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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Case No. 2020-CP-10-03549
Appellate Case No: 2021-000105

Fred Holland Realty, Inc., and LaJuan Kennedy.....Appellants,

v.

The City of Folly Beach.....Respondent

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NO. 2020-CP-10-03549
FRED HOLLAND REALTY, INC., and LUJUAN KENNEDY,	)	
Appellants,	)	**ORDER AFFIRMING LOWER COURT ORDERS IN FULL**
v.	)	
THE CITY OF FOLLY BEACH,	)	
Respondent.	)	

This matter is before the Court on the appeal of Appellant Fred Holland Realty, Inc. of two Orders issued by the City of Folly Beach Hearing Officer ("Hearing Officer") dated July 17, 2020 and August 20, 2020. The Court hereby affirms the Hearing Officer's Orders and enters judgment against Appellant Fred Holland in the amount of Twenty-Five Hundred Dollars and No Cents ($2,500.00).

FACTS

The facts of this appeal are not in dispute. Fred Holland manages rental properties on Folly Beach. On March 19, 2020, Fred Holland rented 208 East Ashley Avenue, Folly Beach to a family from Hanahan, South Carolina. The check out date was April 14, 2020. Because the rental was shorter than 30 days, it was considered a "short-term rental" under City of Folly Beach Ordinance Section 117.01.

On March 28, 2020, the City of Folly Beach passed an Emergency Ordinance banning all new check-ins at short-term rentals on Folly Beach:

> 11. Starting on March 29, 2020 at 9:00 a.m., no new check-ins are permitted at any short-term rental, hotel, or other overnight accommodation. Visitors currently checked-in may remain until the end of their existing reservation.

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The family staying at 208 East Ashley Avenue decided they wanted to continue their stay on Folly Beach. On April 1, 2020, the family made a second reservation with Fred Holland at a new property, 403 West Ashley Avenue, with a new rental rate, and new rental term.

On April 3, 2020, South Carolina Governor Henry McMaster signed Executive Order No. 2020-19. Among other things, the Executive Order included a ban on short-term rentals in the State:

> I hereby order and direct that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration (collectively "Lodging"), as set forth below, in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut).

Executive Order No. 2020-19, Section 1.B.

On April 6, 2020, the City of Folly Beach passed an Amended Emergency Ordinance 06-20 (the "Emergency Ordinance") that barred *all* new check-ins (not just short-term rentals) at any overnight accommodation for any length of stay starting on April 7, 2020:

> 11. Starting on April 7, 2020 at 9:00 a.m., no new check-ins are permitted regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation.

On April 13, 2020, Fred Holland checked the Hanahan family into its new rental at 403 West Ashley Avenue.

On April 14, 2020, the City charged Fred Holland with a violation of the Emergency Ordinance and an assessment of a civil fine under that Emergency Ordinance for allowing the new rental check-in at 403 West Ashley Avenue. The fine was $500 per day, but the City agreed to

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cap the accumulating fine at $2,500. The Hanahan family stayed at the 403 West Ashley rental for more than five days.

Fred Holland appealed the Notice of Violation on May 7, 2020. Similar to the current appeal, Fred Holland contended that the Emergency Ordinance was not enforceable, and that it did not violate the Emergency Ordinance in any case.

Pursuant to a procedure set forth in the City's Emergency Ordinance, the appeal was heard by the City's Hearing Officer, Christine Varnado. On July 17, 2020, prior to the hearing on the appeal and after briefing, the Hearing Officer ruled that the Emergency Ordinance was enforceable in that 1) the City had authorization to issue the Emergency Ordinance, 2) the Emergency Ordinance was not preempted by the Governor's Executive Order, and 3) the Emergency Ordinance did not criminalize otherwise legal conduct.

An administrative hearing on the appeal was held on July 30, 2020 to determine if Fred Holland violated the Emergency Ordinance. Fred Holland presented three witnesses, was given the opportunity to cross the City's witnesses, and introduced 16 exhibits. On August 10, 2020, the Hearing Officer issued an order finding that Fred Holland did violate the Emergency Ordinance, and that the subject renters remained at 403 West Ashley for more than five nights, thus supporting the $2,500 fine issued by the City's License Official.

This appeal followed.[1]

STANDARD OF REVIEW

The standard of review to be applied by a Circuit Court in an appeal of a lower court decision is as follows:

[1] "When a judgment is rendered by a magistrates court, by the governing body of a county **or by any other inferior court or jurisdiction**, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered . . ." S.C. Code Ann. § 18-7-10 (emphasis added).

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> Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

S.C. Code Ann. § 18-7-170.

Section 18–7–170 confers authority upon the Circuit Court to reverse a lower court's findings of fact when exercising appellate jurisdiction in an appeal from a lower court judgment. Burns v. Wannamaker, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984), aff'd as modified, 288 S.C. 398, 343 S.E.2d 27 (1986).

With regards to any review of a municipal ordinance, such ordinances are presumed valid. The Home Rule Act grants broad powers to Folly Beach, and "a presumption of validity attaches to all legislation, especially legislation relating to police power." Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 554, 397 S.E.2d 662, 664 (1990); Aakjer v. City of Myrtle Beach, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010) (An ordinance "is a legislative enactment and is presumed to be constitutional."). The exercise of police power is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose. Id.

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

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

S.C. Const. art. VIII, § 17 (emphasis added).

LEGAL CONCLUSIONS

Appellant Fred Holland Realty, Inc. argues that the City did not have authority to enact its Emergency Ordinance that temporarily barred new check-ins at short-term rentals. Appellant's

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arguments on the validity of the Emergency Ordinance take three forms. First, Appellant argues the City did not have authority to pass any Emergency Ordinance. Second, Appellant argues that any authority the City did have was preempted by South Carolina Governor Henry McMaster's Executive Order No. 2020-19 that banned short-term rentals "from or for individuals residing in or travelling from any country, state, municipality, or other geographic area **subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19** . . ." Executive Order No. 2020-19, Section 1(B) (emphasis added). Section 3(B) of the Executive Order banned local ordinances that conflicted with the Executive Order. Third, Appellant argues that the Emergency Ordinance criminalizes conduct legal under state law in violation of the South Carolina Constitution.

In addition, Appellant argues that it did not violate the Emergency Ordinance by moving the family to a new property after the Emergency Ordinance was passed because this was not a new "check in" under the Emergency Ordinance.

I. THE CITY OF FOLLY BEACH HAD AUTHORITY TO ENACT THE EMERGENCY ORDINANCE.

> Determining if a local ordinance is valid is essentially a two-step process. The first step is to ascertain whether the county or municipality that enacted the ordinance had the power to do so. If no such power existed, the ordinance is invalid and the inquiry ends. However, if the local government had the power to enact the ordinance, the next step is to ascertain whether the ordinance is inconsistent with the Constitution or general law of this State.

Mun. Ass'n of S.C. v. AT & T Communications of the Southern States, Inc., 361 S.C. 576, 606 S.E.2d 468, 470 (2004) (quoting Hospitality Ass'n v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995)).

With regards to the first step of the inquiry, Folly Beach is given broad authority to pass laws to protect public health in times of an emergency. First and foremost, the Home Rule Act,

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S.C. Code Ann. § 5-7-30, grants all municipalities broad powers to enact ordinances to preserve general welfare and public health:

> Each municipality . . . may enact . . . ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it.

Furthermore, Section 5–7–10 states that "[t]he powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities." S.C. Code Ann. § 5–7–10 (2004).

"This grant of power for purposes of municipal legislation is as broad and comprehensive as it was within the power of the State to delegate. It is a grant of the sovereign police power of the State itself, limited alone (1) by the territorial confines of the municipality authorized to exercise it, and (2) by the proviso that legislation thereunder shall not be inconsistent with the laws of the State." Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242, 243 (1963). Thus, standing alone, the Home Rule Act clearly imparts Folly Beach with the police power to enact the Emergency Ordinance to preserve public health.

In addition, municipalities are explicitly granted the right to pass special emergency ordinances to meet public emergencies affecting life, health and safety along with a procedure to follow:

> (d) **To meet public emergencies affecting life, health, safety or the property of the people, [a municipal] council may adopt emergency ordinances**; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public

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> notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment.

S.C. Code Ann. § 5-7-250 (emphasis added). Defendant Folly Beach's Emergency Ordinances have been passed in compliance with this statute.

Appellant Fred Holland argues that this is simply a procedural statute, but the first sentence of Section 5-7-250(d) explicitly states that municipalities have the right to pass emergency ordinances.

In short, the City of Folly Beach was fully within its rights to enact an Emergency Ordinance during a national pandemic.

II. FOLLY BEACH'S EMERGENCY ORDINANCE WAS NOT PREEMPTED BY ANY STATE LAW OR EXECUTIVE ORDER.

In the context of the broad grant of power under the Home Rule Act and the explicit grant of power to pass emergency ordinances in Section 5-7-250(d), any limitation on Folly Beach's police powers during a time of emergency would have to be explicit and clear. No such limitation exists either in state law or in the Governor's Executive Orders. No law states that municipalities cannot exercise emergency powers. No law states that municipalities cannot restrict access during a state of emergency. No law states that municipalities cannot regulate short-term rentals. Rather, the general assembly has seen fit to grant cities a procedure to utilize its emergency powers.

The only potential preemption faced by the City during this pandemic is language in the Governor's Executive Orders stating that local ordinances that *conflict* with the Governor's Orders are preempted:

> B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

Governor's Executive Order No. 2020-19, Section 3.B.

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"Conflict preemption occurs when the [local] ordinance hinders the accomplishment of the [state] statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible." S.C. State Ports Auth. v. Jasper Cty., 368 S.C. 388, 629 S.E.2d 624, 630 (2006) (citations omitted). Generally, additional local regulations that merely supplement state law does not result in a conflict. Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196, 199 (2002) (citations omitted).

"[I]n order for there to be a conflict between a state statute and a municipal ordinance 'both must contain either express or implied conditions which are inconsistent or irreconcilable with each other . . . If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.' " The Town of Hilton Head v. Fine Liquors, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990) (quoting McAbee v. Southern Ry. Co., 166 S.C. 166, 164 S.E. 444, 445 (1932)).

In Denene, the City of Charleston banned on-premises consumption of alcohol between 2:00 a.m. and 6:00 a.m. on Mondays through Saturdays. At the time, S.C. Code Ann. § 61-4-120 prohibited the sale of alcohol "between the hours of twelve o'clock Saturday night and sunrise Monday morning . . . Municipal ordinances in conflict with this section are unenforceable." Denene, 574 S.E.2d at 199. The Court found that the City's ban did not conflict with the state prohibition because "additional regulation to that of State law does not constitute conflict therewith." Id. In other words, additional regulations are "neither inconsistent nor irreconcilable with the State statute." Id.

Fred Holland seems to believe that if a local ordinance is not identical to a state law, it is in conflict with that state law. That is not how conflict preemption works. Nothing in Defendant Folly Beach's Emergency Ordinance conflicts with state law or the Governor's Executive Orders.

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Both the Executive Orders and Folly Beach's Temporary Emergency Ordinance can be enforced at the same time without conflict. The Executive Order at the very least barred all check-ins of visitors from the "Tri-State Area." Folly Beach's Emergency Ordinance barred all check-ins of visitors from any state. Thus, at most, the Folly Beach Emergency Ordinance merely imposed a broader ban. It is not in conflict with the Executive Order because both the Executive Order and Emergency Ordinance can be enforced without conflict. As such, there is no conflict and no preemption of the Emergency Ordinance.

In fact, a close reading of the Governor's Executive Order No. 2020-19 demonstrates that its ban on short-term rentals was just as broad as the ban included in Folly Beach's Emergency Ordinance. The Governor's Executive Order ban on short-term rentals states:

> I hereby order and direct that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration (collectively "Lodging"), as set forth below, in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut).

Executive Order No. 2020-19, Section 1.B.

Appellant Fred Holland argues that the renters they moved in after the enactment of the Executive Order and Emergency Ordinance were not from the "Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut)," and were therefore not banned by the Governor's Executive Order. Fred Holland further argues that Folly Beach's Emergency Ordinance conflicts with the Executive Order because it banned all new short-term rentals, not just rentals to residents from New York, New Jersey, and Connecticut.

Appellant Fred Holland ignores the fact that the Governor's Executive Order ban on short-

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term rentals is not limited to the Tri-State area, but in fact is much broader. The Executive Order covers "individuals residing in or travelling from any country, state, municipality, or other geographic area **subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19** . . ." Executive Order No. 2020-19, Section 1(B) (emphasis added).

Folly Beach has presented unrebutted evidence that the CDC had in place a global travel advisory in April of 2020. On April 7, 2020, when Folly Beach's Emergency Ordinance went into effect, the CDC advised travelers to avoid all nonessential travel in the United States and also advised travelers to follow all state and local rules. CDC, "Coronavirus and Travel in the United States," April 7, 2020.[2] In addition, The CDC's website makes clear that all countries, including the United States and South Carolina, are under a travel advisory during the pandemic. CDC, "COVID-19 Travel Recommendations by Country."[3]

Thus, every state and every locality, including South Carolina and Hanahan, where the renters came from, was under a CDC travel advisory. Indeed, the CDC additionally recommended compliance with all local orders, which would include Folly Beach's Emergency Ordinance.

Since Executive Order No. 2020-19 banned short-term rentals to anyone from a location under a CDC travel advisory and since the CDC had placed the entire country under a travel advisory (and adopted local orders regarding same), the Governor's Executive Order applied to all short-term rentals to persons from South Carolina and Hanahan. In other words, the Governor essentially banned all short-term rentals due to his adoption of the broad advisories issued by the CDC. Thus, Executive Order No. 2020-19 and Folly Beach's Emergency Ordinance were in

---

[2] https://web.archive.org/web/20200407122127/https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html (archived website from April 7, 2020).

[3] https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html

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complete accord and banned the exact same activity: no short-term rental check-ins for any person regardless of where they came from. The Executive Order and Emergency Ordinance do not differ at all, but rather impose identical restrictions. As such, the Governor's Executive Order and Folly Beach's Emergency Ordinance are not in conflict either factually or under South Carolina conflict preemption law.

III. THE FOLLY BEACH EMERGENCY ORDINANCE DOES NOT CRIMINALIZE CONDUCT THAT IS LEGAL UNDER STATE LAW.

Appellant Fred Holland also argues that the Folly Beach Emergency Ordinance is in violation of Article VIII, Section 14(5) of the Constitution of State of South Carolina because the Emergency Ordinance criminalizes conduct that is legal under state law. Article VIII governs the power of municipalities, and Section 14 places some limits on the laws that municipalities can pass:

> In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside [by municipal law]:
>
> (1) The freedoms guaranteed every person; (2) election and suffrage qualifications; (3) bonded indebtedness of governmental units; (4) the structure for and the administration of the State's judicial system; (5) **criminal laws and the penalties and sanctions for the transgression thereof**; and (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

S.C. Const. art. VIII, § 14 (emphasis added).

In fact, Folly Beach's Emergency Ordinance does not "criminalize" any conduct. Rather, the Emergency Ordinance imposes a *civil* fine for violations of the Emergency Ordinance:

> 13. Any failure to comply with this ordinance, including efforts to circumvent this ordinance, **may be penalized a) as a civil infraction** pursuant to provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of business license may result in the loss of a business license or other measures, or b) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency, or c) any other penalties provided by

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> State law, including penalties granted pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State."

Emergency Ordinance, Section 13 (emphasis added).

In its April 6, 2020 Emergency Ordinance, the City adopted *civil* fines rather than *criminal* fines to avoid a potential conflict under Article VIII, Section 14(5). This was done after the South Carolina Attorney General opined on March 29, 2020 that local emergency ordinances criminalizing conduct may run afoul of Article VIII, Section 14(5). March 29, 2020 Updated S.C. A.G. Opinion.

The use of civil fines removes the City's action from the purview of Article VIII, Section 14(5), which only regulates criminal penalties. Indeed, one of the South Carolina opinions cited by the Attorney General, Beachfront Entertainment, Inc. v. Town of Sullivan's Island, 379 S.C. 602, 666 S.E.2d 912, 914 (2008), makes clear that municipalities can adopt local ordinances that supplement and add additional restrictions on top of state laws so long as they 1) are not preempted by any other state law, and 2) do not criminalize the conduct. See also Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 365, 660 S.E.2d 264, 269 (2008) ("Because we find the Ordinance does not criminalize conduct, we hold it does not run afoul of Article VIII, section 14 of the Constitution.").

Imposition of a civil fine does not criminalize conduct. It is a civil fine and does not violate the State Constitution's requirement that municipalities cannot criminalize actions that are legal under state law.

As such, Fred Holland's various challenges to the validity of the Folly Beach Emergency Ordinance, including preemption, are not persuasive. Accordingly, this Court affirms the holdings of the Folly Beach Hearing Office contained in her first order addressing those issues.

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IV. THE HEARING OFFICER CORRECTLY HELD THAT FRED HOLLAND VIOLATED FOLLY BEACH'S BAN ON NEW SHORT-TERM RENTAL CHECK-INS.

Appellant Fred Holland has also appealed the Hearing Officer's final ruling that Fred Holland violated the Folly Beach Emergency Ordinance.

In its underlying administrative appeal, Appellant Fred Holland admitted the relevant underlying facts. In particular, Fred Holland acknowledged that it moved the renters to a new property on April 13, 2020. The effective date of Folly Beach's ban on new check-ins was April 7, 2020, and there was a prior ban on short-term rental check-ins going back to March 28, 2020.

Fred Holland claims this was not a new "check-in" because the renters were staying at another location prior to the Emergency Orders. In fact, those Emergency Orders both made clear that renters could complete their existing reservations, but not make new ones:

> 11. Starting on April 7, 2020 at 9:00 a.m., no new check-ins are permitted regardless of length of stay, until May 31, 2020. **Visitors currently checked-in may remain until the end of their existing reservation.**

Emergency Ordinance, Section 11 (emphasis added).

The renter's initial rental at 208 East Ashley had a check out date of April 14, 2020. Under the Emergency Ordinance, those renters could stay at the rental until April 14, 2020, but could not make a new reservation at a new location with a new rental rate and an extended rental term. Thus, even though the renters were allowed to stay to the end of their *existing* reservation, they were not allowed to make new reservations or check-ins.

In violation of the Emergency Ordinance, Fred Holland accepted a second reservation from the guests staying at 208 East Ashley for a new reservation at 403 West Ashley starting on April 13, 2020 for a period of 17 days. Fred Holland's Appeal acknowledges that the family checked in to this new property on April 13, 2020, after the Folly Beach's check-in ban went into full effect.

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The fact that the renters previously stayed in a different short-term rental under a different reservation at a different rate does not somehow excuse Fred Holland from checking them into a new rental under a new rental agreement after the ban was put in place. Accordingly, the Hearing Officer's Final Order finding that this was a new "check-in" that violated the Emergency Ordinance is hereby affirmed in full.

CONCLUSION

Based on the foregoing, the Court affirms the rulings of the Folly Beach Hearing Officer that Fred Holland violated Folly Beach's Emergency Ordinance. The Court finds that the Folly Beach Hearing Officer correctly ruled that the City's Emergency Ordinances are enforceable, constitutional, and not otherwise preempted. The City's action was authorized by the Home Rule Act, by S.C. Code Ann. § 5-7-250(d), and by Governor McMaster's Executive Order No. 2020-19, Section 1(B). Fred Holland has not pointed to any law or order preempting this broad grant of authority. In addition, the Court finds that the Hearing Officer correctly ruled that Fred Holland violated this Emergency Ordinance, and properly imposed a fine of $2,500 for that violation.

IT IS THEREFORE ORDERED THAT the Hearing Officer's Orders are affirmed in full;

IT IS FURTHER ORDERED THAT a judgment in the amount of $2,500 be entered against Appellant Fred Holland Realty, Inc. pursuant to S.C. Code §§ 18-7-10 and 18-7-170;

IT IS SO ORDERED.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JUDGMENT IN A CIVIL CASE
2020CP1003549

FRED HOLLAND REALTY, INC., and LUJUAN KENNEDY

PLAINTIFF(S)

THE CITY OF FOLLY BEACH

DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

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)
THE CITY OF FOLLY BEACH	FRED HOLLAND REALTY, INC., and LUJUAN KENNEDY,	$2,500.00

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 | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2021 Jan 08 1:54 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

ELECTRONICALLY FILED - 2021 Jan 08 1:54 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

ELECTRONICALLY FILED - 2021 Jan 08 1:54 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549



Charleston Common Pleas

Case Caption: Fred Holland Realty Inc , plaintiff, et al VS Folly Beach City Of The

Case Number: 2020CP1003549

Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	) CASE NO. 2020-CP-10-03549
FRED HOLLAND REALTY, INC, Plaintiffs, vs. THE CITY OF FOLLY BEACH, Defendant.	) Transcript of Record) Date: November 6, 2020

* * * * * * * * * * * * * * * * * *

B E F O R E:

The Honorable Jennifer McCoy

* * * * * * * * * * * * * * * * * *

Denise J. Lauder, RPR

Ninth Judicial Circuit

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

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INDEX OF EXHIBITS

(No exhibits were offered or marked for identification.)

(The following proceedings were had November 6, 2020, 9:34 a.m., Court of Common Pleas, Charleston County, Judge Jennifer McCoy. These proceedings were held via Webex through the virtual courtroom.)

THE COURT: All right. Good morning, everybody.

Good morning, Mr. Wilson, as well. Good to see you.

We've got -- the matter on the docket at 9:30 this morning is, let's see, Fred Holland v City of Folly Beach; is that correct?

MR. WILSON: That's correct, Your Honor.

THE COURT: Holland Realty Company. Okay. While I'm getting my ducks in a row, if you gentlemen would each state your names and the party that you are here representing for the court reporter.

MR. CARRIGG: My name is John Carrigg, and I represent LaJuan Kennedy of Fred Holland Realty.

THE COURT: All right. Joe, you're muted for some reason. Make sure your computer speaker is on. Can't hear you now. Okay. Take

your time. This stuff happens all the time. We will get it straightened out.

On WebEx, there is a dropdown at the top that says, audio and video. If you go to speaker and microphone settings, there is a little testing option there. Sometimes that is helpful.

And worst case scenario, we can have you call in with a separate cell phone.

No, I can't hear you.

MR. CARRIGG: Mine is working, correct?

THE COURT: I can hear you, Mr. Carrigg.

THE CLERK: I'm looking up that number now.

THE COURT: If you could just start again by stating -- Mr. Carrigg's stated who he's here on behalf of. Mr. Wilson, if you could do the same.

MR. WILSON: Joe Wilson here for the City of Folly Beach.

THE COURT: Okay. And, Mr. Carrigg, I believe this is your appeal if I'm not mistaken; is that correct? From the hearing, sir.

MR. CARRIGG: That's correct, yes, ma'am.

THE COURT: I'm happy to hear from you first. I'm going to mute myself and that's so it cuts down on the feedback for the court reporter. Go ahead.

MR. CARRIGG: And there is one preliminary matter, and that is that I have -- I had objected to some exhibits that Mr. Wilson presented. I have no objection to the exhibits that he presented in conjunction with his brief to the hearing officer over the issue of preemption.

So in that respect, I don't -- I withdraw the objection to any exhibits that were presented to the hearing officer.

When I uploaded it -- for the record, I uploaded a transcript of the actual hearing that was held before Judge Varnadoe, the hearing officer, and I also uploaded all of the exhibits that were entered. I did not get back from the hearing officer the marked exhibits.

I uploaded the same document that was presented. There was one document I was missing, and in that instance I did ask her to provide that to me. And so that one has an actual exhibit mark on it like the rest of them.

And I also uploaded the exhibits -- the

copies of the exhibits that I had that were presented by Mr. Wilson at the hearing. With respect to the additional exhibits attached to Mr. Wilson's memorandum that he submitted, I don't have any objection to the -- the exhibits that were previously presented to the hearing officer.

Do you understand my --

THE COURT: I do.

MR. CARRIGG: -- on that?

THE COURT: I do. I do. I am well aware of the standard that I am cast with to review this and I understand I am not to review new evidence, if that's your objection.

MR. CARRIGG: That's correct.

THE COURT: I understand that, so your objection is noted. I will only consider that which I'm legally allowed to consider. With that, I'll let you start your argument.

MR. CARRIGG: Thank you, Your Honor. And we have submitted relatively detailed briefs from both sides, so I'm not going to spend a lot of time. I know it's taken 15 minutes getting all going.

Basically, our position on this -- and I think the thrust of our case is twofold. One,

the City of Folly Beach did not have -- our position is did not have the power or authority to declare a state of emergency and to enact emergency ordinances once the governor had acted.

They -- the city wants to -- just a general -- no specific, but a general grant of authority. And they've repeatedly pointed to Section 5-7-250 as giving them the power to enact an emergency ordinance. That, we submit, is a procedural statute. It does give them the authority to -- gives them a procedure by which to enact an emergency ordinance.

And the reason that I would submit to you is that the statute in South Carolina dealing with emergency situations is very clear. And that statute is 25-1440. And it says, the governor as the chief executive of the state has the authority to act. And he acted.

And I don't believe that the City of Folly Beach, once that occurs, has the authority to enact emergency ordinances or declare a state of emergency.

The reason for that is this: If you have the governor acting on behalf of the citizens of the state of South Carolina, and every

municipality or county started enacting their own travel ban -- I mean, if Orangeburg County all of a sudden decided they're just not going to let anybody into Orangeburg County, kind of like Folly Beach did -- they decided we're not going to let anybody into the City of Folly Beach.

They let property owners in. They wouldn't even let property owners family members in at one point in time. They just said, we're not going to let anybody in.

If Orangeburg decided that, everyone would agree that wouldn't -- I mean, you couldn't shut down Interstate 26 down into Orangeburg. So that is -- the natural consequence of Mr. Wilson's argument is they have the authority to do whatever they want when they enact a declaration of emergency.

And the statute is very clear that the governor has that authority.

They also contend that if the ordinance as enacted doesn't conflict with the governor's proclamation on short-term rentals, and I would submit to you that it does, and that this is my reason.

First, they'd say that -- and I think

this is very inaccurate -- the governor's ordinance -- or the governor's executive order, excuse me, prohibits anyone from an area which I'll call a CDC hotspot. It is an area of extensive community transmission as designated by the CDC. So if they came to South Carolina, they were prohibited from short-term rental.

Presumably, everyone else under that order is allowed to have short-term rentals. People that are not from a prohibited area could have a short-term rental. Folly Beach outlawed any short term rental. For awhile they outlawed any rental, period. They later changed that to allow long-term which was allowing rental for 30 days.

There is a part of the hearing officer's order that seems to find that the renters in question here were not, in fact, long-term renters because of the period of time; but I would ask the Court to defer to the actual notice of violation which I believe is the infraction letter. I don't know the exhibit letter.

The infraction is that it was a new check-in. That's stated in the infraction. I don't think that the hearing officer goes beyond that to find other reasons that they may uphold the

city's decision.

In any event, I think our position is very simple. The City of Folly Beach did not have the power to enact that. And this is way different when you get down the road in the pandemic. Bear in mind this was in March and early April when this occurred. The violation occurred April 14th.

And this is the part that I think is really important. The same -- you will see all of these COVID updates issued by the City of Folly Beach. And what a COVID update was, it was a clarification of what was going on.

And COVID Update J, the issue says we're are clarifying -- and they basically put in effect at that point a rule that would have stopped or would have made what my client did a violation.

And, basically, what -- if you -- I'm sure you read the factual scenario. My client is a rental agency. They had a person who had been here prior to the pandemic for a long-term basis, and I think they had rented for four weeks which is 28 days. And so they wanted to extend which would have made them a long-term resident.

And the way -- if you read the testimony, the way my client understood it -- it

wasn't in any way clarified any different by the city -- excuse me, was that they didn't want new people on the island. So my client felt like, well, moving this person from one house to another rental house, one rental unit to another rental unit, kind of like moving from one to another room in a hotel, was not a new check-in under the rules. They didn't have anybody new to the island.

From the questioning -- when Mr. Wilson who actually testified as a witness for his client said, well, you were adding the owners because now the owners were coming to the house that they were originally in. Well, that would have happened if he kicked them out.

If you said, okay, pack your stuff and go because the City of Folly Beach won't allow check-ins, that owner is still going to come out. So, I mean, the argument doesn't seem to make sense to me.

I mean, basically, our argument is this: I don't think that Folly Beach has the authority when the governor has acted and the governor has passed an executive order dealing with short-term rentals saying, we are -- what we're going to do is -- for the state of South Carolina,

all of the masks, knowledge, education, experience, advice, everything we've had to make that decision, he said, we are going to prohibit short-term renters from CDC hotspots.

And the City of Folly Beach said, nobody can come on the island.

So -- and that's just a -- a polar opposite position. They limited -- presumably, the City of Folly Beach would have prohibited a renter -- a current resident of Folly Beach from renting a house.

There was a back island resident prevented from renting their house during the pandemic because that would have been considered a new check-in. They said no new residents.

So we think that -- that the law was pre-empted by the governor acting on short-term rentals. And I think this is way different than when we get into the situation later on in the pandemic. For instance, the mask issues, a bunch of information cited on the mask issue.

The governor specifically said, I'm not acting on masks. I want local government to act on masks. And they did and that was fine. If you look at the executive order, I think 202028, I

don't think it's included as an exhibit, but it is a legal order issued by the governor, they talk about allowing municipalities, local government, they specifically authorized them to act.

There was no specific authorization by the governor for municipalities to act with respect to short-term rentals.

The other part of this argument, the plain meaning of the actual ordinance itself if it's valid -- I mean, if the city had the power to enact and contend the ordinance is, in fact, valid, quite frankly, my client didn't violate it. I mean, they were doing what the act would -- in the framework of the ordinance as the city had passed it.

They weren't trying to go outside of it, and they didn't think they were. And I would submit to you, because if you look at Exhibit J that says specifically that -- that COVID update Exhibit J, and this is my part of the brief, I think I mentioned it, but it says that the summary of clarifications includes limitations on existing stay of an existing guest.

And so I think simply by their own COVID update admits it wasn't clear before.

Otherwise, why would you need to clarify it? And if it wasn't clear before, how can my client be held responsible for not violating what she felt was the plain meaning of the Folly Beach ordinance? That's pretty much it, Your Honor.

THE COURT: All right. I appreciate you hitting the high points. And just so we're clear, all of your submissions or briefs certainly are fully incorporated for the purpose of the record today as well as those exhibits that are within my purview to consider under the standard.

Mr. Wilson, happy to hear from you.

MR. WILSON: I'm going to back up a little bit and just go real briefly through what actually happened here, the facts. Obviously, there are two big issues here; whether the ordinance that Folly Beach passed was valid and enforceable and whether Fred Holland violated that ordinance. So the facts aren't really in dispute.

On March 19th, Fred Holland moved a renting family into a short-term rental at 208 East Ashley with a check-out date of April 14th. You can see that in the first reservation sheet which is Exhibit 6.

On March 28th, Folly Beach passed an

emergency ordinance banning all check-ins at short-term rentals. Okay. That ordinance did not ban long-term rental check-ins, just short-term rental check-ins. And that's Exhibit 10 of the Folly Beach brief.

On April 1st, the family that checked in made a second reservation at a different property, 403 West Ashley. Now, this was after the ban had already been put in place. So it was a reservation at a new location, with a new rate, with a new contract and a new time period. And this is all shown in the second reservation sheet that the City got from the renters that's Exhibit 7.

On April 6, Folly Beach passed an amended emergency ordinance that continued the ban on all check-ins, but extended it to long-term rentals as well. That was the ordinance that was in place when the violation occurred. So that's the ordinance they were charged with, but the point is that this ban on short-term rentals had been in place for some time before that.

Then on April 13th, after this ordinance had been in place for weeks, Fred Holland checked this family into the new property at 403

West Ashley. This is the violation we're talking about, two weeks after the ban went into place.

And just to be clear, the ban -- I'm going to read it, the relevant language. Starting on April 7, 2020, at 9:00 a.m., no new check-ins are permitted, regardless of length of stay, until May 31, 2020. This is important, the second sentence. Visitors currently checked in may remain until the end of their existing reservation.

So we were addressing people moving around, and we said they couldn't do it. You can stay until the end of your existing current reservation, but not beyond -- not making new reservations, not checking into new properties with new rates. And that's what they did. And that's what the hearing officer found, Judge Varnadoe.

Just -- also, just procedurally, I want to make clear what happened in the lower court because there seems to be some confusion. We have an administrative hearing officer hearing these matters. They are civil fined matters under our ordinance. We're not criminalizing conduct. We adopted civil fines just like every other city did in the state.

Just like the municipal association

recommended, we adopted civil fines, side-stepped concerns raised by the attorney general that we might be criminalizing otherwise legal conduct. So that was something that was very common and done across the state. So that's what Judge Varnadoe heard.

We had an initial briefing on the validity of the ordinances that was extensively briefed by both sides and decided before the hearing, and Judge Varnadoe decided that the Folly Beach ordinance was valid, enforceable and not preempted.

We then had the hearing. Fred Holland was allowed to present all of the witnesses they wanted. I believe it was three. They submitted two dozen exhibits. They had plenty of time to present their case and -- although the facts aren't really in dispute. The only question is, was there a new check-in or not.

And Judge Varnadoe, after that hearing issued a second order ruling that there was a new check-in and that Fred Holland, therefore, violated the ordinance. The violation was $500 a day. The city agreed to cap that accumulating fine at $2500. And so that's what they were fined, $2500.

Now, the real -- what I see as the big issue is the validity of the ordinance. And in determining the validity of the ordinance for municipal ordinance, you first have to determine whether the city was authorized to pass the ordinance, and then you have to determine if the ordinance was preempted by any state law or is otherwise unconstitutional.

So the first point is, the city has plenty of authority to pass emergency ordinances. Under the Home Rule Act at 5-7-30, the city has the right to pass ordinances for preserving health, peace, order and good government. And the Home Rule Act is very broad. It passes on the full police power of the state without limitation to the municipality.

As part -- when they pass a Home Rule Act, as part of that action they also passed, I guess what I would call, the emergency ordinance statute, which is 5-7-250 and -- or subsection D. And that talks about granting the city the power to pass emergency ordinances. It literally says to meet -- and this is a quote, to meet public emergencies affecting life, health, safety or the property of the people, a municipal council may

adopt emergency ordinances.

It just couldn't be more clear. And then it goes on about how you go about adopting an emergency ordinance.

So based on these two grants of authority, any restriction on the municipality to grant a municipal to grant an emergency ordinance has to be very explicit and clear, and no such restrictions exists.

These are under state law or under the governor's executive orders. So looking at the potential restrictions -- you know, Mr. Carrigg has not really addressed anywhere the extensive preemption law that exists in this state.

I mean, there are dozens of preemption cases that talk about every form of preemption knows to man and none of them are applicable here.

At some point, Mr. Carrigg has argued there's a blanket preemption arising from the statute that gives the governor the authority to act during an emergency, 25-1-440. Problem with this is you can look at that statute all you want, and you won't see anything that says the governor has exclusive authority to do this.

You won't find anything that says

municipalities cannot exercise these powers. You wouldn't find anything that says anything done by a municipality for emergencies is void. And the state legislature knows how to create a blanket exemption because they do it all the time.

One that I've been dealing with recently concerns pesticides. And just so -- you know, the language is pretty clear. Local ordinances pertaining to the subject matter assigned by law to the commission, i.e. pesticide regulations, whether or not in conflict, are void. That's what a blanket preemption looks like.

It doesn't matter if your law is in conflict or not. They are void. And you will not find that language in any of the governor's orders or in any statute, nor has Mr. Carrigg pointed to it. There is no blanket preemption.

The other broad category of preemption and the one that really is what this case comes down to is conflict preemption. Now, there is conflict -- potential conflict preemption in this action because the governor in all of his executive orders has stated if, or to the extent, that any political subdivision of this state seeks to adopt or enforce a local ordinance, rule, regulation or

other restriction that conflicts with this order, this order shall supercede and preempt any such local ordinance, rule, regulation or other restriction.

So there is -- the municipality cannot conflict with the governor's order on this issue.

The problem -- Mr. Carrigg seems to think that that means the ordinance has to be identical to what the governor has ordered. And that is not the rule of law. Case law on conflict preemption, and it's cited throughout my brief, has repeatedly stated that only local ordinances that hinder the accomplishment of the state statute are in conflict with that statute.

Local ordinances that merely complement state law does not result in a conflict. That's from the Denene case. From The Town of Hilton Head v Fine Liquors, in order for there to be a conflict between a state statute and a municipal ordinance, both must contain either express or implied conditions which are inconsistent or irreconcilable with each other. If either is silent when the other speaks, there can be no conflict between them and both laws stand.

So in that case, The Town of Hilton v

Fine Liquors, the state has extensive rules about the red dot signs on the outside of a liquor store down to how big they have to be, but Hilton Head passed a local rule on illuminating those signs.

Since that illumination wasn't covered in the state law, it didn't conflict with the state law. This is no different. The state -- the governor has, at the very least, banned short-term rentals from any place under a CDC warning. Folly Beach has a blanket ban. They can both be enforced at the same time. They are not in conflict. We have just simply supplemented what the governor has done.

