public	7384	7
Film developers for movies and TV	7819	3
Film distributor	7822	3
Finance company	6141	6
Fireworks, retail (plus \$50.00 state license)	5999	2
Fireworks, wholesale	5092	3
Fish and seafood—retail	5421	1
Fish and seafood—wholesale	5146	2
Fisheries	0912	5
Fishermen's equipment—retail	5941	2

Fixtures and furniture, manufacture	2500	3
Floor covering—retail	5713	3
Floor covering—wholesale	5023	3
Flooring contractor	1752	8
Florist—retail	5992	2
Florist—wholesale	5193	2
Flowers, real or artificial—retail	5992	2
Flowers, real or artificial—wholesale	5193	2
Food broker	5141	2
Food—retail, not consumed on premises	5411	1
Food—wholesale	5141	2
Fortunetelling	Prohibited	
Foundry	3300	1
Freight forwarders	4731	7
Fruit and produce—retail	5431	1
Fruit and produce—wholesale	5148	2
Fruit baskets, mail order	5961	2
Funeral establishments	7261	6
Fur, clothing—retail	5632	2
Furnace dealer—retail	5075	3
Furnace or heating contractor	1711	8
Furniture and fixtures, manufacture	2500	3
Furniture repair, refinishing, upholstering	7641	7
Furniture—retail	5712	3
Furniture—secondhand	5932	2
Furniture—wholesale	5021	3
G		

Garment pressing, alteration	7212	6
Gas, liquefied petroleum and equipment	5984	2
Gas, natural gas company	4900	8
Gasoline service station	5541	1
Gasoline—wholesale	5172	2
Gift shop	5947	2
Glass, motor vehicle, sale and installation	7536	3
Glass—retail	5231	1
Glass, stone and clay products, manufacture	3200	1
Golf courses (including miniature)	7992	5
Grain broker (commodity)	6221	4
Grain dealer—wholesale or retail	5153	2
Grain elevator	4221	3
Granite—wholesale	5032	3
Greeting cards—retail	5947	2
Grocers—retail	5411	1
Grocers—wholesale	5141	2
Guns—retail or dealer	5941	2
Guns—wholesale	5091	3
Gunsmith	7699	7
H		
Hardware—retail	5251	1
Hardware—wholesale	5072	3
Hat cleaning and blocking	7251	6
Hats—retail	5611	2
Hats—wholesale	5136	2
Health club	7991	5
Hearing aids—retail	5999	2
Heating contractor	1711	8

Hemstitching and pleating	7219	6
Holding companies	6700	7
Horticulturist	0781	3
Hose, industrial-wholesale	5085	3
Hosiery-retail	5632	2
Hosiery-wholesale	5137	2
Hosiery mill	2200	4
Hospital, animal	0742	3
Hospital, sanitorium and like institutions	8062	7
Hotel	7011	8
Hotel supplies-wholesale	5046	3
House mover/wrecker	1799	8
I		
Ice cream-retail	5451	1
Ice cream Ice cream manufacture	2024	1
Ice cream-wholesale	5143	2
Ice dealer	5999	2
Ice manufacture	2097	1
Industrial and farm machinery and equipment	5080	3
Industrial chemicals-wholesale	5169	2
Inns, food and lodging	7011	8
Insulation contractor	1742	8
Insurance adjuster	6411	7
Insurance agent/broker (see 8 for nonadmitted)	6411	7
Insurance broker for nonadmitted insurer	6411	8
Insurance companies, fire and casualty	633-635	8
Insurance companies, life and health	631-632	8
	636-639	1

Insurance companies, title and others not elsewhere classified		
Insurance consultants or engineers	6411	7
Insurance solicitors	6411	7
Interior decorator	7389	7
Investment counselor	6282	4
Investment firm, general brokerage	6211	4
Iron and steel, semifinished items—wholesale	5051	3
J		
Janitor or housekeeping service	7349	7
Janitor supplies—wholesale	5087	3
Jewelry and watch repair	7631	7
Jewelry—retail	5944	2
Jewelry—wholesale	5094	3
Junk dealers—wholesale	5093	8
K		
Kennels	0759	3
Kindergarten	8211	7
Kitchen designers and contractors	1521	8
Knitting mills (textiles)	2253	4
L		
Laboratory, testing, commercial	8734	7
Lamp dealers—retail	5719	3
Lamp dealers—wholesale	5023	3
Land title or abstract company	6361	1
Landfills	4953	4
Landscape service	0781	3
Lapidary shop—retail	5999	2

Lapidary supplies and equipment—wholesale	5085	3
Laundries	7215	6
Laundry agent or pickup station	7211	6
Lawnmowers—retail	5261	1
Lawnmowers—wholesale	5083	3
Leased equipment, not otherwise listed	7359	7
Leasing company, vehicles, and nonexpendable equipment	7510	3
Leather goods—retail	5999	2
Leather products, manufacture	3111	1
Legal services, attorneys	8111	7
Libraries, lending and depositories in stores	8231	7
Limousine rental with driver	4119	7
Limousine service, airport—scheduled	4111	7
Linen service	7213	6
Livestock dealers	0751	3
Locker rental, food	4222	3
Locksmiths	7699	7
Luggage—see leather		
Lumber manufacturer	2400	2
Lumber merchant	5211	1
M		
Machine shops	3599	3
Mail order business	5961	2
Management consultant	8742	7
Manicurist	7231	6
Manufacturing:		
Chemicals and allied products	2800	6

Clay, stone and glass products	3200	1
Electrical machinery, equipment, supplies	3600	2
Furniture and fixtures	2500	3
Leather and leather products	3100	1
Medicine	2833	6
Metal products	3400	1
Paper and allied products	2600	2
Petroleum refining and related	2900	3
Rubber and miscellaneous products	3000	2
Soap	2841	6
Textile mill products	2200	4
Tobacco products	2100	4
Transportation equipment	3700	2
Manufacturing not otherwise listed	3900	2
Marble, building, cut and shape	3281	1
Marble, granite and other stone yards	5032	3
Marinas	4493	2
Massage	7299	6
Mattress makers	2515	3
Mattress-retail	5712	3
Meat market-retail	5421	1
Meat processing	2013	1
Meats, wholesale	5147	2
Medical and health services, physicians	8000	7
Medical-dental/hospital equipment/supplies	5047	3
Medicine, manufacture	2833	6
Men's wearing apparel-retail	5611	2

Messenger service	4215	3
Metal jobber— wholesale	5051	3
Metal products, manufacture	3400	1
Milk depots, with or without delivery	5143	2
Milk—retail	5451	1
Millinery shop— retail	5632	2
Millinery— wholesale	5137	2
Miscellaneous business services, not listed	8999	7
Mobile home parks	6515	7
Mobile home, repairs	7699	7
Mobile homes— retail	5271	5
Moneylenders, finance company (not banks)	6141	6
Moneylenders, industrial loans	6141	6
Monuments—retail	5999	2
Mortgage brokers	6163	6
Motels	7011	8
Motion picture films, agents	7829	3
Motion picture operator	7832	3
Motion picture supply house	5043	3
Motion picture theater and drive-in	7833	3
Motor freight lines	4231	3
Motor vehicle dealers— retail	551–552	8
Motor vehicle driver training school	8299	7
Motorcycle rental	7999	8
Motorcycle repairs	7699	7
Motorcycles, dealer or agent	5571	8
Motors, outboard, dealer	5551	8

Movers, trucking and storage	4214	3
Multigraphing or photocopying	7334	7
Music or musical instruments—retail	5736	3
Music schools	8299	7
Music, teachers and educational services	8299	7
Music, wire transmitted, systems	7389	7
Musicians (entertainers)	7929	5
N		
Natatorium or swimming pool	7999	5
Neckware—retail	5611	2
News syndicate	7383	7
Newspapers, publishing	2711	4
Newspapers—wholesale	5192	2
Newsstand	5994	2
Nightclubs	5813	8
Notions, novelties—retail	5947	2
Nurseries, day	8351	2
Nursery or horticulturist	5261	1
Nursing home	8051	7
O		
Office building, rental agent	6531	7
Office furniture, wholesale	5021	3
Office machines, rental	7359	7
Office machines, service and repair	7629	7
Office machines, wholesale	5044	3
Office supplies—retail	5943	2
Office supplies—wholesale	5112	2

Oil, fuel only— wholesale	5172	2
Ophthalmic goods— wholesale	5048	3
Optical goods or supplies—retail	5995	2
Optical goods or supplies—wholesale	5048	3
Osteopathic, physicians and clinics	8031	7
P		
Packing house, cold storage	4222	3
Paint manufacture	2851	6
Paint—retail	5231	1
Paint—wholesale	5198	2
Paper and allied products, manufacture	2621	2
Paper jobbers— wholesale	5113	2
Parcel delivery company	4215	3
Parking lots and garages	7521	3
Parking spaces, trailer park	6515	7
Pawn brokers, all types	5932	8
Peanut and popcorn stands	5441	1
Peddlers, all types	5963	8
Personal holding company	6719	7
Personnel supply services	7361	7
Pest control— exterminators	7342	7
Pet shop	5999	2
Petroleum, refining and related	2911	3
Pharmacies	5912	2
Phonograph record store—retail	5735	3
Phonograph records— wholesale	5099	3
	5946	2

Photo supply store— retail		
Photocopying	7334	7
Photograph developing and retouching	7384	7
Photographers, commercial	7335	7
Photographers, portraits	7221	6
Physical fitness center, health club	7991	5
Piano tuners	7699	7
Pianos—retail	5736	3
Pictures or picture frames—retail	5799	3
Plating, silver, etc.	3471	1
Plumbers supplies and equipment—retail	5211	1
Plumbers supplies and equipment— wholesale	5074	3
Plumbing contractor	1711	8
Polygraph service	7381	7
Printing or duplicating, all types	2700	4
Produce—retail and wholesale	5141	2
Promoters, sports and entertainment	7941	5
Public relations	8743	7
Publishers	2731	4
Pulpwood yards, wholesale	5099	3
Pumps—retail	5999	2
Pumps—wholesale	5084	3
R		
Radio and TV, etc., supplies and parts	5065	3
Radio and TV, rental or lease	7359	7
Radio and TV repairs	7622	7
Radio and TV— retail	5731	3
	4832	2

Radio and TV stations		
Railroad companies	4000	8
Real estate:		
;Agents, brokers, realtors, managers	6531	7
;Developers and subdividers	6552	7
;Operators and lessors (more than one dwelling unit)	651	7
Recreation clubs	7997	5
Recreation equipment rental	7999	8
Recreation vehicle dealers, retail	5561	8
Reducing salon	7991	5
Refrigerators—retail	5722	3
Refrigerators—wholesale	5064	3
Rehabilitation house, after care	8081	7
Rental service, miscellaneous, not listed	7359	7
Repair services, miscellaneous	7699	7
Reporter, stenographer, fee-or-commission	7338	7
Representatives, business	7389	7
Restaurants	5812	1
Retail trade—apparel and accessories	5699	2
Retail trade—building materials, hardware, farm equipment, etc	5200	1
Retail trade—food	5411	1
Retail trade—furniture, home equipment	5712	3
Retail trade—general merchandise	5399	1
Retail trade—miscellaneous, not listed	5999	2
	7999	5