And, of course, we're talking about what was going on back in April. Obviously, a lot has changed since then.

So since Folly did nothing more than expand on the short-term rental check-in, and that's arguably -- I'm going to address the other issue -- then they are not in conflict. The important thing that you have to return to here is we're not criminalizing otherwise legal behavior. This is a civil fine. So the constitutional issues raised by that don't come up.

And, again, this is something clear

under South Carolina law. Beachfront Entertainment v Town of Sullivan's Island makes clear that municipalities can adopt local ordinances that supplement and add additional restrictions on top of state laws so long as they are, one, not preempted by any state law and, two, do not criminalize the conduct.

So if Folly had wanted to, they could have expanded on the short-term rental ban, but in point of fact they did not. The Folly Beach ban was universal, but so was the governor's ban.

The governor's ban said that everyone -- that you can't have any check-ins from anyone -- I'm going to read it -- are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID 19 to include the tri-state area of New York, New Jersey, and Connecticut.

The important thing to remember here is, back in April when Folly Beach passed this ordinance, every place, every country, every state

in the country, in this country and every country, was under a CDC advisory. You can look at the exhibits attached to my brief, Exhibit No. 12 and Exhibit No. 13.

These are screen shots of the CDC from back in April. You can -- you know, they're archived. And they essentially say, avoid all nonessential travel in the United States. CDC recommends you stay home and avoid all nonessential travel.

It also says the state or local government where you are may have issued orders or provided guidance more restrictive than these federal guidelines. In that case, follow the state or local orders or guidance.

In addition, the website makes clear that all countries -- and this is in Exhibit 13, all countries including the United States and South Carolina are under a travel advisory during the pandemic. And there's a map, and the US like every other country is in red. So everyone was under a CDC travel advisory; therefore, the governor's order, just like the Folly Beach emergency ordinance, banned these new check-ins. All of them. Regardless of where the person came from.

There is -- there was an attorney general opinion in March. You know, I -- Mr. Carrigg has not cited this opinion. He cited an older one in his briefing. I'm not sure why; the March 1st is obviously more recent. And it called into question all emergency ordinances passed by local ordinance on municipalities.

So, obviously, what -- what this opinion from the attorney general conflicted with, with what -- I don't know, dozens and dozens, if not hundreds of municipalities did, and are doing during the pandemic -- I should note, I am not aware of a single one that's been struck down. Nor has Mr. Carrigg cited one, a single municipality that has an ordinance struck down. And many of them were far, far more restrictive than the ban on short-term rentals.

But, nevertheless, the attorney general offered his opinion that they may be preempted by the governor's powers. What's important to remember is that focus on this idea that the municipalities might be criminalizing otherwise legal conduct.

So since Folly Beach, again, like most of the other municipalities, adopted civil fines,

that took it out of the purview of this attorney general opinion.

That's really the important points to make. I would note that the attorney general's opinion doesn't cite a single South Carolina case on preemption. I don't know why, since there are many, many preemption cases, but they didn't go through a preemption analysis.

I would also note that since that opinion was issued in June of 2020, and this is Exhibit 17 to my brief, the attorney general issued a statement on local mask ordinances approving them. So it's hard to reconcile that statement with a prior opinion that no local ordinances are allowed.

So I feel like the attorney general opinion is not applicable or persuasive.

I have gone through why I think the hearing officer correctly ruled on the facts. Mr. Carrigg hasn't identified any exhibits that were part of my brief before this Court that were not introduced in the lower court, because they all were. I looked -- I literally looked through the two lists.

The only exhibit that wasn't introduced

at the lower court is I did print up a copy of the Folly Beach procedure -- Folly Beach ordinance setting forth the procedure we followed.

I mean, that's just something that's online, part of the case. It didn't really need to be an exhibit. I could have just cited it, but it was really to help the Court see the procedure that was followed.

Every other thing was introduced in the lower court, including, probably most importantly, the CDC web pages without objection.

I do want to point out some procedural problems I have with Mr. Carrigg's brief. Most significantly he argues -- his third argument on page 15 of the brief, he argues for the first time ever that the Folly Beach Emergency Ordinance was arbitrary and capricious and not supported by scientific evidence.

This was an issue that I asked repeatedly about and was never raised in the lower court, was not part of the notice of appeal list of issues, and would drastically, drastically expand the reach of this case, because Folly Beach has many, many scientific articles, scientific testimony, affidavits, supporting the passage of

these emergency ordinances. They weren't introduced because the issue was never raised.

THE COURT: If it wasn't in the lower court, obviously I can't consider it at this point as well. I'll take note of it. You might want to hurry. I can't allow too much --

MR. WILSON: Okay.

THE COURT: Of course, I give you more time here than you would get at the Court of Appeals. We do have several matters scheduled and they are patiently waiting. Like I said, I want you to be able to hit your high points. Go ahead.

MR. WILSON: Right. Just one more minute. Just we would ask that judgment be entered on this matter immediately. No bond has been submitted. And last, but not least, I don't understand why Ms. Kennedy has been made a party to this appeal. She was not a party to the lower matter. Unless Mr. Carrigg wants a judgment entered against her as well, she should probably be dropped as a party.

But that's my argument. I appreciate the court's time. Sorry if I went a little bit over.

THE COURT: That's okay. I'm happy to

hear a brief response from you, Mr. Carrigg, if any is necessary.

MR. CARRIGG: Very briefly. I would submit that the city's position that there was a new contract and new -- is totally false. The evidence does not support that testimony before the hearing officer. Does not support that it was anything other than a transfer from one unit to the other. The -- they did not negotiate a new rental.

What occurred is the fact that the individual didn't want to return home because the daughter, who lived in the home worked in a hospital, and they didn't want to exposed themselves to COVID. And so it was merely an extension of the rental, which wasn't prohibited at the time.

The argument that the governor's order basically banned any rental in South Carolina is absolutely not true. The only restriction was from areas that extensive community transmission. Not that they were under a travel advisory. The whole world was under a travel advisory.

And if -- basically, what Mr. Wilson -- to carry that to a reasonable end is you get to where anybody leaves the island or come back if

that were the case.

Again, I would submit that -- and I agree with Mr. Wilson. There is just not really any good law. There's no good cases out there dealing with preemption of a state of emergency. There is just not.

And I would submit that as the attorney general -- the original attorney general's opinion is attached as an exhibit. It's Exhibit J. And it does state that the municipalities don't have the authority to pass declarations of emergencies as the City of Folly Beach did in these emergency ordinances.

But after researching this issue for the brief, I found this a very on point AG opinion which was reprinted in my brief. And I think that that -- I understand it's not a precedential ruling, but I think it certainly provides guidance.

I think Mr. Wilson's position is that the city has unfettered authority to pass whatever emergency ordinance they want, they can seize property under their own emergency ordinance, and I just think that that goes too far. I think that the City of Folly Beach has gone too far.

You know, he said, well, they only

limited short-term rentals. The fact of the matter is, is they shut down the island and they went to extensive lengths to the extent that -- and I'm sure you read it in the newspapers, Charleston County filed a lawsuit against them. And the city backed down at that point because they -- the city of Charleston County was --

MR. WILSON: Your Honor --

MR. CARRIGG: -- the same issue --

MR. WILSON: (Laughing)

THE COURT REPORTER: I can't hear him.

MR. WILSON: That's not true.

MR. CARRIGG: In any event, I'll stop.

THE COURT: Okay. I appreciate everybody's position on the matter. Obviously, this is something that is quite unprecedented. It arose out of these unprecedented times that we are in, and I will certainly take a look at the briefs, I know you put a lot of time into them, as well as the exhibits that are within my purview and issue an order as soon as possible after I've reviewed these things.

And if we need anything else from your office, we'll be sure to reach out and let you know.

MR. CARRIGG: Thank you, Your Honor.

MR. WILSON: Thank you.

(These proceedings were concluded at 10:24 a.m.)

CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of February, 2021, at Charleston, Charleston County, South Carolina.

S/Carol Denise Lauder, RPR
Carol Denise Lauder
Registered Professional Reporter, CP
My Commission expires
February 27, 2028

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
FRED HOLLAND REALTY, INC. AND, LAJUAN KENNEDY, Appellants vs. THE CITY OF FOLLY BEACH Respondent.	)	C/A# 2020-CP-10-03549 APPELLANT'S BRIEF

STATEMENT OF ISSUES ON APPEAL

1. DID THE HEARING OFFICER ERR IN CONCLUDING THAT THE CITY OF FOLLY BEACH HAD THE POWER TO PASS AN EMERGENCY ORDINANCE RESTRICTING SHORT TERM RENTALS IN CONTRADICTION TO THE GOVERNOR'S EXECUTIVE ORDERS?

2. DID THE HEARING OFFICER ERR IN CONCLUDING THAT THE EMERGENCY ORDINANCE RESTRICTING SHORT TERM RENTALS WAS NOT PREEMPTED BY THE GOVERNOR'S EMERGENCY EXECUTIVE ORDER 2020-19?

3. DID THE HEARING OFFICER ERR IN FAILING TO FIND THAT BECAUSE THE FOLLY BEACH EMERGENCY ORDINANCE WAS MORE RESTRICTIVE THAN THE GOVERNORS EXECUTIVE ORDER WITH REGARD TO SHORT TERM RENTALS, THE FOLLY BEACH EMERGENCY ORDINANCE WAS ARBITRARY AND CAPRICIOUS?

4. DID THE HEARING OFFICER ERR IN FINDING THAT THE FACTS PRESENTED SUPPORTED A FINDING OF A VIOLATION OF THE EMERGENCY ORDINACE AND WARRANTED A FINDING THAT THERE WAS A "NEW CHECK IN" THAT VIOLATED THE EMERGENCY ORDINANCE?

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5. DID THE HEARING OFFICER ERR IN FINDING THAT THE CITY IMPOSING A VIOLATION ON APPELLANT WHILE ALLOWING SIMILAR CONDUCT CONSTITUTED AN IMPERMISSABLE ARBITRARY ENFORCEMENT OF THE EMERGENCY ORDINANCE?

STATEMENT OF THE CASE

This case involves an appeal from the decision of the Business License Hearing Officer below who affirmed the finding of the Municipal Official that the Appellant had violated Emergency Ordinance 06-20 enacted by the City of Folly Beach on March 28, 2020 and amended on April 6, 2020, pursuant to a Declaration of Emergency declared by the Mayor of the City of Folly Beach on March 16, 2020. The ordinance and the numerous explanatory/amending COVID Updates that were issued as a result of and by authority of said ordinance seeks to severely restrict property owners from leasing their homes to short term renters in contradiction to the Executive Order issued by the Governor. Conversely the Ordinance and COVID updates limit the ability of a non-resident from being able to lease a short term rental within the City. After the onset of the COVID Pandemic, the Governor declared a State of Emergency and issued several Executive Orders. Included among those Executive Orders was Order #2020-19. That Executive Order only prohibited Short term rentals in the State of South Carolina including "new reservations of new bookings" to individuals from areas considered to be COVID "hot spots" or areas designated by the CDC as an area with extensive community transmission. The City of Folly Beach Emergency Ordinance outlawed any short term rentals to any individuals without exception. The ordinance specifically prohibited "new check-ins" for any short term rental. Although the Folly Beach ordinance "evolved" over

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time it was always more restrictive than the rules imposed by the Governor's Executive Orders.

STANDARD OF REVIEW

"Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits." South Carolina Code §18-7-170 (2019). On appeal to the Circuit Court the Review of the Municipal Hearing Officer is a De Novo review. Section 18-7-170 allows the circuit court to weigh the evidence or substitute its findings of fact for those of the designated municipal hearing officer. Vacation Time of Hilton Head Island, Inc. v. Kiwi, Corp., 280 S.C. 232, 312 S.E.2d 20 (Ct. App. 1984); Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984).

STATEMENT OF FACTS

Pursuant to the threats posed by the Novel Corona Virus (COVID-19) the Governor of the State of South Carolina declared a State of Emergency on March 13, 2020, for the entire State and has been issuing Executive Orders on a regular basis to provide for the health, safety and welfare of the citizens of South Carolina. That on March 16, 2020 Mayor Tim Goodwin of the City of Folly Beach declared a "Proclamation of Emergency" and on March 28, 2020 The Defendant City of Folly Beach acting by and through its chief executive and its council, passed Ordinance 06-20 which among other acts declared a "State of Emergency" in the City of Folly Beach separate and distinct from the State of Emergency declared by the Governor. The Ordinance further authorized the Mayor to rule the city by decree. Goodwin has issued several proclamations which are styled as "COVID Updates," these "laws" or

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"declarations of law" set forth laws, rules and regulations which the citizens and residents of The City of Folly Beach are required to obey upon pain of penalties provided by state law as provided for in Ordinance 06-20.

The Original version of the Folly Beach Declaration of Emergency, 06-20 passed on March 28, 2020, suspended all new short term rentals but allowed long term rentals. It prohibited "new check-ins" of short term renters. The ordinance itself does not define or reference a definition of "short term" and "long term." The amended version of the ordinance passed on April 6, 2020 prohibited "new check-ins" for short term or long term renters. The mayor's proclamation "COVID Update 5" issued on March 24th defined long term rental as one of 30 days or more. On March 29, 2020 the South Carolina Attorney General issued an opinion which clearly set out that counties and municipalities were prohibited from enacting emergency ordinances and that the power to enact such ordinances rests solely with the Governor. On April 3, 2020, the Governor issued Executive order 2020-19 governing short term rentals in the State of South Carolina. In direct contradiction to the Governors Order the City of Folly Beach continued to prohibit both short term and long term rentals allowable under the Governors Order. The Governors Order which defines short term rental as any rental less than 90 days and prohibits all short term rental only to person from "hot spots" as define by the CDC.

On March 16, 2020, Fred Holland Realty, Inc., took a reservation for a long term rental from the Richardson family. Ms. Richardson suffers from COPD. They were originally placed at a unit located at 208 East Ashley. On or about April 1, 2020, Ms. Richardson contacted Fred Holland and discussed their desire to extend their stay until the end of April because their daughter who lived in their home worked at a local hospital

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and was treating COVID patients. This posed a dangerous situation for Ms. Richardson because she suffers from COPD. The stay was extended on April 1, 2020, but the extension potentially required the family to be moved to a new unit at some point in the future if the owner of 208 East Ashley wished to use his home. On April 13, 2020 the family was moved to 403 W. Ashley for the remainder of their stay. A citizen of Folly Beach complained to the Elected Officials of the City of Folly Beach and the city police investigated the Family for moving to 403 W. Ashley. They determined that the move constituted a "New Check-in" even though the Richardson family had been on Folly Island prior to the Mayor or the Council limiting rentals.

Aaron Pope issued a violation letter to Appellants on April 14, 2020. The Letter levies a fine of $500.00 per day and continues to accrue so long as the Richardson family stays on Folly Beach. (Limited to a maximum of $2,500.00 by the City). On the same day Goodwin clarified his previous proclamations stating that "Visitors currently checked in may remain until the end of their reservation, and may extend only for the same guests, on the same rental terms, and at the same location." (See COVID-19 Update 11). Initially Appellant attempted to persuade the Richardson family to vacate the Island but they refused to do so because of the serious health risks moving back to their home in North Charleston would pose. The City of Folly Beach has chosen not to take any enforcement action against the Family and instead wishes to only punish Appellants. Further Appellants would show that in another circumstance on or about April 1, 2020, with the exact same facts that involved a long term renter being moved to another location the City investigated the matter but because of the involvement of a City Council member on behalf of the renter no action was taken by the City.

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ARGUMENT

I. THE HEARING OFFICER ERRED IN CONCLUDING THAT THE CITY OF FOLLY BEACH HAD THE POWER TO PASS AN EMERGENCY ORDINANCE RESTRICTING SHORT TERM RENTALS IN CONTRADICTION TO THE GOVERNOR'S EXECUTIVE ORDERS.

The Hearing officer erred in concluding that the City had the power to pass Emergency Ordinance 06-20 restricting short term rentals. The Governor is granted the authority under state statute to issue Executive Orders in an emergency situation. As set forth in and relied upon by Appellant The South Carolina Attorney General has opined that any the Governor's extraordinary powers in a state of emergency preempt similar orders of Counties and Municipalities during the same state of emergency. S.C. Code Section 25-1-430 defines "emergency' as "(b) "Emergency" shall mean actual or threatened enemy attack, sabotage, conflagration, flood, storm, epidemic, earthquake, riot, or other public calamity." Emphasis added. Code § 25-1-440 states, in part, as follows:

SECTION 25-1-440. Additional powers and duties of Governor during declared emergency.

(a) The Governor, when an emergency has been declared, as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State and is empowered with the following additional authority to adequately discharge this responsibility:

(1) issue emergency proclamations and regulations and amend or rescind them. These proclamations and regulations have the force and effect of law as long as the emergency exists;

(2) declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency, as defined in Section 44-4-130, has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation. A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly;. . . .
S.C. Code Ann. § 25-1-440 (2018).

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In determining whether a local ordinance is valid, it must pass a two-part test. The first prong of the test is to determine if the municipality was authorized to adopt the ordinance. The second prong is if the municipality had the power to adopt the ordinance whether it is consistent with the South Carolina Constitution and laws. Denene v. City of Charleston, 352 S.C. 208. 574 S.E.2d 196 (2002) (citing Buesy's v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890 (2000)).

Clearly the Governor has acted in the face of the COVID 19 pandemic. As a result the Governor by taking action to insure the safety of the citizens of the State of South Carolina has preempted any action on the part of the political subdivisions of the state. Later in time the Governor would delegate authority to individual Counties and Municipalities to take action as they saw fit to protect their citizens but at the time of this infraction, April 14, 2020, we were all still in the infancy of the pandemic and the Governor had not, at that time, delegated any authority to the various municipalities and counties.[1] If the Folly Beach Emergency Ordinance (06-20) is in fact preempted by S.C. Code § 25-1-440, then the alleged infraction must be dismissed because The City of Folly Beach lacked the power to pass the ordinance initially. This specific question of whether a Municipality possesses the authority or power to declare a state of emergency was addressed in an informal opinion of the South Carolina Attorney General. It states as follows:

Office of the Attorney General, State of South Carolina

[1] The question of whether or not the Governor may delegate that authority to a municipality or other local government is not addressed in this brief.

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April 21, 1997

The Honorable Carmen R. Bunch
Mayor, City of Isle of Palms
P.O. Drawer 508
Isle of Palms, South Carolina

Re: Informal Opinion

Dear Mayor Bunch:

Attorney General Condon has forwarded your recent opinion request to me for reply. You inform this Office that the Isle of Palms City Council (hereinafter "City Council") is considering passage of an emergency powers ordinance that would delegate certain specified powers and functions to the City Administrator, or other designee of the City Council. You ask whether the City Council has the authority to confer these powers on a city employee or other unspecified person.

. . . In short, the Ordinance gives the City Council the power to declare a state of emergency in the city based on the occurrence of certain specified events. Further, the City Administrator may temporarily declare a state of emergency until such time as City Council may convene to act upon such emergency.

The threshold question regarding the validity of the Ordinance is whether the City Council and the City Administrator have the authority under the laws of this state to declare a state of emergency. Therefore, this opinion will first answer this threshold question followed by an answer to the specific question raised in your request.

The health, welfare, and safety of the lives and property of the people of this state are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are contained in the police power inherent in the sovereign. See Article XII, Section 1 of the Constitution of the State of South Carolina. There is no similar inherent "police power" in political subdivisions such as municipalities, as municipalities derive their authority from the sovereign. Consequently, the General Assembly provides by general law for the structure, organization, powers, duties, functions, and responsibilities of municipalities. Article VIII, Section 9.

In furtherance of its Constitutional mandate, the General Assembly has provided general legislation for the governance of municipalities. Home Rule was accomplished through the passage of Act No. 283, 1975 Acts and Joint Resolutions. Section 5-7-30 of the Code (Supp. 1996) sets forth the powers conferred upon municipalities. This provision makes it clear that the grant of power is subject to the general laws of the State. There is nothing contained in this list of powers that can be reasonably construed to confer upon a municipality the extraordinary authority

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to declare a state of emergency. In another portion of the Home Rule legislation, municipalities have been granted the limited power to adopt emergency ordinances to meet public emergencies affecting life, health, safety or property of the people. The emergency ordinance, which may be adopted upon affirmative vote of at least two-thirds of the council members present, expires automatically as of the sixty-first day following the date of enactment. S.C. Code Ann. § 5-7-250 (1977).

The General Assembly, apparently recognizing that actual or threatened disaster or public calamity will often extend beyond political boundaries and exceed local capabilities, has enacted general legislation dealing with civil defense and disaster preparedness at the State level. In 1979, the General Assembly established the South Carolina Emergency Preparedness Division within the Office of the Adjutant General and seemingly shifted to the State level the overall and final responsibility for emergency preparedness and response. See S.C. Code Arm. § 25-1-420 (1989).

The Governor has been granted a wide range of emergency powers to further enable the State to respond effectively to emergencies. S.C. Code Ann. § 25-1-440 (1989 & Supp. 1996). Among the powers granted to the Governor are as follows:

(a) The Governor, when an emergency has been declared, as the elected Chief Executive of the State, shall be responsible for the safety, security and welfare of the State and shall be empowered with the following additional authority to adequately discharge this responsibility:
Page 3

(1) Issue emergency proclamations and regulations and amend or rescind them. Such proclamations and regulations shall have the force and effect of law as long as the emergency exists.

(2) Declare a state of emergency for all or part of the State if he finds a disaster has occurred, or that the treat thereof is imminent, and extraordinary measures are deemed necessary to cope with the existing or anticipated situation. A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly.

....

Given the existence of the statute expressly empowering the Governor to declare a state of emergency for any part of the State, I believe that local governments have been pre-empted in the matter. It appears that only the Governor has the clear legislative authority and available resources at his command to declare a state of emergency and order actions in accordance with such declaration. See, Op. Arty. Gen. dated September 5, 1980. Section 5-7-250 gives municipalities the power the adequately respond to public emergencies, but not the power to declare such.

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The next question is whether the City Council can delegate the power to declare a state of emergency to the City Administrator. Since the City Council does not have the authority to declare a state of emergency, it follows that the City Council can not delegate a power it does not possess to the City Administrator.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Verv truly yours,...

Opinion informing that the Isle of Palms City Council (hereinafter "City Council") is considering passage of an emergency powers ordinance that would delegate certain specified powers and functions to the City Administrator, or other designee of the City Council. (South Carolina Office of the Attorney General, 1997). (Emphasis added).

The City of Folly beach relied upon a similar Ordinance authorizing the Mayor to declare a State of Emergency within the municipal boundaries of the City of Folly Beach. The Ordinance in question states that it is an emergency ordinance to "Declare a State of Emergency" and further states "Whereas, in light of the foregoing, City council of the City of Folly beach deems it proper and necessary to adopt this emergency ordinance in order to address how the City and Council will proceed in light of the above emergency." (Ordinance 06-20). The Ordinance also refers to City Ordinance Section 35.05 which is a similar ordinance to the one addressed in the Informal Opinion of the Attorney General dated April 21, 1997. That opinion lays out the legal reasoning why any ordinance that authorizes a municipality to "Declare a State of Emergency" violates the Statues and Constitution of the State of South Carolina. Section 1 of the Emergency Ordinance 06-20 actually authorizes the Mayor to rule as an unchecked autocrat during the "emergency." Under Folly Beach Code § 35.05 the Mayor has the unchecked authority as set forth in the ordinance:

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"(B) Once a state of emergency has been declared, the Mayor, or the Mayor Pro Tem in the Mayor's absence, will have the power to take necessary actions including but not limited to:

(1) Require some or all of the roads within city jurisdiction be closed;
(2) Require the city be evacuated;
(3) Establish a curfew within city limits;
(4) Authorize the Director of Public Safety to hire people to assist city staff and fill certain roles and to compensate them in accordance with the duties they undertake and the number of hours they work;
(5) Disperse assemblies or congregations of people;
(6) Suspend issuance of permits;
(7) Prohibit or restrict business operations within city limits;
(8) Designate off-limit areas;
(9) Commandeer boats and vehicles; and
(10) Authorize the Director of Finance to make emergency purchases outside of the regular procurement process."

City of Folly Beach Ordinance 35.05

Clearly our constitutional structure and our legislature never intended for a municipality to be vested with the authority to seize the property of its citizens without due process of law, yet that is exactly the power that the City of Folly Beach has embraced by enacting this Declaration of Emergency and adopting this resulting Emergency Ordinance. Further, the Governor has stated in his Executive Orders including Executive Order 2020-19, "[I]f or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction." (Executive Order 2020-19). In addition, the Governor has stated in his Executive Orders, "[i]n accordance with § 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate,

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in the courts of the State by injunction, mandamus, or other appropriate legal action." (Executive Orders, S.C. Code Ann. § 1-3-440(4)).

It is very clear in the language of the Executive Orders issued by the Governor including Executive Order 2020-19 that the Governor intends to preempt any action by local government. The Governor's Executive Orders anticipate that local government should obey the Executive Orders of the Governor not enact "Declarations of Emergency" or Emergency Ordinances that compete with the structure that the Governor has put in place to protect the citizens of the State of South Carolina. While Folly Beach is in fact an Island it cannot seek to isolate itself from the State of South Carolina which is exactly what was attempted here. Even if Folly Beach's actions are not in conflict with the Orders, Folly Beach's Emergency Ordinance placing restrictions on short term rentals and access to short term rentals by non-city residents exceeds the authority granted to the City under State law. See, S.C. Code Ann. § 5-7-250. Richland County. v. S.C. Department of Revenue, 422 S.C. 292, 311, 811 S.E.2d 758, 768 (2018) (". . . observing that local government enactments and regulations 'must be authorized by the enabling act, at least, where they are enacted pursuant to the authority conferred by such act, and they can be no broader than the statutory grant of power").

State law does not authorize the City to treat disparately non-City residents by placing restrictions on short term rentals affecting non-City residents. The emergency ordinance provisions provided to municipal corporations under State law do not expand the power of local government or create new substantive powers to regulate matter reserved to the Chief Executive of the State. The emergency ordinance statute is procedural and it merely suspends the normal procedural process necessary to adopt laws

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when public emergencies affecting life, health, safety or the property of the people exists within the municipal boundries. Therefore, the City's actions exceed the power given to it under State law. See, S.C. Code Ann. § 5-7-250 ("To meet public emergencies affecting life, health, safety . . . council may adopt emergency ordinances; . . . An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements."). This Statute that has been relied upon by The City to uphold their Declaration of Emergency and their Emergency Ordinances 06-20 is in fact merely a procedural statue that allows the city to deal with an emergent situation that may occur within the boundaries of the municipality when the city needs to act quickly and does not have the time to have three readings and a public hearing. This is very evident by the fact that the statue relied upon by the City is entitled "**Council meetings; rules and procedures for meetings; freedom of information; emergency ordinance.**" S.C. Code § 2-7-250 (2019). There is a statute that confers "Powers" to municipalities entitled "**Powers conferred upon municipalities; surtax for parking spaces.**" S. C. Code § 5-7-30, It contains no reference to the power to declare a state of emergency nor does it confer the power to pass emergency ordinances when the State's Chief Executive has already acted.

II. THE HEARING OFFICER ERRED IN CONCLUDING THAT THE EMERGENCY ORDINANCE RESTRICTING SHORT TERM RENTALS WAS NOT PREEMPTED BY THE GOVERNOR'S EMERGENCY EXECUTIVE ORDER 2020-19.

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The Governor's Executive Order 2020-19 specifically addresses the restrictions on short term rentals that apply in the State of South Carolina. Executive Order 2020-19 specifically states:

"If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction." Executive Order 2020-19, Issued and effective April 3, 2020.

The Governors Order only placed restrictions on short term rentals to individuals who were travelling from states with "extensive community transmission" rates of COVID-19. At the time the list included ONLY individuals from New York, New Jersey and Connecticut. The Folly Beach Ordinance unlawfully and in direct contradiction of the Governor's Executive Order restricts rentals to any person including current residents of Charleston County and the State of South Carolina. Clearly these are not ordinances that "complement" one another or in any way work in conjunction with one another. The City Ordinance does not reference in any fashion the place from which the renter comes. That is the criteria put in place by the Governor's Executive Order. Under the Folly Beach Ordinance a long term renter could be from one of the "hot spot" areas prohibited by the Governors Order but would be allowable under the Folly Beach Ordinance. The Governors Order provides exceptions for individuals involved in commercial vehicle/ transportation operators, airline employees, military, healthcare, public safety, or emergency response. The Folly Beach Ordinance would deny these people the ability obtain a short term rental in the city of Folly Beach even though they are granted a specific exemption under the Governors Order.

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Clearly the City Council led by the Mayor panicked and overreacted to the situation and passed an ordinance that deprived property owners of a valuable right. It also has been used to impose an unfair and improper penalty upon Appellant.

III. THE HEARING OFFICER ERRED IN FAILING TO FIND THAT BECAUSE THE FOLLY BEACH EMERGENCY ORDINANCE WAS MORE RESTRICTIVE THAN THE GOVERNORS EXECUTIVE ORDER WITH REGARD TO SHORT TERM RENTALS, THE FOLLY BEACH EMERGENCY ORDINANCE WAS ARBITRARY AND CAPRICIOUS.

The Order of the Hearing officer ignores the argument that the Folly Beach Ordinance is contrary to the Constitution and Law of the State of South Carolina because it is in fact arbitrary and capricious. Appellant asserts that the law is contrary as set forth in her briefs and by the evidence submitted at the hearing. It is worthy of note that the Governor amassed the entire emergency apparatus of the State of South Carolina and with all that knowledge, experience and scientific information he concluded that we only need to prohibit those individuals from areas of extensive community transmission or "hot spots" while the Mayor and the City Council had available to them one individual – Dr. Edward O'Bryan, Chief Medical Officer for MUSC Business- and they concluded that they needed to exclude everyone. They concluded based upon that limited information that they should shut down and isolate Folly Island from the rest of the world. Nothing could be more arbitrary.

IV. THE HEARING OFFICER ERRED IN FIDING THAT THE FACTS PRESENTED SUPPORTED A FINDING OF A VIOLATION OF THE EMERGENCY ORDINACE AND WARRANTED A FINDING THAT THERE WAS A "NEW CHECK IN" THAT VIOLATED THE EMERGENCY ORDINANCE?

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The facts as presented in this case lead to only one reasonable conclusion that the mere fact that Appellant moved the renters from one house to another does not constitute a new check in. It is well established that in interpreting a statute, the court's primary function is to ascertain the intention of the legislature. First South Savings Bank, Inc. v. Gold Coast Assoc., 301 S.C. 158, 390 S.E.2d 486 (Ct.App.1990). When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning. Id. Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980), State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (S.C. 1991), Glover v. County of Charleston, 361 S.C. 634, 606 S.E.2d 773 (S.C. 2004).

First the term "new check in" is not defined by the Emergency Ordinance nor any other ordinance so it must be afforded its ordinary meaning. Clearly the City applied and the Hearing Officer adopted a very strained definition of what constituted a new check in.

The City has adopted the position that anytime a person moves from one rental unit to another no matter the reason it constitutes a "New Check In". (See Testimony of Upton, Transcript pp 19-20). Conversely, The Appellant, who has Forty Seven (47) years of experience in the vacation rental business defines new check in as "the first time the person checks into Folly Beach," and she further confirms that it is not uncommon to have to move renters from one rental unit to another but that does not create a "new Check in." (Transcript pp. 54-55). Clearly based upon the facts presented the finding by

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the hearing officer that moving the Richardson's from one rental unit to another constituted a "new Check in" is an abuse of discretion.

With regard to her finding that the Richardson's did not qualify as long term renters, the City has never contended that Appellants violated the Ordinance because the renter was a short term as opposed to a long term renter. In fact she would have been required to show her rental contract to the officer guarding the entrance to Folly Beach every day as she went back and forth to the grocery store.

Taken as a whole the purpose of the ordinance was to prevent new people from coming on the Island. It was essentially to isolate Folly Island from the rest of Charleston County, even though every single person on the Island would leave and return to go shopping. Mr. Wilson himself testified that the purpose of the Emergency Ordinance was to keep people off of the island. He testified that the acts of Appellant constituted a violation of the Ordinance because it "added people" to the island. When questioned he stated that it added the property owners from the original house the renters were staying in. (Transcript page 102). That position makes absolutely no common sense. If the Island was COVID free allowing the renters to stay on the island would introduce no new people. If you made the renters leave instead of allowing them to move into another vacant house the owners of the first house were still going to come onto the island whether the renters were there or not.

One of the most important points raised at the hearing was that after this incident occurred the City issued COVID Update #11 which imposed a new restriction indicating that "Visitors Checked in may remain until the end of their existing reservation, and the stay may be extended **only for the same guests, on the same rental**

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terms, and at the same address." (Exhibit J). Since this is the first clarification or Emergency Ordinance regulation that even mentions a restriction on extending reservations one would reasonably conclude that extension had been allowed in the past but are now being restricted by the COVID Update. This Update was issued on April 14, 2020, the same day Appellant was charged with violating the ordinance. The only reason to issue the Update and specifically address the terms under which a client could be extended was that other real estate rental companies were doing the exact same thing.

V. THE HEARING OFFICER ERRED IN FINDING THAT THE CITY IMPOSING A VIOLATION ON APPELLANT WHILE ALLOWING SIMILAR CONDUCT DID NOT CONSTITUT AN IMPERMISSABLE ARBITRARY ENFORCEMENT OF THE EMERGENCY ORDINANCE.

First the Hearing Officer in her Order and in her Return indicates that she ruled out exhibit U. That is not correct and not supported by the record. (Transcript pp. 94-95). While the Hearing officer was critical of the value of Exhibit U she allowed the exhibit into evidence.

Second there was ample evidence that on two separate occasions the City of Folly Beach had allowed situations factually identical to the one that resulted in Appellants fine. Based upon that the City should be prohibited from treating Appellant differently that hey treat other individuals in a similar position. When a Government discriminates against an individual they should not be allowed to disguise discrimination in the cloak of "prosecutorial discretion." (Testimony of Wilson Transcript p.101)

CONCLUSION

In conclusion, for the reasons stated above the decision of the Hearing Officer affirming the decision of the License Official should be reversed and the Violation issued by the City should be dismissed based upon the grounds of preemption or for such other grounds as set forth in this brief.

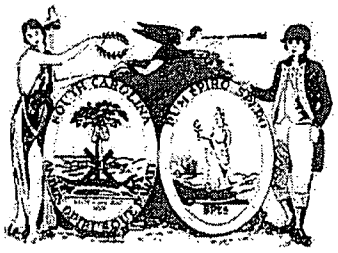
S/ JohnW. Carrigg, Jr.
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SCB# 0015239
Attorney for Appellants

November 2, 2020
Lexington, South Carolina

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State of South Carolina

Executive Department



FILED

MAR 13 2020

Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2020-08

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in proactively preparing for and promptly responding to the threat posed by the 2019 Novel Coronavirus ("COVID-2019"); and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, having consulted with numerous state and federal agencies, officials, and experts, to include DHEC, EMD, and the PHEPC, the undersigned has determined that it is necessary and prudent to declare that an emergency exists, or that the threat thereof is imminent, due to the evolving nature and scope of the public health threat or other risks posed by COVID-19 and the actual and anticipated impacts associated with the same; and

WHEREAS, section 1-3-420 of the South Carolina Code of Laws, as amended, provides that "[t]he Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of . . . a public health emergency . . . a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any

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particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists"; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is authorized pursuant to section 25-1-440 of the South Carolina Code of Laws, as amended, to "declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency . . . has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation"; and

WHEREAS, in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, a "public health emergency" exists when there is an "occurrence of imminent risk of a qualifying health condition," which includes "an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness"; and

WHEREAS, for the aforementioned and other reasons, the undersigned has determined that COVID-19 poses an actual or imminent public health emergency for the State of South Carolina.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby declare that a State of Emergency exists in South Carolina. Accordingly, for the foregoing reasons and in accordance with the cited authorities and other applicable law, I further order and direct as follows:

Section 1. I hereby memorialize and confirm my prior activation of the Plan and direct that the Plan be further placed into effect and that all prudent preparations be taken at the individual, local, and state levels to proactively prepare for and promptly respond to the threat posed by COVID-19.

Section 2. I hereby order and direct that DHEC is immediately vested with those emergency powers set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, and without limiting the powers DHEC already possesses to combat infectious diseases, to promptly and effectively address the cited public health emergency. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, "DHEC must use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment." To this end, I further direct DHEC to restrict visitation to nursing homes and assisted living facilities, with the exception of end-of-life situations, as DHEC deems necessary and appropriate.

Section 3. I hereby order the closure of all public schools, to include state-supported colleges, universities, and technical colleges, in the following counties: Kershaw and Lancaster, beginning Monday, March 16, 2020, which shall remain closed for a period of fourteen (14) days, unless otherwise modified, amended, or rescinded. This Order applies to all employees of public

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schools located in the aforementioned counties, with the exception of those emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate school district official. DHEC shall consult with the Superintendent of Education to provide guidance to local school district leadership regarding the timing and necessity of any additional school closures. This Order does not apply to state government offices under the authority of the undersigned, which shall remain open for operation during their normal business hours unless and until otherwise directed.

Section 4. I hereby authorize and direct state correctional institutions and local detention facilities to suspend visitation processes and procedures, as necessary, during this State of Emergency.

Section 5. I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and direct the Adjutant General to issue the requisite supplemental orders as he deems necessary and appropriate. I further order the activation of South Carolina National Guard personnel and the utilization of appropriate equipment at the discretion of the Adjutant General, and in coordination with the Director of EMD, to take necessary and prudent actions to assist the people of this State. I authorize Dual Status Command, as necessary, to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status).

Section 6. I hereby order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina shall be suspended, and I direct the South Carolina Law Enforcement Division ("SLED") to initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

Section 7. I hereby declare that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, are in effect and shall remain in effect for the duration of this State of Emergency.

Section 8. I hereby modify and amend Executive Order No. 2020-07, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, to extend the provisions thereof to commercial vehicles and operators of commercial vehicles responding to the declared emergency in the State of South Carolina or otherwise assisting with the public health threat posed by COVID-19, as well as to commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips).

This Order is effective immediately and shall remain in effect for a period of fifteen (15) days unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued verbally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 13th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State

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CITY OF FOLLY BEACH

1st Reading: March 28, 2020
Amended: April 6, 2020 Introduced by: Mayor Goodwin

No Second Reading per S.C. Code § 5-7-250 Date: March 28, 2020

ORDINANCE 06-20

AN EMERGENCY ORDINANCE TO DECLARE A STATE OF EMERGENCY, TEMPORARILY SUSPEND THE NORMAL OPERATING PROCEDURES OF FOLLY BEACH CITY COUNCIL MEETINGS AND TAKE ADDITIONAL MEASURES TO PROTECT THE PUBLIC.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that the following Emergency Ordinance be adopted pursuant to South Carolina Code § 5-7-250:

WHEREAS, it is well recognized that SARS-CoV-2, the virus that causes the disease COVID-19, presents a public health concern that requires extraordinary protective measures and vigilance; and

WHEREAS, these matters have taken many forms across the nation including travel bans, school closures, individual quarantines, and cancellation of major events, among other measures; and

WHEREAS, the Governor of South Carolina declared a State of Emergency on March 13, 2020, to enhance the state's response to the COVID-19 virus's impact on the state; and

WHEREAS, the City of Folly Beach is working with other government agencies in an effort to prevent the spread of disease; and

WHEREAS, Section 5-7-250 of the South Carolina Code of Laws empowers Council to enact emergency ordinances affecting life, health, or safety; and

WHEREAS, in light of the foregoing, City Council of the City of Folly Beach deems it proper and necessary to adopt this emergency ordinance in order to address how the City and Council will proceed in light of the above emergency;

WHEREAS, pursuant to Executive Order No. 2020-14, March 27, 2020, the Governor has authorized law enforcement officers of any municipality "to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by [the Governor];"

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WHEREAS, as part of the record, the City relies on public testimony from Dr. Edward O'Bryan, Chief Medical Officer for MUSC Business, which outlines the danger of allowing beach visitors and short-term rentals;

NOW BE IT THEREFORE ORDAINED that the following emergency procedures are hereby adopted and to remain in effect until ~~April 30, 2020,~~ June 1, 2020 subject to termination or extension by Council:

1. Council formally adopts the Mayor's Proclamation of Emergency dated March 16, 2020 and the measures contained therein. Council also confirms that the Mayor, or the Mayor Pro Tempore in his absence, can exercise the emergency powers granted to the Mayor pursuant to City of Folly Beach Ordinance § 35.05.

2. City Hall is closed and moved to a virtual, phone, and dropbox operation until further notice.

3. All City meetings scheduled for March and April are postponed.

4. City Council members and staff will be authorized during this State of Emergency to attend meetings of Council via teleconference at their discretion.

5. The public will not be allowed to attend Council meetings, or any other City meetings, in person. Meetings will still be broadcast. Measures will be taken to allow the public to submit comments prior to any meeting by emails, which will be included in the public record of the meeting.

6. All deadlines imposed by City Ordinance or rule, applicable to the municipality or any applicant, shall be suspended, during this temporary period.

7. The City Administrator is authorized to develop and enact a plan in order to ensure continuity in the delivery of government services in light of the COVID-19 outbreak.

8. The City Administrator is authorized to cancel and revoke any special events permits issued prior to the date of this ordinance for events taking place until April 30, 2020.

9. The Mayor is authorized to take the following measures to limit access to the City of Folly Beach by the general public until ~~April 30, 2020~~ June 1, 2020:

a. Public Safety will establish a check point limiting access to the City on a 24-hour basis.

b. The following persons will have access to the City:

i. Residents, including long-term renters, and property owners, ~~including a maximum of 2 family members (spouse, children, parents, grandparents only)~~ with

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two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, lease, etc.).

ii. Residents may obtain a pass to give to professional medical caretakers through locations and methods established by staff.

iii. Employees of local businesses must have a previously-issued red or yellow reentry pass issued by the City and employee credentials.

iv. Contractors and service businesses with a Folly Beach Business License vehicle sticker. Contractors must stay on site.

v. Delivery persons who can demonstrate business on the island at the checkpoint, including pharmacy, FedEx, UPS, Amazon, and food delivery, by showing delivery address and goods at the checkpoint.

10. The Mayor is authorized to other protective measures and may authorize Public Safety to do whatever may be deemed necessary to maintain peace and good order and protect the public health, as authorized by Executive Order No. 2020-14, Section 2, and any other Executive Orders issued by the Governor.

11. Starting on ~~March 29, 2020~~ April 7, 2020 at 9:00 a.m., no new check-ins are permitted ~~at any short-term rental, hotel, or other overnight accommodation~~ regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation.

12. All retail, non-essential businesses are hereby ordered closed. Grocery stores, liquor stores, gas stations, healthcare providers, and financial services (including appraisers and real estate agents without clients) are deemed essential. Per Executive Order No. 2020-10 restaurants and food-service establishments may not permit on-premises or dine-in consumption but may continue to offer feed or beverages for off-premises consumption.

13. Any failure to comply with this ordinance, including efforts to circumvent this ordinance, may be penalized a) as a civil infraction pursuant to provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of business license may result in the loss of a business license or other measures, or b) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency, or c) any other penalties provided by State law, including penalties granted pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State."

This emergency ordinance shall be terminated or extended by the issuance of another ordinance or shall automatically expire on ~~April 30, 2020~~ June 1,2020.

AMENDED AND ADOPTED this 6th day of April 2020, at Folly Beach, South Carolina.

Ayes: 7 Nays: _____ Abstains: _____

~~Municipal Clerk~~
City Administrator

Tim Goodwin, Mayor

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John Carrigg

From: rbrooks@cityoffollybeach.com <no-reply@onsolve.com>
Sent: Tuesday, March 24, 2020 1:26 PM
To: jcarrigg@carrigglaw.com
Subject: Folly Beach COVID-19 Update 5

Folly Beach COVID-19 Update 5

The Folly Beach checkpoint will continue to run between 6am and 8pm. However, effective 10am Wednesday, March 25 the following restrictions will be in place:

Checkpoint & Business Restriction

• Short-Term Rentals, Hotels, and Other Overnight Accommodations: no new check ins are permitted beginning 10am Wednesday, March 25, 2020 through April 30, 2020. Visitors currently checked in may remain until the end of their existing reservations. Long-term rentals of 30 days or more are still permitted by showing valid lease agreement.
• Physical businesses (except essential businesses, listed below) may not allow patrons indoors and must follow CDC guidelines. However, business employees may come to work with a checkpoint pass, and businesses may continue to serve clients virtually, by delivery, or at a service window. Grocery stores, gas stations, healthcare providers, financial services, are deemed essential by the CDC, and may continue to allow customers inside.
• Construction and service businesses may continue, but the crew is limited to the job site premise only. Employees must have a copy of the permit (if applicable) and the 2020 business license vehicle sticker or copy of current business license. Please expect substantial delays in processing new building permit and business license applications.
• All Other Checkpoint Regulations:
Passes will be issued Tuesday and Wednesday afternoons (3/24 and 3/25) between 2:00 p.m. and 5:00 p.m. in front of City Hall. Otherwise, the Citizen Information Line will be able to make arrangements by calling 843.588.7006.
o Residents and property owners: Please bring two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, lease, etc).
o Relatives and family members Residents and property owners are entitled to a maximum of 2 family passes (spouse, children, parents, grandparents only).
o Guest passes are not permitted.
o Delivery persons who can demonstrate business on the island at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
o Caretakers: Professional caretakers are limited to caretakers with professional medical service credentials. Existing caretaker passes issued by the City will still be honored.
o Essential Business Employees Dash passes for essential businesses will still be honored at the checkpoint.
o Media personnel with media credentials presented.
o Holders of Folly Beach Post Office boxes must wait until after 8pm to check their mailbox unless they are otherwise allowed (resident, owner, essential employee, etc)
o Any other emergency requests must go through the Citizen information Line: 843-588-7006. Please expect delays as call volumes are extremely heavy at this time.

Operations and Other Information

1. Charleston County School District has extended school closures through April 13; they continue to provide free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary on Harbor View Road.
2. City Parks, Playgrounds, and Facilities are closed consistent with Charleston County Parks and Recreation.
3. City Trash operations will continue on normal schedule. Please check Charleston
4. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
5. City Hall is operating via virtual, phone, and dropbox operations until further notice.
a. All nonessential business walk-in customer service is terminated at this time.
b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
6. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
7. Municipal Court will be canceled March 20th and 27th.
8. Charleston County Parks are closed: Visit their Alert Center for updates.
9. Effective Wednesday morning, March 18, Governor McMaster has ordered restaurants and bars to close other than take-out food service. Food providers may provide take-out food service only, but no on-premise consumption of food or alcohol is permitted.
10. Governor McMaster has extended the state filing deadline is extended to June 1st for all state taxes.
11. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission will meet in coming weeks to set a new date.
12. All City meetings scheduled for March are postponed: this includes Design Review Board (3/16), Candidate Forum (3/17), Tourism Visitor Promotion Committee (3/18), Parks & Recreation (3/24), and the OCRM Public Hearing (3/26).

Medical Testing
If you are experiencing life-threatening symptoms including respiratory distress, please call 911.

For all other symptoms of COVID-19, such as fever, cough or shortness of breath, MUSC Health Virtual Care telehealth service is offering COVID-19 screenings free of charge to South Carolina residents experiencing COVID-19-like symptoms located in South Carolina. Non-residents may use the service but may be charged for the visit and the panel. All MUSC screenings must be initiated online through their telehealth service: https://campaigns.muschealth.org/virtual-care/index.html. No walk-up traffic is accepted at the drive-through testing location.

You may also be able to obtain testing through your regular doctor's office and lab, dependent on each medical provider's capabilities. Please check with your doctor's office as capabilities continue to be expanded daily. The Governor has requested that doctors offices and insurance companies to provide tests at no charge; however, this is not a mandate and may not be followed by every provider.

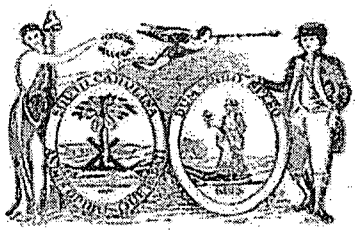
If you are unable to access the links in this email go to www.cityoffollybeach.com and click the COVID 19 Information link there.

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State of South Carolina

Executive Department



Office of the Governor

EXECUTIVE ORDER NO. 2020-19

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"), cases of which have now been identified and reported in each of the State's forty-six (46) counties; and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

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WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[w]ork or engage in schooling from home whenever possible"; "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the

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emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

WHEREAS, on March 27, 2020, the President of the United States granted the undersigned's aforementioned request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

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WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain "non-essential" businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, directing that certain additional "non-essential" businesses, venues, facilities, services, and activities in the general category of retail stores be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, in light of the continued spread of COVID-19 and the resulting strain on healthcare resources, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding

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"emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, the undersigned may authorize a party to exceed the terms of any curfew imposed if "the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official," and "exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures designed to slow the spread of COVID-19 and limit the resulting strain on healthcare resources.

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NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Lodging and Travel Restrictions for Individuals Entering South Carolina from High-Risk Areas

To prepare for and respond to the ongoing and potential impacts associated with COVID-19, and the evolving public health threat posed by the same, and to maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and to avoid or minimize the potential risks associated with individuals entering this State from areas with extensive community transmission of COVID-19, additional action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. I hereby order and direct that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration (collectively "Lodging"), as set forth below, in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut).

C. For purposes of this Section, Lodging shall include the following:

1. A "lodging establishment," as defined by section 45-2-20(2) of the South Carolina Code of Laws, as amended, to mean "a hotel, motel, villa, condominium, inn, tourist court, tourist camp, campground, bed and breakfast, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration."

2. A vacation rental property or other short-term rental property that involves the rental of any house, condominium, room, or other dwelling unit for a period of less than ninety (90) days if such property is advertised, represented, or held out to the public as a place regularly rented to, or available for rental to, guests or if such property has been so advertised, represented, or held out to the public at any point during the preceding thirty (30) days.

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D. This Section does not prohibit any individual, entity, or establishment from providing Lodging to the following:

1. Individuals operating commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips); individuals employed by airlines; and individuals otherwise engaged in commercial transportation activities.

2. Individuals performing or assisting with military, healthcare, public safety, or emergency response operations, as well as any other operations or services identified by the United States Cybersecurity and Infrastructure Security Agency in its March 28, 2020 Memorandum, or any future amendments or supplements thereto, as essential to continued critical infrastructure viability.

E. I hereby modify and amend Section 2 of Executive Order No. 2020-14 to clarify that the provisions thereof shall not apply to individuals performing or assisting with those operations, services, or activities identified in Section 1(D)(1), (2) of this Order.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of

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Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 3rd DAY OF APRIL, 2020.

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State

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E

ALAN WILSON
ATTORNEY GENERAL

March 29, 2020

The Hon. Jeff Bradley
South Carolina House of Representatives District 123
306B Blatt Bldg.
Columbia 29201

Dear Rep. Bradley:

We received your request seeking an opinion on the extraordinary powers of the Governor during a state of emergency. This expedited opinion sets out our Office's understanding of your question and our response. Our guidance herein, as with any other opinion of this Office, is advisory only.

In view of the Governor's issuance of a new declaration of emergency on March 28, 2020, and with the benefit of additional time, we are adding additional authorities to our original opinion. These authorities supplement the original opinion but do not in any way change the reasoning or conclusion. We note that the new declaration of emergency states the following:

> If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

Executive Order of Governor of South Carolina 2020-15 §6(B).

Issue:

Do the Governor's extraordinary powers in a state of emergency preempt similar orders of counties and municipalities during the same state of emergency?

Law/Analysis:

This opinion has been expedited and will not undertake an exhaustive analysis of all applicable law. It should be read and understood in the context of the law cited and the current circumstances.

We affirm that the previous opinion of this Office dated September 5, 1980 and relating to compulsory evacuations by municipalities controls in this instance. *Op. S.C. Att'y Gen.*, 1980

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WL 81975 (September 5, 1980). That opinion concluded that only the Governor was empowered to exercise extraordinary emergency powers under Section 25-1-440. *Id.* The opinion noted that "there is no enumerated power expressly conferred upon such political subdivisions as would reasonably include the extraordinary authority . . . ." *Id.* It further observed that "within such extraordinary power lies the extraordinary opportunity for abuse," but also that "no one would seriously challenge that such an emergency power may be needed given the ever present potential of enemy attack, epidemic, natural disaster or nuclear accident." *Id.* (emphasis added). The opinion reasoned that the Legislature had balanced those competing interests by vesting the power in the Governor exclusively. *Id.*

Additionally, we highlight this language from our 1980 opinion in particular:

> Each provision [of Home Rule] makes clear that the grant of power is subject to the general law of the State.
>
> . . .
>
> The empowering of any government or officials with the authority to order and compel an evacuation, thereby forcibly separating its citizens from their homes, businesses, property and even families is clearly at odds with the fundamental rights, freedoms and privileges which are the bedrock of our nation.

Op. S.C. Att'y Gen., 1980 WL 81975 (September 5, 1980).

This conclusion that the Governor's emergency powers preempt those of counties and municipalities is equally applicable to the pandemic created by COVID-19. Accordingly the 1980 opinion is affirmed and is provided as guidance to counties and municipalities.

Furthermore, Section 25-1-440 expressly begins by stating that during a state of emergency, "the Governor . . ., as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State." S.C. Code Ann. § 25-1-440(a) (2018). To that end, the Governor "is empowered with the following additional authority to adequately discharge this responsibility." *Id.* The corollary to this is that while local governments retain their Home Rule powers during a state of emergency, they do not have extraordinary emergency powers. They cannot exercise the emergency powers delegated to the Governor by the General Assembly. As additional persuasive support for this conclusion, consider this reasoning of the Michigan Supreme Court:

> It is conceded in the present case that, in the event the Governor exercises any of the powers granted to him by [the emergency powers law], local government has no power to act. Conversely, it must be concluded, if the Governor does not elect to exercise any of the powers granted to him, local government is without power to act since the field of permitted action has been entirely preempted by the State law.

Walsh v. City of River Rouge, 385 Mich. 623, 189 N.W.2d 318 (Mich. 1971).

Additional authority may be found in Art. VIII § 14(5) of the State Constitution which prohibits local governments from setting aside the State's criminal laws. As our Supreme Court consistently has held, Art. VIII § 14 forbids a local government from making activity criminal which is legal under state law. *See Beachfront Entertainment, Inc. v. Town of Sullivan's Island*, 379 S.C. 602, 606, 666 S.E.2d 912, 914 (2008) (smoking); *Palmetto Princess, LLC v. Town of Edisto Beach*, 369 S.C. 50, 631 S.E.2d 76 (2006) (day cruises); *Op. S.C. Att'y Gen.*, 2015 WL 4596713 (July 20, 2015) (and cases cited therein). Here the Governor's executive orders have made certain actions criminal, but others remain legal, for the duration of the executive order. However, the emergency ordinances in question deem these same actions, which are legal under state law, to be criminal within the limits of that political subdivision – arguably in violation of Art. VIII § 14(5).

Of course, all of these powers are subject to any applicable constitutional limitations. We do not undertake to set out an exhaustive list of those constitutional protections here, and any particular case would have to be considered on its merits. We refer the reader to our opinion issued March 24 to Chief Mark Keel concerning enforcement of Section 16-7-10 for more discussion of this issue. *Op. S.C. Att'y Gen.*, (March 24, 2020) ("Some examples of these fundamental constitutional protections are the freedom of religion inherent in a church or other religious meeting, or a wedding or funeral; the constitutional protections of the family unit; and the freedom of assembly for political purposes.") (internal citations omitted).

Additionally, as we have reiterated on numerous occasions, "the autonomy and authority of counties has increased significantly since the advent of Home Rule." *Op. S.C. Att'y Gen.*, 2012 WL 1036301 (March 20, 2012). This Office has consistently supported the broad Home Rule powers of counties and municipalities. Nothing in this opinion should be construed in derogation of the numerous prior opinions of this Office expounding on that power entrusted to local officials.

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Conclusion:

In conclusion, consistent with our 1980 opinion, we reaffirm that local government cannot exercise the emergency powers delegated to the Governor by the General Assembly. As our General Assembly codified into the law of our State, "the Governor . . . as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State." S.C. Code Ann. § 25-1-440(a) (2018). Therefore, counties and municipalities should be aware that any unauthorized exercise of such emergency powers could subject these political subdivisions to liability at the behest of a private citizen with requisite legal standing.

However, this Office has opined on many prior occasions that a municipal ordinance is a legislative enactment and is presumed to be constitutional." *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999). The unconstitutionality of an ordinance must be proven beyond a reasonable doubt. *Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 532, 476 S.E.2d 477, 481 (1996). While this Office may comment upon constitutional problems or a potential conflict with general law, only a court may declare an ordinance void as unconstitutional, or preempted by or in conflict with state statutes. Thus, we have recognized that an ordinance must continue to be enforced unless and until set aside by a court of competent jurisdiction. *See, e.g., Op. S.C. Att'y Gen.*, 2010 WL 1808719 (April 9, 2010).

Of course, all of these powers are subject to any applicable constitutional limitations. We refer the reader to our opinion issued March 24, 2020 to Chief Mark Keel concerning enforcement of Section 16-7-10 for more discussion of this issue. This Office has consistently supported the broad Home Rule powers of counties and municipalities. However your questions do not concern day-to-day Home Rule authority, but the extraordinary powers delegated to the Governor during these extraordinary times. Those powers are exclusive and may be exercised only by the Chief Executive of the State.

Sincerely,

Robert D. Cook
Solicitor General

cc: The Hon. Henry McMaster, Governor of South Carolina (via counsel)
Mark Keel, Chief of SLED

Ryan Alphin, South Carolina Police Chief's Association
Jarrod Bruder, South Carolina Sheriff's Association
South Carolina Association of Counties
Municipal Association of South Carolina

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John Carrigg

From: rbrooks@cityoffollybeach.com <no-reply@onsolve.com>
Sent: Friday, March 27, 2020 7:06 PM
To: jcarrigg@carrigglaw.com
Subject: Folly Beach COVID-19 Update 7

Folly Beach COVID-19 Update 7

Effective today, Friday, March 27, 2020 at 8:00 p.m. the City of Folly Beach will be suspending checkpoint operations based on guidance from the Attorney General of South Carolina. The City will no longer restrict access to the City pending further direction from Governor McMaster.
Additionally, restrictions on short-term rentals and other overnight accommodations are lifted at this time.

The beach will be open, however, the Governor has ordered everyone to maintain social distance and we will work to disperse all crowds.

• Short-Term Rentals, Hotels, and Other Overnight Accommodations may permit new check- ins. However, all guests should be advised that they are subject to all executive orders issued by Governor McMaster.
• Physical Businesses must follow Governor McMaster's orders and CDC guidelines.
• Construction and service businesses may continue with building permit (if applicable) and 2020 Folly Beach business license. Please expect substantial delays in processing new building permit and business license applications. To apply for a new permit or license, please visit our Virtual City Hall at:
https://www.cityoffollybeach.com/virtual-city-hall/

Operations and Other Information

1. Charleston County School District has extended school closures through April 13; they continue to provide free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary
on Harbor View Road.
2. City Parks, Playgrounds, and Facilities are closed consistent with Charleston County Parks and Recreation. The boat landing is open for use.
3. City Trash operations will continue on normal schedule. Please check Charleston
4. Municipal Court will be canceled through April 30, 2020, except for emergency matters.
5. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
6. City Hall is operating via virtual, phone, and dropbox operations until further notice.
a. All nonessential business walk-in customer service is terminated at this time.
b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
7. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
8. Charleston County Parks are closed: Visit their Alert Center for updates.
9. Effective Wednesday morning, March 18, Governor McMaster has ordered restaurants and bars to close other

than take-out food service. Food providers may provide take-out food service only, but no on-premise consumption of food or alcohol is permitted.
10. Governor McMaster has extended the state filing deadline is extended to June 1st for all state taxes.
11. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission will meet in coming weeks to set a new date.
12. All City meetings scheduled for March are postponed: this includes Design Review Board (3/16), Candidate Forum (3/17), Tourism Visitor Promotion Committee (3/18), Parks & Recreation (3/24), and the OCRM Public Hearing (3/26).

Medical Testing
If you are experiencing life-threatening symptoms including respiratory distress, please call 911.

For all other symptoms of COVID-19, such as fever, cough or shortness of breath, MUSC Health Virtual Care telehealth service is offering COVID-19 screenings free of charge to South Carolina residents experiencing COVID-19-like symptoms located in South Carolina. Non-residents may use the service but may be charged for the visit and the panel. All MUSC screenings must be initiated
online through their telehealth service: https://campaigns.muschealth.org/virtual-care/index.html.
No walk-up traffic is accepted at the drive-through testing location.

You may also be able to obtain testing through your regular doctor's office and lab, dependent on each medical provider's capabilities. Please check with your doctor's office as capabilities continue to be expanded daily. The Governor has requested that doctors offices and insurance companies to provide tests at no charge; however, this is not a mandate and may not be followed by every provider.

Prevention
There is currently no vaccine to prevent coronavirus disease 2019 (COVID-19). The best way to prevent illness is to avoid being exposed to this virus. However, as a reminder, CDC always recommends everyday preventive actions to help prevent the spread of respiratory diseases,
including:

Stay home and practice social distancing, whether or not you are experiencing symptoms
Avoid close contact with people who are sick.
Avoid touching your eyes, nose, and mouth. Stay home when you are sick.
Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
Clean and disinfect frequently touched objects and surfaces using a regular household cleaning spray or wipe.
Follow CDC's recommendations for using a facemask.
• CDC does not recommend that people who are well wear a facemask to protect themselves from respiratory diseases, including COVID-19.
• Facemasks should be used by people who show symptoms of COVID-19 to help prevent the spread of the disease to others. The use of facemasks is also crucial for health workers and people who are taking care of someone in close settings (at home or in a health care facility).
Wash your hands often with soap and water for at least 20 seconds, especially after going to the bathroom; before eating; and after blowing your nose, coughing, or sneezing.
• If soap and water are not readily available, use an alcohol-based hand sanitizer with at least 60% alcohol. Always wash hands with soap and water if hands are visibly dirty.

About Coronavirus Disease 2019 (COVID-19)
All citizens are encouraged to review the information below and make plans for you and your family in the event of disruptions to your daily routine.
o About Coronavirus Disease 2019 (COVID-19)

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o How it spreads
o Symptoms
o Prevention & treatment
o Testing
o Frequently Asked Questions
o South Carolina Department of Health and Environmental Control Latest Updates
o Centers for Disease Control Latest Updates

Information for Travel
o Coronavirus Disease 2019 Information for Travel
o FAQ for travelers

If you are unable to access the links in this email go to www.cityoffollybeach.com and click the COVID 19 Information link there.

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John Carrigg

From: rbrooks@cityoffollybeach.com <no-reply@onsolve.com>
Sent: Saturday, March 28, 2020 4:18 PM
To: jcarrigg@carrigglaw.com
Subject: Folly Beach COVID-19 Update 8

Effective by 5:00 p.m. Saturday March 28, the checkpoint for restricted access to the island will resume 24 hours per day. The checkpoint will be located at Little Oak Island Drive. Further, no new check-ins to short-term rentals will be permitted after 9:00 a.m. Sunday, March 29.

Checkpoint & Business Restrictions

• Short-Term Rentals, Hotels, and Other Overnight Accommodations: no new check ins are permitted beginning 9am Sunday, March 29, 2020 through April 30, 2020. Visitors currently checked in may remain until the end of their existing reservations.
• Physical businesses may not allow patrons indoors and must follow CDC guidelines. However, business employees may come to work with a checkpoint pass, and businesses may continue to serve clients virtually, by delivery, or at a service window. Grocery stores, gas stations, healthcare providers, financial services (included real estate agents and appraisers), are deemed essential by the CDC, and may continue to allow customers inside.
• Construction and service businesses may continue, but the crew is limited to the job site premise only. Employees must have a copy of the building permit (if applicable) and the 2020 Folly Beach business license vehicle sticker or copy of current Folly Beach business license (or state license for real estate agents and appraisers). Please expect delays in processing new building permit and business license applications. To apply for a new permit or license, please visit our Virtual City Hall at: https://www.cityoffollybeach.com/virtual-city-hall/
• Residents and property owners: Please bring two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, lease, etc).
• Checkpoint Passes
Passes can be issued by calling the Citizen Information Line: 843.588.7006 and arrangements will be made to deliver the passes to the checkpoint for pickup. Please expect a 24-hour turnaround time for new passes.
o Relatives and family members Residents and property owners are entitled to a maximum of 2 family passes (spouse, children, parents, grandparents only).
o Caretakers: Professional caretakers are limited to caretakers with professional medical service credentials. Previously issued caretaker passes issued by the City will still be honored.
o Guest passes are not permitted.
• Media personnel with media credentials presented.
• Delivery persons who can demonstrate business on the island at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
• Non-Resident holders of Folly Beach Post Office boxes: must show their key at the check point.
• Any other emergency requests must go through the Citizen information Line: 843-588-7006.

Operations and Other Information

1. Charleston County School District has extended school closures through April 13; they continue to provide free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary on Harbor View Road.

2. City Parks, Playgrounds, and Facilities are closed consistent with Charleston County Parks and Recreation.
3. City Trash operations will continue on normal schedule. Contact Charleston County for recycling operations, their number is: (843)720-7111.
4. Municipal Court will be canceled through April 30, 2020, except for emergency matters.
5. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
6. City Hall is operating via virtual, phone, and dropbox operations until further notice.
a. All nonessential business walk-in customer service is terminated at this time.
b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
7. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
8. Charleston County Parks are closed: Visit their Alert Center for updates.
9. Effective Wednesday morning, March 18, Governor McMaster has ordered restaurants and bars to close other than take-out food service. Food providers may provide take-out food service only, but no on-premise consumption of food or alcohol is permitted.
10. Governor McMaster has extended the state filing deadline is extended to June 1st for all state taxes.
11. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission will meet in coming weeks to set a new date.
12. All City meetings scheduled for March are postponed: this includes Design Review Board (3/16), Candidate Forum (3/17), Tourism Visitor Promotion Committee (3/18), Parks & Recreation (3/24), and the OCRM Public Hearing (3/26).

For medical testing and prevention information or if you are unable to access the links in this email go to www.cityoffollybeach.com and click the COVID 19 Information link to access the entire COVID-19 Update 8.

ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

John Carrigg

From: rbrooks@cityoffollybeach.com <no-reply@onsolve.com>
Sent: Tuesday, March 31, 2020 10:04 AM
To: jcarrigg@carrigglaw.com
Subject: Folly Beach COVID-19 Update 9 - Governor has issued an Executive Order

The Governor has issued a state-wide executive order closing the public beach access points and public boat landings. In addition, the City's prohibition on short-term rental check-ins is still in place. To enforce these restrictions, the checkpoint will remain in place 24 hours per day.

The full text of the order can be found by clicking HERE.

Checkpoint & Business Restrictions

• Short-Term Rentals, Hotels, and Other Overnight Accommodations: no new check ins are permitted beginning 9am Sunday, March 29, 2020 through April 30, 2020. Visitors currently checked in may remain until the end of their existing reservations.
• Physical businesses may not allow patrons indoors and must follow CDC guidelines. However, business employees may come to work with a checkpoint pass, and businesses may continue to serve clients virtually, by delivery, or at a service window. Grocery stores, gas stations, healthcare providers, financial services (included real estate agents and appraisers), are deemed essential by the CDC, and may continue to allow customers inside.
• Construction and service businesses may continue, but the crew is limited to the job site premise only. Employees must have a copy of the building permit (if applicable) and the 2020 Folly Beach business license vehicle sticker or copy of current Folly Beach business license (or state license for real estate agents and appraisers). Please expect delays in processing new building permit and business license applications. To apply for a new permit or license, please visit our Virtual City Hall at: https://www.cityoffollybeach.com/virtual-city-hall/
• Residents and property owners: Please bring two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, lease, etc).
• Checkpoint Passes
Passes can be issued by calling the Citizen Information Line: 843.588.7006 and arrangements will be made to deliver the passes to the checkpoint for pickup. Please expect a 24-hour turnaround time for new passes.
o Relatives and family members Residents and property owners are entitled to a maximum of 2 family passes (spouse, children, parents, grandparents only).
o Caretakers: Professional caretakers are limited to caretakers with professional medical service credentials. Previously issued caretaker passes issued by the City will still be honored.
o Guest passes are not permitted.
• Media personnel with media credentials presented.
• Delivery persons who can demonstrate business on the island at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
• Non-Resident holders of Folly Beach Post Office boxes: must show their key at the check point.
• Any other emergency requests must go through the Citizen information Line: 843-588-7006.

Operations and Other Information

1. Charleston County School District has extended school closures through April 13; they continue to provide

free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary on Harbor View Road.
2. City Parks, Playgrounds, and Facilities are closed consistent with Charleston County Parks and Recreation.
3. City Trash operations will continue on normal schedule. Contact Charleston County for recycling operations, their number is: (843)720-7111.
4. Municipal Court will be canceled through April 30, 2020, except for emergency matters.
5. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
6. City Hall is operating via virtual, phone, and dropbox operations until further notice.
a. All nonessential business walk-in customer service is terminated at this time.
b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
7. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
8. Charleston County Parks are closed: Visit their Alert Center for updates.
9. Effective Wednesday morning, March 18, Governor McMaster has ordered restaurants and bars to close other than take-out food service. Food providers may provide take-out food service only, but no on-premise consumption of food or alcohol is permitted.
10. Governor McMaster has extended the state filing deadline is extended to June 1st for all state taxes.
11. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission will meet in coming weeks to set a new date.
12. All City meetings scheduled for March are postponed: this includes Design Review Board (3/16), Candidate Forum (3/17), Tourism Visitor Promotion Committee (3/18), Parks & Recreation (3/24), and the OCRM Public Hearing (3/26).

For medical testing and prevention information or if you are unable to access the links in this email go to www.cityoffollybeach.com and click the COVID 19 Information link to access the entire COVID-19 Update 9.

ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

John Carrigg

From: rbrooks@cityoffollybeach.com <no-reply@onsolve.com>
Sent: Monday, April 6, 2020 4:27 PM
To: jcarrigg@carrigglaw.com
Subject: Folly Beach COVID-19 Update 10

Effective April 7, 2020 at 9am, no new short or long-term rental check-ins will be permitted through May 31st, 2020. Further, no new family passes will be issued; existing passes will be honored, but otherwise the listed owner or resident must accompany any family members through the checkpoint in the same vehicle. To enforce these restrictions and the Governor's orders regarding quarantine and the beach, the checkpoint will remain in place 24 hours per day.

The public beach accesses remain closed pursuant to the Governor's order. The full text of the Governor's Emergency declarations can be found HERE.

Checkpoint & Business Restrictions

• Short and Long-Term Rentals, Hotels, and Other Overnight Accommodations: No new check-ins are permitted between April 7, 2020 and May 31st, 2020 regardless of length of stay. Visitors currently checked in may remain until the end of their existing reservations.
• Residents and property owners: Please bring two forms of identification showing residency or ownership (driver's license, utility bill, deed,-tax bill, lease, etc). No new family passes will be issued, although existing passes will be honored.
• Checkpoint Passes
Passes for caretakers and essential businesses can be issued by calling the Citizen Information Line: 843.588.7006 and arrangements will be made to deliver the passes to the checkpoint for pickup. Please expect a 24-hour turnaround time for new passes.
o Caretakers: Professional caretakers are limited to caretakers with professional medical service credentials. Previously issued caretaker passes issued by the City will still be honored.
o Guest passes are not permitted.
• Physical businesses may not allow patrons indoors and must follow CDC guidelines. However, business employees may come to work with a checkpoint pass, and businesses may continue to serve clients virtually, by delivery, or at a service window. Grocery stores, gas stations, healthcare providers, financial services (included real estate agents and appraisers), are deemed essential by the CDC, and may continue to allow customers inside.
• Construction and service businesses may continue, but the crew is limited to the job site premise only. Employees must have a copy of the building permit (if applicable) and the 2020 Folly Beach business license vehicle sticker or copy of current Folly Beach business license (or state license for real estate agents and appraisers). Please expect delays in processing new building permit and business license applications. To apply for a new permit or license, please visit our Virtual City Hall at: https://www.cityoffollybeach.com/virtual-city-hall/
• Media personnel with media credentials presented.
• Delivery persons who can demonstrate business on the island at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
• Non-Resident holders of Folly Beach Post Office boxes: must show their key at the check point.
• Any other emergency requests must go through the Citizen information Line: 843-588-7006.

Operations and Other Information

1. Charleston County School District has extended school closures through April 13; they continue to provide free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary on Harbor View Road.
2. City Parks, Playgrounds, and Facilities are closed.
3. City Trash operations will continue on normal schedule. Contact Charleston County for recycling operations, their number is: (843)720-7111.
4. Municipal Court will be canceled through April 30, 2020, except for emergency matters.
5. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
6. City Hall is operating via virtual, phone, and dropbox operations until further notice.
a. All nonessential business walk-in customer service is terminated at this time.
b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
7. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
8. Charleston County Parks are closed: Visit their Alert Center for updates.
9. Effective Wednesday morning, March 18, Governor McMaster has ordered restaurants and bars to close other than take-out food service. Food providers may provide take-out food service only, but no on-premise consumption of food or alcohol is permitted.
10. Governor McMaster has extended the state filing deadline is extended to June 1st for all state taxes.
11. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission will meet in coming weeks to set a new date.
12. All City meetings scheduled for March and April are postponed.

For medical testing and prevention information or if you are unable to access the links in this email go to www.cityoffollybeach.com and click the COVID 19 Information link to access the entire COVID-19 Update 10.