Riding schools and academies		
Roofing manufacture	2952	3
Roofing-retail	5211	1
Roofing-wholesale	5033	3
Roominghouse	7021	8
Rubber, related products, manufacture	3069	2
Rubber stamps, manufacture	3999	2
Rubber stamps-retail	5999	2
Rugs and carpets-retail	5713	3
S		
Safes, dealer or agent-wholesale	5044	3
Sales engineer	7389	7
Sales office-see heading under product		
Sales promotion	7389	7
Sanatoriums	8051	7
Sand-retail	5211	1
Sand-wholesale	5032	3
Sandwiches-manufacture and wholesale	5149	2
Sandwiches-retail	5812	1
Satellite antenna-sales and installation-household	5731	3
Satellite master antenna systems-services	4841	2
Sausage factory	2013	1
Sawmills, manufacture of	3553	3
Saws, dealers	5072	3
Scales, coin-operated	7299	6
Scales-wholesale	5046	3
School supplies and books-retail	5943	2
	5021	3

School supplies and desks—wholesale		
Schools, acting	8299	7
Schools, dance	7911	5
Schools, educational or vocational	8200	7
Scrap, dealers or gatherers, yards	5093	8
Scrap—wholesale	5093	8
Screens, doors, windows—manufacture	2431	2
Screens—retail	5211	1
Screens—wholesale	5051	3
Secondhand goods, all types	5932	2
Secretarial service	7338	7
Security and guard services	7381	7
Seeds, dealers	5261	1
Sewer pipe, dealers	5032	3
Sewing machines, manufacture	3634	2
Sewing machines—retail	5722	3
Sewing machines—wholesale	5064	3
Shipyards	3731	2
Shirts, manufacture	2326	3
Shoe repair shop	7251	6
Shoes—retail	5661	2
Shoes—wholesale	5139	2
Shooting gallery	7999	5
Shopping service for individuals	7299	6
Shuffleboards	7999	5
Sign painters	7389	7
Skating and other rinks	7999	5
Soap, manufacture	2841	6
Soap—wholesale or dealer	5122	2
Soda fountain	5812	1
Soda fountain supplies—wholesale	5145	2

Soda water—wholesale	5145	2
Soft drink stands	5812	1
Soft drinks—wholesale	5149	2
Spa—health club	7991	5
Sporting goods—wholesale	5091	3
Springs, bed, manufacture	2515	3
Stables, feed boarding or sales	7999	5
Stamp shop—retail (philatelist)	5999	2
Stationery, including books	5943	2
Statuary, dealer	5999	2
Steam, heating and cooling contractor	1711	8
Stenographer, on fee or commission	7338	7
Stevedoring	4491	2
Stockbroker or dealer	6211	4
Stone, clay, glass products, manufacture	3299	1
Stove repairs	7699	7
Stoves, manufacture	3631	2
Stoves—retail	5722	3
Stoves—wholesale	5064	3
Sugar—wholesale or jobber	5149	2
Surgical instruments—wholesale	5047	3
Swimming pool contractor	1799	8
T		
Tailor, custom—retail	5699	2
Tailor shop, repair	7219	6
Talent agent	7399	7
Tallow, manufacturer	2076	1
Tanning salon	7299	6

Tape recorders-- retail	5731	3
Tavern	5813	8
Tax service	7291	6
Taxicabs (permit required)	4121	8
Taxidermist	7699	7
Tea, coffee--retail	5499	1
Telegraph or signal company, agent	4822	2
Telephone:		
Answering service	7389	7
Billing services	7389	7
Communication services (based on gross receipts billed to customers within the city)	481	8
Company	481	8
Directory	7389	7
Equipment leasing	7359	7
Equipment sales-- retail	5999	2
Installation	1731	8
Maintenance	7629	7
Television, broadcast station	4833	2
Television, CATV	Franchise	
Television, closed circuit system	4841	2
Television, pay TV	Franchise	
Television, rent or lease	7359	7
Television, tubes in cabinets in stores	5065	3
Temporary employment agency	7363	7
Tent and awning maker	2394	3
Tent repairs	7699	7
Tents--retail	5999	2
Textile mill	2200	4
Theaters, motion picture	7832	3
Theaters, stage	7922	5
	7922	5

Theatrical or night club acts, agent		
Ticket agent, theatrical	7922	5
Tile, manufacture	3253	1
Tile—retail	5211	1
Tile—wholesale	5032	3
Tin and metal shop, repair only	7699	7
Tires, recapping	7534	3
Tobacco products, manufacture	2131	4
Tour buses	4141	7
Tourist guides (examination required)	7999	5
Towel service and rental, uniforms, rags, etc.	7213	6
Toys—retail	5945	2
Toys—wholesale	3092	3
Tractors—see industrial and farm machinery		
Trading stamps, dealers or companies	7389	7
Trailer parking lots, rental, campers	7033	8
Trailer parks, residential	6515	7
Trailers, rental	7519	3
Transportation equipment, manufacture	3799	2
Travel bureau, domestic and foreign	4724	7
Tree surgery	0783	3
Truck and auto rental or leasing	7513	3
Trucking, except rental or leasing	4212	3
Trunks—retail	5948	2
Trusses, dealers	5999	2
Tuxedo rental	7299	6
Typesetting	2791	4
Typewriters and office machines—retail	5999	2

Typewriters— wholesale	5044	3
U		
Uniform rental	7299	6
Uniform supply service	7213	6
V		
Vacuum cleaners— retail	5722	3
Vacuum cleaners— wholesale	5064	3
Variety store	5331	1
Vehicles—see heading under type.		
Vending machines, sale of products	5962	8
Vending machines— wholesale	5046	3
Veterinarian	0742	3
Video tape rental	7841	3
W		
Wallpaper—retail	5231	1
Wallpaper— wholesale	5198	2
Warehouse and storage	4225	3
Washing cars	7542	3
Washing machines— retail	5722	3
Waste paper and rags	5093	3
Watchmaker, repairs	7631	7
Water or steam hose— wholesale	5085	3
Water transportation services	4400	2
Waterbeds—retail	5712	3
Weather stripping, dealers	5211	1
Weight control— reducing facilities	7991	5
Welding supplies	5085	3
Wholesalers, not otherwise listed:		
;Durable goods	5099	3

;Nondurable goods	5199	2
Wigs—retail	5699	2
Wigs—wholesale	5199	2
Wood sawyers, sawing wood by machinery	2421	2
Woodenware, dealers—retail	5999	2
Woolen mills	2282-4	4
Wrecker, towing service	7549	3
Wrecking, buildings	1795	8
X		
X-ray laboratories	8071	7
X-ray machines, wholesale	5047	3
Y		
Yacht basins, operation	4493	2
Yacht clubs	7997	5
Yard goods, retail	5949	2
Yard goods, wholesale	5131	2
Yarn, manufacture	2281	4
Yarn shops, retail	5949	2
Yeast—wholesale	5149	2
Yogurt, manufacture	2024	1
Yogurt, wholesale	5143	2

(Ord. No. 91-24, § 20, 6-25-91; Ord. No. 91-37, 9-24-91; Ord. No. 93-35, 7-27-93; Ord. No. 96-41, 4-23-96; Ord. No. 96-52, 5-14-96; Ord. No. 97-54, 7-22-97; Ord. No. 98-25, 5-12-98; Ord. No. 98-27, 6-9-98; Ord. No. 98-50, 10-13-98; Ord. No. 990622-2, 6-22-99; Ord. No. 2004-75, § 1, 11-9-04; Ord. No. 2006-18, § 2, 3-21-06; Ord. No. 2012-67, 12-11-12)

Sec. 11-40. Telecommunications.

- (1) (a) Notwithstanding any other provisions of article II of chapter 11, the business license tax for "retail telecommunications services", as defined in S.C. Code § 58-9-2200, shall be at the maximum rate authorized by S.C. Code § 58-9-2220, as it now provides or as provided by its amendment. The business license tax year shall begin on January 1 of each year. The rate for the 2005 business license tax year shall be the maximum rate allowed by state law as in effect on February 1, 2005. Declining rates shall not apply.

- (b) In conformity with S.C. Code § 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a 12-month projected income.
- (2) (a) For the year 2005, the business license tax for "retail telecommunications services" shall be due on February 1, 2005, and payable by February 28, 2005, without penalty. For years after 2005, the business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.
- (b) The delinquent penalty shall be five percent of the tax due for each month, or portion thereof, after the due date until paid.
- (3) Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.
- (4) (a) Nothing in this section shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.
- (b) All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes, which might otherwise be authorized by this section.
- (5) As authorized by S.C. Code § 5-7-300, the Agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S.C. Code § 58-9-2200 shall continue in effect. Notwithstanding the provisions of the Agreement, for the year 2005, the Municipal Association of South Carolina is authorized to collect current and delinquent license taxes, in conformity with the due date and delinquent date for 2005 as set out in this section and is further authorized, for the year 2005, to disburse business license taxes collected, less the service charge agreed to, to this municipality on or before April 1, 2005, and thereafter as remaining collections permit.

(Ord. No. 990921-34, §§ 1—5, 9-21-99; Ord. No. 2004-65, §§ 1—5, 9-28-04)

Secs. 11-41—11-60. Reserved.

FOOTNOTE(S):

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State Law reference— Municipal authority to levy a business license tax, S.C. Code 1976, § 5-7-30. (Back)

Myrtle Beach, South Carolina, Code of Ordinances >> - CODE OF ORDINANCES >> APPENDIX A - ZONING >> ARTICLE II ESTABLISHMENT OF CONTROLS AND DEFINITIONS >>

ARTICLE II ESTABLISHMENT OF CONTROLS AND DEFINITIONS

Section 201. Short title.

Section 202. Purpose and interpretation.

Section 203. Terms and words used in ordinance.

Section 204. Definitions.

Section 201. Short title.

The ordinance shall be known and may be cited as the Zoning Ordinance of the City of Myrtle Beach, South Carolina. The map referred to herein shall be known and may be cited as the Zoning Map of the City of Myrtle Beach.

Section 202. Purpose and interpretation.

The purpose of the Zoning Ordinance is to implement the Comprehensive Plan.

In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements adopted for promoting the public health, safety, morals, convenience, appearance, prosperity, and general welfare of the city. To these ends they have been designed:

- a. To provide for adequate light, air, and open space;
- b. To prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets;
- c. To facilitate the creation of a convenient, attractive, and harmonious community;
- d. To protect and preserve scenic, historic, or ecologically sensitive areas;
- e. To regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities, and other purposes;
- f. To facilitate the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements;
- g. To secure safety from fire, flood and other dangers; and.
- h. To further the public welfare in any other regard specified by city council.

Section 203. Terms and words used in ordinance.

Where uncertainty exists, the following rules of interpretation shall apply:

203.1 Except as defined herein, all words and terms used in this ordinance shall be interpreted in accord with their customary dictionary definition.

203.2 Words used in the present tense include the future tense and words used in the future tense include the present.

203.3 Words used in the singular include the plural, and words used in the plural include the singular.

203.4 The word "shall" is always mandatory. The word "may" is permissive.

203.5 The word "lot" includes the word plot, parcel, or property

203.6 The word "building" includes the word "structure"

203.7 The word "used" or "occupied", as applied to any land or buildings, shall be construed to include the words "intended, arranged", or "designed to be used or occupied".

Section 204. Definitions.

204.1 *Accessory building or use.* An accessory building or use is:

- (a) Subordinate to and serves a principal building or principal uses;
- (b) Subordinate in area, extent, or purpose to the principal use served; and
- (c) Designed for the comfort, convenience, or necessity of occupants of the principal use served; and
- (d) Located on the same lot as the principal use served, with the single exception of such required parking facilities permitted to locate elsewhere than on the same lot with the permitted use.