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ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

John Carrigg

From: rbrooks@cityoffollybeach.com <no-reply@onsolve.com>
Sent: Tuesday, April 14, 2020 5:56 PM
To: jcarrigg@carrigglaw.com
Subject: Folly Beach COVID-19 Update 11

This update provides several enforcement clarifications to the previous order, but no major changes to the policies in place since April 6

The summary of clarifications includes limitations on extending the stay of an existing guest (same address only), language clarifying the use of existing caretaker, family, and employee passes (access to the listed address only), and changes to documentation requirements when accessing the beach through a private beach walkover (signed, written permission). Please see the list below for specific rules.

The City enforces all of the Governor's Emergency declarations, and the full orders can be found HERE.

Checkpoint & Business Restrictions

• The beach is closed pursuant to the Governor's Executive Order 2020-16. All public beach accesses are closed, and only persons owning beachfront property are permitted to access through a private walkover. Any guests of beachfront owners should be prepared to show signed, written permission from the owner on the beach.
• Short and Long-Term Rentals, Hotels, and Other Overnight Accommodations: No new check-ins are permitted between April 7, 2020 and May 31st, 2020 regardless of length of stay. Visitors currently checked in may remain until the end of their existing reservations, and the stay may be extended only for the same guests, on the same rental terms, and at the same address.
• Residents and property owners: Please bring two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, long-term lease, etc). No new family passes will be issued, although existing passes will be honored. Existing family passes are only permitted for travel between the checkpoint and the listed address. No guest passes are permitted.
• Caretakers: passes for credentialed medical caretakers can be issued by calling the Citizen Information Line: 843.588.7006 and arrangements will be made to deliver the passes to the checkpoint for pickup. Please expect a 24-hour turnaround time for new passes. Previously issued caretaker passes will still be honored, but access is limited to the listed address for the purpose of providing care.
• Physical businesses may not allow patrons indoors and must follow CDC guidelines. However, essential business employees may come to work with a checkpoint pass, and businesses may continue to serve clients virtually, by delivery, or at a service window. Grocery stores, gas stations, healthcare providers, financial services, are deemed essential by the CDC, and may continue to allow customers.
o Essential Business passes are limited to those services deemed essential by Governor McMaster. When using a pass at the checkpoint, please be prepared to show employee credentials (paystub, etc). To request a new business pass, the 2020 Folly Beach Business License holder should call the Citizen Information Line and be prepared to share a copy of your 2020 Folly Beach Business License, the specific state provision designating the business as essential, and the employee names.
• Construction and service businesses may continue, but the crew is limited to the job site premise only. Employees must have a copy of the building permit (if applicable) and the 2020 Folly Beach business license vehicle sticker or copy of current Folly Beach business license (or state license for real estate agents and appraisers). Please expect delays in processing new building permit and business license applications. To apply for a new permit or license, please visit our Virtual City Hall at: https://www.cityoffollybeach.com/virtual-city-

hall/
• Media personnel with media credentials presented.
• Delivery persons who can demonstrate business on the island at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
• Non-Resident holders of Folly Beach Post Office boxes: must show their key at the check point.
• Any other emergency requests must go through the Citizen information Line: 843-588-7006.

Persons found attempting to circumvent local or state laws or employing deceptive practices will be charged to the full extent of the law.

Operations and Other Information

1. Charleston County School District has extended school closures through at least April 30; they continue to provide free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary on Harbor View Road.
2. City Parks, Playgrounds, and Facilities are closed.
3. City Trash operations will continue on normal schedule. Contact Charleston County for recycling operations, their number is: (843)720-7111.
4. Municipal Court will be canceled through April 30, 2020, except for emergency matters.
5. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
6. City Hall is operating via virtual, phone, and dropbox operations until further notice.
a. All nonessential business walk-in customer service is terminated at this time.
b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
7. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
8. Charleston County Parks are closed: Visit their Alert Center for updates.
9. Effective Wednesday morning, March 18, Governor McMaster has ordered restaurants and bars to close other than take-out food service. Food providers may provide take-out food service only, but no on-premise consumption of food or alcohol is permitted.
10. Governor McMaster has extended the state filing deadline is extended to June 1st for all state taxes.
11. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission will meet in coming weeks to set a new date.
12. All City meetings scheduled for March and April are postponed.

For medical testing and prevention information or if you are unable to access the links in this email go to www.cityoffollybeach.com and click the COVID 19 Information link to access the entire COVID-19 Update 11.

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PRESS RELEASE

April 17, 2020 4:00 p.m.
Contact: Spencer Wetmore,
swetmore@cityoffollybeach.com

Folly Beach COVID-19 Update 12

This update notes the reopening of the boat landing at noon on April 17th, 2020 for boat retrieval and launching only. There are no other changes from Update 11 issued on April 14th.

Update 11 provided several enforcement clarifications to the previous order, but no major changes to the policies in place since April 6. The summary of clarifications includes limitations on extending the stay of an existing guest (same address only), language clarifying the use of existing caretaker, family, and employee passes (access to the listed address only), and changes to documentation requirements when accessing the beach through a private beach walkover (signed, written permission). Please see the list below for specific rules.

The City enforces all of the Governor's Emergency declarations, and the full orders can be found HERE.

Checkpoint & Business Restrictions

- **The beach** is closed pursuant to the Governor's Executive Order 2020-16. All public beach accesses are closed, and only persons owning beachfront property are permitted to access through a private walkover. Any guests of beachfront owners should be prepared to show signed, written permission from the owner on the beach.
- **Short and Long-Term Rentals, Hotels, and Other Overnight Accommodations:** No new check-ins are permitted between April 7, 2020 and May 31st, 2020 regardless of length of stay. Visitors currently checked in may remain until the end of their existing reservations, and the stay may be extended only for the same guests, on the same rental terms, and at the same address.
- **Residents and property owners:** Please bring two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, long-term lease, etc). No new family passes will be issued, although existing passes will be honored. Existing family passes are only permitted for travel between the checkpoint and the listed address. No guest passes are permitted.
- **Caretakers:** passes for credentialed medical caretakers can be issued by calling the Citizen Information Line: 843.588.7006 and arrangements will be made to deliver the passes to the checkpoint for pickup. Please expect a 24-hour turnaround time for new passes. Previously issued caretaker passes will still be honored, but access is limited to the listed address for the purpose of providing care.
- **Physical businesses** may not allow patrons indoors and must follow CDC guidelines. However, essential business employees may come to work with a checkpoint pass, and businesses may continue to serve clients virtually, by delivery, or at a service window. Grocery stores, gas stations, healthcare providers, financial services, are deemed essential by the CDC, and may continue to allow customers.
    - Essential Business passes are limited to those services deemed essential by Governor McMaster. When using a pass at the checkpoint, please be prepared to show employee credentials (paystub, etc). To request a new business pass, the 2020 Folly Beach Business License holder should call the Citizen Information Line and be prepared to share a copy of your 2020 Folly Beach Business License, the specific state provision designating the business as essential, and the employee names.
- **Construction and service businesses** may continue, but the crew is limited to the job site premise only. Employees must have a copy of the building permit (if applicable) and the 2020 Folly Beach business license

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vehicle sticker or copy of current Folly Beach business license (or state license for real estate agents and appraisers). Please expect delays in processing new building permit and business license applications. To

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apply for a new permit or license, please visit our Virtual City Hall at: https://www.cityoffollybeach.com/virtual-city-hall/

- **Media personnel** with media credentials presented.
- **Delivery persons** who can demonstrate business on the island at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
- **Non-Resident holders of Folly Beach Post Office boxes:** must show their key at the check point.
- **Any other emergency requests** must go through the Citizen information Line: 843-588-7006.
- **The boat landing is open beginning at noon on April 17th, 2020.** All users must abide by the terms of the Governor's executive order.

Persons found attempting to circumvent local or state laws or employing deceptive practices will be charged to the full extent of the law.

Operations and Other Information

1. Charleston County School District has extended school closures through at least April 30; they continue to provide free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary on Harbor View Road.
2. City Parks, Playgrounds, and Facilities are closed.
3. City Trash operations will continue on normal schedule. Contact Charleston County for recycling operations, their number is: (843)720-7111.
4. Municipal Court will be canceled through April 30, 2020, except for emergency matters.
5. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
6. City Hall is operating via virtual, phone, and dropbox operations until further notice.
    a. All nonessential business walk-in customer service is terminated at this time.
    b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
    c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
    d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
7. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
8. Charleston County Parks are closed: Visit their Alert Center for updates.
9. Effective Wednesday morning, March 18, Governor McMaster has ordered restaurants and bars to close other than take-out food service. Food providers may provide take-out food service only, but no on-premise consumption of food or alcohol is permitted.
10. Governor McMaster has extended the state filing deadline is extended to June 1st for all *state* taxes.
11. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission will meet in coming weeks to set a new date.
12. All City meetings scheduled for March and April are postponed.

Medical Testing

If you are experiencing life-threatening symptoms including respiratory distress, please call 911.

For all other symptoms of COVID-19, such as fever, cough or shortness of breath, MUSC Health Virtual Care telehealth service is offering COVID-19 screenings free of charge to South Carolina residents experiencing COVID-19-like symptoms located in South Carolina. Non-residents may use the service but may be charged for the visit and the panel. All MUSC screenings must be initiated online through their telehealth service: https://campaigns.muschealth.org/virtual-care/index.html. No walk-up traffic is accepted at the drive-through testing location.

You may also be able to obtain testing through your regular doctor's office and lab, dependent on each medical provider's capabilities. Please check with your doctor's office as capabilities continue to be

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expanded daily. The Governor has *requested* that doctors offices and insurance companies to provide tests at no charge; however, this is not a mandate and may not be followed by every provider.

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Prevention

There is currently no vaccine to prevent coronavirus disease 2019 (COVID-19). The best way to prevent illness is to avoid being exposed to this virus. However, as a reminder, CDC always recommends everyday preventive actions to help prevent the spread of respiratory diseases, including:

- ✓ Stay home and practice social distancing, whether or not you are experiencing symptoms
- ✓ Avoid close contact with people who are sick.
- ✓ Avoid touching your eyes, nose, and mouth.
- ✓ Stay home when you are sick.
- ✓ Cover your cough or sneeze with a tissue, then throw the tissue in thetrash.
- ✓ Clean and disinfect frequently touched objects and surfaces using a regular household cleaning spray or wipe.
- ✓ Follow CDC's recommendations for using a facemask.
    - CDC does not recommend that people who are well wear a facemask to protect themselves from respiratory diseases, including COVID-19.
    - Facemasks should be used by people who show symptoms of COVID-19 to help prevent the spread of the disease to others. The use of facemasks is also crucial for healthworkers and people who are taking care of someone in close settings (at home or in a health care facility).
- ✓ Wash your hands often with soap and water for at least 20 seconds, especially after going to the bathroom; before eating; and after blowing your nose, coughing, orsneezing.
    - If soap and water are not readily available, use an alcohol-based hand sanitizer with atleast 60% alcohol. Always wash hands with soap and water if hands are visibly dirty.

About Coronavirus Disease 2019 (COVID-19)

All citizens are encouraged to review the information below and make plans for you and your family in the event of disruptions to your daily routine.

- o About Coronavirus Disease 2019 (COVID-19)
- o How it spreads
- o Symptoms
- o Prevention & treatment
- o Testing
- o Frequently Asked Questions
- o South Carolina Department of Health and Environmental Control Latest Updates
- o Centers for Disease Control Latest Updates

Information for Travel

- o Coronavirus Disease 2019 Information for Travel
- o FAQ for travelers

PRESS RELEASE

April 19, 2020 7:00 p.m.
Contact: Spencer Wetmore,
swetmore@cityoffollybeach.com

Folly Beach COVID-19 Update 13

We anticipate the Governor to announce an opening of public beach access effective Tuesday, April 21st. However, all Charleston-area beach communities will continue checkpoint operations at this time. In addition to protecting our law enforcement and residents, the restricted access is intended to reduce large crowds gathering in small spaces and lessen the chance of the virus spreading and spiking throughout the greater Charleston community.

For those on the island (residents, property owners, etc per the guidelines below), the beach will be open for exercise only. **Permitted exercise**: Running, walking, dog-walking, biking, surfing, and other recreational activities consistent with social distancing. "Keep it moving!" **Prohibited**: Sunbathing (towels and chairs), coolers, loitering without moving, congregated in groups larger than 3 people.

City Council will meet again on Monday, April 27 at 6:00 p.m. to determine a gradual reopening strategy including the checkpoint and rentals.

The City enforces all of the Governor's Emergency declarations, and the full orders can be found HERE.

Checkpoint & Business Restrictions

- **Residents and property owners:** Please bring two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, long-term lease, etc). Existing family passes should have the name of the family member on the pass. New family passes may be issued for children, spouse, parents, or grandchildren by calling (843) 588-7006 and making arrangements for delivery to the checkpoint. No guest passes are permitted, although residents and owners may bring up to two guests through the checkpoint (no shuttling back and forth).
- **Short and Long-Term Rentals, Hotels, and Other Overnight Accommodations** no changes at this time: No new check-ins are permitted between April 7, 2020 and May 31st, 2020 regardless of length of stay. Visitors currently checked in may remain until the end of their existing reservations, and the stay may be extended only for the same guests, on the same rental terms, and at the same address.
- **Caretakers:** passes caretakers can be issued by calling the Citizen Information Line: 843.588.7006 and arrangements will be made to deliver the passes to the checkpoint for pickup. Please expect a 24-hour turnaround time for new passes. Previously issued caretaker passes will still be honored, but access is limited to the listed address for the purpose of providing care.
- **Physical businesses** may not allow patrons indoors and must follow State Executive Orders and CDC guidelines. However, essential business employees may come to work with a checkpoint pass, and businesses may continue to serve clients virtually, by delivery, or at a service window. Grocery stores, gas stations, healthcare providers, financial services, are deemed essential by the CDC, and may continue to allow customers.
    - Essential Business passes are limited to those services deemed essential by Governor McMaster. When using a pass at the checkpoint, please be prepared to show employee credentials (paystub, etc). To request a new business pass, the 2020 Folly Beach Business License holder should call the Citizen Information Line and be prepared to share a copy of your 2020 Folly Beach Business License, the specific state provision designating the business as essential, and the employee names.

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- **Construction and service businesses** are permitted through the checkpoint with a copy of the building permit (if applicable) and the 2020 Folly Beach business license vehicle sticker or copy of current Folly Beach business license (or state license for real estate agents and appraisers). Please expect delays in processing new building permit and business license applications. To apply for a new permit or license, please visit our Virtual City Hall at: https://www.cityoffollybeach.com/virtual-city-hall/
- **Media personnel** with media credentials presented.
- **Delivery persons** who can demonstrate business on the island at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
- **Non-Resident holders of Folly Beach Post Office boxes:** must show their key at the check point.
- **Any other emergency requests** must go through the Citizen information Line: 843-588-7006.

Persons found attempting to circumvent local or state laws or employing deceptive practices will be charged to the full extent of the law.

Operations and Other Information

1. Charleston County School District has extended school closures through at least April 30; they continue to provide free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary on Harbor View Road.
2. City Parks, Playgrounds, and Facilities are closed.
3. City Trash operations will continue on normal schedule. Contact Charleston County for recycling operations, their number is: (843)720-7111.
4. Municipal Court will be canceled through April 30, 2020, except for emergency matters.
5. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
6. City Hall is operating via virtual, phone, and dropbox operations until further notice.
    a. All nonessential business walk-in customer service is terminated at this time.
    b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
    c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
    d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
7. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
8. Charleston County Parks are closed: Visit their Alert Center for updates.
9. Effective Wednesday morning, March 18, Governor McMaster has ordered restaurants and bars to close other than take-out food service. Food providers may provide take-out food service only, but no on-premise consumption of food or alcohol is permitted.
10. Governor McMaster has extended the state filing deadline is extended to June 1st for all *state* taxes.
11. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission will meet in coming weeks to set a new date.
12. All City meetings scheduled for March and April are postponed.

Medical Testing

If you are experiencing life-threatening symptoms including respiratory distress, please call 911.

For all other symptoms of COVID-19, such as fever, cough or shortness of breath, MUSC Health Virtual Care telehealth service is offering COVID-19 screenings free of charge to South Carolina residents experiencing COVID-19-like symptoms located in South Carolina. Non-residents may use the service but may be charged for the visit and the panel. All MUSC screenings must be initiated online through their telehealth service: https://campaigns.muschealth.org/virtual-care/index.html. No walk-up traffic is accepted at the drive-through testing location.

You may also be able to obtain testing through your regular doctor's office and lab, dependent on each

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medical provider's capabilities. Please check with your doctor's office as capabilities continue to be expanded daily. The Governor has *requested* that doctors offices and insurance companies to provide tests at no charge; however, this is not a mandate and may not be followed by every provider.

Prevention

There is currently no vaccine to prevent coronavirus disease 2019 (COVID-19). The best way to prevent illness is to avoid being exposed to this virus. However, as a reminder, CDC always recommends everyday preventive actions to help prevent the spread of respiratory diseases, including:

- ✓ Stay home and practice social distancing, whether or not you are experiencing symptoms
- ✓ Avoid close contact with people who are sick.
- ✓ Avoid touching your eyes, nose, and mouth.
- ✓ Stay home when you are sick.
- ✓ Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- ✓ Clean and disinfect frequently touched objects and surfaces using a regular household cleaning spray or wipe.
- ✓ Follow CDC's recommendations for using a facemask.
- ✓ Wash your hands often with soap and water for at least 20 seconds, especially after going to the bathroom; before eating; and after blowing your nose, coughing, or sneezing.
    - If soap and water are not readily available, use an alcohol-based hand sanitizer with at least 60% alcohol. Always wash hands with soap and water if hands are visibly dirty.

About Coronavirus Disease 2019 (COVID-19)

All citizens are encouraged to review the information below and make plans for you and your family in the event of disruptions to your daily routine.

- o About Coronavirus Disease 2019 (COVID-19)
- o How it spreads
- o Symptoms
- o Prevention & treatment
- o Testing
- o Frequently Asked Questions
- o South Carolina Department of Health and Environmental Control Latest Updates
- o Centers for Disease Control Latest Updates

Information for Travel

- o Coronavirus Disease 2019 Information for Travel
- o FAQ for travelers

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City of Folly Beach

Aaron Pope, AICP
License Official
PO Box 48
Folly Beach, SC 29439

Fred Holland c/o Lajuan Kennedy
PO Box 270
Folly Beach, SC 29439

Notice of Violation
and Assessment of Civil Fine

Date: April 14, 2020

Property Address: 403 West Ashley Avenue, Folly Beach, SC; TMS: 3281300075

This notice of violation (NOV) is to inform you that the City of Folly Beach verified a new rental check in at the property you manage at 403 West Ashley Avenue on 4/14/20. New rental checks are currently prohibited by Emergency Ordinance 06-20.

Emergency Ordinance 06-20 states that violation of the Emergency Ordinance can be penalized as a civil infraction pursuant to the provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of a business license. Accordingly, pursuant to Ordinance Section 110.99, this letter shall serve as your notice that a civil penalty of $500.00 (Five Hundred Dollars and No Cents) is hereby assessed against Fred Holland Realty on this date, April 14, 2020. In addition, each day that the renters at 403 West Ashley remain in place at that address shall be considered a separate offense.

Any further violations of Emergency Ordinance 06-20 will result in a suspension and/or revocation of your business license.

If you chose to appeal this finding of a violation, such appeal will be governed by Section 110.18, which states:

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§ 110.18 APPEALS FROM DECISIONS OF THE LICENSE OFFICIAL.

(A) Any person aggrieved by a license revocation, final assessment, charge backs from an audit or a denial of a business license by the License Official may appeal the decision by written request stating the reasons for the appeal. The appeal must be filed with the License Official within 30 days after service by certified mail or personal service of the notice of the License Official's decision. A written notice of appeal must be accompanied with a $250 fee that will be used to partially defray the costs incurred in connection with the administration of appeals. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.

(B) A hearing on an appeal shall be held within 20 business days after receipt of a request for appeal, unless continued by agreement. A licensee may surrender the business license and cease doing business prior to the revocation hearing date. The License Official has the discretion to cancel the hearing and to return some or all of the appeal fee after surrender of the business license.

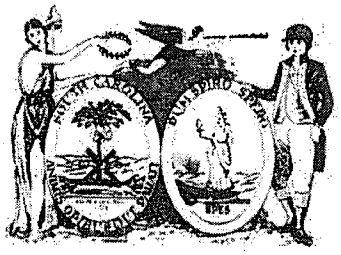
(C) At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded by the city. A party who wants a transcript of the hearing shall bear the expense of preparing the transcript and shall provide a copy to the other party at no cost. A hearing officer, who shall be a member of the South Carolina Bar selected by the City Administrator, will preside over the hearing and determine the rules of evidence and procedure, including the imposition of time limitations upon the parties. Hearsay evidence will be allowed. Subpoenas will not be allowed. Within 15 business days of the hearing, the hearing officer shall render a written decision, based upon findings of fact and the application of the standards herein, that shall be served upon all parties or their representatives. The decision of the hearing officer shall be final.

Aaron Pope, AICP
License Official
City of Folly Beach

4/14/20

State of South Carolina

Executive Department



FILED

APR 2 0 2020

Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2020-28

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020; and

WHEREAS, in addition to declaring a State of Emergency on March 13, 2020, the undersigned also issued Executive Order Nos. 2020-07, 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, and 2020-14, initiating and directing various emergency measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act, and on March 27, 2020, the President of the United States granted the undersigned's request and declared that such a major disaster exists and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

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Executive Order No. 2020-28

April 20, 2020

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new State of Emergency based on a determination that COVID-19 posed an actual and ongoing public health threat to the State of South Carolina and extending the provisions of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, in further proactively preparing for and promptly responding to the ongoing and evolving emergency, the undersigned subsequently issued Executive Order Nos. 2020-16, 2020-17, 2020-18, 2020-19, 2020-21, and 2020-22, initiating and directing additional extraordinary measures deemed necessary and appropriate to cope with the public health threats and dangers and to address the resulting strain on healthcare resources, the economic consequences for individuals and businesses, and the various other significant impacts associated with COVID-19; and

WHEREAS, on April 12, 2020, the undersigned issued Executive Order No. 2020-23, declaring an additional State of Emergency based on new facts and circumstances and a determination that the accelerated spread of COVID-19 throughout the State posed a different and distinct public health threat to the State of South Carolina and extending provisions of certain of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on April 16, 2020, the undersigned issued Executive Order No. 2020-25, modifying certain emergency restrictions related to the public waters of the State to facilitate authorized outdoor exercise and recreational activities in accordance with Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as modifying and extending previous emergency measures pertaining to unemployment claims and benefits; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

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WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable" and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, the State of South Carolina must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously beginning the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

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WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and the modification of certain extraordinary measures employed to cope with the existing or anticipated situation, to include mitigating the significant economic and other impacts and burdens on individuals, families, and businesses and providing appropriate flexibility and relief to facilitate the same.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Modification of Emergency Restrictions for Public Beaches and Waters to Account for Home or Work Order

To facilitate authorized outdoor exercise and recreational activities in accordance with the provisions of Section 1 of Executive Order No. 2020-21 (Home or Work Order), as extended by Executive Order No. 2020-23, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby modify and amend the provisions of Section 1(B) of Executive Order No. 2020-16 (Emergency Access Restrictions for Public Beaches and Waters), as extended by Executive Order No. 2020-23, effective Tuesday, April 21, 2020, at 12:00 p.m., to rescind the order and directive that any and all public beach access points, to include any adjacent or associated public parking lots or other public facilities, shall be closed to public access for recreational purposes for the duration of the State of Emergency. Notwithstanding the foregoing, I hereby authorize any agency, department, county, municipality, or political subdivision of the State owning, operating, managing, or otherwise having jurisdiction and control over any such public beach access points to close, in whole or in part, or otherwise restrict the use of any such public beach access points, to include any adjacent or associated public parking lots or other public facilities, if it is determined that such action is necessary to preserve or protect public health. This authorization shall remain in effect for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded by subsequent Order.

B. I hereby modify and amend the provisions of Section 1(C) of Executive Order No. 2020-16 (Emergency Access Restrictions for Public Beaches and Waters), as extended by Executive Order No. 2020-23 and modified by Section 1(A) of Executive Order No. 2020-25 (Modification of Emergency Restrictions for Public Waters to Account for Home or Work Order), effective Tuesday, April 21, 2020, at 12:00 p.m., to rescind the order and directive that any and all public piers, docks, or wharfs providing public access to the public waters of this State, to include any adjacent or associated public parking lots or other public facilities, shall be closed to public access for recreational purposes for the duration of the State of Emergency. Notwithstanding the foregoing, I hereby authorize any agency, department, county, municipality, or political subdivision of the State owning, operating, managing, or otherwise having jurisdiction and control over any such public piers, docks, or wharfs to close, in whole or in part, or otherwise restrict the

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use of any such public piers, docks, or wharfs, to include any adjacent or associated public parking lots or other public facilities, if it is determined that such action is necessary to preserve or protect public health. This authorization shall remain in effect for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded by subsequent Order.

C. This Section shall not be construed to modify, amend, or otherwise alter the terms and provisions of Executive Order No. 2020-16, as modified by Executive Order No. 2020-25, with regard to public boat ramps and boat landings providing public access to the public waters of this State.

D. In accordance with Section 1 of Executive Order No. 2020-21, any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice "social distancing" in accordance with Centers for Disease Control and Prevention ("CDC") guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, as defined therein, except as expressly authorized. Pursuant to Section 1(E) of Executive Order No. 2020-21, individuals are permitted to "[e]ngag[e] in outdoor exercise or recreational activities, provided that a minimum distance of six (6) feet is maintained during such activities between all persons who are not occupants of the same Residence."

E. Notwithstanding the foregoing, individuals are still subject to the provisions of prior and future Orders issued by the undersigned in connection with the State of Emergency, to include Executive Order No. 2020-13, as extended by Executive Order No. 2020-23, which expressly authorizes any and all law enforcement officers of the State, or any political subdivision thereof, to prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such congregation or gathering is deemed to pose, or could pose, a threat to public health.

F. I further expressly authorize the South Carolina Department of Natural Resources ("DNR") and the South Carolina Department of Health and Environmental Control ("DHEC"), as applicable, to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 2. Incremental Modification of Non-Essential Business Closures

To begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization, while also continuing to implement further proactive measures to provide for and ensure the health, safety, security, and welfare of the people of this State, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby modify and amend the provisions of Executive Order No. 2020-18 and Executive Order No. 2020-21, as extended by Executive Order No. 2020-23, to authorize the following businesses, venues, facilities, services, and activities, which were previously deemed

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"non-essential" and directed to close to non-employees and not to open for access or use by the public, or not to take place, as applicable, in accordance with Executive Order No. 2020-18, to re-open to non-employees and for access or use by the public, subject to the emergency rules and restrictions set forth below, effective Monday, April 20, 2020, at 5:00 p.m.:

1. Retail stores as follows:
   (a) Furniture and home-furnishings stores
   (b) Clothing, shoe, and clothing-accessory stores
   (c) Jewelry, luggage, and leather goods stores
   (d) Department stores, with the exception of hardware and home-improvement stores
   (e) Sporting goods stores
   (f) Book, craft, and music stores
   (g) Flea markets
   (h) Florists and flower stores

B. I hereby order and direct that effective Monday, April 20, 2020, at 5:00 p.m., any retail business identified by general description above, or previously authorized to continue operations pursuant to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated by the South Carolina Department of Commerce ("Department") in accordance with the Clarification and Provisional Determination Process set forth in Section 2 of Executive Order No. 2020-18, shall be subject to the following emergency rules and restrictions in addition to any other applicable provisions of this Order or any prior Order:

1. Emergency Maximum Occupancy Rate. The business shall limit the number of customers allowed to enter and simultaneously occupy the premises so as not to exceed five (5) customers per 1,000 square feet of retail space, or twenty percent (20%) of the occupancy limit as determined by the fire marshal, whichever is less.

2. Social Distancing Practices. The business shall not knowingly allow customers, patrons, or other guests to congregate within six (6) feet of one another, exclusive of family units.

3. Sanitation. The business shall implement all reasonable steps to comply with any applicable sanitation guidelines promulgated by the CDC, DHEC, or any other state or federal public health officials.

C. In accordance with Section 1(H) of Executive Order No. 2020-21, and subject to the emergency rules and restrictions set forth herein, this Section does not prohibit retail stores from fulfilling online or telephone orders or providing alternate means of purchasing or delivering products or services—to include curbside purchase, pickup, or delivery and home or off-site delivery—provided that such options or measures can be implemented in a manner that facilitates and maintains effective "social distancing" and is consistent with any applicable guidance issued by state and federal public health and safety officials.

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D. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the sale or transportation of firearms or ammunition or any component thereof.

E. Notwithstanding the foregoing, any and all businesses, venues, facilities, services, and activities in this State are urged to facilitate effective "social distancing" practices. As applicable and to the maximum extent possible, to further promote "social distancing," facilitate self-isolation, and otherwise prevent potential exposure to COVID-19, businesses and organizations are also encouraged to utilize telecommuting or work-from-home options for employees and to provide alternate means of purchasing and delivering products and services, to include online or telephone orders and curbside or off-site deliveries, and individuals are encouraged to utilize such options to support businesses in this State during the ongoing public health emergency.

F. Except as expressly provided herein, this Section shall not be construed to modify, amend, or otherwise alter the provisions of any prior or future Orders issued by the undersigned in connection with the State of Emergency and does not repeal, by implication or otherwise, the remaining terms and provisions of, *inter alia*, Executive Order No. 2020-21, Executive Order No. 2020-18, and Executive Order No. 2020-10, as extended by Executive Order No. 2020-23. The aforementioned Orders shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order.

G. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the authority of the undersigned or the Department to issue, provide, or promulgate any necessary and appropriate additional or supplemental clarification, guidance, rules, regulations, or restrictions regarding the provisions of this Order or of Executive Order No. 2020-18 or Executive Order No. 2020-21. I further expressly authorize the Office of the Governor ("Office") to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other

sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 20th DAY OF APRIL, 2020.

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State

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PRESS RELEASE

May 4, 2020 4:30 p.m.
Contact: Spencer Wetmore,
swetmore@cityoffollybeach.com

Folly Beach COVID-19 Update 14

As Step One of the City's phased reopening, the **new checkpoint hours are 7:00 a.m. to 7:00 p.m.** This allows daily visitors access in the morning and evening hours for recreation on the beach (as outlined below) and to patronize the restaurants for outdoor dining. The City will monitor medical data and public compliance with social distancing for future phases of reopening.

The beach is open to residents and visitors for exercise only. **Permitted exercise**: Running, walking, dog-walking, biking, surfing, swimming and other recreational activities consistent with social distancing. "Keep it moving!" **Prohibited:** Sunbathing (towels and chairs), coolers, loitering without moving, congregating in groups larger than 3 people. Please contact Folly Beach Public Safety if you need a beach wheelchair during this time: 843.588.2433.

New check-ins to short term rentals and other overnight accommodations may begin May 12, subject to the following restrictions from Ordinance 06-20:

- Short-term rentals are limited to a 6-day minimum stay.
- Hotels are subject to occupancy restrictions and must present a phased reopening plan to the City.

Effective Monday, May 4, Governor McMaster has allowed **restaurants and bars to offer outdoor service.** City staff will work with each establishment to create additional areas for outdoor seating to safely accommodate the new regulations. Visitors may come onto Folly to visit the restaurants after the checkpoint hours.

The City enforces all of the Governor's Emergency Declarations, and the full orders can be found HERE.

Checkpoint & Business Restrictions

For access to the island during the checkpoint hours, please see the following guidelines:

- **Residents and property owners:** Please bring two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, long-term lease, etc). Existing family passes should have the name of the family member on the pass. New family passes may be issued for children, spouse, parents, or grandchildren by calling (843) 588-7006 and making arrangements for delivery to the checkpoint. No guest passes are permitted, although residents and owners may bring up to two guests through the checkpoint (no shuttling back and forth).
- **Short and Long-Term Rentals, Hotels, and Other Overnight Accommodations** must show booking confirmation and corresponding photo identification.
- **Caretakers:** passes caretakers can be issued by calling the Citizen Information Line: 843.588.7006 and arrangements will be made to deliver the passes to the checkpoint for pickup. Please expect a 24-hour turnaround time for new passes.
- **Physical businesses** must follow State Executive Orders and CDC guidelines. Businesses are strongly encouraged to use service windows and outside display tables.

- **Construction and service businesses** are permitted through the checkpoint with a copy of the building permit (if applicable) and the 2020 Folly Beach business license vehicle sticker or copy of current Folly Beach business license (or state license for real estate agents and appraisers). Please expect delays in processing new building permit and business license applications. To apply for a new permit or license, please visit our Virtual City Hall at: https://www.cityoffollybeach.com/virtual-city-hall/
- **Media personnel** with media credentials presented.
- **Delivery persons** who can demonstrate business on the island at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
- **Non-Resident holders of Folly Beach Post Office boxes:** must show their key at the check point.
- **Any other emergency requests** must go through the Citizen information Line: 843-588-7006.

Persons found attempting to circumvent local or state laws or employing deceptive practices will be charged to the full extent of the law.

Operations and Other Information

1. Charleston County School District has extended school closures through for the remaining school year; they continue to provide free "grab and go" lunches to all students (whether or not they previously qualified for free or reduced lunch); the nearest drive-through location is Harbor View Elementary on Harbor View Road.
2. City Parks, Playgrounds, and Facilities are closed, except tennis and basketball courts may be used if social distancing is enforced.
3. City Trash operations will continue on normal schedule. Contact Charleston County for recycling operations, their number is: (843)720-7111.
4. Municipal Court will be canceled through May 31, 2020, except for emergency matters. Please visit our City COVID page for information on how to submit proof for certain items (driver's license, insurance, equipment, etc) to the Court and Public Safety Department.
5. Public Safety will respond to calls, but please expect extra questions from Dispatch to screen for COVID symptoms for the safety of the public and our officers. Please use the Dispatch phone number (843-588-2433) rather than walk-in for non-emergency questions. The station will be closed to the public for tours and drop-ins.
6. City Hall is operating via virtual, phone, and dropbox operations until further notice.
    a. All nonessential business walk-in customer service is terminated at this time.
    b. Building permits and business licenses may be applied for online, but please expect delays as staff focuses on emergency operations.
    c. Parking and Court tickets can only be paid online or by mail to PO Box 48/Folly Beach, SC 29439
    d. All payments can be made online via credit card or through the drop box in the lobby of City Hall, or by mail to PO Box 48/Folly Beach, SC 29439. Temporarily, we will accept credit card payments over the phone during the declared state of emergency.
7. All Charleston County Libraries (including Folly Beach) are closed to patrons until further notice.
8. Charleston County Parks: Visit their Alert Center for updates.
9. Governor McMaster has extended the state filing deadline is extended to June 1st for all *state* taxes.
10. The Governor has ordered that all municipal elections in April be postponed until after May 1st. Therefore, the City Council election and Utility Referendum will be canceled at this time. The Municipal Election Commission is awaiting guidance from the Governor before rescheduling the Folly Beach Municipal elections.
11. All City meetings scheduled for April and May are postponed.

Medical Testing

If you are experiencing life-threatening symptoms including respiratory distress, please call 911.

For all other symptoms of COVID-19, such as fever, cough or shortness of breath, MUSC Health Virtual Care telehealth service is offering COVID-19 screenings free of charge to South Carolina residents experiencing COVID-19-like symptoms located in South Carolina. Non-residents may use the service but

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may be charged for the visit and the panel. All MUSC screenings must be initiated online through their telehealth service: https://campaigns.muschealth.org/virtual-care/index.html. No walk-up traffic is accepted at the drive-through testing location.

Charleston County is offering mobile testing locations throughout Charleston County, with the closest location to Folly being on May 11 at St. James Presbyterian Church 1314 Secessionville Road (James Island).

You may also be able to obtain testing through your regular doctor's office and lab, dependent on each medical provider's capabilities. Please check with your doctor's office as capabilities continue to be expanded daily. The Governor has *requested* that doctors offices and insurance companies to provide tests at no charge; however, this is not a mandate and may not be followed by every provider.

Prevention

There is currently no vaccine to prevent coronavirus disease 2019 (COVID-19). The best way to prevent illness is to avoid being exposed to this virus. However, as a reminder, CDC always recommends everyday preventive actions to help prevent the spread of respiratory diseases, including:

- ✓ Stay home and practice social distancing, whether or not you are experiencing symptoms
- ✓ Avoid close contact with people who are sick.
- ✓ Avoid touching your eyes, nose, and mouth.
- ✓ Stay home when you are sick.
- ✓ Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- ✓ Clean and disinfect frequently touched objects and surfaces using a regular household cleaning

  spray or wipe.
- ✓ Follow CDC's recommendations for using a facemask.
- ✓ Wash your hands often with soap and water for at least 20 seconds, especially after going to the bathroom; before eating; and after blowing your nose, coughing, or sneezing.
    - If soap and water are not readily available, use an alcohol-based hand sanitizer with at least 60% alcohol. Always wash hands with soap and water if hands are visibly dirty.

About Coronavirus Disease 2019 (COVID-19)

All citizens are encouraged to review the information below and make plans for you and your family in the event of disruptions to your daily routine.

- o About Coronavirus Disease 2019 (COVID-19)
- o How it spreads
- o Symptoms
- o Prevention & treatment
- o Testing
- o Frequently Asked Questions
- o South Carolina Department of Health and Environmental Control Latest Updates
- o Centers for Disease Control Latest Updates

Information for Travel

- o Coronavirus Disease 2019 Information for Travel
- o FAQ for travelers

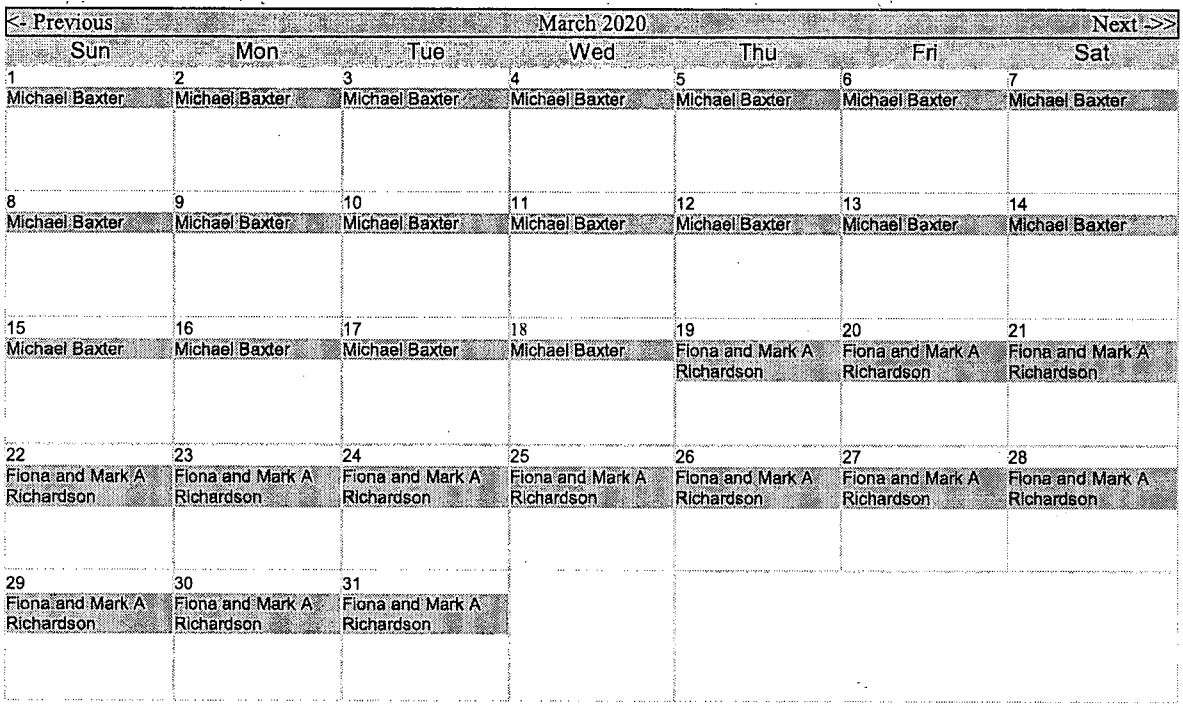
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Calendar for 208 East Ashley

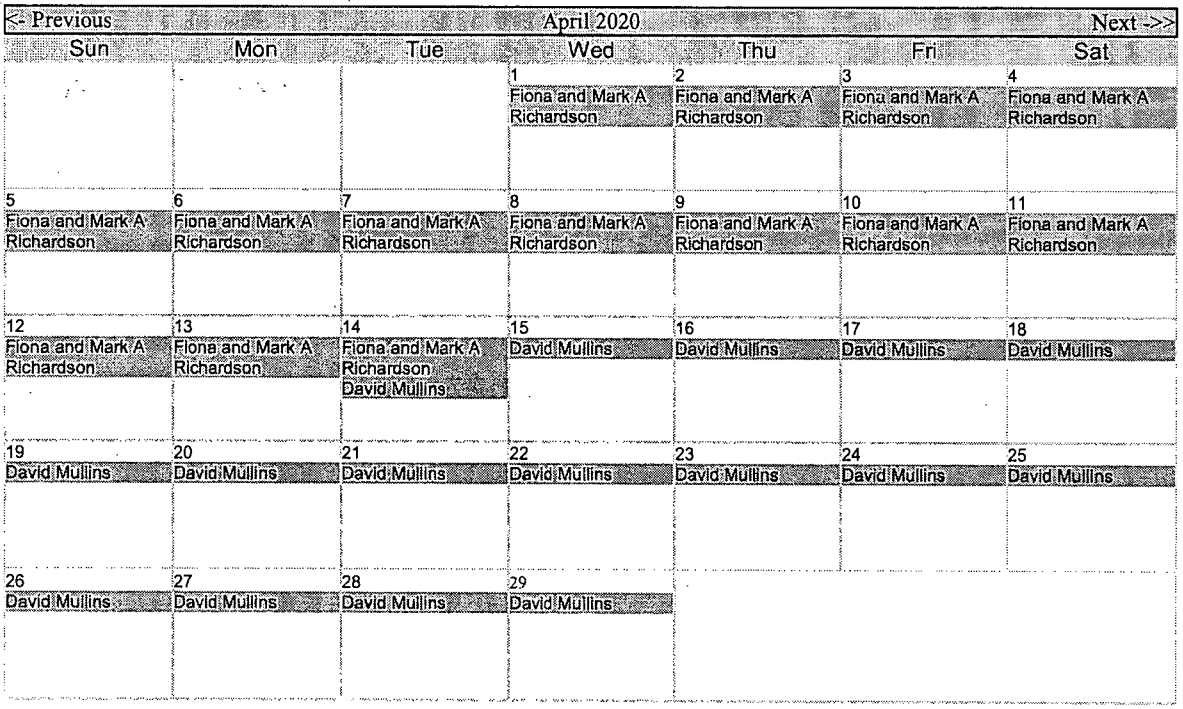
Mar 19 Check-In (Green) Fiona and Mark Richardson

April 14 Check Out (Green) Fiona and Mark Richardson

April 14 Owner Check-In (Blue) David Mullins (Owner)



<- Previous			March 2020			Next ->>
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1 Michael Baxter	2 Michael Baxter	3 Michael Baxter	4 Michael Baxter	5 Michael Baxter	6 Michael Baxter	7 Michael Baxter
8 Michael Baxter	9 Michael Baxter	10 Michael Baxter	11 Michael Baxter	12 Michael Baxter	13 Michael Baxter	14 Michael Baxter
15 Michael Baxter	16 Michael Baxter	17 Michael Baxter	18 Michael Baxter	19 Fiona and Mark A Richardson	20 Fiona and Mark A Richardson	21 Fiona and Mark A Richardson
22 Fiona and Mark A Richardson	23 Fiona and Mark A Richardson	24 Fiona and Mark A Richardson	25 Fiona and Mark A Richardson	26 Fiona and Mark A Richardson	27 Fiona and Mark A Richardson	28 Fiona and Mark A Richardson
29 Fiona and Mark A Richardson	30 Fiona and Mark A Richardson	31 Fiona and Mark A Richardson				



<- Previous			April 2020			Next ->>
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 Fiona and Mark A Richardson	2 Fiona and Mark A Richardson	3 Fiona and Mark A Richardson	4 Fiona and Mark A Richardson
5 Fiona and Mark A Richardson	6 Fiona and Mark A Richardson	7 Fiona and Mark A Richardson	8 Fiona and Mark A Richardson	9 Fiona and Mark A Richardson	10 Fiona and Mark A Richardson	11 Fiona and Mark A Richardson
12 Fiona and Mark A Richardson	13 Fiona and Mark A Richardson	14 Fiona and Mark A Richardson David Mullins	15 David Mullins	16 David Mullins	17 David Mullins	18 David Mullins
19 David Mullins	20 David Mullins	21 David Mullins	22 David Mullins	23 David Mullins	24 David Mullins	25 David Mullins
26 David Mullins	27 David Mullins	28 David Mullins	29 David Mullins			

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403 W Ashley Ave Calendar

<<- Previous			April 2020			Next ->>
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13 Fiona and Mark A Richardson	14 Fiona and Mark A Richardson	15 Fiona and Mark A Richardson	16 Fiona and Mark A Richardson	17 Fiona and Mark A Richardson	18 Fiona and Mark A Richardson
19 Fiona and Mark A Richardson	20 Fiona and Mark A Richardson	21 Fiona and Mark A Richardson	22 Fiona and Mark A Richardson	23 Fiona and Mark A Richardson	24 Fiona and Mark A Richardson	25 Fiona and Mark A Richardson
26 Fiona and Mark A Richardson	27 Fiona and Mark A Richardson	28 Fiona and Mark A Richardson	29 Fiona and Mark A Richardson	30 Fiona and Mark A Richardson		

Fred Holland Realty

Reservation History for Res ID: 104424

Guest: Fiona and Mark A Richardson
Property: 208 E Ashley
Res Info: Short-Term / Checked-Out
Dates: Thursday, March 19, 2020 - Tuesday, April 14, 2020
Reserved On: Tuesday, March 17, 2020 4:26 PM

Effective Time	User Name	Details	Real Event Time
3/17/2020 4:27:00PM	Patrick Hampton	Rent: $4894.27 -> $1800.00	3/17/2020 4:27:00 PM
3/17/2020 4:27:00PM	Patrick Hampton	Added Reservation Custom Charge: Housekeeping and linen	3/17/2020 4:27:00 PM
3/17/2020 4:27:00PM	Patrick Hampton	Removed Reservation Builtin: Housekeeping $90 for $90.00	3/17/2020 4:27:00 PM
3/17/2020 4:27:00PM	Patrick Hampton	Removed Reservation Builtin: Linen Fee $40 for $40.00	3/17/2020 4:27:00 PM
3/17/2020 4:28:00PM	Patrick Hampton	Rent: $1670.00 -> $1800.00	3/17/2020 4:28:00 PM
3/17/2020 4:28:00PM	Patrick Hampton	Added Payment to Receivable: Prepay Payor: Fiona A Richardson Date: 03/17/2020 Amount: $2427.90 Payment Type: VISA (WEB) [4] Check / CC Num: 72486	3/17/2020 4:28:00 PM
3/17/2020 4:29:00PM	Patrick Hampton	Added Payment to Receivable: Security Deposit Payor: Fiona A Richardson Date: 03/17/2020 Amount: $100.00 Payment Type: VISA (WEB) [4] Check / CC Num: 72486	3/17/2020 4:28:00 PM
3/20/2020 9:54:00PM	Lajuan Kennedy	Checked In by Lajuan Kennedy (set housekeeping status to Occupied / Do Not Clean)	3/20/2020 9:54:00 PM
4/13/2020 12:41:00PM	Anna Brown	First Name: Fiona -> Fiona and Mark Last Name: Richardson -> Richardson Email: Mricha4362@aol.com -> Mricha4362@aol.com SMS Phone: 8435328302 -> 8435328302	4/13/2020 12:41:00 PM
4/13/2020 12:41:00PM	Anna Brown	Guest information has been updated.	4/13/2020 12:41:00 PM
4/13/2020 12:41:00PM	Anna Brown	Added Reservation Comment.	4/13/2020 12:41:00 PM
4/16/2020 8:13:00PM	Lajuan Kennedy	Checked Out by Lajuan Kennedy (set housekeeping status to On Change / Check Property)	4/16/2020 8:13:00 PM
4/16/2020 11:21:00PM		Distributed Reservation	4/16/2020 11:21:00 PM

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Fred Holland Realty

Reservation History for Res ID: 104506

Guest: Fiona and Mark A Richardson
Property: 403 W Ashley
Res Info: Short-Term / Checked-Out
Dates: Monday, April 13, 2020 - Thursday, April 30, 2020
Reserved On: Wednesday, April 1, 2020 10:04 AM

Effective Time	User Name	Details	Real Event Time
4/1/2020 10:06:00AM	Anna Brown	Added Reservation Comment.	4/1/2020 10:06:00 AM
4/1/2020 1:20:00PM	Anna Brown	Added Payment to Receivable: Prepay Payor: Fiona A Richardson Date: 04/01/2020 Amount: $1288.40 Payment Type: VISA (WEB) [4] Check / CC Num: 07249	4/1/2020 1:20:00 PM
4/1/2020 1:21:00PM	Anna Brown	Added Payment to Receivable: Security Deposit Payor: Fiona A Richardson Date: 04/01/2020 Amount: $100.00 Payment Type: VISA (WEB) [4] Check / CC Num: 07249	4/1/2020 1:20:00 PM
4/9/2020 1:50:00PM	Anna Brown	Changed Property from: 519 E Arctic to: 403 W Ashley	4/9/2020 1:50:00 PM
4/9/2020 1:50:00PM	Anna Brown	Rent: $1080.00 -> $1081.00	4/9/2020 1:50:00 PM
4/9/2020 1:50:00PM	Anna Brown	Rent: $1081.00 -> $1081.25	4/9/2020 1:50:00 PM
4/9/2020 1:50:00PM	Anna Brown	Rent: $1081.25 -> $1081.30	4/9/2020 1:50:00 PM
4/9/2020 1:50:00PM	Anna Brown	Rent: $1081.30 -> $1081.31	4/9/2020 1:50:00 PM
4/9/2020 1:51:00PM	Anna Brown	Rent: $1081.31 -> $1081.33	4/9/2020 1:51:00 PM
4/10/2020 12:57:00PM	Carol Rourk	VRA (not checked(0), checked(1)): 0 -> 1	4/10/2020 12:57:00 PM
4/13/2020 12:43:00PM	Anna Brown	First Name: Fiona -> Fiona and Mark Last Name: Richardson -> Richardson Email: Mricha4362@aol.com -> Mricha4362@aol.com SMS Phone: 8435328302 -> 8435328302	4/13/2020 12:43:00 PM
4/13/2020 12:43:00PM	Anna Brown	Guest information has been updated.	4/13/2020 12:43:00 PM
4/16/2020 10:14:00AM	Lajuan Kennedy	Added Guest Comment.	4/16/2020 10:14:00 AM
4/16/2020 8:13:00PM	Lajuan Kennedy	Checked In by Lajuan Kennedy (set housekeeping status to Occupied / Do Not Clean)	4/16/2020 8:13:00 PM
4/29/2020 12:40:00PM	Lajuan Kennedy	Distributed Reservation	4/29/2020 12:40:00 PM
5/1/2020 11:12:00AM	Lajuan Kennedy	Checked Out by Lajuan Kennedy (set housekeeping status to On Change / Check Property)	5/1/2020 11:12:00 AM

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Printed
on: Monday, June 22, 2020
at: 6:13:18 pm

VRM
Virtual Resort Manager

Anna West

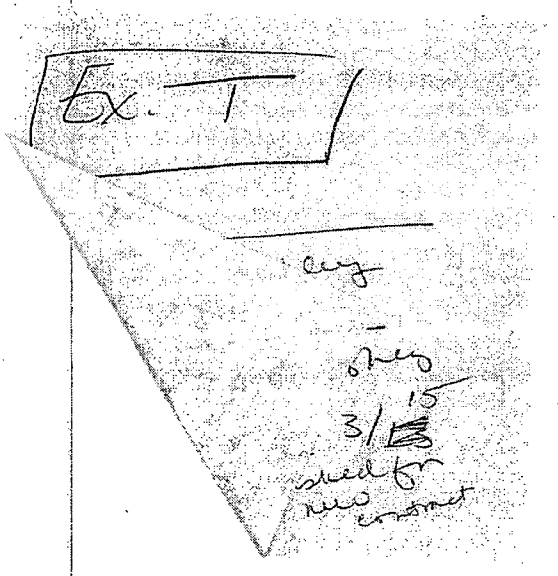
From: Anna West
Sent: Wednesday, April 29, 2020 5:35 PM
To: 'apope@cityoffollybeach.com'
Subject: 1002 West Ashley Move to 1707A East Ashley
Attachments: Loper.pdf

Aaron,

As discussed earlier this week regarding the transfer from 1002 W Ashley to 1707A East Ashley. The new paper work for transfer is attached if needed.

Thanks so much!

Anna West
843-588-2325
Fred Holland Realty
50 Center Street
Folly Beach, SC 29439



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Fred Holland Realty

106 W Hudson Suite 1A
Folly Beach, SC 29439

Office: Fred Holland Realty

Local Number: 843-588-2325
Fax Number: 843-588-2562

April 29, 2020

Reservation ID: 104408
Arrival Date: Sunday, March 15, 2020
Check Out Date: Sunday, May 31, 2020
 # Of Nights: 77
Date Reserved: Friday, March 13, 2020
Total Guests: 1
under 25 years old: 0

Phone: 310-980-5673 **Fax:**
Email: christen.loper@gmail.com

Christen and Caleb Loper/McClennen
311 West 127th
Apt # 1204
New York, NY 10027

Please visit us online at:
http://www.fredhollandrealty.com

Your User ID for our website is: Christen. Your Password is: Loper. You can log in to change your password or access other features.

Property: 1707 E Ashley A 'Summersalt'
843-588-2744
Beds: 4q

Location: Ocean View

Type: House

Description: Don't be misled by "ocean view" – you have a private walkway to access the beach! Although the completion of oceanfront homes has changed the classification of this beach house to "ocean view", it is much more than that! This beach house has its own wooden walkway to the beach – so there is no need to cross the street or walk to the nearest beach access! This charming, affordable beach house has had recent renovations to the kitchen, bathrooms, bedrooms, etc., with new furniture throughout the house. There are hardwood floors in the living room, dining room, kitchen, and hall; carpet in the bedrooms; and tile in the bathrooms. The house sleeps 8 in the bedrooms, and the sofa and loveseat provide additional comfortable sleeping



Guest Comments:

Total Rent:	$2,920.08
Insurance Carrier:	DECLINED
Insurance Price:	$0.00

** Initial here to accept Travel Insurance: _____

Total Other Charges:	$149.00
Total Taxes and Fees:	$412.31
Total Vacation Cost:	$3,481.39
Damage Deposit:	$100.00
Total Bill:	$3,581.39
Advance Required By:	March 13, 2020
Advance Amount:	$2,400.00
Advance Received:	$3,581.39
Advance Now Due:	$0.00
Remaining Balance Will Be:	$0.00
Due on or before:	*3/13/2020*
Total Left To Pay:	$0.00

Check in Time 4PM to 6PM. Do not go to the property location until after you have checked in and received your keys and instructions. Do not park cars at the location this will delay your check-in.. Your rental does not begin until you have checked in through the office.

Other Charges:

Charge	QTY	Price Each	Total Price	Tax
Reservation Fee	1	$35.00	$35.00	Sales
Housekeeping	1	$114.00	$114.00	None

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LaJuan Kennedy

From: janet Clark mullins <flarkclark52@hotmail.com>
Sent: Wednesday, July 29, 2020 4:47 PM
To: LaJuan Kennedy
Subject: Fw: facebook response from Eddie Ellis

From: janet Clark mullins <flarkclark52@hotmail.com>
Sent: Thursday, April 16, 2020 4:03 PM
To: LaJuan Kennedy <info@fredhollandrealty.com>
Subject: Re: facebook response from Eddie Ellis

From: janet Clark mullins <flarkclark52@hotmail.com>
Sent: Thursday, April 16, 2020 3:45 PM
To: LaJuan <LaJuan@fredhollandrealty.com>
Subject: facebook response from Eddie Ellis

I can't find original complaint post from the April 9th post re: 1667 E Ashley, but this was Eddie's response....hope it helps
Janet
This was April 9th on Facebook
Eddie Ellis Yes. I was on the phone with Yvette and the Mayor yesterday. It was thoroughly investigated. The camera with the liscense plate reader has them here on the island before the change went into effect. Their paperwork was checked and they are legal. However, the neighbors are all at home and see everything. I believe the neighbors observed them arriving yesterday...unpacking luggage, and looking around. They used the public access. They were issued a citation, and were told if they use it again they will get another ticket. Did I think something like this was gonna happen? Absolutely! But, that imo, is no reason to not enact the rental suspension. There would be so many more people here if they could come here legally. And it looks like, after investigating, these people are legal.
Hide or report this

EXHIBIT NO. P-1

CITY OF FOLLY BEACH

1st Reading: March 28, 2020
Amended: April 6, 2020

Introduced by: Mayor Goodwin

No Second Reading per S.C. Code § 5-7-250

Date: March 28, 2020

ORDINANCE 06-20

AN EMERGENCY ORDINANCE TO DECLARE A STATE OF EMERGENCY, TEMPORARILY SUSPEND THE NORMAL OPERATING PROCEDURES OF FOLLY BEACH CITY COUNCIL MEETINGS AND TAKE ADDITIONAL MEASURES TO PROTECT THE PUBLIC.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that the following Emergency Ordinance be adopted pursuant to South Carolina Code § 5-7-250:

WHEREAS, it is well recognized that SARS-CoV-2, the virus that causes the disease COVID-19, presents a public health concern that requires extraordinary protective measures and vigilance; and

WHEREAS, these matters have taken many forms across the nation including travel bans, school closures, individual quarantines, and cancellation of major events, among other measures; and

WHEREAS, the Governor of South Carolina declared a State of Emergency on March 13, 2020, to enhance the state's response to the COVID-19 virus's impact on the state; and

WHEREAS, the City of Folly Beach is working with other government agencies in an effort to prevent the spread of disease; and

WHEREAS, Section 5-7-250 of the South Carolina Code of Laws empowers Council to enact emergency ordinances affecting life, health, or safety; and

WHEREAS, in light of the foregoing, City Council of the City of Folly Beach deems it proper and necessary to adopt this emergency ordinance in order to address how the City and Council will proceed in light of the above emergency;

WHEREAS, pursuant to Executive Order No. 2020-14, March 27, 2020, the Governor has authorized law enforcement officers of any municipality "to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by [the Governor];"

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WHEREAS, as part of the record, the City relies on public testimony from Dr. Edward O'Bryan, Chief Medical Officer for MUSC Business, which outlines the danger of allowing beach visitors and short-term rentals;

NOW BE IT THEREFORE ORDAINED that the following emergency procedures are hereby adopted and to remain in effect until ~~April 30, 2020,~~ June 1, 2020 subject to termination or extension by Council:

1. Council formally adopts the Mayor's Proclamation of Emergency dated March 16, 2020 and the measures contained therein. Council also confirms that the Mayor, or the Mayor Pro Tempore in his absence, can exercise the emergency powers granted to the Mayor pursuant to City of Folly Beach Ordinance § 35.05.

2. City Hall is closed and moved to a virtual, phone, and dropbox operation until further notice.

3. All City meetings scheduled for March and April are postponed.

4. City Council members and staff will be authorized during this State of Emergency to attend meetings of Council via teleconference at their discretion.

5. The public will not be allowed to attend Council meetings, or any other City meetings, in person. Meetings will still be broadcast. Measures will be taken to allow the public to submit comments prior to any meeting by emails, which will be included in the public record of the meeting.

6. All deadlines imposed by City Ordinance or rule, applicable to the municipality or any applicant, shall be suspended, during this temporary period.

7. The City Administrator is authorized to develop and enact a plan in order to ensure continuity in the delivery of government services in light of the COVID-19 outbreak.

8. The City Administrator is authorized to cancel and revoke any special events permits issued prior to the date of this ordinance for events taking place until April 30, 2020.

9. The Mayor is authorized to take the following measures to limit access to the City of Folly Beach by the general public until ~~April 30, 2020~~ June 1, 2020:

a. Public Safety will establish a check point limiting access to the City on a 24-hour basis.

b. The following persons will have access to the City:

i. Residents, including long-term renters, and property owners, ~~including a maximum of 2 family members (spouse, children, parents, grandparents only)~~ with

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two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, lease, etc.).

ii. Residents may obtain a pass to give to professional medical caretakers through locations and methods established by staff.

iii. Employees of local businesses must have a previously-issued red or yellow reentry pass issued by the City and employee credentials.

iv. Contractors and service businesses with a Folly Beach Business License vehicle sticker. Contractors must stay on site.

v. Delivery persons who can demonstrate business on the island at the checkpoint, including pharmacy, FedEx, UPS, Amazon, and food delivery, by showing delivery address and goods at the checkpoint.

10. The Mayor is authorized to other protective measures and may authorize Public Safety to do whatever may be deemed necessary to maintain peace and good order and protect the public health, as authorized by Executive Order No. 2020-14, Section 2, and any other Executive Orders issued by the Governor.

11. Starting on ~~March 29, 2020~~ April 7, 2020 at 9:00 a.m., no new check-ins are permitted ~~at any short-term rental, hotel, or other overnight accommodation~~ regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation.

12. All retail, non-essential businesses are hereby ordered closed. Grocery stores, liquor stores, gas stations, healthcare providers, and financial services (including appraisers and real estate agents without clients) are deemed essential. Per Executive Order No. 2020-10 restaurants and food-service establishments may not permit on-premises or dine-in consumption but may continue to offer feed or beverages for off-premises consumption.

13. Any failure to comply with this ordinance, including efforts to circumvent this ordinance, may be penalized a) as a civil infraction pursuant to provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of business license may result in the loss of a business license or other measures, or b) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency, or c) any other penalties provided by State law, including penalties granted pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State."

This emergency ordinance shall be terminated or extended by the issuance of another ordinance or shall automatically expire on ~~April 30, 2020~~ June 1,2020.

AMENDED AND ADOPTED this 6th day of April 2020, at Folly Beach, South Carolina.

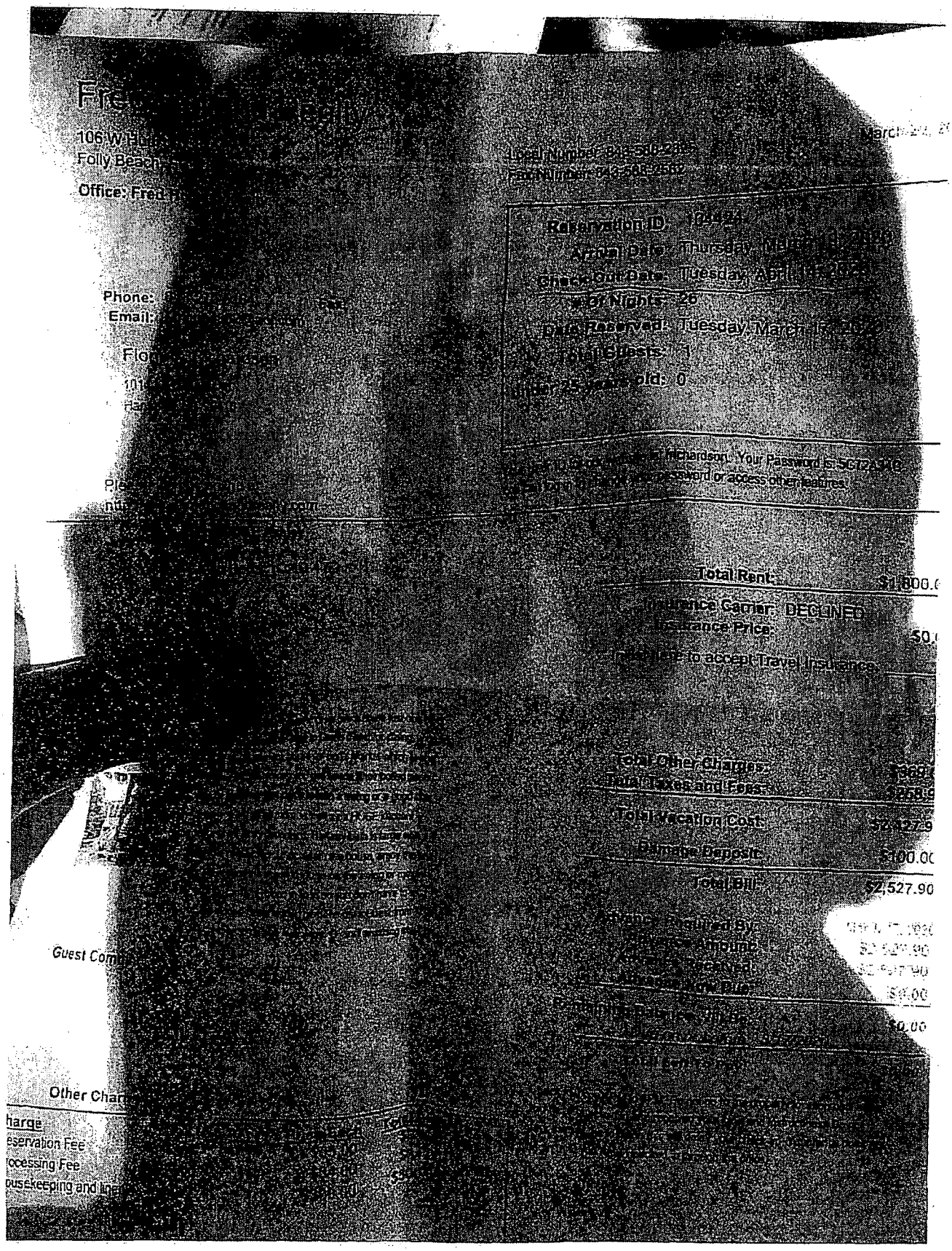
Ayes: 7 Nays: _____ Abstains: _____

~~Municipal Clerk~~
City Administrator

Tim Goodwin, Mayor

ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

EXHIBIT NO. P-2 1st one



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ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

Property: 208 E Ashley
Reservation ID: 104424
Dates: 3/19/2020 - 4/14/2020

Guest: Fiona and Mark A Richardson
Guest Type: Member
Property Summary -- -- NOTES

General | Member Info | Travel Agencies | Other Charges | Custom Charges | Summary

Change Date | Pay Upl | Undo Check In | Check Out

Confirmation By: 3/17/2020
Modified By: Anna Brown
Number In Party: 1 **Underage:** 0
Marketing Code: Returning Guest

Days Reserved: 26
Date Reserved: 3/17/2020 at 4:26 PM
Status: Checked In

Paid Deposit | VRA Signed | Receives Emails

NONE / DECLINED

Rental Price: $ 1800.00
Management Fee: 10.00 Percent
Required PrePay: ($2,527.90) $ 2527.90

Damage Deposit: $ 100.00
Discount: $ 0.00
Markup: $ 0.00
Owner Markup: $ 0.00

Reservation Comment History:
Apr 13 2020 12:41PM
Tenant has to move to 403 W Ashley on 4/14/2020. AB

New Comment:

ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

Property: 208 E Ashley
Reservation ID: 104424
Dates: 3/19/2020 - 4/14/2020

Guest: Fiona and Mark A Richardson
Guest Type: Member
Property Summary – NOTES

General | Member Info | Travel Agencies | Other Charges | Custom Charges | Summary

Change Date | Pay Up! | Undo Check In | Check Out

Confirmation By: 3/17/2020

Modified By: Anna Brown

Number In Party: 1 Underage: 0

Marketing Code: Returning Guest

Days Reserved: 26
Date Reserved: 3/17/2020 at 4:26 PM
Status: Checked In

Hold Deposit | VRA Signed | Receives Emails

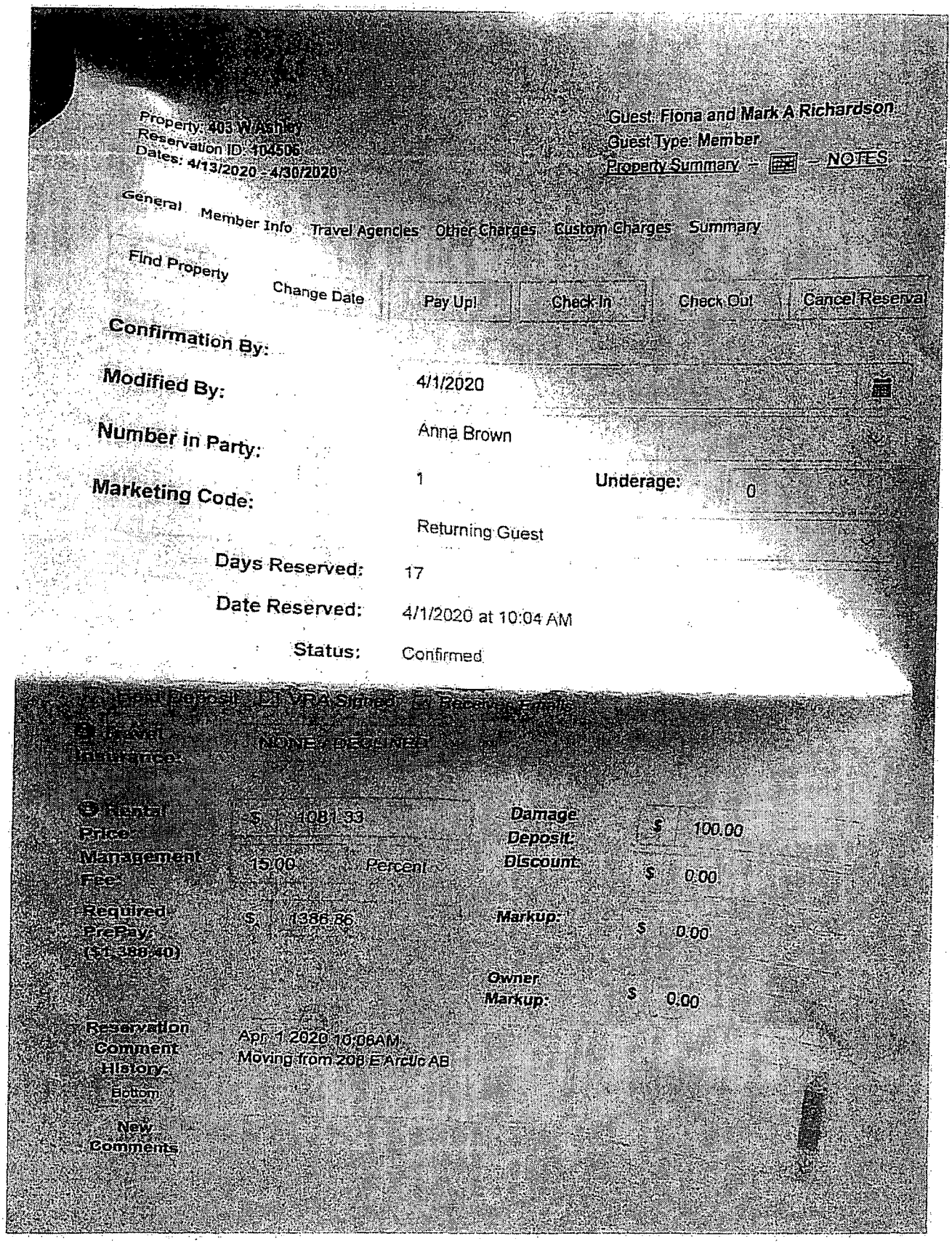
Travel Insurance: NONE / DECLINED

Rental Price: $ 1800.00
Damage Deposit: $ 100.00
Management Fee: 10.00 Percent
Discount: $ 0.00
Markup: $ 0.00
Required PrePay: ($2,527.90) $ 2527.90
Owner Markup: $ 0.00

Reservation Comment History:
Bottom
New

Apr 13 2020 12:41PM
Tenant has to move to 403 W Ashley on 4/14/2020 AB

EXHIBIT NO. P-3 2nd one



ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

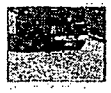
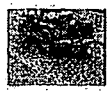
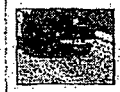
EXHIBIT NO. P-4

VISCE [illegible] TOS

Hotlists | Live Reads | Analysis | Reports | Snapshots

Capture Details | Map It

Refresh | Search Parameters | Saved Searches | Bulk Se

Overview	VRM	DateTime	Organization	System	Camera	
	HUM207	4/11/2020 9:14:31 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	HUM207	4/9/2020 10:21:33 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	HUM207	4/8/2020 10:30:40 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	HUM207	4/7/2020 8:54:05 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	HUM207	4/4/2020 10:03:01 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	HUM207	4/2/2020 9:23:28 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	HUM207	3/31/2020 9:44:03 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	HUM207	3/29/2020 10:37:43 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	HUM207	3/28/2020 10:36:44 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details

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3/27 @ 0800 NB

3/26 @ 0910 NB

3/25 @

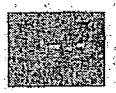
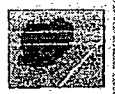
3/19 @ 1705 SB

VSG [redacted] hals

Hotlists | Live Reads | Analysis | Reports | Snapshots

Capture Details | Map It

Refresh | Search Parameters | Saved Searches | Bulk Se

Overview	VRM	DateTime	Organization	System	Camera	
	NGL475	3/27/2020 10:23:44 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	NGL475	3/27/2020 7:20:41 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	NGL475	3/21/2020 7:42:58 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	NGL475	3/21/2020 2:16:05 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	NGL475	3/21/2020 12:13:40 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details

7

2

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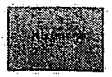
144

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Hotlists | Live Reads | Analysis | Reports | Snapshots

Capture Details | Map It

Refresh | Search Parameters | Saved Searches | Bulk Se

Overview	VRM	DateTime	Organization	System	Camera	
	QNY882	6/1/2019 5:49:16 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	QNY882	4/30/2019 4:22:22 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	QNY882	4/15/2019 6:39:32 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	QNY882	4/15/2019 6:39:32 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details

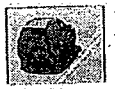
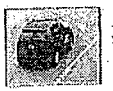
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Hotlists | Live Reads | Analysis | Reports | Snapshots

Capture Details | Map It

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Overview	VRM	DateTime	Organization	System	Camera	
	IPT259	4/15/2020 10:29:16 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	IPT259	4/14/2020 10:51:02 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	IPT259	4/6/2020 4:17:44 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	IPT259	4/5/2020 6:28:44 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	IPT259	4/5/2020 10:53:02 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	IPT259	4/1/2020 11:27:30 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details
	IPT259	4/1/2020 8:56:34 AM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	IPT259	3/30/2020 4:22:11 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd NB	View Details
	IPT259	3/24/2020 4:24:32 PM	SLED	FBPSD Folly Beach Rd	FBPSD Folly Beach Rd SB	View Details

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Queried By: Carla Woodhull ORI: SC0100400
Search Text: QVRQ-SC(IPT259)
Query Printed At: 4/15/2020, 1:00:54 PM

VEHICLE & PLATE INFORMATION

VIN: 5UXZV4C51D0B13664
Year: 2013
Make: BMW
Model: X5
Style: SU
Tag#: IPT259
Tag Exp: 11/2020
Tag State: SC
Decal Exp: 11/2020

OWNER INFORMATION

Name: FLECK, INC
Address: 4224 DORCHESTER RD
N, CHARLESTO SC

County: 294057433 CHAR CNTY
Sex: U

LIEN INFORMATION

Title #:770850255807628 A
Transfer Date: 11/16/2012

147

EXHIBIT NO. P-5

City of Folly Beach

Aaron Pope, AICP
License Official
PO Box 48
Folly Beach, SC 29439

Fred Holland c/o Lajuan Kennedy
PO Box 270
Folly Beach, SC 29439

Notice of Violation
and Assessment of Civil Fine

Date: April 14, 2020

Property Address: 403 West Ashley Avenue, Folly Beach, SC; TMS: 3281300075

This notice of violation (NOV) is to inform you that the City of Folly Beach verified a new rental check in at the property you manage at 403 West Ashley Avenue on 4/14/20. New rental checks are currently prohibited by Emergency Ordinance 06-20.