204.2 *Accessory use, private garage.* An accessory building not exceeding 900 square feet in floor area designed or used for the storage of not more than four motor driven vehicles, owned and used by the occupants of the building to which it is accessory. Not more than one of the vehicles may be a commercial vehicle and that one of not more than one ton capacity.

204.3 *Alley.* A public or private way at the rear or side of property permanently reserved as a means of providing secondary or service vehicular access to abutting property, less in size than a street, and which is not designed for general vehicular traffic.

204.4 *Ambulatory.* In respect to a person, the ability to move by walking, either unaided or aided by prosthesis, brace, cane, crutches, or hand rails, or by propelling a wheelchair; and the ability to perceive an emergency situation and react appropriately without human assistance.

204.5 *Amusement device.* Any equipment or piece of equipment, appliance or combination thereof designed or intended to entertain or amuse.

204.6 *Amusement ride.* Any amusement device or combination of devices which carries passengers along, around or over a fixed or restricted course for the purpose of amusement.

204.7 *Apartment.* A part of a building consisting of a room or rooms intended, designed, or used as a residence by an individual or a single family.

204.8 *Apartment, garage.* A part of a garage consisting of a room or rooms intended, designed, or used as a residence by an individual or a single family

204.9 Assisted living facility. An assisted living facility is a residential facility for elderly housing and care, licensed by the State of South Carolina, with a residential character and home like setting that provides an array of coordinated support of personnel and health care services, available 24-hours per day, to residents who have been assessed under the applicable state or federal guidelines to need any of these services. Assisted living facilities are for people needing assistance with Activities of Daily Living (ADLs) but wishing to live as independently as possible for as long as possible. As a distinct zoning use, assisted living development exists to bridge the gap between elderly or retired independent living communities, elderly congregate care and nursing homes. Assisted living facilities offer help with ADLs such as eating, bathing, dressing, laundry, housekeeping, and assistance with medications. An assisted living facility may have a limited component of medical care; however, the care offered may not be as intensive or available to residents as the care offered at a nursing home. Each resident shall have a service plan based on the assessment, which may include:

- i. Specified services of intermediate nursing care;
- ii. Administration of medication, and;
- iii. Support services promoting residence independence and self sufficiency.

Such a facility may include an adult day care center provided in conjunction with a congregate care facility as defined elsewhere in the Code.

204.10 Auto detailing. The thorough cleaning of the exterior and interior surfaces of a vehicle. This activity may also include the application of waxes, compounds, sealants, pinstriping (non-painted/vinyl only) or protectants to maintain, protect, or enhance the value and appearance of a vehicle.

204.11 Automotive junk yard. An area outside of a building where motor vehicles not in operable condition or used parts of motor vehicles are stored.

204.12 Awning. A roof-like shelter extending over a doorway, window, porch, etc., which provides protection from the sun or rain.

204.13 Bar. A building, room or place devoted primarily to the retailing and on-premises consumption of beer, wine or other alcoholic beverages.

204.14 Body Piercing. Any method of piercing of the human skin of one person by another person with the intention of inserting any object including but not limited to jewelry. For the purposes of the Zoning Ordinance the term body piercing shall also include any process of marking or disfiguring the skin or other tissue of any person by branding or scarification but shall not include the piercing of the fatty lobe of the ear by an ear-piercing gun designed solely for that purpose, or physician authorized surgical procedures. This definition of body piercing includes that process commonly referred to as implantation.

204.15 Branding. The act of intentionally marking or disfiguring a human body by branding it through the use of a hot object or by the use of any substance or process which results in such marking or disfiguration.

204.16 Buildable width. The width of the lot left to be built upon after the required side yards are provided.

204.17 Buildable area of a lot. The portion of a lot bounded by the required rear, front and side yards.

204.18 Building. Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind which has a roof and enclosed walls for 50 percent of its perimeter. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

204.19 Building front. That part of a building or structure which faces and is parallel to the required front yard.

204.20 Building height. The vertical distance from grade to the highest finished roof surface in the case of flat roofs or to a point at the average height of the highest roofs having a pitch of more than 4½:12. Height of a building in stories does not include basements and cellars. Church spires, chimneys, tanks and supports, aerial supports, parapet walls not over ten feet high, non-habitable architectural features (ex: cupolas), bulkheads and penthouses used solely to enclose stairways, tanks, elevator machinery or shafts, or ventilation or air conditioning apparatus, need not be considered in determining the highest point of the building, provided that the highest point shall be taken to be the highest point of the roof of the highest penthouse when the aggregate area of all penthouses and other roof structures exceeds one-third of the area of the roof upon which they stand.

204.21 Building line. A line which represents the distance that a building or structure must be set back from a lot boundary line or a street right-of-way line according to the terms of this ordinance. In all cases, the building lines of a lot shall be determined to run parallel to right-of-way lines and lot boundary lines.

204.22 Cabana. A beach house or deck or combination thereof not to exceed a 200 square feet (covered or uncovered) area nor a height not more than 12 feet, measured above the existing grade or to the base flood contour, whichever is greater. Cabanas shall be used as bathing quarters for temporary storage of swimming and beach paraphernalia, and for protection from sun and weather. Cabanas shall not be equipped with kitchen facilities and accommodations for overnight lodging; provided, however, that a toilet and shower are permitted.

204.23 Canopy. A shelter structure attached to or cantilevered from a building and wholly or partially supported by a building and/or supported by columns, braces or poles extending to ground. Materials are rigid and durable such as metal, wood, plastic, glass, canvas and other awning type fabrics over rigid frames, etc.

204.24 Cemetery. A burial place, burial ground, burial vault or columbarium

204.25 Child day care facility. Child day care facility shall mean any facility which provides care, supervision or guidance for any minor (under the age of 18 child who is not related by blood, marriage or adoption to the owner or operator of such a facility whether or not the facility is operated for profit and whether or not the facility makes a charge for services offered by it. This definition includes, but is not limited to day nurseries, nursery schools, child day care centers, group (child) day care homes and family (child) day care homes. The term does not include:

- (1) Any educational facility, whether private or public, which operates solely for educational purposes in grades one or above.
- (2) Five-year-old kindergarten programs operated by public school systems.
- (3) Kindergartens or nursery schools or other daytime programs with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age.

- (4) Kindergartens or nursery schools or other day time programs operated as part of a private school and receiving children younger than lawful school age for four hours a day or less, with or without stated educational purposes.
- (5) Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis as defined in this sub-article while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; provided, however, that such facilities meet local fire and sanitation requirements.
- (6) Summer resident or day camps for children.
- (7) Bible schools normally conducted during vacation periods.
- (8) Facilities for the mentally retarded provided for in article 3, chapter 21 of title 44 of the state code.
- (9) Facilities for the mentally ill as provided for in section 44-17-10 of the 1976 State Code.
- (10) Child day care centers and group day care homes owned and operated by a local church congregation, college or university which does not receive state or federal financial assistance for day care services, provided however, that such facilities must comply with the provisions of sections 20-7-2900 through 20-7-2970 and provided, further that they may voluntarily elect to become licensed according to the process as set forth in sections 20-7-2700 through 20-7-2780 and sections 20-7-2980 through 20-7-3090.

Child care facilities shall be further differentiated by the following three classifications:

- (1) Family day care home (child) shall mean an occupied residence in which child day care is regularly provided (for periods less than 24 hours) for no more than six children, ages birth to 12, unattended by a parent or legal guardian, including those children living in the home and children received for day care who are related (by marriage, blood or adoption; parent, grand-parent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin of 1st degree) to the resident caregiver. ~~Provided, however, that an occupied residence in which child day care is regularly provided only for a child or children related to the resident caregiver, or only for the child or children of one unrelated family or only for a combination of such children is not a family day care home.~~
- (2) Group day care home (child) shall mean any facility, generally within a dwelling unit, (which regularly provides child day care for periods of less than 24 hours) for at least seven, but no more than 12 children, ages birth to 12, unattended by a parent or a legal guardian, including those children living in the home and children received for day care who are related to the resident caregiver. Provided, however, that an occupied residence in which child day care is regularly provided only for a child or children related to the resident caregiver, or only for the child or children of one unrelated family, or only for a combination of such children is not a group (child) day care home.
- (3) Child day care center. A child day care center shall mean or include any facility where 13 or more children, ages birth to 17 are received for custodial care, apart from their parents or guardians, whether for compensation, reward or otherwise (for periods of less than 24 hours).

204.26 *Clinic*. A facility operated by a group of physicians, dentists, chiropractors, or other licensed practitioners for the examination, care and treatment of outpatients. The term does not include a place for the treatment of animals.

204.27 *Club*. Building or facilities owned or operated by a corporation, association, person or persons for a social, educational, or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business.

204.28 *Coin-operated amusement device*. A coin-operated machine or device which, whether mechanical, electrical, or electronic, is ready for play by the insertion of a coin or any form of legal tender, and may be operated by the public for use as a game, entertainment or amusement. The object of which is to achieve a score which demonstrates relative skill or competence, or in any way indicates a competitive advantage regardless of skill or competence. Included are devices such as pinball machines or any device which utilizes video tubes to reproduce figures, lines and images intended to be representative of actual games or activities.

204.29 *Condominium*. A multifamily building and land, certain parts of which are held in common ownership, such as yards, foundations, basements, floors, walls, hallways, stairways, elevators and other related common elements, together with individual ownership in fee of a particular dwelling unit within such building.

204.30 *Congregate housing, elderly*. Residential housing form providing efficiency or one bedroom dwelling units designed for the needs of ambulatory elderly persons, with access to common dining and recreation facilities.

204.31 *Continuing care retirement community*. A congregate care retirement community contains elements of elderly independent living residential development, adult day care, elderly congregate housing, assisted living facilities and nursing homes. The combination is known as a continuing care retirement community. The resident can take advantage of the full range of services available and the ease of transfer to a different type of facility as his or her condition and needs change without needing to look for a new facility, relocate, or adapt to a new setting. The resident may begin in the independent living residences, move to assisted living as he or she needs help with activities of daily living, and eventually move to the nursing home as ongoing care becomes necessary.

204.32 *Cooperative apartment*. A multifamily building and land held in corporate ownership by the occupants of the building, who own stock in the corporation with the right through a propriety lease to occupy the individual units.

204.33 *Court*. An open space which may or may not have direct street access and around which is arranged a single building or group of related buildings.

204.34 *Day care center, adult*. An adult day care center shall be defined as any home, center, agency, place or facility, however styled, which provides care, guidance or supervision for persons over age 18, who are not related to the operator whether for compensation, reward or otherwise, during the day only. Such facilities shall comply with the required license procedures of the state department of health and environmental control.

204.35 *Deciduous*. A woody perennial plant, either tree or shrub form, which at a certain stage of development in its life cycle sheds or dislodges its foliage or leaves (usually seasonal).

204.36 *Driveway*. An impervious surface, as approved by the city engineer, used to provide vehicular access to privately owned property

214.37 *Dwelling*. Any building containing one or more dwelling units but not including hotel, motel, rooming house, hospital or other accommodation used more or less for transient occupancy.

204.38 *Dwelling, single-family*. A building arranged or designed to be occupied by one family.

204.39 *Dwelling, two-family* A building arranged or designed to be occupied by two families living independently of each other.

204.40 *Dwelling, multifamily*. A building, or portion thereof, used or designed as residence for three or more families living independently of each other with separate kitchen facilities.