Emergency Ordinance 06-20 states that violation of the Emergency Ordinance can be penalized as a civil infraction pursuant to the provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of a business license. Accordingly, pursuant to Ordinance Section 110.99, this letter shall serve as your notice that a civil penalty of $500.00 (Five Hundred Dollars and No Cents) is hereby assessed against Fred Holland Realty on this date, April 14, 2020. In addition, each day that the renters at 403 West Ashley remain in place at that address shall be considered a separate offense.

Any further violations of Emergency Ordinance 06-20 will result in a suspension and/or revocation of your business license.

If you chose to appeal this finding of a violation, such appeal will be governed by Section 110.18, which states:

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§ 110.18 APPEALS FROM DECISIONS OF THE LICENSE OFFICIAL.

(A) Any person aggrieved by a license revocation, final assessment, charge backs from an audit or a denial of a business license by the License Official may appeal the decision by written request stating the reasons for the appeal. The appeal must be filed with the License Official within 30 days after service by certified mail or personal service of the notice of the License Official's decision. A written notice of appeal must be accompanied with a $250 fee that will be used to partially defray the costs incurred in connection with the administration of appeals. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.

(B) A hearing on an appeal shall be held within 20 business days after receipt of a request for appeal, unless continued by agreement. A licensee may surrender the business license and cease doing business prior to the revocation hearing date. The License Official has the discretion to cancel the hearing and to return some or all of the appeal fee after surrender of the business license.

(C) At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded by the city. A party who wants a transcript of the hearing shall bear the expense of preparing the transcript and shall provide a copy to the other party at no cost. A hearing officer, who shall be a member of the South Carolina Bar selected by the City Administrator, will preside over the hearing and determine the rules of evidence and procedure, including the imposition of time limitations upon the parties. Hearsay evidence will be allowed. Subpoenas will not be allowed. Within 15 business days of the hearing, the hearing officer shall render a written decision, based upon findings of fact and the application of the standards herein, that shall be served upon all parties or their representatives. The decision of the hearing officer shall be final.

Aaron Pope, AICP
License Official
City of Folly Beach

4/14/20

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EXHIBIT NO. P-6

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511
120 North Lake Drive
Lexington, South Carolina 29072
Fax (803) 785-5513

jcarrigg@carrigglaw.com
Website: CARRIGGLAW.COM

May 7, 2020

Aaron Pope, AICP
License Official, City of Folly Beach
P.O. Box 48
Folly Beach, SC 29439

RE: Appeal of Notice of Violation and Assessment of Civil Fine for Fred Holland Realty, Inc. and LaJuan Kennedy

Dear Aaron,

Enclosed please find Appeal in the above matter along with filing fee check in the amount of $250.00 as required by Folly Beach Ordinance Section 110.18. Please contact me to schedule this matter for hearing.

With kind regards,

JOHN CARRIGG
Attorney for Appellants

CC: Joseph C. Wilson, IV, Esquire
P.O. Box 178
Folly Beach, SC 29439

LaJuan Kennedy
P.O. Box 270
Folly Beach, SC 29439

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ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE CITY OF FOLLY BEACH
THE CITY OF FOLLY BEACH, vs. FRED HOLLAND REALTY, INC. AND LAJUAN KENNEDY, Appellant.	)	APPEAL OF NOTICE OF VIOLATION AND ASSESSMENT OF FINE

TO AARON POPE, LICENSE OFFICIAL:

Appellants hereby Appeal the Notice of Violation served on April 14, 2020 along with the Assessment of Civil Fine.

Appellants would respectfully allege the following particulars as to their appeal:

1. That pursuant to the threats posed by the Novel Corona Virus (COVID-19) the Governor of the State of South Carolina declared a State of Emergency on March 13, 2020, for the entire State and has been issuing proclamations on a regular basis to provide for the health, safety and welfare of the citizens of South Carolina.

2. That on March 16, 2020 Mayor Tim Goodwin of the City of Folly Beach declared a "Proclamation of Emergency" and on March 28, 2020 The Defendant City of Folly Beach acting by and through its chief executive and its council, passed Ordinance 06-20 which among other acts declared a "State of Emergency" in the City of Folly Beach separate and distinct from the State of Emergency declared by the Governor. The Ordinance further authorized the Mayor to rule the city by decree. Goodwin has issued several proclamations which are styled as "COVID Updates," these "laws" or "declarations of law" set forth laws, rules and regulations

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which the citizens and residents of The City of Folly Beach are required to obey upon pain of penalties provided by state law as provided for in Ordinance 06-20.

3. The Original version of the Folly Beach Declaration of Emergency, 06-20 passed on March 28, 2020, suspended all new short term rentals but allowed long term rentals. It prohibited "new check-ins" of short term renters. The ordinance itself does not define or reference a definition of "short term" and "long term." The amended version of the ordinance passed on April 6, 2020 prohibited "new check-ins" for short term or long term renters. The mayor's proclamation "COVID Update 5" issued on March 24th defined long term rental as one of 30 days or more.

4. The Governor issued Executive order 2020-19 governing short term rentals in the State of South Carolina. In direct contradiction to the Governors Order the City of Folly Beach continues to prohibit both short term and long term rentals allowable under the Governors Order. The Governors Order which defines short term rental as any rental less than 90 days and prohibits all short term rental only to person from "hot spots" as define by the CDC.

5. On March 29, 2020 the South Carolina Attorney General issued an opinion which clearly set out that counties and municipalities were prohibited from enacting emergency ordinances and that the power to enact such ordinances rests solely with the Governor.

6. On March 16, 2020, Fred Holland Realty, Inc., took a reservation for a long term rental from an unnamed family. One of the customers suffers from COPD. They were originally placed at a unit located at 208 East Ashley. On or about April 1, 2020, the customer contacted Fred Holland and discussed their desire to extend their stay until the end of April because their daughter who lived in their home worked at a local hospital and was treating COVID patients. This posed a dangerous situation for the family member with COPD. The stay was extended on

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April 1, 2020, but the extension potentially required the family to be moved to a new unit at some point in the future if the owner of 208 East Ashley wished to use his home. On April 13, 2020 the family was moved to 403 W. Ashley for the remainder of their stay.

7. A citizen of Folly Beach complained to the Elected Officials of the City of Folly Beach and the city police investigated the Family for moving to 403 W. Ashley. They determined that the move constituted a "New Check-in" even though the family had been on Folly Island prior to the Mayor or the Council Limiting Rentals. Aaron Pope issued a violation letter to Plaintiffs' on April 14, 2020. The Letter levies a fine of $500.00 per day and continues to accrue so long as the Family stays on Folly Beach. On the same day Goodwin clarified his previous proclamations stating that "Visitors currently checked in may remain until the end of their reservation, and may extend only for the same guests, on the same rental terms, and at the same location." (See COVID-19 Update 11).

8. Initially Plaintiff attempted to persuade the Family to vacate the Island but they refused to do so because of the serious health risks moving back to their home in North Charleston would pose. The City of Folly Beach has chosen not to take any enforcement action against the Family and instead wishes to only punish Appellants.

9. Further Appellants would show that in another circumstance on or about April 1, 2020, with the exact same facts that involved a long term renter being moved to another location the City investigated the matter but because if the involvement of a city Council member on behalf of the renter no action was taken by the City.

9. That Appellant would assert that:

a. The provisions of the Folly Beach Declaration of Emergency and Ordinance No. 06-20 prohibiting rentals is null and void as the same violates the Constitution and Laws of the

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State of South Carolina in whole or in part. South Carolina Code Ann. Section 25-1-440(a) (2018), specifically provides that the Governor is charged with the authority to exercise emergency powers as delegated by the general assembly. The Governors authority to act preempts the ability of Defendants to act.

b. That the provisions of Folly Beach Ordinance 35.01 through 35.05 that allow The City to restrict rentals are null and void as they violate the Constitution and Laws of the State of South Carolina.

c. That the laws, rules and regulations declared by Defendants as COVID Updates are null and void as being in violation of the Constitution of the Laws of the State of South Carolina in whole or in part.

d. That the Folly Beach Emergency Ordinance 06-20; Folly Beach Ordinance 35.01 through 35.05; COVID update 2 through 14 (along with any successive update) are null and void to the extent that they violate Article VIII Section 14(5) of the Constitution of the State of South Carolina in that these laws make acts which are legal under state law criminal within the municipal boundaries of Folly Beach.

e. That the City has allowed other rental companies to move individuals from one unit to another without imposing any fine or penalty and should not be allowed to "pick and choose" what businesses they punish and which businesses they favor.

10. That Appellants have been required to employ attorneys at great expense to bring this appeal in defense of a quasi-criminal action and violation levied and prosecuted by City of Folly Beach, through no fault of her own and pursuant to the statutes and laws of the State of South Carolina and the South Carolina Rules of Civil Procedure they are entitled to an award of Attorney's fees, costs and expenses incurred in this appeal.

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WHEREFORE, Plaintiff prays for this Tribunal to issue its judgment in accordance with the requests and demands set forth above and dismiss the Notice of Violation and notice of Civil Fine and award Appellant costs and Attorney's fees along with such other and further relief as the Tribunal deems just and proper.

By: _____

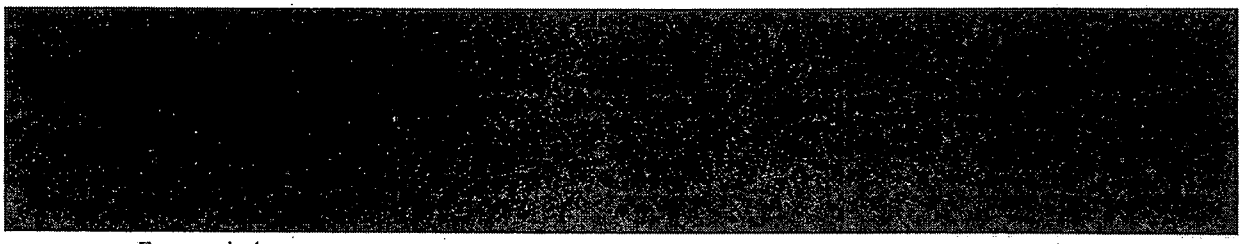
JOHN W. CARRIGG, JR.
120 North Lake Drive
Lexington, South Carolina 29072
Phone (803) 785-5511

Lexington, South Carolina

Dated: 5-07-20

ATTORNEY FOR PLAINTIFF

EXHIBIT NO. P-7



---------- Forwarded message ---------
From: **LaJuan Kennedy** <LaJuan@fredhollandrealty.com>
Date: Wed, Mar 25, 2020, 12:49 PM
Subject: RE: Re:
To: Tim Goodwin <timgoodwin52@gmail.com>

We are moving our reservations to 30 day stays and cancelling the rest. My owners are not happy but many of the guest want to come another time anyway . I do not agree with the ruling. The 30 day guest is no different than the 3 day guest. We will get through this Stay safe

From: Tim Goodwin [mailto:timgoodwin52@gmail.com]
Sent: Tuesday, March 24, 2020 7:32 PM
To: LaJuan Kennedy <LaJuan@fredhollandrealty.com>
Cc: Anna West <Anna@fredhollandrealty.com>
Subject: Re:

Got it.

On Tue, Mar 24, 2020, 6:51 PM LaJuan Kennedy <LaJuan@fredhollandrealty.com> wrote:

This is to inform you that we will be taking action against the city of Folly Beach for loss of revenue due to the recent passed resolution. The owners will be losing 190,618 and the company will be 28,592. The does not include the reservation that have cancelled because of you actions that we are calculating now. We are doing this based on the following legal advise

1 No just cause taken without compensation

2 No scientific evidence to uphold the decision

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3 Will the city abate taxes?

4 What is the difference between home owner from out of state and a tenant from out of state

5 Family members and delivery can be infected when they come in.

LaJuan Kennedy , Please call if you care to discuss.

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EXHIBIT NO. P-8

From: Katharine Eich
To: City Council
Subject: FW: Email to Rentals Regarding 30 Day Contracts
Date: Thursday, March 26, 2020 2:42:10 PM

Comment is below in blue.

Katharine Eich
Municipal Clerk
Email: keich@cityoffollybeach.com
Phone: 843-513-1833

From: LaJuan Kennedy <LaJuan@fredhollandrealty.com>
Sent: Thursday, March 26, 2020 2:41 PM
To: Katharine Eich <keich@cityoffollybeach.com>
Subject: FW: Email to Rentals Regarding 30 Day Contracts

From: Aaron Pope [mailto:apope@cityoffollybeach.com]
Sent: Thursday, March 26, 2020 2:13 PM
To: LaJuan Kennedy <lajuan@fredhollandrealty.com>
Cc: Patrick Hampton <patrick@fredhollandrealty.com>
Subject: RE: Email to Rentals Regarding 30 Day Contracts

You can send these comments to keich@cityoffollybeach.com and she will forward to the Mayor and Council.

Aaron Pope, AICP
Deputy Administrator/Zoning Administrator
City of Folly Beach
843-276-5568 apope@cityoffollybeach.com

From: LaJuan Kennedy <lajuan@fredhollandrealty.com>
Sent: Thursday, March 26, 2020 1:56 PM
To: Aaron Pope <apope@cityoffollybeach.com>
Cc: Patrick Hampton <patrick@fredhollandrealty.com>
Subject: RE: Email to Rentals Regarding 30 Day Contracts

We have offered the tenant the 30 days rental . If they wanted the unit then they would have only one tenant for the 30 day period. We are not booking several tenants in the unit. There is no scientific data that proves we are endangering the city in any manner. The vacation rentals are a large part of the city budget . Accommodation taxes city, county and state. A portion of all sale taxes, business licenses higher taxes on the property that the city receives.

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What about the second home owners if they want to just come stay in their house 3 days or a week are you going to stop that as well. Just had one ask how to get on the beach to go to their house. They are staying for a week. Are we going to tell that owner he cannot stay.

The president is trying to get the country back to normal with a target date of Easter, and there are several Charleston beaches that are planning to reopen on April 16th.

Just as his action has caused the country to go into recession the loss of income for some home owners could cause them to lose their home. Most everything we managed had April rentals in it. Many of them booked every week. As we are cancelling these reservations I am keeping a tally of the loss income.

LaJuan Kennedy

From: Aaron Pope [mailto:apope@cityofollybeach.com]
Sent: Thursday, March 26, 2020 11:38 AM
To: Property Managers <propertymanagers@cityofollybeach.com>
Subject: Email to Rentals Regarding 30 Day Contracts

Notice to Property Managers and Rental Owners:

Earlier this week the City prohibited new short term rental check ins until April 30th, 2020. Since that time, numerous reports have come in that rental contracts are being issued for 30 days even for stays of one week or less. Please be advised that issuing fraudulent 30 day contracts is a basis for revocation of a rental license or other actions. Also, the Mayor is prepared to issue further orders to restrict all rentals to non residents (short or long term) for the duration of the COVID-19 emergency or take other measures to stop actions taken to circumvent the law. The City halted check ins to limit the spread of a dangerous virus that has put countless lives in danger and is prepared to take more stringent action should further abuses be documented.

Aaron Pope, AICP
Deputy Administrator/Zoning Administrator
City of Folly Beach
843-276-5568 apope@cityofollybeach.com

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EXHIBIT NO. P-10

ELECTRONICALLY FILED - 2020 Oct 20 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

From: Aaron Pope
To: City Council
Subject: Fwd: 30 Day Rental Cooperation
Date: Wednesday, April 1, 2020 3:52:53 PM

Sent from my iPhone

Begin forwarded message:

From: LaJuan Kennedy <LaJuan@fredhollandrealty.com>
Date: April 1, 2020 at 3:48:58 PM EDT
To: Aaron Pope <apope@cityoffollybeach.com>
Subject: RE: 30 Day Rental Cooperation

Aaron

The lease for 30 days is not a fake, our system cannot process a fake reservation or contract. It will only allow us to provide paperwork for reservations that are paid. Guest could leave before the 30 days....we are renting 30 days only, but I cannot force someone to stay the whole time. I have the weekly rentals in the summer leave after 5 days but they were required to rent for the week. Do not think this is against the law. We are renting nothing less than 30 days in April Only one renter will be listed for the entire month regardless if they leave early or stay the entire month.

Are we offering discounts, yes. I am trying to help my owners survive. Our guest are all families trying to survive just like us.

Please also keep in mind that we are coming off seasonal (winter reservations thru 3/31). We have had tenants from out of state on Folly since the beginning of October/November, many from the northeast and many elderly that are extending. There have been several locals on the beach riding around looking at car tags to see where people are from and harassing/screaming at them to leave the beach. We have had people call in today threatening us, screaming at us walking down main street. Social media is getting out of hand with people posting and slandering us, by posting things that are not true!

I know there are owners (absentee owners) from the north here at their homes which is not against the law. The absentee owner makes up 80% of the ownership of Folly. I have had a many person ask how can they register to vote here . Then they would have a say since they represent the majority of the population

Most people want to be on front beach if they can. That is the best view and they can watch the children play on the beach.

We are informing anyone that comes in from another state be it long term, owner etc that the governor has issued a self quarantine for 14 days.....our website is also

updated with all the city and state information on COVID19.

Again - WE DO NOT ISSUE FAKE CONTRACT OF ANY KIND FOR ANY REASON. That is totally unethical, and illegal!

-----Original Message-----
From: Aaron Pope [mailto:apope@cityoffollybeach.com]
Sent: Wednesday, April 01, 2020 1:44 PM
To: Property Managers <propertymanagers@cityoffollybeach.com>; City Council <Citycouncil@cityoffollybeach.com>
Subject: 30 Day Rental Cooperation

Property Managers,

City Council exempted long term rentals of 30 days or more from the emergency actions last week. That said, since that time the city has received multiple complaints of (among other things):

1) Renters bragging that they intend to stay for a week and signed a fake 30 day lease.

2) Rental units being offered at a "monthly discount "to encourage 30 day rentals.

3) Renters from identified hotspot states telling residents that no one had informed them of a quarantine.

4) Renters from JI telling residents that they got a 30 day front beach rental contract so they could get access to the beach.

If your company is continuing to issue thirty day rentals please make sure you are relaying the quarantine requirements, educating your renters about the closure of the beach and non essential businesses, and otherwise not trying to actively entice a new class of long term renters for the sole purpose of filling short term rentals.

30 day rentals are allowed today. There is only one other option if enough complaints come in or, more importantly, it is determined that this exception is attracting large amounts of renters from COVID hotspots and otherwise putting residents in danger. City Council will have no choice but to prohibit all rentals.

Thank you
Sent from my iPhone

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE CITY OF FOLLY BEACH
THE CITY OF FOLLY BEACH, vs. FRED HOLLAND REALTY, INC. AND LAJUAN KENNEDY, Appellant.	)	MEMORANDUM IN SUPPORT OF APPELLANT'S CLAIM OF PREEMPTION

TO: THE HONORABLE CHRISTINE VARNADOE, HEARING OFFICER, CITY OF FOLLY BEACH

FACTS

Appellants would respectfully allege the following particulars as to their position that the provisions of the Folly Beach Ordinance dealing with short term rentals was preempted under the South Carolina Constitution and by specific Order of the Governor:

1. That pursuant to the threats posed by the Novel Corona Virus (COVID-19) the Governor of the State of South Carolina declared a State of Emergency on March 13, 2020, for the entire State and has been issuing proclamations on a regular basis to provide for the health, safety and welfare of the citizens of South Carolina.

2. That on March 16, 2020 Mayor Tim Goodwin of the City of Folly Beach declared a "Proclamation of Emergency" and on March 28, 2020 The Defendant City of Folly Beach acting by and through its chief executive and its council, passed Ordinance 06-20 which among other acts declared a "State of Emergency" in the City of Folly Beach separate and distinct from the State of Emergency declared by the Governor. The Ordinance further authorized the Mayor

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to rule the city by decree. Goodwin has issued several proclamations which are styled as "COVID Updates," these "laws" or "declarations of law" set forth laws, rules and regulations which the citizens and residents of The City of Folly Beach are required to obey upon pain of penalties provided by state law as provided for in Ordinance 06-20.

3. The Original version of the Folly Beach Declaration of Emergency, 06-20 passed on March 28, 2020, suspended all new short term rentals but allowed long term rentals. It prohibited "new check-ins" of short term renters. The ordinance itself does not define or reference a definition of "short term" and "long term." The amended version of the ordinance passed on April 6, 2020 prohibited "new check-ins" for short term or long term renters. The mayor's proclamation "COVID Update 5" issued on March 24th defined long term rental as one of 30 days or more.

4. On March 29, 2020 the South Carolina Attorney General issued an opinion which clearly set out that counties and municipalities were prohibited from enacting emergency ordinances and that the power to enact such ordinances rests solely with the Governor.

5. On April 3, 2020, the Governor issued Executive order 2020-19 governing short term rentals in the State of South Carolina. In direct contradiction to the Governors Order the City of Folly Beach continues to prohibit both short term and long term rentals allowable under the Governors Order. The Governors Order which defines short term rental as any rental less than 90 days and prohibits all short term rental only to person from "hot spots" as define by the CDC.

6. On March 16, 2020, Fred Holland Realty, Inc., took a reservation for a long term rental from an unnamed family. One of the customers suffers from COPD. They were originally placed at a unit located at 208 East Ashley. On or about April 1, 2020, the customer contacted

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Fred Holland and discussed their desire to extend their stay until the end of April because their daughter who lived in their home worked at a local hospital and was treating COVID patients. This posed a dangerous situation for the family member with COPD. The stay was extended on April 1, 2020, but the extension potentially required the family to be moved to a new unit at some point in the future if the owner of 208 East Ashley wished to use his home. On April 13, 2020 the family was moved to 403 W. Ashley for the remainder of their stay.

7. A citizen of Folly Beach complained to the Elected Officials of the City of Folly Beach and the city police investigated the Family for moving to 403 W. Ashley. They determined that the move constituted a "New Check-in" even though the family had been on Folly Island prior to the Mayor or the Council limiting rentals. Aaron Pope issued a violation letter to Plaintiffs' on April 14, 2020. The Letter levies a fine of $500.00 per day and continues to accrue so long as the Family stays on Folly Beach. On the same day Goodwin clarified his previous proclamations stating that "Visitors currently checked in may remain until the end of their reservation, and may extend only for the same guests, on the same rental terms, and at the same location." (See COVID-19 Update 11).

8. Initially Appellant attempted to persuade the Family to vacate the Island but they refused to do so because of the serious health risks moving back to their home in North Charleston would pose. The City of Folly Beach has chosen not to take any enforcement action against the Family and instead wishes to only punish Appellants.

9. Further Appellants would show that in another circumstance on or about April 1, 2020, with the exact same facts that involved a long term renter being moved to another location the City investigated the matter but because if the involvement of a city Council member on behalf of the renter no action was taken by the City.

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9. That Appellant would assert that:

a. The provisions of the Folly Beach Declaration of Emergency and Ordinance No. 06-20 prohibiting rentals is null and void as the same violates the Constitution and Laws of the State of South Carolina in whole or in part. South Carolina Code Ann. Section 25-1-440(a) (2018), specifically provides that the Governor is charged with the authority to exercise emergency powers as delegated by the general assembly. The Governors authority to act preempts the ability of Defendants to act.

b. That the provisions of Folly Beach Ordinance 35.01 through 35.05 that allow The City to restrict rentals are null and void as they violate the Constitution and Laws of the State of South Carolina.

c. That the laws, rules and regulations declared by Defendants as COVID Updates are null and void as being in violation of the Constitution of the Laws of the State of South Carolina in whole or in part.

d. That the Folly Beach Emergency Ordinance 06-20; Folly Beach Ordinance 35.01 through 35.05; COVID update 2 through 14 (along with any successive update) are null and void to the extent that they violate Article VIII Section 14(5) of the Constitution of the State of South Carolina in that these laws make acts which are legal under state law criminal within the municipal boundaries of Folly Beach.

ARGUMENT

Appellant's position is very straight forward and simple. Appellant asserts that the City of Folly Beach may not pass an Emergency Ordinance that attempts to place Emergency restrictions on Short Term rentals when the Governor under his Emergency Powers has issued an Executive Order specifically addressing restrictions on Short Term Rentals on a state wide basis.

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The Governor's Executive Order 2020-19 (Attached as Exhibit A) specifically addresses the restrictions on short term rentals that apply in the State of South Carolina. Executive Order 2020-19 specifically states

"If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction." Executive Order 2020-19, Issued and effective April 3, 2020.

The Governors Order only placed restrictions on short term rentals to individuals who were travelling from states with "extensive community transmission" rates of COVID-19. At the time the list included ONLY individuals from New York, New Jersey and Connecticut. The Folly Beach Ordinance unlawfully and in direct contradiction of the Governor's Executive Order restricts rentals to any person including current residents of the city of Folly Beach.

The Opinion of the Attorney General dated March 29, 2020, (Attached as Exhibit B), specifically addresses the preemption issue with regard to Emergency Ordinances/Orders. We hereby adopt the reasoning stated in that opinion and incorporate it herein as if repeated verbatim. We do not wish to repeatedly cite the Opinion or repeat the citations contained therein in support of our position however we do ask that the Hearing Officer review the attached Opinion as it concisely states and supports our position.

It is very important to note that we do not propound that the City of Folly Beach does not have authority to govern short term rentals through a properly passed ordinance. Nor do we content that they would be preempted from passing an ordinance that imposed similar regulations set forth in their Emergency Ordinance. Our contention is that they are not allowed to pass an Emergency Ordinance that lacks the formalities of an Ordinance passed in the normal course of

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business of governing the city. Those ordinances require three readings and a public hearing whereas emergency ordinances are passed with a single reading without public input. Our caveat to that position is that while Executive Order 2020-19 remains in effect all municipalities including The City of Folly Beach would be restrained from any action that contradicts that Order.

The Folly Beach Order contradicts the Governors Executive Order in a number of particulars. The Folly Beach Ordinance prohibited all short term rentals regardless of the location from which the renter travelled from. That provision directly contradicts the Governor's Order which would allow short term rental new check-ins so long as the individual or family was not from an "extensive community transmission area." Certainly the Governor's Order would not prohibit a Charleston County Resident from renting a short term rental on Folly Beach, but the Folly Beach Ordinance does just that. Further the Folly Beach Ordinance does not allow a current renter authorized under the Folly Beach Ordinance and currently on the island from renting a different house or unit should they wish to. The Ordinance also places restrictions on extending rentals that the Governors Order would allow.

CONCLUSION

Based upon the above we contend that the "preemption" issue here is limited to emergency ordinances. The general law of preemption is different and distinct from the law concerning preemption as it pertains to emergency ordinances. The reason lies with the fact that emergency ordinances are passed in the darkness of a closed meeting without input by the public and without the elected officials having to act in front of their constituents. Further The City's Ordinance is in direct violation of the Governor's Executive Order that prohibits the City from passing an ordinance in contradiction to the Governors Order. Appellant would also request that

even should she prevail on the preemption issue that she be allowed to present her evidence at the hearing due to the complication that may occur should the City appeal and obtain a favorable reversal.

WHEREFORE, Appellant prays for this Tribunal, after holding its hearing, issue its judgment in accordance with the requests and demands set forth above and dismiss the Notice of Violation and notice of Civil Fine and award Appellant costs and Attorney's fees along with such other and further relief as the Tribunal deems just and proper.

By: S/John W, Carrigg, Jr.
JOHN W. CARRIGG, JR.
120 North Lake Drive
Lexington, South Carolina 29072
Phone (803) 785-5511

Lexington, South Carolina

Dated:07-09-2020

ATTORNEY FOR APPELLANT

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NO. 2020-CP-10-03549
FRED HOLLAND REALITY, INC., and LUJUAN KENNEDY,	)	
Appellants,	)	**RESPONDENT CITY OF FOLLY BEACH'S APPELLATE BRIEF**
v.	)	
THE CITY OF FOLLY BEACH,	)	
Respondent.	)	

Respondent The City of Folly Beach, by and through undersigned counsel, hereby submits its Appellate Brief in favor of affirming the Orders of the City of Folly Beach Hearing Officer ("Hearing Officer"). July 17, 2020 Hearing Officer Order, Exhibit No. 1; August 20, 2020 Hearing Officer Final Order, Exhibit No. 2.

SUMMARY

Appellants Fred Holland Realty, Inc. and LaJuan Kennedy argue that the City's Hearing Officer incorrectly ruled 1) that the City's Emergency Ordinance No. 06-20, Exhibit No. 3, which temporarily barred new check-ins at short-term rentals, was a valid exercise of the City's emergency powers, and 2) that Appellant Fred Holland violated the Emergency Ordinance by allowing a family to move into a new rental in the City.

The City's Hearing Officer ruled correctly on both issues. As to the validity of Folly Beach's Emergency Ordinance, the City had ample authority from both state statutory law and the Executive Orders of Governor Henry McMaster to enact emergency ordinances restricting short-term rentals. First and foremost, the Home Rule Act, S.C. Code Ann. § 5-7-30, grants all municipalities broad powers to enact ordinances "for preserving health, peace, order and good

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government." Second, municipalities are explicitly granted the right to pass special emergency ordinances to meet public emergencies affecting life, health and safety. S.C. Code Ann. § 5-7-250(d) ("To meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances.").

Third, the City's Emergency Ordinance did not conflict with the Governor's Executive Orders. The Governor's Executive Order No. 2020-19 also banned short-term rentals "from or for individuals residing in or travelling from any country, state, municipality, or other geographic area **subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19** . . ." Executive Order No. 2020-19, Section 1(B), Exhibit No. 4 (emphasis added). Section 3(B) of the Executive Order only banned local ordinances that conflicted with the Executive Order.

Folly Beach's Emergency Ordinance does not conflict with Executive Order No. 2020-19 for two reasons. First, Executive Order No. 2020-19 covers all areas under a CDC travel advisory. Since the CDC had issued a global travel advisory at the time, the Executive Order effectively bans all short-term rental check-ins, just as Folly Beach's Emergency Ordinance does. Second, even if Folly Beach's Emergency Ordinance is viewed as a more expansive ban than the Executive Order, that does not mean the Emergency Ordinance is in conflict with the Executive Order. **It is well-settled that additional local regulation that merely supplements or expands state law does not result in a conflict.** Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196, 199 (2002) (citations omitted); The Town of Hilton Head v. Fine Liquors, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990) ("[I]n order for there to be a conflict between a state statute and a municipal ordinance 'both must contain either express or implied conditions which are inconsistent or irreconcilable with each other . . . If either is silent where the other speaks, there can be no conflict

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between them. Where no conflict exists, both laws stand.' ") (quoting McAbee v. Southern Ry. Co., 166 S.C. 166, 164 S.E. 444, 445 (1932)).

In addition, the City's Emergency Ordinance No. 06-20 did not criminalize any conduct. Rather, it imposed civil fines for violations. Emergency Ordinance, Section 13, Exhibit No. 3. Thus, the City did not criminalize conduct that was otherwise legal under State law.

Finally, Fred Holland plainly violated the Emergency Ordinance barring new short-term rental check-ins. After the Emergency Ordinance was passed, Fred Holland moved a family into a new property located in the City, under a new rental agreement, with a new rate, and a new rental term. Compare First Reservation Sheet, Exhibit No. 5 and Second Reservation Sheet, Exhibit No. 6. Even though the family was in a different rental with a different rate and term previously, the Hearing Officer correctly ruled that this was a new short-term rental check-in and that Fred Holland had violated the Emergency Ordinance by moving the family into a new rental.

PROCEDURAL POSTURE

This is an appeal from the enforcement of the City of Folly Beach's Emergency Ordinance No. 06-20, dated April 6, 2020, Exhibit No. 3 ("Emergency Ordinance"). The Emergency Ordinance adopted the City's existing business license enforcement procedure:

> 13. Any failure to comply with this ordinance, including efforts to circumvent this ordinance, may be penalized **a) as a civil infraction pursuant to provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of business license may result in the loss of a business license or other measures,** or b) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency, or c) any other penalties provided by State law, including penalties granted pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State."

Emergency Ordinance, Section 13, Exhibit No. 3 (emphasis added).

Sections 110.17 of the City of Folly Beach Code of Ordinances sets forth the procedure for

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initial enforcement of a violation, and Section 110.18 sets forth an appeal procedure. City of Folly Beach Code of Ordinances, Sections 110.17 and 110.18, Exhibit No. 7.

On April 14, 2020, the City's License Official, Aaron Pope, issued a Notice of Violation and Assessment of Civil Fine to Fred Holland. Notice of Violation, Exhibit No. 8. Fred Holland violated Emergency Ordinance 06-20 for allowing a new short-term rental check-in at 403 West Ashley Avenue, Folly Beach, on April 14, 2020. The Notice of Violation assessed a civil fine of $500.00 for each day that the renters remained at the address. The City agreed to cap this accumulating fine at $2,500.

Fred Holland appealed the Notice of Violation on May 7, 2020. Fred Holland Administrative Appeal, Exhibit No. 9. Similar to the current appeal, Fred Holland contended that the Emergency Ordinance was not enforceable and that it did not violate the Emergency Ordinance in any case.

The appeal was heard by the City's Hearing Officer, Christine Varnado. On July 17, 2020, prior to the hearing on the appeal and after briefing, the Hearing Officer ruled that the Emergency Ordinance was enforceable in that 1) the City had authorization to issue the Emergency Ordinance, 2) the Emergency Ordinance was not preempted by the Governor's Executive Order, and 3) the Emergency Ordinance did not criminalize otherwise legal conduct. July 17, 2020 Hearing Officer Order, Exhibit No. 1.

An administrative hearing on the appeal was held on July 30, 2020 to determine if Fred Holland violated the Emergency Ordinance. Fred Holland presented three witnesses, was given the opportunity to cross the City's witnesses, and introduced 16 exhibits. On August 10, 2020, the Hearing Officer issued an order finding that Fred Holland did violate the Emergency Ordinance, and that the subject renters remained at 403 West Ashley for more than five nights, thus supporting

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the $2,500 fine issued by the City's License Official. August 10, 2020 Hearing Officer Final Order, Exhibit No. 2.

This appeal followed.[1]

STANDARD OF REVIEW

The City of Folly Beach has chosen to provide review of business license issues by a hearing officer rather than City Council, which is the common path of such reviews. Nevertheless, the rulings of the hearing officer should be reviewed using the same standards as a more typical business license review by City Council.

In reviewing the discretionary decision of a legislative body, our courts have been hesitant to substitute their judgment for that of elected representatives. McSherry v. Spartanburg County Council, 371 S.C. 586, 590, 641 S.E.2d 431, 434 (2007). "When the city council of a municipality has acted after considering all of the facts, this 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, 254, 612 S.E.2d 467, 468 (Ct.App.2005).

With regards to the Hearing Officer's rulings on the validity of Emergency Ordinance 06-20, such ordinances are presumed valid. The Home Rule Act grants broad powers to Folly Beach, and "a presumption of validity attaches to all legislation, especially legislation relating to police power." Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 554, 397 S.E.2d 662, 664 (1990); Aakjer v. City of Myrtle Beach, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010) (An ordinance "is a legislative enactment and is presumed to be constitutional."). The exercise of

[1] "When a judgment is rendered by a magistrates court, by the governing body of a county **or by any other inferior court or jurisdiction**, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered . . ." S.C. Code Ann. § 18-7-10 (emphasis added).

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police power is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose. Id.

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

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

S.C. Const. art. VIII, § 17 (emphasis added).

FACTS

Folly Beach Amended Emergency Ordinance 06-20, dated April 6, 2020 (the "Emergency Ordinance"), attached as Exhibit No. 3, barred all new check-ins at any overnight accommodation for any length of stay starting on April 7, 2020:

> 11. Starting on ~~March 29, 2020~~ April 7, 2020 at 9:00 a.m., no new check-ins are permitted ~~at any short-term rental, hotel, or other overnight accommodation~~ regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation.

Emergency Ordinance, Section 11, Exhibit No. 3 (revisions adopted on April 6 in red type). The Emergency Ordinance did allow "Visitors currently checked-in may remain until the end of their existing reservation."

Fred Holland was charged with a violation of the Emergency Ordinance and an assessment of a civil fine on April 14, 2020 for allowing a new rental check-in at 403 West Ashley Avenue, Folly Beach, South Carolina, a rental property managed by Fred Holland. Notice of Violation, Exhibit No. 8.

Based on admissions in Fred Holland's Administrative Appeal, Exhibit No. 9, as well as Reservation Sheets, Exhibits No. 5 and 6, provided by Fred Holland's renters, it is clear that Fred

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Holland violated the Emergency Ordinance banning new check-ins after April 7, 2020. The renting family initially checked-in to a short-term rental located at 208 East Ashley on March 19, 2020 with a check out date of April 14, 2020. First Reservation Sheet, Page 1, Exhibit No. 5. Under the Emergency Ordinance, those renters could stay at the rental until April 14, 2020, but could not make a new reservation.

At some point in early April, Fred Holland accepted a second reservation from the renting family for 403 West Ashley starting on April 13, 2020 for a period of 17 days. Second Reservation Sheet, Exhibit No. 6; Fred Holland Appeal, Paragraph 6, Exhibit No. 9. Fred Holland's Appeal acknowledges that the family checked in to this new property on April 13, 2020, after Folly Beach's check-in ban went into effect. Fred Holland Appeal, Section 6, Exhibit No. 9. The Reservation Sheet provided by the renters confirms that the new reservation was for a new property, at a new rental rate, for a new time period. Second Reservation Sheet, Exhibit No. 6.[2] Since that check-in was after April 7, 2020, it was a violation of the Emergency Ordinance ban on new check-ins.

It is worth noting that Fred Holland also violated the prior version of the Emergency Ordinance, Emergency Ordinance 06-20, dated March 28, 2020, Exhibit No. 10. This earlier version of the Emergency Ordinance included a ban on new check-ins starting on March 29, 2020 at any short-term rental. The earlier version of the Emergency Ordinance did not cover long-term

[2] In its appeal of the Notice of Violation, Fred Holland notes that the renting family had health reasons for now wanting to move back home. Fred Holland Appeal, Section 6, Exhibit No. 9. The City did not "evict" or otherwise charge the guests and would have allowed them to stay at the original property at 208 East Ashley if Fred Holland had contacted the City about the situation. Fred Holland Appeal, Section 7 (noting that City would allow renters to extend existing reservations), Exhibit No. 9. Instead, Fred Holland kicked the renters out of 208 East Ashley to make room for the owners, Fred Holland Appeal, Section 6, and never came to the City to find a way to allow the family to stay without increasing the number of renters on the island.

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rentals like the April 6, 2020 version at issue. Since the check-in on April 14, 2020 was for a short-term rental, it would have violated this prior Emergency Ordinance. This is important because the prior Emergency Ordinance was in place at the time that Fred Holland accepted the second reservation on April 1, 2020.

The Hearing Officer agreed, ruling that this was a new check-in in violation of the Emergency Ordinance.

LEGAL ARGUMENT

I. THE FOLLY BEACH EMERGENCY ORDINANCE DOES NOT CRIMINALIZE CONDUCT THAT IS LEGAL UNDER STATE LAW.

Fred Holland first argues that the Folly Beach Emergency Ordinance is in violation of Article VIII, Section 14(5) of the Constitution of State of South Carolina because the Emergency Ordinance criminalizes conduct that is legal under state law. Article VIII governs the power of municipalities, and Section 14 places some limits on the laws municipalities can pass:

> In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside [by municipal law]:
>
> (1) The freedoms guaranteed every person; (2) election and suffrage qualifications; (3) bonded indebtedness of governmental units; (4) the structure for and the administration of the State's judicial system; (5) **criminal laws and the penalties and sanctions for the transgression thereof**; and (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

S.C. Const. art. VIII, § 14 (emphasis added).

It would appear that Fred Holland has not read the Folly Beach Emergency Ordinance. The Emergency Ordinance does not "criminalize" any conduct. Rather, the Emergency Ordinance imposes a *civil* fine for violations of the Emergency Ordinance:

> 13. Any failure to comply with this ordinance, including efforts to circumvent this ordinance, may be penalized a) as a civil infraction pursuant to

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> provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of business license may result in the loss of a business license or other measures, or b) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency, or c) any other penalties provided by State law, including penalties granted pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State."

Emergency Ordinance, Section 13, Exhibit No. 3 (amendments adopted on April 6, 2020 in red type).

In its April 6, 2020 Emergency Ordinance, the City adopted *civil* fines rather than *criminal* fines to avoid a *potential* conflict under Article VIII, Section 14(5), after the South Carolina Attorney General opined on March 29, 2020 that local emergency ordinances criminalizing conduct may run afoul of Article VIII, Section 14(5). March 29, 2020 Updated S.C. A.G. Opinion, Exhibit No. 11.[3]

The reported cases cited by the Attorney General in its Opinion make clear that the use of civil fines removes the City's action from the purview of Article VIII, Section 14(5), which only regulates criminal penalties. For instance, the first South Carolina opinion cited by the Attorney General, Beachfront Entertainment, Inc. v. Town of Sullivan's Island, 379 S.C. 602, 666 S.E.2d 912, 914 (2008), makes clear that municipalities can adopt local ordinances that supplement and add additional restrictions on top of state laws so long as they 1) are not preempted by any state law, and 2) do not criminalize the conduct. See also Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 365, 660 S.E.2d 264, 269 (2008) ("Because we find the Ordinance does not criminalize conduct, we hold it does not run afoul of Article VIII, section 14 of the Constitution.").

[3] To be clear, this Opinion is neither binding nor applicable nor persuasive as argued below.

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Imposition of a civil fine does not criminalize conduct. It is a civil fine and does not violate the State Constitution's requirement that municipalities cannot criminalize actions that are legal under state law.

Since Folly Beach is seeking to enforce a civil fine or infraction against Fred Holland, the City is not criminalizing actions that are legal under state law. Accordingly, the Emergency Ordinance does not violate South Carolina Constitution Article VIII, Section 14(5).

II. FOLLY BEACH'S EMERGENCY ORDINANCE IS NOT PREEMPTED BY ANY STATE LAW OR EXECUTIVE ORDER.

Appellant Fred Holland also claims that Folly Beach's Emergency Ordinance, which banned all new rental check-ins, conflicted with and was preempted by Governor Henry McMaster's Executive Order No. 2020-19. That Executive Order banned new reservations or bookings at short-term rentals "from or for individuals residing in or travelling from any country, state, municipality, or other geographic area **subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19** . . ." Executive Order No. 2020-19, Section 1(B), Exhibit No. 4 (emphasis added).

Executive Order No. 2020-19, like Governor McMaster's other Emergency Orders dealing with the pandemic, does contain a provision invalidating local ordinances that *conflict* with the Executive Order:

> If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction **that conflicts with this Order**, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

Executive Order No. 2020-19, Section 3(B), Exhibit No. 4 (emphasis added). While Executive Order No. 2020-19 preempted any local ordinance that ***conflicts*** with the Order, it did not declare a broad field preemption of all local emergency ordinances addressing short-term rentals.

Folly Beach's Emergency Ordinance banning all new check-ins does is authorized under

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clear state law and does not conflict with the Governor's Executive Order No. 2020-19 as a matter of fact and as a matter of law.

A. FOLLY BEACH IS GRANTED UNEQUIVOCAL AND BROAD AUTHORITY BY STATE LAW TO ISSUE EMERGENCY ODINANCES.

> Determining if a local ordinance is valid is essentially a two-step process. The first step is to ascertain whether the county or municipality that enacted the ordinance had the power to do so. If no such power existed, the ordinance is invalid and the inquiry ends. However, if the local government had the power to enact the ordinance, the next step is to ascertain whether the ordinance is inconsistent with the Constitution or general law of this State.

Mun. Ass'n of S.C. v. AT & T Commc'ns of S. States, Inc., 361 S.C. 576, 579, 606 S.E.2d 468, 470 (2004) (quoting Hosp. Ass'n of S.C., Inc. v. Cty. of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995)).

With regards to the first step of the inquiry, Folly Beach is given broad authority to pass laws to protect public health in times of an emergency. First and foremost, the Home Rule Act, S.C. Code Ann. § 5-7-30 grants all municipalities broad powers to enact ordinances to preserve general welfare and public health:

> Each municipality . . . may enact . . . ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it.

Furthermore, Section 5–7–10 states that "[t]he powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities." S.C. Code Ann. § 5–7–10 (2004).

"This grant of power for purposes of municipal legislation is as broad and comprehensive as it was within the power of the State to delegate. It is a grant of the sovereign police power of

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the State itself, limited alone (1) by the territorial confines of the municipality authorized to exercise it, and (2) by the proviso that legislation thereunder shall not be inconsistent with the laws of the State." Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242, 243 (1963). Thus, standing alone, the Home Rule Act clearly imparts Folly Beach with the police power to enact the Emergency Ordinance to preserve public health.

In addition, municipalities are explicitly granted the right to pass special emergency ordinances to meet public emergencies affecting life, health and safety along with a procedure to follow:

> (d) **To meet public emergencies affecting life, health, safety or the property of the people, [a municipal] council may adopt emergency ordinances**; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment.

S.C. Code Ann. § 5-7-250 (emphasis added). Defendant Folly Beach's Emergency Ordinances have been passed in compliance with this statute. Emergency Ordinance, Exhibit No. 3.

Appellant Fred Holland may argue this is simply a procedural statute, but the first sentence of Section 5-7-250(d) explicitly states that municipalities have the right to pass emergency ordinances.

In the context of the broad grant of power under the Home Rule Act and the explicit grant of power to pass emergency ordinances in Section 5-7-250(d), any limitation on Folly Beach's police powers during a time of emergency would have to be explicit and clear. No such limitation exists either in state law or in the Governor's Executive Orders. No law states that municipalities cannot exercise emergency powers. No law states that municipalities cannot restrict access during

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a state of emergency. No law states that municipalities cannot regulate short-term rentals. Rather, the general assembly has seen fit to grant cities a procedure to utilize its emergency powers.

To be clear, the City's police powers are derived from the State. City of Charleston v. Jenkins, 243 S.C. 205, 208, 133 S.E.2d 242, 243 (1963) ("Governmental authority known as the police power is an inherent attribute of state sovereignty. It can belong to cities or other subordinate government agencies or divisions of the state when and as conferred by the state."). Thus, the General Assembly and possibly the Governor, if they wished, could explicitly limit the City's police powers.

Governor McMaster has steadfastly refused to impose any such broad restriction on municipalities' emergency powers. Nor has the state legislature. Without an explicit repeal of the powers granted by the Home Rule Act and Section 5-7-250(d), the City is fully within its rights to enact emergency ordinances and to enforce its police powers, including the indisputable power to regulate short-term rentals.

It is beyond question that Folly Beach's Emergency Ordinance limiting short-term rentals for a brief period of time was enacted to protect the public health. In a typical year, 1 million visitors from outside the Charleston County area stay overnight on Folly Beach. *See Folly Beach 2014 Economic Impact Study* (College of Charleston Office of Tourism Analysis).[4] Managing and temporarily reducing those visitors at the peak of a generational pandemic created by a highly infectious disease susceptible to social transmission is undoubtedly a public health concern of the highest order. Appellant fails to offer a scintilla of scientific or medical evidence that Folly

[4] https://www.cityoffollybeach.com/wp-content/uploads/2015/04/Folly-Beach-Econ-Impact-Exec-Summary.pdf

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Beach's restrictions are not an appropriate measure to address this pandemic.[5]

B. FOLLY BEACH'S EMERGENCY ORDINANCE DOES NOT CONFLICT WITH THE GOVERNOR'S EXECUTIVE ORDER NO. 2020-19.

As pointed out above, the only limitation placed on local emergency ordinances is the Governor's ban on local laws that conflict with his Executive Orders. Executive Order No. 2020-19, Section 3(B), Exhibit No. 4. Folly Beach's Emergency Ordinance does not conflict with Executive Order No. 2020-19 for two reasons.

First, the Executive Order and the Emergency Ordinance were identical in that they both effectively banned all short-term rentals. Executive Order No. 2020-19 banned check-ins from all areas under a CDC travel advisory. Since the CDC had issued a global travel advisory at the time, the Executive Order effectively bans all short-term rental check-ins, just as Folly Beach's Emergency Ordinance does.

Second, even if Folly Beach's Emergency Ordinance is viewed as a more expansive ban than the Executive Order, that does not mean the Emergency Ordinance is in conflict with the Executive Order. It is well-settled that additional local regulation that merely supplements or expands state law does not result in a conflict. Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196, 199 (2002) (citations omitted); The Town of Hilton Head v. Fine Liquors, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990) ("[I]n order for there to be a conflict between a state statute and a municipal ordinance 'both must contain either express or implied conditions which are inconsistent or irreconcilable with each other . . . If either is silent where the other speaks, there

[5] Since Fred Holland has not asserted that the adoption of the Emergency Ordinance was arbitrary or without any factual support, Folly Beach will not address that issue at this point. However, if there is any question regarding the need for action during a global generational pandemic, Folly Beach can present scientific articles, data, affidavits, and statements from qualified experts all supporting Folly Beach's actions during this pandemic. Folly Beach reserves the right to present such evidence if Fred Holland adds any new arguments.

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can be no conflict between them. Where no conflict exists, both laws stand.' ") (quoting McAbee v. Southern Ry. Co., 166 S.C. 166, 164 S.E. 444, 445 (1932)). Since the Governor's Executive Order is arguably silent on renting to persons who are not from the Tri-State area, Folly Beach's regulation of same is not in conflict with the Executive Order.

1. **THE GOVERNOR'S EXECUTIVE ORDER NO. 2020-19 BARS CHECK-INS FROM ALL AREAS UNDER A CDC TRAVEL ADVISORY, WHICH INCLUDES THE ENTIRETY OF THE UNITED STATES.**

Governor Henry McMaster's Executive Order No. 2020-19, dated April 3, 2020, Exhibit No. 4, banned new reservations or bookings at short-term rentals:

> B. I hereby order and direct that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration (collectively "Lodging"), as set forth below, in the State of South Carolina are prohibited from making or accepting new reservations or bookings **from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19**, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut).

Executive Order No. 2020-19, Section 1(B), Exhibit No. 4 (emphasis added).

Appellant Fred Holland would have the Court focus on the non-exclusive reference to the "Tri-State Area," but the Executive Order is, in fact, much broader. The Executive Order bans rentals to all persons from any area "identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19." This language brings the Executive Order in line with the Folly Beach Emergency Ordinance because the CDC had issued travel advisories for the United States as a whole when it was passed.

Executive Order No. 2020-19 was in place when Folly Beach passed its Emergency Ordinance and when Fred Holland violated that Emergency Ordinance. On April 7, 2020, when Folly Beach's Emergency Ordinance went into effect, the CDC advised travelers to avoid all

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nonessential travel in the United States and also advised travelers to follow all state and local rules:

Coronavirus and Travel in the United States

Avoid all nonessential travel in the United States

CDC recommends you stay home and avoid all nonessential travel within the United States. This includes travel of any distance (across town, state and country) by air, bus, train and car. COVID-19 is spreading in every state, and travel increases your chances of getting and spreading the virus. This guidance does not apply to workers in critical infrastructure industries.

The State or local government where you are may have issued orders or provided guidance more restrictive than these federal guidelines. In that case, **follow the state or local orders and guidance.**

CDC, "Coronavirus and Travel in the United States," April 7, 2020, Exhibit No. 12 (emphasis added).[6]

In addition, The CDC's website makes clear that all countries, including the United States and South Carolina, are under a travel advisory during the pandemic. CDC, "COVID-19 Travel Recommendations by Country," Exhibit No. 13.[7]

Thus, every state and every locality, including South Carolina and Hanahan, where the renters came from, was under a CDC travel advisory. Indeed, the CDC additionally recommended compliance with all local orders, which would include Folly Beach's Emergency Ordinance.

Since Executive Order No. 2020-19, Exhibit No. 4, banned short-term rentals to anyone from a location under a CDC travel advisory and since the CDC had placed the entire country

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[6] https://web.archive.org/web/20200407122127/https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html (archived website from April 7, 2020).

[7] https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html The archived website would not display the map on this page, but this page has not changed since the pandemic began in March.

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under a travel advisory (and adopted local orders regarding same), the Governor's Executive Order applied to all rentals to persons from South Carolina and Hanahan. In other words, the Governor essentially banned all short-term rentals by the plain language of his Executive Order No. 2020-19 due to its adoption of the broad advisories issued by the CDC. Thus, Executive Order No. 2020-19 and Folly Beach's Emergency Ordinance were in complete accord and banned the exact same activity: no short-term rental check-ins for any person regardless of where they came from. The Executive Order and Emergency Ordinance do not differ at all, but rather impose identical restrictions.

In addition, the Governor authorized Folly Beach to enforce the Governor's orders. Executive Order No. 2020-19, Exhibit No. 4, explicitly authorized municipalities and their law enforcement officers "to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of any Order issued by the undersigned in connection with same.". The Executive Order also authorized any city official "to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action."

This grant of authority by the Governor during the pandemic is in accord with the explicit legislative grant of authority for municipalities to pass emergency orders pursuant to Section 5-7-250(d). Thus, the City's actions were authorized not only by the Home Rule Act and Section 5-7-250(d), but also by Governor Henry McMasters Executive Orders.

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2. EVEN IF FOLLY BEACH'S EMERGENCY ORDINANCE EXPANDED THE SHORT-TERM RENTAL RESTRICTIONS CONTAINED IN THE GOVERNOR'S EXECUTIVE ORDER, THE EMERGENCY ORDINANCE AND EXECUTIVE ORDER WOULD NOT BE IN CONFLICT UNDER SOUTH CAROLINA LAW.

Even if the Court ignores the fact that Executive Order No. 2020-19 and Folly Beach's Emergency Ordinance both ban all short-term rental check-ins, as a matter of law, a local ordinance can expand on the restrictions of a state law without being in conflict with that state law. "Conflict preemption occurs when the [local] ordinance hinders the accomplishment of the [state] statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible." S.C. State Ports Auth. v. Jasper Cty., 368 S.C. 388, 629 S.E.2d 624, 630 (2006) (citations omitted). Generally, additional local regulations that merely supplement state law does not result in a conflict. Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196, 199 (2002) (citations omitted).

"[I]n order for there to be a conflict between a state statute and a municipal ordinance 'both must contain either express or implied conditions which are inconsistent or irreconcilable with each other . . . If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.' " The Town of Hilton Head v. Fine Liquors, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990) (quoting McAbee v. Southern Ry. Co., 166 S.C. 166, 164 S.E. 444, 445 (1932)).

Thus, in City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963), the Court determined a city ordinance which prohibited businesses from on-premises service or consumption of any wines or malt liquors between 1:30 a.m. and 7:30 a.m. did not conflict with a state statute making it unlawful to sell wine or beer between midnight Saturday and sunrise Monday. Noting the ordinance merely imposed additional requirements on commercial establishments in the city,

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the Court concluded the ordinance was neither inconsistent nor irreconcilable with the State statute, and its passage was a proper and valid exercise of the city's police power. Id.

In Denene, the City of Charleston banned on-premises consumption of alcohol between 2:00 a.m. and 6:00 a.m. on Mondays through Saturdays. At the time, S.C. Code Ann. § 61-4-120 prohibited the sale of alcohol "between the hours of twelve o'clock Saturday night and sunrise Monday morning . . . Municipal ordinances in conflict with this section are unenforceable." Denene, 574 S.E.2d at 199. The Court found that the City's ban did not conflict with the state prohibition because "additional regulation to that of State law does not constitute conflict therewith." Id. In other words, additional regulations are "neither inconsistent nor irreconcilable with the State statute." Id.

Fred Holland seems to believe that if a local ordinance is not identical to a state law, it is in conflict with that state law. That is not how conflict preemption works. Nothing in Defendant Folly Beach's Emergency Ordinance conflicts with state law or the Governor's Executive Orders. Both the Executive Orders and Folly Beach's Temporary Emergency Ordinance can be enforced at the same time without conflict. The Executive Order at the very least barred all check-ins of visitors from the "Tri-State Area." Folly Beach's Emergency Ordinance barred all check-ins of visitors from any state. Thus, the Folly Beach Emergency Ordinance merely imposed a broader ban. It is not in conflict with the Executive Order because both the Executive Order and Emergency Ordinance can be enforced without conflict. As such, there is no conflict and no preemption of the Emergency Ordinance.

C. THERE IS NO BLANKET PREEMPTION OF THE EMERGENCY POWERS GRANTED TO THE CITY.

Fred Holland also argues that the City's Emergency Ordinance is preempted by state law, specifically South Carolina Code Ann. § 25-1-440(a), which grants the Governor broad emergency

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powers. Fred Holland Appeal, Paragraph 9(a), Exhibit No. 9. This argument is directly refuted by S.C. Code Ann. § 5-7-250(d), which unequivocally grants Folly Beach the power to pass emergency ordinances: "To meet public emergencies affecting life, health, safety or the property of the people, [a municipal] council may adopt emergency ordinances."

Section 25-1-440 does not contravene, repeal or limit Section 5-7-250(d). Nothing in Section 25-1-440 restricts the emergency powers of local governments. Nothing in Section 25-1-440 states that the Governor's emergency powers belong exclusively to the Governor. Nothing in Section 25-1-440 preempts emergency powers held by local governments. Appellant's argument points to no language in Section 25-1-440 preempting local law and contravening Section 5-7-250(d). As pointed out above, stating that municipalities cannot pass ordinances that conflict with state law is not the equivalent of a blanket preemption. Denene, 574 S.E.2d at 199.

Preemption can arise either explicitly or implicitly. First, preemption can arise explicitly when the state legislature says local governments are preempted. Sandlands C & D, LLC v. Cty. of Horry, 394 S.C. 451, 716 S.E.2d 280, 286 (2011). "Express preemption occurs when the General Assembly declares in express terms its intention to preclude local action in a given area." South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624, 628 (2006).

1. NO EXPLICIT PREEMPTION

The General Assembly has not expressly preempted the field of emergency ordinances. Plaintiff has identified no language expressly prohibiting Defendant Folly Beach from enacting emergency ordinances. If the General Assembly had wanted to preempt the entire field of emergency ordinances and measures, it could have easily done so by law. Indeed, the South Carolina Code is replete with such actions and language. See, e.g., South Carolina Code Ann. § 46-9-220 ("Local ordinances pertaining to the subject matter assigned by law to the commission

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[pesticide regulations], whether or not in conflict, are void."); Barnhill v. City of North Myrtle Beach, 333 S.C. 482, 511 S.E.2d 361 (1999) (finding preemption of regulating watercraft on navigable waters where statute required local laws to be identical to statute); Wrenn Bail Bond Service, Inc. v. City of Hanahan, 335 S.C. 26, 28, 515 S.E.2d 521, 522 (1999) (finding preemption of the field of professional licensing for bail bondsmen through a statute providing, "[no] license may be issued to a professional bondsman or runner except as provided in this chapter").

Instead of preempting the field, the legislature has explicitly authorized local authorities to enact their own temporary emergency ordinances. S.C. Code Ann. § 5-7-250(d). If the legislature had intended a blanket preemption of emergency powers, it would not have passed a law granting those powers.

Similarly, the Governor has not expressly preempted all local emergency ordinances. Governor McMaster has issued approximately 30 Executive Orders related to the COVID-19 pandemic, and not a single one says municipalities cannot enact emergency ordinances pursuant to the Home Rule Act and S.C. Code Ann. § 5-7-250(d). Rather, the Governor has merely stated that local ordinances that conflict with his orders are preempted:

> If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction **that conflicts with this Order**, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

Executive Order No. 2020-19, Section 3(B), Exhibit No. 4 (emphasis added).

If the Governor had wanted to preempt all local emergency ordinances, or even just all local emergency ordinances addressing short-term rentals, he could have done so. Instead, the Governor explicitly decided to just preempt those local ordinances that conflict with his Executive Orders. As such, there is no explicit field preemption of local emergency ordinances.

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2. NO IMPLIED PREEMPTION

Similarly, there is no *implied* field preemption for many of the same reasons set forth above. Implied field preemption occurs "when the state statutory scheme so thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity." Sandlands C & D, LLC v. Cty. of Horry, 394 S.C. 451, 465, 716 S.E.2d 280, 287 (2011) (quoting Ports Authority, 629 S.E.2d at 628). However, as pointed out in the Sandlands opinion where there is no explicit preemption and other legislative actions indicate local governments have some authority, there is no implied preemption:

> Where the General Assembly specifically recognizes a local government's authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation. See Denene, Inc. v. City of Charleston, 352 S.C. 208, 213, 574 S.E.2d 196, 199 (2002) (stating "[i]t would have been unnecessary for the legislature to refer to municipalities' authority to regulate the hours of operation of retail sales of beer and wine if the General Assembly intended to occupy the entire field."); AmVets Post 100 v. Richland County Council, 280 S.C. 317, 313 S.E.2d 293 (1984) (where the language of the statute contemplated additional regulation of the game of bingo at the local level, there was not preemption). The SWPMA is silent with respect to control over the flow of local waste generated in the counties and, instead, expressly invites county regulation, planning, authority, and responsibility in the field of solid waste management. See, e.g., S.C. Code Ann. § 44–96–80(A), (J), (K). Therefore, we find the legislature did not intend for DHEC to occupy the entire field of solid waste management.

Sandlands, 716 S.E.2d at 288.

In this case, the General Assembly has explicitly provided that local authorities can enact emergency ordinances. S.C. Code Ann. § 5-7-250(d). There can be no implied field preemption in the face of an explicit grant of authority.

In addition, the Governor has only preempted local laws that conflict with his Executive Orders. He has not issued an order preempting all local emergency ordinances. Thus, there is ample indication that both the General Assembly and the Governor have not impliedly preempted

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the entire field of emergency powers.

Many other municipalities have also concluded that they can regulate short-term rentals without conflicting with the Governor's Executive Orders. Folly Beach counsel is not aware of any of these local emergency ordinances being ruled invalid or in conflict with the Governor's Executive Orders. The City of Isle of Palms had a ban on short-term rental check-ins until May 12, 2020. Isle of Palms STR Emergency Ordinance, Exhibit No. 14. The City of Myrtle Beach had issued an Emergency Executive Order containing four pages of restrictions on tourist accommodations. Myrtle Beach Emergency Executive Order No. 8, Exhibit No. 15. Edisto Beach banned all new check-ins from March 26, 2020 through April 30, 2020. Edisto Beach Emergency Ordinance, Exhibit No. 16. Numerous other coastal cities have taken similar measures.

The law in South Carolina is clear that local authorities can impose additional restrictions even where the State has enacted laws. Denene, 574 S.E.2d at 199; Fine Liquors, 397 S.E.2d at 664; Jenkins, 133 S.E.2d at 242. Indeed, Folly Beach, like every other municipality, is entitled to regulate tourist accommodations within their city limit even during normal times. There is simply no legal basis for Plaintiff's contention that such measures violate State law or the Governor's Executive Orders.

D. THE ATTORNEY GENERAL OPINION IS NOT BINDING, APPLICABLE, OR PERSUASIVE.

Appellant Fred Holland has cited the South Carolina Attorney General's Opinion from March 29, 2020 as supportive of its positions in this matter. March 29, 2020 Updated S.C. A.G. Opinion, Exhibit No. 11 (hereinafter "Attorney General Opinion"). The Attorney General Opinion is not binding, not applicable to this matter, and, in any case, not persuasive.

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First, the **opinion** offered by the Attorney General carries no legal weight. In the Opinion, the Attorney General expressly recognizes that his opinion does not render a municipal ordinance unconstitutional:

> However, this Office has opined on many prior occasions that a municipal ordinance is a legislative enactment and is presumed to be constitutional." Whaley v. Dorchester County Zoning Bd. Of Appeals, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999). The unconstitutionality of an ordinance must be proven beyond a reasonable doubt. Peoples Program for Endangered Species v. Sexton, 323 S.C. 526, 532, 476 S.E.2d 477, 481 (1996). While this Office may comment upon constitutional problems or a potential conflict with general law, only a court may declare an ordinance void as unconstitutional, or preempted by or in conflict with state statutes. Thus, we have recognized that an ordinance must continue to be enforced unless and until set aside by a court of competent jurisdiction. See, e.g., Op. S.C. Att'y Gen., 2010 WL 1808719 (April 9, 2010).

Attorney General Opinion, Exhibit No. 11.

No court has found that Folly Beach's emergency ordinances, or any other municipality's emergency ordinance, are preempted by state law or otherwise barred by the State Constitution. So, this is just another opinion by an attorney working for the government, just like the opinion of counsel for Folly Beach and every other municipality that has passed an emergency ordinance during the pandemic.

Second, the Attorney General Opinion is not applicable here because it focuses on local emergency ordinances that criminalize behavior. As explained above, Folly Beach, like many other municipalities, imposes civil infractions, not criminal fines, removing the ordinances from the restrictions contained in S.C. Const. art. VIII, § 14(5). The Attorney General Opinion does not address the legality of municipal emergency ordinances enforced with civil fines.

Finally, the Attorney General Opinion is not persuasive on the issue of preemption. The Attorney General concludes that South Carolina Code Ann. § 25-1-440(a) somehow creates a blanket preemption on emergency powers even though there is no such language in the statute.

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Indeed, the Emergency Powers Act does not even state that municipalities are barred from passing ordinances that conflict with the Governor's emergency orders. Rather, the statute is completely silent on the issue of preemption.

In reaching its opinion, the Attorney General also completely ignores South Carolina's numerous published opinions on preemption. For some reason, the Attorney General cites one case on preemption from Michigan, Walsh v. City of River Rouge, 385 Mich. 623, 189 N.W.2d 318 (1971), which is based on an entirely different statute than South Carolina's Emergency Powers Act.[8] The Attorney General offers no explanation as to why it would cite and rely on a Michigan preemption case when there are literally dozens of published and authoritative South Carolina opinions addressing every manner of preemption imaginable, including implied field preemption which the Attorney General appears to be advocating. Of course, the most likely reason for this glaring omission is that the South Carolina court opinions on preemption do not support the Attorney General's conclusive and bald assertion that Section 25-1-440(a) somehow creates a blanket preemption. See, e.g., Sandlands, 716 S.E.2d at 288.

Nor does the Attorney General address the impact of S.C. Code Ann. § 5-7-250(d), which directly contradicts the Attorney General's opinion that municipalities possess no emergency powers. Nor does he address the fact that nearly every municipality in the State has adopted emergency ordinances using that procedure. Nor does he address the fact that the Governor's own Executive Orders only bar local ordinances that conflict with the Executive Orders and do not seek

[8] The Michigan Supreme Court in Walsh actually adopted the same rule as South Carolina on whether a local statute "conflicts" with state law: "In order that there be a conflict between a state enactment and a municipal regulation both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand." Walsh, 189 N.W.2d at 324.

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a blanket preemption of all local emergency ordinances. Put simply, courts should not be persuaded by bald, unsupported opinions from the Attorney General that directly conflict with clear statutory law.

Further, it would appear that the Attorney General later altered his opinion on preemption of local emergency ordinances. The Attorney General issued a statement approving of local governmental entities passing emergency ordinances requiring mask use. Attorney General Wilson's Statement on Local Mask Ordinances, June 24, 2020, Exhibit No. 17. The Statement makes clear that it is ***not*** the Attorney General's opinion that there is an implied field-wide preemption of emergency powers, and that local municipalities do have authority to issue emergency ordinances, in apparent contradiction of the prior Attorney General Opinion.

Specifically, the Attorney General stated:

> **The only question before my office is whether a city can lawfully pass this type of ordinance? The short answer to that question is – yes, a city can pass this type of ordinance.** Our state constitution and state laws have given cities the authority to pass these types of ordinances under the doctrine of Home Rule. The basic premise behind the Home Rule doctrine is to empower local governments (i.e., towns, cities and counties) to effectively govern themselves without interference from state government. There are limits to this power.
>
> One limit to this power would be if the S.C. General Assembly were to preempt a city from passing an ordinance through some state law or specifically prohibit a city from passing an ordinance through some state law. For example, it is our position that a city cannot pass its own gun laws because a state law specifically preempts this action. **However, in this case there is no state law that preempts or prohibits a city from passing this particular ordinance.**
>
> Another limitation on cities passing these kinds of ordinances is that the ordinance cannot be arbitrary or capricious. In other words, if there were no COVID 19 pandemic or public health emergency going on a court might find the requirement to wear a mask arbitrary. That is not the case here.
>
> If there was a riot (as there was a few weeks ago) a city could pass a curfew to get control of the civil unrest. A city could require a mandatory evacuation in the event of a local flood. Normally, a city could pass an emergency order requiring people to leave an area or stay in a particular area for a period of time. An exception to this

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> would be if the Governor issued an emergency executive order then that would preempt a city from passing a different emergency order. **This was our position two months ago when cities were passing their own emergency lock-down orders after Governor McMaster issued his state of emergency order.** That remains our position today.
>
> The final limitation would be if an ordinance violated a person's constitutional rights. A city has the right to pass these ordinances and the only way to know if someone's constitutional rights have been violated by these ordinances would be on a case by case basis involving very specific facts. In other words, an otherwise lawful ordinance can be applied in a way that violates someone's rights. Based on court precedent, simply requiring someone to wear a mask at the grocery store, or stop smoking in a restaurant, or be home before curfew does not constitute a violation of rights. We would need specific facts to make that determination and we do not have those facts at this time.

Attorney General Wilson's Statement on Local Mask Ordinances, June 24, 2020, Exhibit No. 17 (emphasis added).

It is difficult to reconcile the Attorney General's Statement on Local Mask Ordinances with its prior Opinion, relied on by Fred Holland, implying there is some implied field preemption in place. If municipalities can pass an emergency ordinance on masks, there is clearly no implied field preemption on emergency measures. This is truly the only conclusion based on 1) the broad and persistent grant of authority, and 2) the utter failure of the Governor or the legislature to repeal or limit that authority.

In summary, the Attorney General's original Opinion on local emergency powers is not supported by South Carolina statutes or South Carolina case law, and the Attorney General appears to have reversed this prior Opinion in any case.

III. THE HEARING OFFICER CORRECTLY HELD THAT FRED HOLLAND VIOLATED FOLLY BEACH'S BAN ON NEW SHORT-TERM RENTAL CHECK-INS.

Fred Holland has also appealed the Hearing Officer's final ruling that it violated the Folly Beach Emergency Ordinance. This was a ruling based on the facts of the case, most of which were

admitted by Fred Holland. In considering the appeal, the Hearing Officer stood in for City Council. As such, any review is limited to whether the decision was "arbitrary, unreasonable, or an obvious abuse of its discretion." Gay v. City of Beaufort, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct.App.2005).

Of course, any trial judge's findings of fact will not be disturbed on appeal unless the findings are wholly unsupported by the evidence or controlled by an erroneous conception of the application of the law. Pope v. Gordon, 369 S.C. 469, 474, 633 S.E.2d 148, 151 (2006). Clearly, the Hearing Officers finding that Fred Holland violated the Emergency Ordinance was not "wholly unsupported by the evidence."

The facts of this case are not in dispute. Fred Holland has admitted to most of the facts in its Administrative Appeal, Exhibit No. 9. Fred Holland's Reservation Sheets, Exhibits No. 5 and 6, and the testimony of its owner, LaJuan Kennedy, all confirm these facts. The only issue is whether the admitted actions of Fred Holland in allowing renters to check-in to a new rental after the check-in ban was put in place was an actual violation of the Folly Beach Emergency Ordinance.

Folly Beach Emergency Ordinance 06-20, dated April 6, 2020, attached as Exhibit No. 3, barred all new check-ins at any overnight accommodation starting on April 7, 2020:

> 11. Starting on April 7, 2020 at 9:00 a.m., no new check-ins are permitted regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation.

Emergency Ordinance, Section 11, Exhibit No. 3.

Fred Holland violated this Emergency Ordinance. A renter checked-in to a short-term rental located at 208 East Ashley on March 19, 2020 with a check out date of April 14, 2020. First Reservation Sheet, Page 1, Exhibit No. 5. Under the Emergency Ordinance, those renters could stay at the rental until April 14, 2020, but could not make a new reservation. Thus, even though

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the renters were allowed to stay to the end of their *existing* reservation, they were not allowed to make new reservations or check-ins.