204.41 *Dwelling unit*. A building, or portion thereof, providing complete and permanent living facilities for one family.

204.42 *Reserved*.

204.43 *Elderly*. A household with a household head of 55 years of age or older. Households including handicapped or infirm members as defined by the Americans with Disabilities Act (citation) whose head of household is over age 18 but under age 55 whose disabilities within the household require the special amenities and services of congregate housing or nursing home facilities are incorporated within the term "elderly" as it relates to the definition of permitted residents in such facilities.

204.44 *Evergreen*. A woody perennial plant, either tree or shrub form, on which foliage remains green and functional through more than one growing season.

204.45 *Family*. Any individual, or two or more persons related by blood or marriage, or a group of not more than five persons (excluding servants) who need not be related by blood or marriage, living together in a dwelling unit.

204.46 *Floor area*. Gross floor space according to section 204.50, minus permanently non-enclosed areas on the ground level.

204.47 *Game arcade*. Any business location in which there are more than five coin-operated amusement devices, as defined herein, available for use by members of the public and/or business invitees.

204.48 *Goods; heavy durable*. Large bulky commodities such as automobiles, trucks, manufactured homes, recreational vehicles, boats, trailers, motorcycles, golf carts and similar items stored and used outdoors.

204.49 *Grade*. The natural elevation of the ground when compared to abutting properties. With reference to determining a building height, [grade] means average of the average grades of the land adjacent to all structural walls of the building. In extreme cases of varied elevations within the same site, grade shall be established by the zoning administrator.

204.50 *Gross floor space*. For purposes of this zoning ordinance, the gross floor space of a building is the sum of the areas of the several floors of the building, including basements, mezzanine and intermediate floored tiers and penthouses of head room height, measured from the

exterior faces of exterior walls or from the center line of walls separating buildings. Covered walkways, open roofed-over areas that are paved, porches and similar spaces shall have the gross floor space multiplied by a space factor of 1.0. The gross floor space does not include such features as pipe trenches, exterior terraces or steps, chimneys, roof overhangs, parking and vehicular circulation space in parking garages, etc.

204.51 *Ground cover.* Grass, low growing shrubs which at maturity shall not exceed a height of 12 inches, organic mulch, and crushed stone that cover the ground or exposed earth.

204.52 *Reserved.*

204.53 *Group house (townhouse).* A group or row of attached single-family dwellings designed and built as a single structure.

204.54 *Guest room.* A separate living unit offered for compensation to temporary residents in a hotel, motel, boarding, lodging or tourist home.

204.55 *Health club.* A commercial establishment with equipment and facilities designed to help customers or members lose weight or improve their physical fitness.

204.56 *Hedge.* The close planting of shrubs which form a compact, dense, visually opaque, living barrier when mature.

204.57 *Height.* For other than a building, the vertical distance from average grade to the top of a structure (refer to building height definition)

204.58 *Home occupation.* Any occupation within a dwelling and clearly incidental thereto, carried on by a member of the family residing on the premises, provided that no person not a resident of the premises is employed, no stock in trade is kept or commodities sold, no mechanical equipment is used except such that is normally used for family, domestic, or household purposes, and there is no exterior indication that the building is being used for any purpose other than a dwelling. When within the above requirements, a home occupation includes but is not limited to the following:

- (a) Art studio;
- (b) Dressmaking;
- (c) Professional office of a lawyer, engineer, architect, accountant, salesman, real estate agent, insurance agent, or similar occupation;
- (d) Teaching, with musical instruction limited to one or two pupils at a time.
- (e) Day care for one to six children.

204.59 *Hotel.* A building in which lodging or boarding and lodging are provided and offered to the traveling public or temporary resident for compensation, in contra-distinction to a boarding or rooming house.

204.60 *Independent living, elderly.* An elderly independent living is a residential development of detached single-family dwelling units or townhouse-style dwelling units restricted to individuals or families in which all residents are aged 55 or older, with the exception of spouses or caregivers. Such developments may contain compatible commercial elements, but are not in the continuum of care of elderly congregate care facilities, assisted living and nursing homes, and are to be distinguished from the multifamily elements of an elderly congregate care facility.

204.61 *Indigenous*. Having originated in and being produced, growing, living or occurring naturally within a particular region or environment.

204.62 *Impermeable lot coverage*. Any permanent installation on or improvement to the natural earth surface which completely or partially prevents the absorption of precipitation and surface water in a natural manner, said coverage to be expressed as a percentage of net land area of the lot. For the purpose of computing impermeable lot coverage, the following enumerated items and like installations shall be construed to be impermeable: building coverage, driveways, sidewalks, patios, pool decks, wooden decks, grouted cut stone or tile walkways, and stone, shell or gravel surfacing.

204.63 *Irrigation*. The watering of plant material through the use of underground pipe (artificial means).

204.64 *Landscaped open space*. Landscaped open space consists of lawns, shrubs, trees or other vegetation and permeable ground cover capable of absorbing runoff water.

204.65 *Landscaping*. Any combination of living plants and natural material purposely maintained for functional and/or aesthetic reasons. Landscaping includes trees, shrubs, vines, ground cover, flowers and grass; natural features, such as rock, stone, bark chips/shavings and pine straw; and manmade features, including but not limited to fountains, reflecting pools, outdoor art work and benches.

204.66 *Lot*. A single tract or parcel of land located within a single block, occupied or intended for occupancy by a use or uses permitted in these regulations, and held under single ownership or control. Where two or more lots are joined for development, but not replatted as a single lot, they shall nonetheless be treated as a single tract or parcel of land observing all applicable requirements of this zoning ordinance.

204.67 *Lot area*. The total horizontal area within the lot lines of the lot.

204.68 *Lot, corner*. A lot abutting on two or more streets at their intersections. On corner lots the front yard depth of the lot shall be deemed to be in the direction of the longer axis of the lot.

204.69 *Lot, depth of*. The mean horizontal distance between the front and rear lot lines.

204.70 *Lot frontage (width)*. The horizontal distance between the side lot lines measured at the required front yard line parallel to the front street line.

204.71 *Lot line*. The boundary line of a lot.

204.72 *Lot, non-conforming*. Any lot which does not meet the minimum dimensions or area requirements of the district in which it is located, or which fails to conform to the present requirements of the zoning ordinance.

204.73 *Lot, ocean front*. Any lot which is contiguous to the ocean or to public property that is contiguous to the ocean.

204.74 *Maximum building coverage*. The maximum extent (percent) to which a lot may be covered by principal and accessory buildings established by the zoning district in which the lot is situated.

204.75 Mobile/manufactured home. A detached single-family dwelling unit with all of the following characteristics:

1. Designed for long-term occupancy, and containing sleeping accommodations, a flush toilet, a tub or shower bath, and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems.
2. Designed to be transported after fabrication on its own wheels, or on flat bed or other trailers or detachable wheels.
3. Arriving at the site where it is to be occupied as a dwelling complete, often including major appliances and furniture, and ready for occupancy except for minor incidental unpacking and assembly operation, location on foundation supports, connections to utilities and the like.
4. Inspected and "sealed" in accordance with HUD regulations.

204.76 Mobile/manufactured home lot. A single parcel or site located in either a rental mobile home park or in a mobile home subdivision and intended for occupancy by only one mobile home.

204.77 Mobile/manufactured home park. Any area, tract, site or plot of land whereupon two or more mobile homes as herein defined are placed, located or maintained, and shall include all accessory buildings used or intended to be used as part of the equipment thereof.

204.78 Modular home. A factory built unit that is transported and assembled as a permanent structure.

204.79 Moped. Any cycle with pedals to permit propulsion by human power or without pedals and with a motor of not more than 50 cubic centimeters which produces not to exceed two brake horsepower and which is not capable of propelling the vehicle at a speed in excess of 30 miles an hour on level ground is a moped. If an internal combustion engine is used, the moped must have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

204.80 Motel. (see section 204.59 Hotel)

204.81 Museum. An institution devoted to the procurement, care, and display of objects of lasting interest or value.

204.82 Night club. A restaurant, dining room, or similar establishment where a dance floor of 150 square feet or larger is provided for guests.

204.83 Reserved.

204.84 Nonconforming use. A structure or land lawfully occupied by an existing use which does not conform with the permitted use for the zoning district in which it is situated, either at the effective date of this ordinance or as a result of the subsequent amendments to this ordinance. A nonconforming use may take on one of several forms. It may be nonconforming because the building is not situated properly on the lot or the lot nonconforming use may be nonconforming because the particular use does not conform to some aspect of the ordinance such as signs, landscaping, parking, etc. A deficiency in any of these areas causes the use to be nonconforming.

204.85 Nursing home facility. A facility licensed by the State of South Carolina for the purpose of providing organized nursing staff to maintain and operate facilities and services to accommodate two or more unrelated persons over a period exceeding 24 hours which is operated

either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing nursing care for persons who are not in need of hospital care. This definition shall incorporate and reflect the requirements of SCDHEC R61-17 and/or other state requirements which may preempt local definition or regulation of such uses.

204.86 *Off-street parking space.* An off-street parking space, including aisles, shall meet the following minimal dimensional requirements:

Parking stalls shall not be less than nine feet by 19 feet except that a maximum of 20 percent of the total number of stalls may be 8.5 feet by 16 feet provided such spaces are clearly designated "for compact cars only." However the dimensions of all parallel parking stalls shall not be less than nine feet by 24 feet. All parking spaces shall be located so that the occupant of any parking space can enter and leave independently, except for single family residences where tandem parking is permitted.

204.87 *Open space.* An area of outdoor, unobstructed space intended for use by the general public.

204.88 *Open space, usable.* An area of outdoor, unobstructed space, of sufficient dimension, size and scale to accommodate an identifiable activity or sport.

204.89 *Permanent residence.* The place where one permanently resides as distinguished from a place of temporary residency.

204.90 *Permeable.* Allowing passage of fluids.

204.91 *Public utility.* A business or service which is engaged in regularly supplying the public with some commodity or service and which is either a government agency, a city franchisee, or an entity regulated by a state or federal commission. For the purposes of this ordinance, a public utility shall include providers of the following services: electricity, gas, water, sewer, transportation, telephone and cable TV.

204.92 *Recreational vehicle.* A vehicular type unit containing temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, motor home, and boats (over 16 feet in length).

204.93 *Recreational vehicle, dependent.* A recreational vehicle that is dependent upon a service building for toilet and lavatory facilities.

204.94 *Recreational vehicle, independent.* A recreational vehicle containing toilet and lavatory facilities.

204.95 *Recreational vehicle site or campsite.* A campsite plot of ground within a recreational vehicle park intended for the accommodation of either a recreational vehicle, tent, or other individual camping unit on a temporary basis.

204.96 *Restaurant.* A building or room devoted primarily to the preparation, service and on-premise consumption of food for pay.

204.96.1 *Restaurant, take-out facilities.* A building devoted primarily to the preparation and service of food for pay, which has no more [than] 1,200 square feet.

204.97 Retail, high bulk. Retail establishments selling primarily one-stop items usually in high bulk and compared to those found in general retail establishments. For example: stores selling major household appliances, floor coverings and furniture.

204.98 Scarification. The act of making one or more incisions in the skin of any person with the intent of causing visible marks on the skin after the incisions heal.

204.99 Reserved.

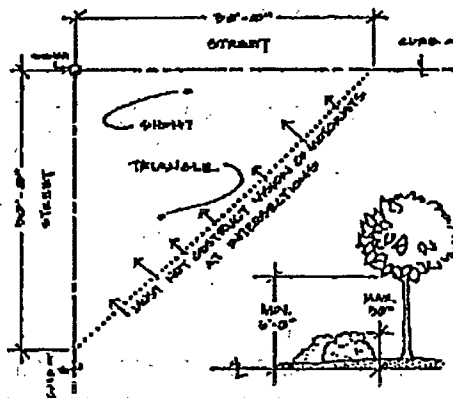
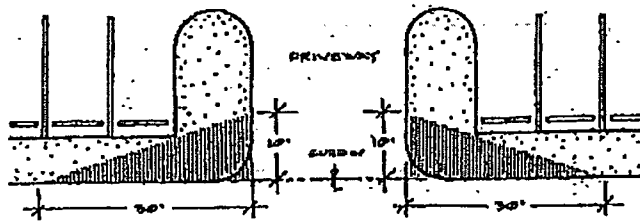
204.100 School. An institution for the instruction of people.

204.101 Shopping center. A group of architecturally unified commercial establishments on a single site with common parking facilities which is planned, developed and owned and/or managed as a single operating unit.

204.102 Shrub. Multi-stemmed plant with a spread and height characteristic to the species with minimum height as specified within the plant material list (section 910).

204.103 Sight triangle. A sight corridor, between 30 inches and 72 inches in height, for motorists as they enter streets from driveways or side streets. Specific sight triangles are determined as defined below:

- (a) **Driveway intersection sight triangle.** At intersections of driveways with streets, the sight triangle shall be formed by measuring at least ten feet from the right-of-way property line along the driveway edge and at least 30 feet from the driveway edge along the right-of-way property and connecting these points.
- (b) **Street intersection sight triangle.** At street intersections, the sight triangle shall be formed by measuring at least 30 feet along existing right-of-way property lines and connecting these points.



Street Intersection Sight Triangle

204.104 *Sign.* (See section 902).

204.105 *Speedy/fast lube operations.* Operations that provide lubrication and/or checking, changing, or addition of those fluids and filters necessary to the maintenance of a vehicle. It is intended that these services will be provided while customers wait, generally within a 15- to 20-minute time period.

204.106 *Structure.* Anything constructed, erected or established on and at least six inches above the ground, including but not without limiting the generality of the following: buildings, signs, sea walls, trailers, fences, screen enclosures, and patio walls.

204.107 *Swimming pool.* A pool constructed, either in-ground or above ground, for the purpose of swimming or wading.

204.108 *Swimming pool enclosure.* A structure that surrounds a pool on all sides, so as to prevent common use or protect from other elements, an enclosed swimming pool.

204.109 *Tattoo.* To place any design, letter, scroll, figure, symbol or any other mark upon or under the skin or any person with ink or any other substance resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

204.110 *Tattoo parlor.* Any place in which is offered or practiced the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in permanent coloration of the skin, including permanent make-up or

permanent jewelry, by the aid of needles or other instrument designed to touch or puncture the skin.

204.111 *Temporary models.* (See section 307).

204.112 *Timeshare.* The use of any unit under which the exclusive right of use or occupancy of the unit for a period of less than three months circulates among various occupants in accordance with a fixed time schedule on a periodically recurring basis for a period of time established by such schedule. Timesharing includes, but is not limited to, fee (interval) ownership and right-of-use ownership. Timesharing is a form of transient accommodation when the occupancy period is less than 30 days and it is then considered a commercial use.

204.113 *Townhouses.* (See Group house definition).

204.114 *Transient accommodations.* A transient accommodation means a living unit or other accommodation used as a place of human habitation with sleeping accommodations (hereinafter collectively referred to as "an accommodation") which is rented, leased or sub-leased for less than monthly periods or which is subject to time sharing pursuant to general law for less than monthly time share periods. "Monthly" shall mean either a calendar month or 30 days. Examples of transient accommodations shall include but not be limited to hotels, condotels, motels, boatels, and other similar uses. A transient accommodation shall be considered a commercial use.

204.114.1 *Transient accommodation, lockout.* A combination of units or suites with interconnecting doors which can be locked to prevent access between units or suites and therefore functions as independent rental space(s).

204.114.2 *Transient accommodation, suite.* A rental space with no more than one point of access exterior to the unit and which contains two rooms. Baths, kitchens or closets are not counted as rooms.

204.114.3 *Transient accommodation, supersuite.* A rental space with no more than one point of access exterior to the unit and which contains more than two rooms. Baths, kitchens or closets are not counted as rooms.

204.114.4 *Transient accommodation, unit.* A rental space with no more than one point of access exterior to the unit and which contains a single room. Baths, kitchens or closets are not counted as rooms.

204.115 *Travel trailer (recreational vehicle) park.* A lot of land upon which two or more recreational vehicles or camping sites are located, established or maintained for occupancy by recreational vehicles for the general public as temporary living quarters for recreation, vacation, or travel purposes. (see section 1236)

204.116 *Reserved.*

204.117 *Tree.* Any self-supporting woody plant growing upon the earth that provides single or multiple trunks with a potential DBH of two inches or more and produces a more or less distinct and elevated head with many branches including Sabal Palmettos; but excluding Wax Myrtle and Crepe Myrtle.

204.117.1 *Upper story tree.* A tree that has a mature height of over 30 feet.

204.117.2 *Under story tree.* A tree that has a mature height of 30 feet or less.

204.118 *Turf*. Upper layer of soil bound by grassy plant roots.

204.119 *Use*. The use of property is the purpose or activity for which the land or building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

204.119.1 *Permitted*. The use allowed by right in a particular zoning district.

204.119.2 *Conditional*. The use allowed in a particular zoning district provided all the conditions, restrictions or limitations set forth in the text of the zoning ordinance are met.

204.119.3 *Special exception*. The use allowed in a particular zoning district, after review by the Board of Zoning Appeals, for conformance with the conditions, restrictions or limitations set forth in the text of the zoning district as well as those set forth in section 1106. The Board of Zoning Appeals may impose additional conditions and restrictions as it determines are necessary to accomplish the intent of the zoning ordinance.

204.120 *Use, commercial*. Use of land or structure(s) thereon, or portion thereof, for the purpose of conducting business including the provision of goods and/or services, not otherwise identified under the general definition of other generic uses to the general public or segments thereof. For the purposes of this definition, motel and/or hotel uses and occupancy of residential properties (including timesharing properties) for periods of less than one month shall be considered commercial uses.

204.121 *Use, residential*. Use of land or structure(s) thereon, or portion thereof, for residential occupancy of a permanent or semi-permanent nature with an intended continuous occupancy period, by any one individual or family, of not less than one month; and, except that this definition does not include occupancy of a transient nature such as in hotel, motel or time-sharing uses involving periods of continuous occupancy of less than one month.

204.122 *Vehicular use area*. Any area used for circulation, parking, and/or display of any and all types of vehicles, whether self-propelled or not, whether moving or at rest, including but not limited to parking lots, loading and unloading areas, mobile home parks, and sales service areas. Driveways are considered to be vehicular use areas wherever they are adjacent to public streets or other vehicular use elements described previously in this paragraph (intervening curbs, sidewalks, yards, landscape, strips, etc., do not eliminate adjacency). Not included in this definition are driveways and parking spaces serving detached one and two-family residential dwellings.

204.123 *Vine*. A plant whose natural growth characteristic produces climbing, meandering stems.

204.124 *Wearing apparel*. Inner and outer clothing and wearing accessories including dresses, suits, shirts, pants, blouses, hats, socks, shoes, jewelry, gloves, and ties.

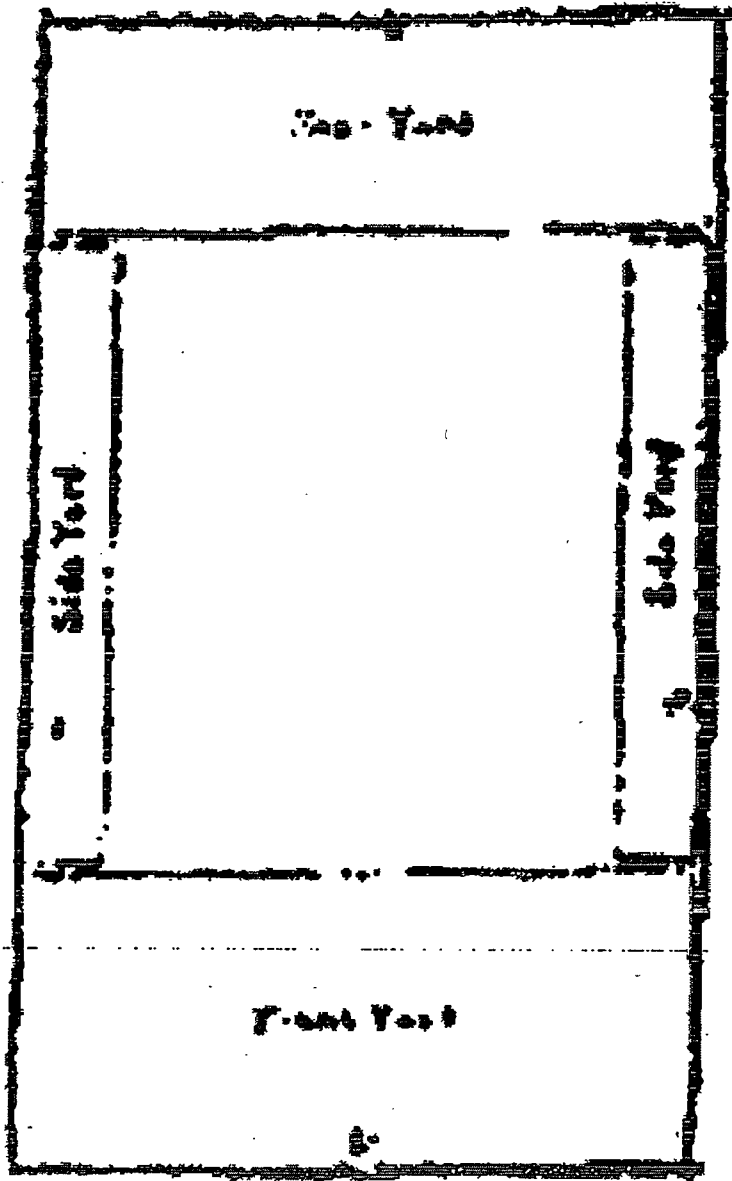
204.125 *Yard*. Open space on a lot which is unoccupied and unobstructed from its lowest level upward for drives, landscaping, retaining and sea walls, fences, open patios, entrance steps, open parking space, transformers, gas meters, air conditioning units and solid waste containers.

204.126 *Yard, front*. A yard extending across the full width of the lot, the depth (front yard setback) of which is the minimum horizontal distance between the front lot line and the building line parallel thereto.

204.127 Yard, ocean front. Any yard contiguous to the ocean shall constitute a front yard, and shall meet the minimum front yard requirements of the district within which it is located.

204.128 Yard, rear. A yard extending across the full width of the lot, the depth (rear yard setback) of which is the minimum horizontal distance between the rear lot line and the building line parallel thereto.

204.129 Yard, side. A yard extending along a side lot line and back to the building line drawn parallel to the side lot line at a distance therefrom equal to the width of the required minimum side yard (side yard setback), but excluding any area encompassed within a front yard or rear yard. Unless otherwise stated, dimensions of minimum side yards specified in the district regulations of this ordinance refer to the required width of each side yard rather than to the total width of both side yards.



Yard, Side

204.130 Zoning district. Any areas of the City of Myrtle Beach within which the zoning regulations are uniform.

(Ord. No. 991012-41, 10-12-99; Ord. No. 2001-38, 7-24-01; Ord. No. 2002-15, 4-23-02; Ord. No. 2002-13, 8-27-02; Ord. No. 2005-57, 8-23-05; Ord. No. 2005-84, 2-21-06; Ord. No. 2006-32, 5-23-06; Ord. No. 2007-17, 3-13-07; Ord. No. 2010-49, 6-22-10)

Section 301. Administration and enforcement.

The duly appointed zoning administrator is hereby given authority to administer and enforce the provisions of the zoning ordinance. The duties of the zoning administrator are to:

- a. Interpret the zoning ordinance provisions and district boundaries;
- b. Approve all building and land improvement permits for zoning compliance;
- c. Approve conditional uses provided all the required zoning standards are met;
- d. Process applications for zoning variances and special exceptions;
- e. Process appeals to the board of zoning appeals and preparing the record for appeal to circuit court;
- f. Maintain the current zoning map;
- g. Maintain public records related to zoning;
- h. Investigate and resolve zoning violation complaints;
- i. Enforce the zoning ordinance;
- j. Perform other duties assigned by ordinance or the city manager.

If the zoning administrator or other appropriate code enforcement officer determines that any of the provisions of this ordinance are being violated, he shall enforce the requirements of the ordinance by notifying in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it; or by ordering in writing the person responsible to discontinue the illegal use, addition, alteration or structural change; or by ordering in writing the person responsible to immediately discontinue the illegal work being done; or by issuing an ordinance summons; or by taking any other action authorized by law to ensure compliance with or to prevent violation of the ordinance. The zoning administrator or other appropriate code enforcement officer is not required to warn before the issuance of an ordinance summons. In addition to the institution of criminal process for the misdemeanor violation of the zoning ordinance, the ordinance summons shall also serve as official notice of the zoning administrator's interpretation of the zoning ordinance and determination of the applicability of the ordinance to the land use. The zoning administrator or other appropriate code enforcement officer may invoke a single course of enforcement or parallel courses of enforcement in his discretion as the exigencies of the circumstances demand. Delivery of the written notice of violation and order to correct or discontinue is deemed accomplished by deposit in regular mail with sufficient postage affixed to the last known address; or by hand delivery to a person of suitable age and responsibility at the address; or by affixing the notice of violation to the structure or on a sign at the address.

(Ord. No. 2000-45, 9-12-00)

Section 302. Buildings, sign and vehicular use area permits required.

No building, structure, or sign shall be erected, moved, added to, or structurally altered, nor shall any vehicular use area be created or expanded without a permit. No building, sign, or vehicular use area permit shall be issued, except in conformity with the provisions of this ordinance, unless a written order is issued by the board of zoning appeals in the form of an administrative review or variance.

Section 303. Stop order.

The zoning administrator may post a stop order on a premises for any work in violation of the zoning ordinance. A stop order requires all activities violating the zoning ordinance to cease immediately upon issuance. Failure to comply with a stop order or removal of a posted stop order is a violation of this ordinance.

Section 304. Vehicular use area particulars.

It shall be unlawful to initially occupy or use or cause to be occupied or used any vehicular use area unless all improvements required by city codes have been installed and approval has been obtained for the use of such vehicular use area. Approval for use of vehicular use areas shall be by certificate of use for such areas, such certificate to be issued by the zoning administrator. The use of a vehicular use area prior to issuance of a certificate of use as herein provided for shall be cause for the zoning administrator to require immediate evacuation and cessation of use. Upon receiving notice that the vehicular use area is being used without first having obtained a certificate of use, the zoning administrator shall immediately notify the owner or occupier of the land, in writing, said notice to require immediate cessation of the use. If corrective action is not taken by the owner or occupier of the land within 24 hours after receipt of such notice the vehicular use area may be barricaded and such area must remain unoccupied until the required improvements have been completed and a certificate of use is issued. Re-striping of an existing vehicular use area that does not change the layout of the approved parking spaces may be done without a permit or re-approval from the zoning administrator. The provisions herein which authorize barricading of vehicular use areas shall only apply to those vehicular use areas constructed after the effective date of this ordinance.

Section 305. Application for building permit.

All applications for building permits shall be in accordance with the requirements of the city ordinance adopting the building code. The application shall include such other information as lawfully may be required by the zoning administrator including but not limited to the number of dwelling units the building is designed to accommodate; conditions existing on the lot; area to be cleared or graded; location of solid waste containers; location of any proposed hazardous materials; size, height, location and orientation of proposed signs; elevation above mean sea level of the finished first floor or lowest horizontal support if in a special flood hazard zone; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this ordinance. Changes made subsequent to the issuance of a permit shall be reviewed and approved by the zoning administrator prior to the building official's approval of the change.

Section 306. Expiration of building permit.

If the work described in any building permit has not begun within six months from the date of issuance thereof, said permit shall expire, unless an extension has been granted by the building official in accordance with the provisions of the building code. All requests for permit extensions shall have the zoning administrator's approval prior to being granted by the building official. If no work described in a building permit has been begun prior to its expiration date the permit shall be canceled by the building official who shall give written notice to the person affected.

Section 307. Complaints regarding violations.

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the zoning administrator. He shall record properly such complaint, immediately investigate, and take action thereon as provided by this appendix.

Section 308. Temporary uses.

The zoning administrator is authorized to approve the issuance of a temporary certificate of use for temporary uses, as follows:

308.1 Religious meetings in tents or other temporary structures in AC-3 districts, for a period not to exceed seven days, and not more than three times in a calendar year.

308.2 Open lot for Christmas trees, in the C-2, C-3, and C-4 districts for the period from November 1st to January 2nd.

308.3 Temporary sales, social, cultural or charitable non-profit events.

- a. Except for the month of May as provided herein, any licensed non-restaurant business is eligible to erect a tent or other temporary structure for hosting or sponsoring a charitable fundraising event, merchandise sales, customer appreciation event, social activities and food and beverage sales or distribution on site; provided however, no business location may host more than two such events in a calendar year, and the events are separated by not less than 30 days.
- b. Any licensed restaurant business is eligible to erect a tent or other temporary structure for hosting or sponsoring a charitable fundraising event, merchandise sales, customer appreciation event, social activities and food and beverage sales or distribution on site; provided however, the business location may not host more than two such events in a calendar year and may only vend food and beverages during the month of May, and the events are separated by not less than 30 days.
- c. Charitable organizations registered with the South Carolina Secretary of State are eligible to engage upon their property or a host property in a fundraising event, including merchandise, food and beverage sales, with or without a tent or temporary structure; provided however, the charitable organization may not hold more than two such events in a calendar year at any location, and may only vend food and beverages during the month of May, and the events are separated by not less than 30 days.

308.4 Restrictions.

- a. Application and permit fee must be submitted 48 hours in advance. The application can be obtained from the Department of Construction Services.
- b. The event may not exceed 72 hours, and events must be separated by not less than 30 days.
- c. The event should not require the deployment of public resources or affect traffic unduly due to temporary use impact, scope or purpose.
- d.

- Event signage or banners are permitted, of not more than 32 square feet and shall only be displayed during the event, and taken down at the end of the event.
- e. The event may have the outside sale or display of merchandise and costumed employees, provided however, no person on public or private property may actively solicit attendance or attention from the driving public.
 - f. No more than 25 percent of the parking area can be used for non-parking uses; provided however, there is no parking area restriction on the charitable temporary use if the sponsoring or hosting business is closed and the event does not cause off-site parking problems.
 - g. The permit does not address the sale, service or consumption of alcoholic beverages, and may not be interpreted to have any bearing on the subject. The applicant is solely responsible for compliance with state and local alcohol laws.
 - h. Charitable events may be required to provide verification of status. The hosting property owner or business license holder must submit an authorization from a responsible party of the charitable organization when applying for a permit on their behalf.
 - i. In consideration of current demands on public resources made during the month of May and except as limited herein, no temporary zoning use permit may be issued from May 1st through midnight of May 31st of every year, if such permit overlaps or coincides with an unpermitted rally that is held forth as occurring on specified days and is reasonably perceived by the administration as being held in furtherance of or to take advantage of an unpermitted rally, to include either five days before or five days after the time of the rally as set forth.

(Ord. No. 2012-40, 7-24-12)

Section 309. Exemptions—Homes for Handicapped.

The use restrictions of this ordinance do not apply to a home serving nine or fewer mentally or physically handicapped persons provided the home provides care on a twenty-four hour basis and is approved or licensed by a state agency or department for that purpose. Prior to locating the home for the handicapped persons, the appropriate state agency or department or the private entity operating the home under contract must first give prior notice to the City, advising of the exact site of any proposed home. The notice must also identify the individual representing the agency, department or private entity for site selection purposes. If the City objects to the selected site, city council must notify the site selection representative of the entity seeking to establish the home within fifteen days of receiving notice and must appoint a representative to assist the entity in selection of a comparable alternate site or structure, or both. The site selection representative of the entity seeking to establish the home and the city's representative shall select a third mutually agreeable person. The three persons have forty-five days to make a final selection of the site by majority vote. This final selection is binding on the entity and the City. In the event no selection has been made by the end of the forty-five day period, the entity establishing the home shall select the site without further proceedings. An application for variance or special exception is not required. No person may intervene to prevent the establishment of a community residence without reasonable justification.

309.1 Prospective residents of these homes must be screened by the licensing agency to ensure that the placement is appropriate.

309.2 The licensing agency shall conduct reviews of these homes no less frequently than every six months for the purpose of promoting the rehabilitative purposes of the homes and their continued compatibility with their neighborhoods.

309.3 The City may apply to a court of competent jurisdiction for injunctive and such other relief as the court may consider proper from a violation of the zoning ordinance resulting from application of this section.

Section 310. Staff review.

In the planning and zoning context in which applications for approval are required to be reviewed by an appointed body after preliminary staff review, applications that are incapable of review due to incompleteness, failure to address required statutory standards, or illegibility shall be returned to the applicant for completion and correction prior to staff's submittal of the application to the reviewing body.

(Ord. No. 2012-54, 8-28-12)

Myrtle Beach, South Carolina, Code of Ordinances >> - CODE OF ORDINANCES >> APPENDIX A - ZONING >> ARTICLE V. BOARD OF ZONING APPEALS >>

ARTICLE V. BOARD OF ZONING APPEALS

Section 501. Organization.

Section 502. Duties and powers.

Section 503. Organization, rules and procedures.

Section 504. Hearings, decisions and appeals.

Section 501. Organization.

A board of zoning appeals is hereby established. This board shall consist of nine members, the majority of whom shall be citizens of the City of Myrtle Beach. Members shall be appointed by the Myrtle Beach City Council for overlapping terms of three years. The terms of the members shall be for three years except that the terms of the initial appointments shall be as follows: three members for a term of three years, three members for a term of two years, and three members for a term of one year. Members shall continue to serve until their successors are appointed. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the board. The city council may remove any member of the board for misconduct or nonperformance of duty. None of the members of the board shall hold any other public office or position in the City of Myrtle Beach.

Section 502. Duties and powers.

The board of zoning appeals shall have the following duties and powers: to hear and decide appeals where it is alleged that there is an error in an order, requirement, decision or to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in determination made by an administrative official in the enforcement of the zoning ordinance; to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.

502.1 *Variances.* The board shall have the power to grant the following variances:

502.1.1 A variance in the requirements of any district so as to relieve particular hardships in cases when and where the strict application of such regulation or restriction would result in exceptional hardship upon the owner of such property. Such grant of variance shall comply as nearly as possible in every respect with the spirit, intent and purpose of the zoning ordinance. It being the purpose of this provision to authorize variances based on a showing of demonstrable and exceptional hardship as distinguished from variances sought by applicants for purposes or reasons of convenience, profit, caprice or self-imposed hardship.

502.1.2 A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing all the following findings:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- (b) These conditions do not generally apply to other property in the vicinity;
- (c) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (d) The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

502.1.3 In granting a variance the board may attach conditions to it. These conditions may address the location, character or other features of the proposed building, structure or use. The board may set these conditions to protect established property values in the surrounding area or to promote the public health, safety or general welfare.

502.1.4 The board may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change zoning district boundaries shown on the official zoning map.

502.1.5 Whenever an applicant for a variance cancels or withdraws his application after an advertisement for a public hearing in connection with said application has been published, any rescheduling for a public hearing on said application or reapplication for the same variance shall be more than four months after the original public hearing was scheduled.

502.1.6 The procedure for the amendment of a variance already approved, or a request for a change of conditions attached to an approval, shall be the same as for a new application. However, where the zoning administrator determines the change to be minor relative to the original approval, he may transmit the same to the board with the original record without requiring that a new application and filing fee be submitted. In any event, compliance with all required notice provisions of Article V shall be followed for each and every hearing held.

502.2 *Special Exceptions.* The board shall have the power to permit uses by special exception, subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance.

502.2.1 The procedure for the amendment of a special exception already approved, or a request for a change of conditions attached to an approval, shall be the same as for a new application. However, where the zoning administrator determines the change to be minor relative to the original approval, he may transmit the same to the board with the original record without requiring that a new application and filing fee be submitted. In any event compliance with all required notice provisions of Article V shall be followed for each and every hearing held.

502.3 *Appeals.* The board shall have the power to decide appeals where it is alleged an error has been made by an administrative official in the interpretation or enforcement of the zoning ordinance.

Section 503. Organization, rules and procedures.

503.1 *Officers.* The board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board may elect one of its members vice-chairman who shall serve for one year or until he is re-elected or his successor is elected or qualified. The board shall appoint a secretary who may be an officer of the City of Myrtle Beach or a member of the board. The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses by subpoena.

503.2 *Rules.* The board shall adopt rules of procedure which are not in conflict with applicable City codes or State statutes.

503.3 *Meetings and Notices.* Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. Public notice of all meetings of the board, stating the subject matter of the hearing and including notice of the time and place of the meeting, shall be provided by publication in a newspaper of general circulation in the City of Myrtle Beach at least 15 days prior to the date of the meeting. In cases involving variances or special exceptions conspicuous notice, stating the variance or special exception requested and including notice of the time and place of the meeting, shall be posted on or adjacent to the property affected at least 15 days prior to the date of the meeting; with at least one such notice being visible from each public thoroughfare that abuts the property.

503.4 *Minutes and Records.* The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the board and must be a public record.

503.5 *Special Exceptions and Variances.* Applications for special exceptions and variances may be made by any property owner, government official, department, board or bureau. Such application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans, or other information shall be processed promptly by the zoning administrator who shall place the matter on the boards calendar.

503.6 *Appeals.* Appeals to the board may be taken by any person, or by any government official, department, board or bureau of the City aggrieved by an adverse decision of the zoning administrator in the administration or enforcement of this ordinance. Such appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings may not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and on due cause shown.

503.7 An application by any property owner to appear before the board shall be accompanied by a nonrefundable \$100.00 fee to cover the cost of processing and publication of notice of the public hearing.

503.8 Fees shall not be required by any governmental agency or body for appearances before the board of zoning appeals.

Section 504. Hearings, decisions and appeals.

504.1 *Hearings.* The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within 45 days following the hearing. At the hearing any party may appear in person or by agent or by attorney. All testimony taken at a hearing shall be given under oath. The chairman of the board, or in his absence, the acting chairman, shall administer oaths to all witnesses. The board may subpoena witnesses and in case of contempt may certify this fact to the Circuit Court in and for the County of Horry. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. A quorum shall consist of five members. The concurrence of a majority of the members present and voting shall be necessary to reverse any order, requirement, decision or determination of the zoning administrator or to decide in favor of the applicant on any matter upon which it is required to pass under the zoning ordinance or effect any variance from the zoning ordinance.

504.2 *Final decisions.* All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board, which must be delivered to parties of interest by certified mail.

504.3 *Time limitations.* If a completed permit application is not filed within six months from the date of approval of a variance or special exception by the board of zoning appeals then such approval shall be null and void and no permit shall be issued thereunder. Parties filing appeals, special exceptions, and variance requests which have been denied by the board may not reapply for reconsideration of the same request until a period of six months has elapsed.

504.4 *Appeals from decisions of the board of zoning appeals.* A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the city may appeal from a decision of the board to the Circuit Court in and for the County of Horry by filing with the clerk of the court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. The appeal shall be filed within 30 days after the decision of the board is mailed. Upon the filing of an appeal, the clerk of the circuit court will give notice of it to the secretary of the board and within thirty days from the time of the notice the board shall file with the clerk a certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before it, if any, and the decision of the board including its findings of fact and conclusions of law.

Section 1219. C-3 General commercial district.

1219.1 Purpose of district. The purpose of the C-3 general commercial district is to serve highway users including trucks, trucking operations, and large scale business operations primarily engaged in the retailing of heavy durable goods, which because of their nature, are better suited to outlying locations away from congested areas and residential development.

1219.2 Permitted uses. Within the C-3 general commercial district, a building or premises shall be used only for the following purposes:

1219.2.1 One- and two-family dwellings.

1219.2.2 Townhouses, multiple family dwellings and apartment houses.

1219.2.3 Health care establishments engaged in the science and art of preventing, curing, or alleviating disease including medical, surgical, psychiatric, chiropractic and osteopathic, and dental hospitals, clinics and offices, gymnasiums and health clubs, but excluding therapeutic massage establishments, veterinary clinics and associated uses.

1219.2.4 Advisory service establishments engaged in providing monetary and specialized professional knowledge to the community, including offices of lawyers, accountants, engineers, designers, architects, advertising agencies, credit and finance, brokers, bankers, chambers of commerce, professional organizations, business consultants, and real estate, including customer service/reception centers for interval ownership operations.

1219.2.5 Administrative service establishments of a business character which supply general needs of an intangible nature to the public including establishments performing the management duties in the conduct of government, business, industry, or welfare, including administrative offices of federal, state and local governments, utilities, businesses and social welfare organizations.

1219.2.6 Personal service establishments providing services pertaining to the person or to his apparel and personal effects, including: restaurants, barbershops, beauty shops, and cosmetologists, duplicating services, washerettes, pick-up laundry and dry cleaning stations, dressmakers, photographer's studios, jewelry and watch repair, funeral homes; music, dance, craft and art schools, eyeglass sales and shoe repair shops, but excluding therapeutic massage establishments.

1219.2.7 Boarding houses or rooming houses.

1219.2.8 Tourist homes.

1219.2.9 Hotels, motels and other transient accommodations such as timesharing projects.

1219.2.10 Public buildings and land uses (including public parking facilities, public parks, public utilities facilities and structures, playgrounds, beaches and recreational buildings and facilities) and those buildings and uses of public utilities holding a franchise for the city.

1219.2.11 Retail commercial establishments.

1219.2.12 Service establishments of a business character providing maintenance, installation, and repair for specialized service needs to individuals or other businesses, duplicating, mimeographing and multilithing shops, addressing and mailing services, stenographic and letter writing services, blueprinting, photostating and film developing establishments.

1219.2.13 Transportation and communication establishments providing for the interchange of passengers and freight, (excluding truck and railroad terminals), and establishments carrying or conveying written, oral or visual information to the general public.

1219.2.14 Amusement service establishments providing for limited commercial entertainment activities limited to the following: theaters, convention centers and coliseums, golf driving ranges, pool halls and billiard parlors, bowling alleys, indoor skating rinks, automobile rental establishments, and game arcades.

1219.2.15 Wholesale business establishments (excluding bulk fuel oil sales).

1219.2.16 Construction establishments engaged in the construction, repair, or demolition of buildings, streets, water and sewer systems, bridges, and similar construction but not limited to building, electrical, heating and air-conditioning.

1219.2.17 Miscellaneous establishments which supply other businesses, industries, or individuals, including but not limited to laundry and dry cleaning plants, linen supply plants, warehouse storage, cabinet and metal shops, welding shops.

1219.2.18 Parking facilities.

1219.2.19 Church buildings providing for religious service and development.

1219.3 *Reserved.*

1219.4 *Conditional uses.*

1219.4.1 Miniature golf courses developed in accordance with section 904.

1219.4.2 Veterinary offices, for treatment of small domestic animals confined to completely enclosed, sound-proofed and air-conditioned buildings.

1219.4.3 Conditional use, moped rental establishment, provided the following conditions are met:

1. Moped leasing, maintenance and all related functions shall be conducted within a building on site or offsite that meets all building code regulations as well as the area dimension regulations of the district.
2. Display of units available for rental shall be permitted outside the building so long as parking or pedestrian passage is not diminished as required.
3. The operators of such establishments shall provide one motorcycle safety helmet per moped offered for lease or use while the moped is being rented.
4. Any signage shall be within the allowable signage for the property.
- 5.

Amortization of nonconformities. As to this specific zoning amendment pertaining to moped rental uses, those uses made nonconforming which were in existence legally as of May 1, 2010, that are also current with all taxes, fees and assessments with the city, shall have a period of one year from the date of May 1, 2010 for legal operation. On May 1, 2011, the nonconforming uses must end completely.

1219.4.4 Storage yards provided the following conditions are met:

1. Material incapable of being reused in some form shall not be placed in the storage yard.
2. Materials shall not be placed in any storage yard in such a manner that it is capable of being transferred out of the storage yard by wind, water, or other natural causes.
3. All paper, rag, cloth and other fiber handling activities, other than loading and unloading, shall be conducted within fully enclosed buildings.
4. In order to lessen the adverse effect on adjoining property, reduce wind blown trash, and create a more healthful environment, all storage yard materials and activities not within fully enclosed buildings shall nonetheless be enclosed by an opaque fence or wall of at least six feet in height, but not greater than eight feet in height, and of such consistency as to completely hide the use of the storage yard from public view.
5. All storage yards and fences must be a minimum of 40 feet from a front property line and a minimum of 20 feet from a side street property line.

1219.4.5 Automobile repair establishments which provide a minimum front and side street set-back of 50 feet.

1219.4.6 Adult day care centers, provided that such facilities meet the minimum rules and regulations for licensing by SCDHEC

1219.4.7 Child day care centers, subject to proof of SCDSS licensing.

1219.4.8 Therapeutic massage spa/establishments provided that:

1. All massage therapist shall be licensed by the State of South Carolina; and
2. Hours of operation are limited to 7:00 a.m. to 10:00 p.m.

1219.5 *Accessory uses.*

1219.5.1 Customary incidental uses to permitted and conditional uses, including open air storage. However all open air storage areas shall comply with the storage yard requirements as set forth hereinabove.

1219.5.2 *One- and two-family dwellings:* Customary incidental uses including garages, home occupations, noncommercial greenhouses, swimming pools and family day care homes subject to proof of SCDSS registration.

1219.5.3 *Multifamily dwellings:* Customary incidental uses including parking lots, swimming pools, tennis courts, and laundry facilities. (also see section 1102)

1219.6 *Area and dimension regulations.* Area and dimension regulations in C-3 districts are as follows (see exception in section 901):

1219.6.1 *Building site requirements.* Every building erected or structurally altered (also see article VII) shall provide a land area not less than the following:

1219.6.1.1 Per transient accommodation or dwelling unit: No limit.

1219.6.1.2 Minimum total site.

a. All uses: 10,000 square feet in area and 100 feet in width.

1219.6.2 *Minimum front or side street building line.* 30 feet from property line.

1219.6.3 *Minimum oceanfront property building line.* Refer to coastal protection (overlay) zone.

1219.6.4 *Minimum side or rear building line.* Structures of 28 feet in height or less shall require a minimum of 15 feet setback. Structures greater than 28 feet in height, setback shall be 15 feet plus one foot for each two feet of additional structure height. No building shall be erected any closer than a distance of 25 feet from the property line of any adjacent single family, duplex or multifamily structure. One story carports no higher than 15 feet above the average street grade may be constructed within five feet of a side or rear property line (also see subsection 1219.6.2). Vehicle use areas accessory to all commercial uses shall be separated from the property line of adjacent R, RM, residential PUD or TA districts by a 15 feet landscaped buffer.

1219.6.5 *Drive-through entry canopy (porte-cochere), swimming pool or pool enclosure setbacks.* A drive-through entry canopy, swimming pool or pool enclosure which does not exceed 20 feet in height may be constructed within ten feet of the rear, side or front property line.

1219.6.6 *Maximum height.* 40 feet.

1219.6.7 The required distance between buildings located on the interior of a parcel of property shall be the total of the following requirements determined by the height of the buildings and whether the facing walls of the buildings have any windows:

- a. If the wall has any windows: The distance shall be one foot for every four feet of combined building heights for the adjacent buildings.
- b. If the wall does not have any windows: The distance shall be one foot for every five feet of combined height building height.

But in no case shall the total distance between the facing exterior walls of said buildings be less than 20 feet.

1219.6.8 Gas pump islands shall be set back a minimum of 17 feet from any property line.

1219.6.9 *Maximum building coverage.* 50 percent.

1219.6.10 *Minimum usable outdoor living space and landscaping.* At least 35 percent of the land area in multifamily and transient accommodation developments and 20 percent of the land area in other commercial developments and permitted land uses shall be used for outdoor living space and landscaping. Such outdoor living space and landscaping shall be at ground level and unobstructed to the sky. Applicable landscape requirements are addressed in section 910

1219.6.11 *Floor area ratio* (FAR = floor area divided by lot area). One and five-tenths maximum (excludes parking structure).

1219.7 *Reserved.*

1219.8 *Off-street parking and loading.*

1219.8.1 For all transient accommodations, two-family and multi-family dwellings:

Unit = 1.1 spaces

1 bedroom = 1.15

2 bedroom = 1.75

3 bedroom = 2.0

4 bedroom = 2.5

Each additional bedroom requires .5 parking spaces in addition to the requirements above.

In addition accessory uses, for transient accommodations, shall provide one space per 350 square feet of gross floor space.

1219.8.2 For all single-family residential uses, one space per 600 square feet of gross floor space, not to exceed three parking spaces per dwelling unit.

1219.8.3 For all multifamily uses, one space per 600 square feet of gross floor space.

1219.8.4 For retail stores, including barber, shoe and similar service outlets, one space for each 250 square feet of gross floor space.

1219.8.5 For bars, night clubs and restaurants, one space for each 100 square feet gross floor space.

1219.8.6 For religious facilities, one parking space is required for every 30 square feet of gross floor space in the primary assembly hall (place of worship).

1219.8.7 For places of assembly or recreation without fixed seats one space for each 150 square feet of gross floor space. For bowling alleys exclude the lane and pin areas from the calculation or provide three spaces per lane whichever is greater.

1219.8.8 For places of assembly or recreation with fixed seats, one space for each 75 square feet of gross floor space.

1219.8.9 For customer service/reception centers for interval ownership operations, one space for each 100 square feet of gross floor space.

1219.8.10 For professional and business offices, one space for each 275 square feet of gross floor space.

1219.8.11 For doctor's and dentist's and other health care offices or clinics, one space for each 150 square feet of gross floor space.

1219.8.12 For banks, one space for each 275 square feet of gross floor space.

- 1219.8.13 For moped rental establishments, four spaces for each person employed. This parking requirement is in addition to the parking required for any other permitted use located on the same lot.
- 1219.8.14 For automobile repair establishments, one space for each 150 square feet of gross floor space, with the condition that parking spaces shall not block vehicular access to garage entrances. Service bays shall not count as parking spaces.
- 1219.8.15 For wholesale business establishments one space for each 250 square feet of gross floor space used for sales to customers, including all office space associated with the wholesale business. For all warehouse space utilized for storage (restricted to employees of the wholesale business) the site must provide parking, loading and unloading space for vehicle parking and circulation equivalent to or greater than the total square footage of all gross floor space contained in the warehouse.
- 1219.8.16 For all other permitted and accessory uses, one space for every 200 square feet of gross floor space.
- 1219.8.17 All vehicle loading and unloading shall be on the premises.

1219.9 *Joining of lots for development.* Multiple lots which are to be joined for development shall be combined, platted and recorded in the office of the Register of Mesne Conveyance for Horry County as one lot before a building permit is issued.

1219.10 *Special Regulations: C-3 development parcels larger than one acre in size and C-3 development subdivisions with one or more parcels greater than one acre in size must follow the street and parking design standards defined below:*

1219.10.1 *Street design standards.*

1219.10.1.1 Streets shall provide access to all tracts and lots and follow the street design specifications in this section and section 917.4.

1219.10.1.2 Streets and alleys shall, whenever practicable, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Culs-de-sac shall not exceed 150 feet in length, must be accessed from a street providing internal or external connectivity, shall be permanently terminated by a vehicular turnarounds of various configurations so long as emergency access is adequately provided.

1219.10.1.3 The average perimeter of all blocks within the development should not exceed 2,000 feet. No block face should have a length greater than 500 feet without a dedicated alley or pathway providing through access. An exception to this requirement may occur where limited access rights-of-way abut the development and the abutting premises are served by a parallel internal street.

1219.10.1.4 A continuous network of rear alleys is recommended for all lots; rear alleys shall provide vehicular access to lots less than 60 feet in width.

1219.10.1.5 Utilities shall be underground, and run along alleys whenever possible.

1219.10.1.6 Streets shall be organized according to a hierarchy based on function, size, capacity, and design speed; streets and rights-of-way are therefore

expected to differ in dimension. The proposed hierarchy of streets shall be indicated on the submitted plan. Each street type shall be separately detailed. Street types illustrated in design specifications in sections 917.3 and 917.4 represent the array of elements that are combined to meet the purposes of this section. Alternative methods of assembling the required street elements will be considered to allow neighborhood streets designs that are appropriate to siting and use.

1219.10.1.7 To prevent the buildup of vehicular speed, disperse traffic flow, and create a sense of visual enclosure, long uninterrupted segments of straight streets should be avoided. Methods: (1) a street can be interrupted by intersections designed to calm the speed and disperse the flow of traffic and terminate at vistas with a significant feature (building, park, natural feature); (2) a street can be terminated with a public monument, specifically designed building facade, or a gateway to the ensuing space; (3) perceived street length can be reduced by a noticeable street curve where the outside edge of the curve is bounded by a building or other vertical element that hugs the curve to deflect the view; (4) other traffic calming configurations are acceptable so long as emergency access is adequately provided.

1219.10.2 *Parking design standards.* Off street parking areas should be designed to minimize breaks in the pedestrian environment along the public street and create safe and comfortable passage for pedestrians. The following standards shall therefore be met. Parking lots are encouraged to be placed behind buildings. Off-street parking is discouraged in front of the primary building facade, except where specified in an adopted street section or detailed as a public plaza.

1219.10.2.1 Uninterrupted areas of parking lots shall be limited in size. Buildings or landscape features shall break large parking lots.

1219.10.2.2 For small lots, 36 spaces or less, landscaping shall be required at the perimeter; (refer to section 910); for lots larger than 36 spaces landscaping shall be required at the perimeter with additional interior 8 feet wide buffers placed to break the lot into modules of 36 spaces or less. For lots of more than 100 spaces, modules averaging no more than 46 spaces per module can be created with no module used in the averaging consisting of less than 32 spaces. No parking module can exceed 80 spaces.

1219.10.2.3 Parking lots shall be designed to allow pedestrians to safely move from their vehicles to the building. On small lots, this may be achieved by providing a sidewalk at the perimeter of the lot. On large lots, corridors within the parking area should channel pedestrians from the car to the perimeter of the lot or to the building. A paving material that differs from that of the vehicular areas and plated to provide shade shall delineate these corridors.

1219.10.2.4 To maintain pedestrian safety and calm the speed of entering traffic, driveways to parking areas shall be no wider than 24 feet.

1219.10.2.5 To the extent practicable, adjoining parking lots serving non-residential buildings shall be interconnected.

1219.10.3 Pedestrian walkways. Pedestrian walkways shall form an on-site circulation system that minimizes the conflict between pedestrians and traffic at all points of pedestrian access to on-site parking and building entrances. Pedestrian walkways shall provide direct connections from building entrances to sidewalks along streets and to existing or planned transit stops. Pedestrian walkways shall be provided when the pedestrian access point or any parking space is more than 75 feet from the building entrance or principal on-site destination as follows:

1219.10.3.1 All development which contain more than one building shall provide walkways between the principal entrances of the buildings; and

1219.10.3.2 All non-residential buildings set back 100 feet or more from the public right-of-way shall provide for direct pedestrian access from the building to buildings on adjacent lots.

(Ord. No. 2001-49, 8-28-01; Ord. No. 2001-83, 1-18-02; Ord. No. 2003-39, 6-10-03; Ord. No. 2005-53, 9-15-05; Ord. No. 2010-33, 4-27-10)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Presiding Court Judge

Case No. 2013-CP-26-5009

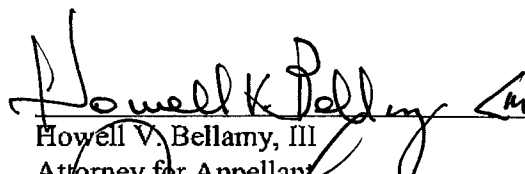
K N S Foundation, LLC, d/b/a Elite *Appellant,*

v.

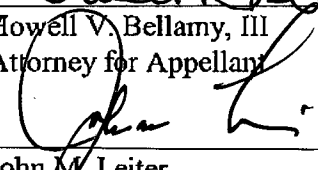
The City of Myrtle Beach *Respondent.*

APPELLANT'S RULE 210(G) CERTIFICATION

The undersigned, attorneys for Appellant KNS Foundation, LLC, d/b/a Elite, certifies, pursuant to Rule 210(g), SCAR, that the Record on Appeal, served herewith, contains all of the materials agreed upon by Appellant and Respondent and not any other material.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
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Case No. 2013-CP-26-5009

K.N.S. Foundation, LLC, d/b/a Elite *Appellant,*

v.

The City of Myrtle Beach *Respondent.*

PROOF OF SERVICE

I certify that I have served copies of the **Record on Appeal** in the above-captioned appeal on the following individual by HAND DELIVERY, on August 20, 2014, addressed as follows:

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