At some point in early April, Fred Holland accepted a second reservation from the guests staying at 208 East Ashley for a new reservation at 403 West Ashley starting on April 13, 2020 for a period of 17 days. Second Reservation Sheet, Exhibit No. 6; Fred Holland Appeal, Paragraph 6, Exhibit No. 9. Fred Holland's Appeal acknowledges that the family checked in to this new property on April 13, 2020, after the Folly Beach's check-in ban went into full effect. Fred Holland Administrative Appeal, Section 6, Exhibit No. 9.

Ms. Kennedy, the owner of Fred Holland, testified that there were two different reservations with different properties, different owners, different rental contracts, different rental rates, and different dates. LaJuan Kennedy Testimony, Tr. Pages 65-70, Exhibit No. 18. She also acknowledged that the renters moved from 208 East Ashley to 403 West Ashley on April 13 or 14, 2020. Kennedy Testimony, Tr. Page 58, Exhibit No. 18.

The Second Reservation Sheet provided by the renters confirms that the new reservation was for a new property, at a new rental rate, and for a new time period. Second Reservation Sheet, Exhibit No. 6. Since that check-in was after April 7, 2020, it was a violation of the Emergency Ordinance ban on new check-ins.

Fred Holland does not dispute the facts, but simply claims that what happened on April 13, 2020 was not a "new check-in" because the renters were already on the island. While the Emergency Ordinance allowed visitors currently checked-in to "remain until the end of their **existing** reservation," it did not allow visitors to make an entirely new reservation at a new property after the ban on new check-ins was imposed. Fred Holland allowed the renters to make this reservation after a ban on new check-ins was initially adopted by the City on March 28, 2020. City

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of Folly Beach Emergency Ordinance No. 06-20, dated March 28, 2020, Exhibit No. 10. Fred Holland generated a new reservation sheet for the April 13, 2020 check-in. Second Reservation Sheet, Exhibit No. 6. Fred Holland charged a different rental rate for the two properties. Id. Fred Holland allowed the renters to move into a new rental on April 13, 2020 based on this check-in made after the ban was put in place. Id. In short, it was a new check-in.

The fact that the renters previously stayed in a different short-term rental under a different reservation at a different rate does not somehow excuse Fred Holland from checking them into a new rental under a new rental agreement after the ban was put in place. The Hearing Officer agreed, finding that this was a new "check-in" that violated the Emergency Ordinance. August 20, 2020 Hearing Officer Final Order, Pages 8-9, Exhibit No. 2. This finding is certainly supported by the facts presented, including the facts admitted by Fred Holland. As such, it should not be overturned on appeal.

CONCLUSION

Based on the foregoing, Respondent Folly Beach would ask that the Court affirm the holding of the Hearing Officer that Fred Holland violated Folly Beach's Emergency Ordinance. In addition, Respondent would ask that the Court affirm the Hearing Officer's holding that the City's Emergency Ordinances are enforceable, constitutional, and not otherwise preempted. The City's action was authorized by the Home Rule Act, by S.C. Code Ann. § 5-7-250(d), and by Governor McMaster's Executive Order No. 2020-19, Section 1(B), Exhibit No. 4. Fred Holland has not pointed to any law or order preempting this broad grant of authority.

The only limitation that has imposed on municipalities is the Governor's ban on municipal laws that conflict with his Executive Orders. Folly Beach's Emergency Ordinance does not conflict with the Governor's Executive Order No. 2020-19. Both orders bar short-term rental

check-ins to renters from any location. Even if the Folly Beach Emergency Ordinance was more expansive than the Governor's Executive Order, the City's Emergency Ordinance is not in "conflict" with the Governor's Executive Order under South Carolina law, which allows municipalities to impose broader restrictions that can be enforced in conjunction with state law.

Respectfully submitted,

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November 2, 2020
Folly Beach, South Carolina

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EXHIBIT LIST
CITY OF FOLLY BEACH RESPONDENT'S BRIEF

EXHIBIT NO. 1	JULY 17, 2020 HEARING OFFICER ORDER
EXHIBIT NO. 2	AUGUST 20, 2020 HEARING OFFICER FINAL ORDER
EXHIBIT NO. 3	CITY OF FOLLY BEACH EMERGENCY ORDINANCE NO. 06-20, DATED APRIL 6, 2020 (VERSION IN PLACE AT TIME OF CHECK-IN)
EXHIBIT NO. 4	GOVERNOR HENRY MCMASTER EXECUTIVE ORDER NO. 2020-19
EXHIBIT NO. 5	FIRST RESERVATION SHEET
EXHIBIT NO. 6	SECOND RESERVATION SHEET
EXHIBIT NO. 7	CITY OF FOLLY BEACH CODE OF ORDINANCES, SECTIONS 110.17 AND 110.18
EXHIBIT NO. 8	NOTICE OF VIOLATION
EXHIBIT NO. 9	FRED HOLLAND ADMINISTRATIVE APPEAL
EXHIBIT NO. 10	CITY OF FOLLY BEACH EMERGENCY ORDINANCE NO. 06-20, DATED MARCH 28, 2020 (PRIOR VERSION OF ORDINANCE)
EXHIBIT NO. 11	MARCH 29, 2020 UPDATED S.C. A.G. OPINION
EXHIBIT NO. 12	CDC, "CORONAVIRUS AND TRAVEL IN THE UNITED STATES," APRIL 7, 2020
EXHIBIT NO. 13	CDC, "COVID-19 TRAVEL RECOMMENDATIONS BY COUNTRY"
EXHIBIT NO. 14	ISLE OF PALMS STR EMERGENCY ORDINANCE
EXHIBIT NO. 15	MYRTLE BEACH EMERGENCY EXECUTIVE ORDER NO. 8
EXHIBIT NO. 16	EDISTO BEACH EMERGENCY ORDINANCE
EXHIBIT NO. 17	ATTORNEY GENERAL WILSON'S STATEMENT ON LOCAL MASK ORDINANCES, JUNE 24, 2020
EXHIBIT NO. 18	LAJUAN KENNEDY TESTIMONY (PARTIAL TRIAL TRANSCRIPT)

EXHIBIT NO. 1

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE ADMINISTRATIVE COURT FOR THE CITY OF FOLLY BEACH VIOLATION OF EMERGENCY ORDINANCE 06-20
The City of Folly Beach, v. Fred Holland Realty Inc. and LaJuan Kennedy, Appellants.	)	**ORDER**

This matter comes before me on the claim of Appellants Fred Holland Realty, Inc. and LaJuan Kennedy that the City of Folly Beach's Emergency Ordinance 06-20 is null and void as a matter of law, which would obviate the need for this tribunal to hold a hearing on this matter. Counsel for the City and Appellants submitted memoranda of law in support of their positions. This Order will address only the preliminary legal matters concerning the City's Emergency Ordinance and will make no findings on the issues specific to Appellants' appeal of the Notice of Violation of Emergency Ordinance 06-20 and Assessment of Fine served on April 14, 2020.

Appellants contend that Emergency Ordinance 06-20 addressing property rentals is null and void because the Governor's authority to exercise emergency powers under S.C. Code Ann. § 25-1-440(a) preempted the City's ability to enact such restrictions. They further contend that the Ordinance violates Article VIII, §14(5) of the South Carolina Constitution by criminalizing acts within the municipal boundaries of the City which are legal under state law.

The Home Rule Act empowers local governments with broad control over their self-governance, including the ability to enact emergency protections in the form of ordinances as a valid exercise of their police powers. In determining whether a municipal ordinance is valid,

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courts must first consider whether the municipality has the power to enact the ordinance. *Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 361, 660 S.E.2d 264, 268 (2008). If the state (or, in this instance, the governor acting via legislatively-delegated authority) has preempted a particular matter, the municipality lacks the power to enact a conflicting provision. *Id.* If the ordinance was enacted in a proper exercise of the municipality's powers, however, then courts must determine whether the ordinance is consistent with the constitution and state law.[1] *Id.* This analysis must be undertaken with the understanding that ordinances, especially those relating to a government's police powers, are subject to "a presumption of validity." *Town of Hilton Head Island v. Fine Liquors, Ltd,*. 302 S.C. 550, 554, 397 S.E.2d 662, 664 (1990); *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010). The powers conferred under the Home Rule doctrine must be liberally construed in favor of the municipality. S.C. Const. art. VIII, § 17.

I. The City of Folly Beach has the authority to enact emergency ordinances to protect its citizens during a pandemic.

Appellants emphasize that they do not contest the City's authority to enact ordinances governing short term rentals in general or even as part of an emergency ordinance, but rather contend that the City may not pass an emergency ordinance that "lacks the formalities of an Ordinance passed in the normal course of business of governing the city," where such ordinances are passed with a single reading and without public input. This argument is contradicted by S.C. Code Ann. § 5-7-250(d), which specifically states that emergency ordinances are immediately effective without the need for "any reading, public hearing, publications, requirements, or pubic

[1] Appellants do not contend that the Emergency Ordinance was arbitrary or capricious. Accordingly, there is no need to address that as a potential concern here.

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notice requirements." Accordingly, I find that the City had the authority to enact its emergency ordinance without several readings or providing an opportunity for public comment.

II. The Governor's Executive Order No. 2020-19 does not preempt the City of Folly Beach's emergency ordinance regulating rental properties.

Appellants contend that the City's ability to regulate rental properties in its emergency ordinance was preempted by the Governor's Executive Order No. 2020-19. The preemption language in Section 3(B) states:

> If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

This language makes clear that the Governor did not intend to preempt the entire field of rules that may be applicable during this pandemic. To do that, the Executive Order would have needed to "make manifest a legislative intent that no other enactment may touch upon the subject in any way." *Bugsy's, Inc. v. City of Myrtle Beach,* 340 S.C. 87, 94, 530 S.E.2d 890, 893 (2000) (citing *Town of Hilton Head Island,* 302 S.C. at 552, 397 S.E.2d at 663).

Based on the plain language in Section 3(B), the Governor is only prohibiting local governments from enacting ordinances that are in conflict with the terms of his Executive Order. A local ordinance is deemed to be in conflict with a state statute or executive order where both provisions "contain either express or implied conditions which are inconsistent or irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand. " *Town of Hilton Head Island,* 302 S.C. at 553, 397 S.E.2d at 664 (quoting *McAbee v. Southern Rwy., Co.,* 166 S.C. 166, 169–70, 164 S.E. 444, 445 (1932)). An ordinance that supplements or expands the Executive Order does not necessarily create a conflict. *Denene, Inc.*

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v. City of Charleston, 352.C. 208, 214, 574 S.E.2d 196, 199 (2002). Rather "[c]onflict preemption occurs when the [local] ordinance hinders the accomplishment of the [state] statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible." *S.C. State Ports Authority v. Jasper Cty.*, 368 S.C. 388, 400, 629 S.E.2d 624, 630 (2006).

In support of their argument, Appellants rely in large part on the opinion of the Attorney General issued on March 29, 2020, that addressed the issue of preemption in regard to the governor's emergency orders. In general, courts are not bound by opinions of the Attorney General. *Eargle v. Horry County*, 344 S.C. 449, 455, 545 S.E.2d 276, 280 (2001). Moreover, based on a comprehensive review of the authorities cited in the opinion and the Attorney General's subsequent Statement on Local Mask Ordinances issued on June 24, 2020, it is clear that to the extent the March 29th opinion is a correct statement of the law, it is relevant only to the lock-down orders by municipalities that criminalize activity that would remain legal under the Governor's executive orders on the subject. Accordingly, that opinion and the authorities it relies on are not persuasive in this context.

Appellants also argue that the general law of preemption differs "as it pertains to emergency ordinances." In so doing, however, they reference no controlling authority setting forth an alternate test or analysis on the issue of preemption based on how the legislation was adopted. Therefore, I find that the principles outlined above control whether the City's rental property regulations in its Ordinance conflict with the terms of the Executive Order.

The portion of Executive Order 2020-19 addressing property rentals states at Section 1(B):

> I hereby order and direct that effective Friday, April 3, 2020 at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term

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> rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration (collectively "Lodging"), as set forth below, in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, states, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut).

The version of City's ordinance addressing property rentals under which Appellants were cited was adopted on April 6, 2020, and states:

> Starting on April 7, 2020, at 9:00 a.m. no new check-ins are permitted regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their excising reservation.[2]

While these provisions differ in their approach to prohibited conduct regarding rental properties in that the Executive Order is focused on new reservations or bookings and the City's Ordinance bases its limitations on check-ins, they both serve to address the public safety concerns inherent with allowing travelers who may be carrying the virus to take up temporary residence in a new locality within the state. The City's Ordinance is silent as to the hometown of the travelers, whereas the Executive Order places restrictions on accepting reservations from travelers "subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19." The City is correct that the Executive Order does not limit new reservations to those residing only in the Tri-State Area. As noted in the City's brief, by April 7, 2020, the date that the City's Ordinance was effective, the CDC had placed a ban on all nonessential travel in the United States, to include "travel of any distance (across town, state, and country)" noting that "COVID-19 is spreading in every state, and travel

[2] As previously enacted, this provision read: "Starting on March 29, 2020 at 9:00 a.m., no new check-ins are permitted at any short-term rental, hotel, or other overnight accommodation regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation." City of Folly Beach Emergency Ordinance, Section 11. This version of the Ordinance also does not conflict with the Executive Order for the same reasons articulated herein.

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increases your chances of getting and spreading the virus." Most importantly, there are no inconsistencies that would render compliance with both provisions impossible. A landlord or rental agency complying with the Executive Order to accept no new reservations after April 3, 2020, can also comply with the City's prohibition against allowing new visitors to check in to a rental property after April 7, 2020. Accordingly, I find that the City's property rental emergency ordinance was not preempted by the Governor's Executive Order.

III. The City of Folly Beach's Emergency Ordinance does not criminalize otherwise legal conduct.

Appellants next contend that the Ordinance criminalizes conduct that is otherwise legal under state law in violation of Article VIII, §14 of the South Carolina Constitution. The Ordinance would be unconstitutional if it sought to "criminalize conduct that is legal under a statewide criminal law." *Martin v. Condon,* 324 S.C. 183, 478 S.E.2d 272, 274 (1996); *accord Connor v. Town of Hilton Head Island,* 314 S.C. 251, 442 S.E.2d 608 (1994) (holding municipality cannot criminalize nude dancing when state law does not). *See* S.C. Const., art. VIII, § 14. The unconstitutionality of an ordinance must be proven beyond a reasonable doubt. *Peoples Program for Endangered Species v. Sexton,* 323 S.C. 526, 532, 476 S.E.2d 477, 481 (1996).

Here, the provision under which the City is enforcing its property rental ordinance is specifically designated as a civil infraction.[3] "'Infraction' is defined as: A breach, violation, or infringement; as of a law, a contract, a right or a duty. A violation of a statute for which the only sentence authorized is a fine and which violation is expressly designated as an infraction."

[3] It should be noted that among the provisions addressing punishment for violation of the Ordinance, there is an option for the City to impose a criminal penalty: "Any failure to comply with this Emergency Ordinance . . . may be penalized . . . or c) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency) . . ." S.C. Code § 16-7-10 categorizes certain violations of proclamations of a state of emergency as designated by the Governor as misdemeanors punishable by fines of up to $100 or imprisonment for up to 30 days and as felonies punishable by fine or imprisonment at the discretion of the court. The City has not sought to apply this provision to Appellants' conduct, however, so it is not relevant to this analysis.

Foothills Brewing Concern, Inc., 377 S.C. at 365, 660 S.E.2d at 269 (quoting *Black's Law Dictionary* 537 (6th ed.1992)). Where a municipality specifies that the violation is civil in nature, "the conclusion is inescapable" that it is not seeking to criminalize the prohibited conduct. *Id.* Accordingly, the Ordinance as enforced is not in violation of Article VIII, § 14 of the South Carolina Constitution.

CONCLUSION

Therefore, I find that the City of Folly Beach's Emergency Ordinance 06-20 was adopted in a valid exercise of the City's police powers, it is not preempted by the Governor's Executive Order 2020-19, and it does not violate state law or the Constitution of South Carolina. The matter will proceed to a hearing on the merits.

Christie Companion Varnado
Hearing Officer
City of Folly Beach

July 17, 2020

Charleston, South Carolina

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EXHIBIT NO. 2

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE ADMINISTRATIVE COURT FOR THE CITY OF FOLLY BEACH VIOLATION OF EMERGENCY ORDINANCE 06-20
The City of Folly Beach, v. Fred Holland Realty Inc. and LaJuan Kennedy, Appellants.	)	**FINAL ORDER**

This matter comes before me as an appeal by Fred Holland Realty, Inc. and LaJuan Kennedy (collectively "Appellants") pursuant to § 110.18 of the Folly Beach Code of Ordinances of the Notice of Violation of Emergency Ord. 06-20 and Assessment of Fine issued by the City of Folly Beach ("City") on April 14, 2020. On July 17, 2020, I issued an Order addressing Appellants' contention that Emergency Ord. 06-20 is null and void as a matter of law and found (1) that the ordinance was adopted in a valid exercise of the City's police powers, (2) it is not preempted by the Governor's Executive Order 2020-19, and (3) it does not violate state law or the Constitution of South Carolina. The findings of that Order are incorporated herein.

The parties appeared before me at a hearing held on July 30, 2020, and counsel for both parties was present. The City presented testimony by City Public Safety Officer Lt. Upton and City attorney, Joseph C. Wilson, IV, Esquire ("Wilson") in rebuttal. Appellants' witnesses were LaJuan Kennedy ("Kennedy"), Anna Brown West ("West"), and Janet Clark Mullins ("Mullins"). Each party was given the opportunity to cross-examine the witnesses.

The City entered into evidence Exhibits P-1 through P-8 and P-10. Appellants objected to exhibits P-7, P-8, and P-10 because the emails were not exchanged prior to the hearing, as

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discussed during the pre-hearing conference. I ruled that the exhibits would be entered, but that Appellants could provide emails in rebuttal within 3 business days after the hearing. In addition, Appellants also offered exhibits at the hearing which had not been exchanged prior. The City was given the same opportunity to provide rebuttal documents after the hearing. Neither party provided additional documents.

Appellants offered Exhibits A through U into evidence. The City objected to Exhibit U, which is a copy of an email from Mullins to Kennedy in which Mullins cut and pasted the text of a Facebook post she attributed to council member Eddie Ellis concerning rental property located at 1667 East Ashley. I upheld the objection, finding that although hearsay evidence was permissible, the document was irrelevant and unreliable. Exhibit U was not accepted into evidence.

FINDINGS OF FACT

1. On March 13, 2020, the Governor of South Carolina declared a state of emergency for the State of South Carolina due to the public health threat posed by the COVID-19 pandemic.
2. In response to the public health concerns caused by the COVID-19 pandemic and in exercise of its police powers pursuant to S.C. Code Ann. § 5-7-250, the City enacted Emergency Ord. 06-20 on March 28, 2020, which stated in pertinent part: "Starting on March 29, 2020 at 9:00 a.m., no new check-ins are permitted at any short-term rental, hotel, or other overnight accommodation regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation." *City of Folly Beach Emergency Ord.* 06-20 ¶11 (Mar. 28, 2020).

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3. In passing the emergency ordinance, the City cited its reliance in part on the public testimony from Dr. Edward O'Bryan, Chief Medical Officer for MUSC Business, concerning the danger of short-term rentals during a public health crisis.

4. The City had an interest in restricting access to the island to residents and those persons providing essential services as part of its emergency measures to protect the public.

5. "Short term rentals" are defined in the *Folly Beach Code of Ordinances* § 117.01 as residential dwellings being rented for less than 30 days. Kennedy admitted that she was aware of this definition although she had not read the applicable code section and that it was the definition Appellants used. Emails sent by Kennedy to the City during the relevant time period further demonstrate her understanding of this definition.

6. On April 3, 2020, the Governor of South Carolina issued Executive Order 2020-19, which included the following addressing property rentals at Section 1(B):

> I hereby order and direct that effective Friday, April 3, 2020 at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration (collectively "Lodging"), as set forth below, in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, states, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut).

7. On April 6, 2020, the City amended 06-20, which as amended stated in pertinent part: "Starting on April 7, 2020, at 9:00 a.m., no new check-ins are permitted regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation." *City of Folly Beach Emergency Ord.* 06-20 ¶11 (Apr. 6, 2020).

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8. According to the Fred Holland Realty Reservation History, on March 17, 2020, Fiona and Mark Richardson ("Renters") made a reservation via Fred Holland Realty to rent 208 East Ashley for a period starting on March, 19, 2020, through April 14, 2020 (26 nights). Renters paid $2427.90 for the rental and a $100 security deposit on March 17, 2020. Renters were checked in to 208 East Ashley on March 19, 2020. This reservation was made and the check-in took place prior to the enactment of any emergency ordinances or orders. A "Reservation Comment" was added to the Reservation History by West on April 13, 2020, which stated, "Tenant has to move to 403 W Ashley on 4/14/2020." The Reservation History shows the Renters' check-out date on this property as April 16, 2020.
9. The Renters contacted Fred Holland Realty on or about April 1, 2020, stating that they wished to extend their stay until the end of April because Mrs. Richardson suffers from a serious health condition and their daughter who lives with them in their home in North Charleston works at a hospital treating COVID-19 patients, making it unsafe for Mrs. Richardson to return to the home.
10. The Fred Holland Realty Reservation History for 403 West Ashley documents that the Renters made a reservation on April 1, 2020, for a rental period starting on April 13, 2020, through April 30, 2020 (17 nights). They paid $1288.40 for the rental and a $100 security deposit on April 1, 2020. A "Reservation Comment" was added by West on April 1, 2020, stating, "Moving from 208 E Arctic [sic]." According to the Reservation History, the Renters were checked in to 403 West Ashley on April 16, 2020. The Renters checked out on May 1, 2020.
11. Kennedy testified that the Renters moved from 208 East Ashley to 403 West Ashley on April 15, 2020.

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12. Kennedy testified that the owner of 208 East Ashley wanted to use the property after April 14, 2020, so the Renters would have to be moved to a different rental property in order to extend their stay on the island.

13. Kennedy further testified that Appellants considered this transaction as an extension of the Renters' original stay or check-in rather than as a new check-in. She testified that it is sometimes the case that renters will need to be moved to another rental property during the course of their stay due to a problem with the first property, such as an inoperable air conditioning system.

14. Between March 24, 2020 and May 4, 2020, the City issued several "Folly Beach COVID-19 Updates" to the public. Appellants admitted to receiving emails with the Updates. Among other things, the Updates provided notice concerning the Governor's and the City's new restrictions concerning rentals, hotels, and other overnight accommodations. The information in the Updates corresponds with the language in 06-20 as initially passed and then as amended, although, starting on April 14, 2020, the Updates clarified the City's position that rental stays may be extended "only for the same guests, on the same rental terms, and at the same address." Prior to that date, the City had not indicated that any extensions of reservations would be permitted.

15. Lt. Upton testified that the City Public Safety Department received a complaint about a new check-in at 403 West Ashley on April 14, 2020. Upon investigation, the PSOs found that the Renters were staying at 403 West Ashley and that they had not been staying at that location prior to that date.

16. On April 14, 2020, the City's License Official, Aaron Pope, issued Appellants a Notice of Violation and Assessment of Civil Fine based on the City's verification of a new rental

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check-in at property managed by Appellants at 403 West Ashley Ave. on April 14, 2020, in violation of Emergency Ord. 06-10, ¶11 and levied a civil penalty in the form of a fine in the amount of $500.

17. The Notice advised that each day the Renters remained in place at that address would be considered a separate offense, punishable by a $500 fine. The City has capped the fine at $2500, or 5 days.

18. Lt. Upton was instructed "to keep an eye" on 403 West Ashley. In so doing, Mrs. Richardson was observed taking out the trash at that property on April 23, 2020, and a truck registered to Mr. Richardson, which was observed to be parked at the property at some point between April 14-30, was recorded leaving the island on April 15 and April 30.

19. Appellants do not contest that Mrs. Richardson occupied 403 West Ashley for at least 5 nights between April 14-30.

20. Appellants timely filed their appeal pursuant to *Folly Beach Code of Ordinances* § 110.18 on May 7, 2020.

LEGAL STANDARDS

A municipal business license ordinance should be interpreted based on the general rules of statutory construction. Olds v. City of Goose Creek, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the [enacting body]." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). The terms in the ordinance should be given their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the [ordinance's] operation." *Id.* at 499, 640 S.E.2d at 459. Where words are unambiguous, the court should apply their literal meaning. *Id.* at 498, 640 S.E.2d at 459.

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In addition, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). The statute should be read "as a whole and in a manner consonant and in harmony with its purpose." CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct.App.2008), *aff'd,* 386 S.C. 339, 688 S.E.2d 569 (2010)).

DISCUSSION

The purpose of Emergency Ord. 06-10 as stated in its main caption, was to declare a state of emergency, temporarily suspend normal operating procedures of the city council meetings, and take additional measures to protect the public. One of those measures included restricting access to the island to aid in containing and limiting exposure to the virus. The City established a check point that operated on a 24-hour basis and allowed only residents and those persons providing essential services to access the island. Restricting new rental check-ins and extensions of stays for non-residents during this time period was consistent with the City's intended purpose for the emergency ordinance.

The Renters' initial reservation was from March 19 to April 16, 2020. It is undisputed that this intended 26 night stay would be categorized as a "short-term rental." As effective April 1, the date that Appellants took the reservation from the Renters to extend their stay on the island, Emergency Ord. 06-10, ¶ 11 prohibited any "new check-ins . . . at any short-term rental, hotel, or other overnight accommodation regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation." The ordinance did not authorize extensions of existing reservations. Based on email correspondence with the City

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prior to and on that date, Appellants were aware of the restrictions of the ordinance and should have been aware that accepting a reservation on April 1 for a new check-in on April 14 for less than 30 days would be in violation of the ordinance.

During the April 13-15th time period, when the Renters ended their stay at 298 East Ashley and took up temporary residence in 403 West Ashley, the ordinance had extended the prohibitions to all check-ins regarding of length of stay. Therefore, Appellants were on notice that a new check-in during this time would violate the ordinance. The language concerning visitors who were already checked-in as of the time when the ordinance became effective remained the same in the amended version. The City did not state the terms under which it would permit extensions of any existing reservations until April 16, 2020, which is after the Renters had moved to the new location.

The City contends that when the Renters moved from 208 East Ashley to 403 West Ashley, that action constituted a new check-in in violation of the ordinance. I agree. When used as a noun, "check-in" is defined as "an act or instance of checking in."[1] The verb "to check in" is defined as "to register at a hotel; to report one's presence or arrival."[2] In contrast, "extension" is defined as "the continuance of the same contract for a specified period." *Black's Law Dictionary* (8th ed.). This definition is consistent with the City's later clarification concerning extensions of rentals in which it emphasized that they were permitted only for the same guests, on the same rental terms, and at the same address. Here, the Renters did not continue their prior rental agreement with a new check out date. Rather, they moved to a new property when their prior rental agreement ended and they were charged a different rate for this new location. Therefore, based on the plain and ordinary use of the terms, the move, which constituted the Renters' arrival

[1] *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/check-in.

[2] Id.

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at a new location, for a new rental time period, and at different rate was a new check-in made in violation of the emergency ordinance.

In addition, at the time Appellants accepted what they termed as an extension of the Renters' original rental agreement, the extension violated the emergency ordinance since visitors who were currently checked in were only permitted to stay until the end of their existing reservation. This was also true at the time that the renters arrived at 403 West Ashley. Moreover, as extension of this nature would also violate the terms under which extensions were deemed permissible since the Renters did not stay at the same location for the same rate.

Appellants' assertion that renters are sometimes moved to a different location due to there being a problem with their current rental property and that such a move should not be considered a new check-in is not persuasive here. They cite as reasons why such a move must take place such as property damage or a mechanical breakdown. The Renters' move did not take place due to the unit becoming uninhabitable during their intended period of stay, however, but rather it happened because the unit was unavailable at the end of the original reservation. Therefore, the situations are not analogous.

Appellants also argue that the City allowed renters from New York to move to a different location and that the same privilege should have been afforded in this instance. In support of this contention, Appellants presented evidence that on April 29, 2020, the City allowed renters who had checked in to 1002 West Ashley on March 15, 2020, to move to 1707A East Ashley until their intended check out date of May 31, 2020. The record does not demonstrate whether this was an extension of the New York renters' original rental term or whether the rates for the East Ashley location differed from the original reservation terms, but comparing the Fred Holland Realty reservation sheet for the New York renters with those issued to the Renters here, it

appears that the New York renters were registered for 77 nights and that they paid the entire balance by or on March 13, 2020, in advance of their March 15, 2020 check-in. (*Compare* P-2 & P-3 with Ex. T.) Based on the fact that the New York renters paid for 77 nights in advance, the change in location in late April would be neither an extension nor a new check-in. Regardless of how it would be classified, however, the City attorney confirmed that the issue with the need to move the New York renters was brought to the City's attention prior to the move and the City exercised its discretion to work with those involved to accommodate the situation. It is undisputed that Appellants did not contact the City prior to the Renters' move to 403 West Ashley.

CONCLUSION

Therefore, I find that Appellants violated the City of Folly Beach's Emergency Ord. 06-20, ¶11 as set forth in the April 14, 2020 Notice of Violation and Assessment of Civil Fine by allowing a new check-in after April 7, and that they continued to violate the ordinance for each night the Renters remained in 403 West Ashley, which exceeded 5 nights. In addition, I incorporate herein my prior findings that the City of Folly Beach's Emergency Ord. 06-20 was adopted in a valid exercise of the City's police powers, is not preempted by the Governor's Executive Order 2020-19, and does not violate state law or the Constitution of South Carolina. The appeal is denied.

IT IS SO ORDERED.

Christie Companion Varnado
Hearing Officer
City of Folly Beach

August 10, 2020

Charleston, South Carolina

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EXHIBIT NO. 3

CITY OF FOLLY BEACH

1st Reading: March 28, 2020
Amended: April 6, 2020 Introduced by: Mayor Goodwin

No Second Reading per S.C. Code § 5-7-250 Date: March 28, 2020

ORDINANCE 06-20

AN EMERGENCY ORDINANCE TO DECLARE A STATE OF EMERGENCY, TEMPORARILY SUSPEND THE NORMAL OPERATING PROCEDURES OF FOLLY BEACH CITY COUNCIL MEETINGS AND TAKE ADDITIONAL MEASURES TO PROTECT THE PUBLIC.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that the following Emergency Ordinance be adopted pursuant to South Carolina Code § 5-7-250:

WHEREAS, it is well recognized that SARS-CoV-2, the virus that causes the disease COVID-19, presents a public health concern that requires extraordinary protective measures and vigilance; and

WHEREAS, these matters have taken many forms across the nation including travel bans, school closures, individual quarantines, and cancellation of major events, among other measures; and

WHEREAS, the Governor of South Carolina declared a State of Emergency on March 13, 2020, to enhance the state's response to the COVID-19 virus's impact on the state; and

WHEREAS, the City of Folly Beach is working with other government agencies in an effort to prevent the spread of disease; and

WHEREAS, Section 5-7-250 of the South Carolina Code of Laws empowers Council to enact emergency ordinances affecting life, health, or safety; and

WHEREAS, in light of the foregoing, City Council of the City of Folly Beach deems it proper and necessary to adopt this emergency ordinance in order to address how the City and Council will proceed in light of the above emergency;

WHEREAS, pursuant to Executive Order No. 2020-14, March 27, 2020, the Governor has authorized law enforcement officers of any municipality "to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by [the Governor];"

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WHEREAS, as part of the record, the City relies on public testimony from Dr. Edward O'Bryan, Chief Medical Officer for MUSC Business, which outlines the danger of allowing beach visitors and short-term rentals;

NOW BE IT THEREFORE ORDAINED that the following emergency procedures are hereby adopted and to remain in effect until ~~April 30, 2020,~~ June 1, 2020 subject to termination or extension by Council:

1. Council formally adopts the Mayor's Proclamation of Emergency dated March 16, 2020 and the measures contained therein. Council also confirms that the Mayor, or the Mayor Pro Tempore in his absence, can exercise the emergency powers granted to the Mayor pursuant to City of Folly Beach Ordinance § 35.05.

2. City Hall is closed and moved to a virtual, phone, and dropbox operation until further notice.

3. All City meetings scheduled for March and April are postponed.

4. City Council members and staff will be authorized during this State of Emergency to attend meetings of Council via teleconference at their discretion.

5. The public will not be allowed to attend Council meetings, or any other City meetings, in person. Meetings will still be broadcast. Measures will be taken to allow the public to submit comments prior to any meeting by emails, which will be included in the public record of the meeting.

6. All deadlines imposed by City Ordinance or rule, applicable to the municipality or any applicant, shall be suspended, during this temporary period.

7. The City Administrator is authorized to develop and enact a plan in order to ensure continuity in the delivery of government services in light of the COVID-19 outbreak.

8. The City Administrator is authorized to cancel and revoke any special events permits issued prior to the date of this ordinance for events taking place until April 30, 2020.

9. The Mayor is authorized to take the following measures to limit access to the City of Folly Beach by the general public until ~~April 30, 2020~~ June 1, 2020:

a. Public Safety will establish a check point limiting access to the City on a 24-hour basis.

b. The following persons will have access to the City:

i. Residents, including long-term renters, and property owners, ~~including a maximum of 2 family members (spouse, children, parents, grandparents only)~~ with

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two forms of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, lease, etc.).

ii. Residents may obtain a pass to give to professional medical caretakers through locations and methods established by staff.

iii. Employees of local businesses must have a previously-issued red or yellow reentry pass issued by the City and employee credentials.

iv. Contractors and service businesses with a Folly Beach Business License vehicle sticker. Contractors must stay on site.

v. Delivery persons who can demonstrate business on the island at the checkpoint, including pharmacy, FedEx, UPS, Amazon, and food delivery, by showing delivery address and goods at the checkpoint.

10. The Mayor is authorized to other protective measures and may authorize Public Safety to do whatever may be deemed necessary to maintain peace and good order and protect the public health, as authorized by Executive Order No. 2020-14, Section 2, and any other Executive Orders issued by the Governor.

11. Starting on ~~March 29, 2020~~ April 7, 2020 at 9:00 a.m., no new check-ins are permitted ~~at any short-term rental, hotel, or other overnight accommodation~~ regardless of length of stay, until May 31, 2020. Visitors currently checked-in may remain until the end of their existing reservation.

12. All retail, non-essential businesses are hereby ordered closed. Grocery stores, liquor stores, gas stations, healthcare providers, and financial services (including appraisers and real estate agents without clients) are deemed essential. Per Executive Order No. 2020-10 restaurants and food-service establishments may not permit on-premises or dine-in consumption but may continue to offer feed or beverages for off-premises consumption.

13. Any failure to comply with this ordinance, including efforts to circumvent this ordinance, may be penalized a) as a civil infraction pursuant to provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of business license may result in the loss of a business license or other measures, or b) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency, or c) any other penalties provided by State law, including penalties granted pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State."

This emergency ordinance shall be terminated or extended by the issuance of another ordinance or shall automatically expire on ~~April 30, 2020~~ June 1,2020.

AMENDED AND ADOPTED this 6th day of April 2020, at Folly Beach, South Carolina.

Ayes: 7 Nays: _____ Abstains: _____

~~Municipal Clerk~~
City Administrator

Tim Goodwin, Mayor

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EXHIBIT NO. 4

State of South Carolina

Executive Department

Office of the Governor

EXECUTIVE ORDER NO. 2020-19

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"), cases of which have now been identified and reported in each of the State's forty-six (46) counties; and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

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WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[w]ork or engage in schooling from home whenever possible"; "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the

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emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

WHEREAS, on March 27, 2020, the President of the United States granted the undersigned's aforementioned request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

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Executive Order No. 2020-19

April 3, 2020

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain "non-essential" businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, directing that certain additional "non-essential" businesses, venues, facilities, services, and activities in the general category of retail stores be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, in light of the continued spread of COVID-19 and the resulting strain on healthcare resources, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding

"emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, the undersigned may authorize a party to exceed the terms of any curfew imposed if "the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official," and "exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures designed to slow the spread of COVID-19 and limit the resulting strain on healthcare resources.

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NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Lodging and Travel Restrictions for Individuals Entering South Carolina from High-Risk Areas

To prepare for and respond to the ongoing and potential impacts associated with COVID-19, and the evolving public health threat posed by the same, and to maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and to avoid or minimize the potential risks associated with individuals entering this State from areas with extensive community transmission of COVID-19, additional action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. I hereby order and direct that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration (collectively "Lodging"), as set forth below, in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut).

C. For purposes of this Section, Lodging shall include the following:

1. A "lodging establishment," as defined by section 45-2-20(2) of the South Carolina Code of Laws, as amended, to mean "a hotel, motel, villa, condominium, inn, tourist court, tourist camp, campground, bed and breakfast, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration."

2. A vacation rental property or other short-term rental property that involves the rental of any house, condominium, room, or other dwelling unit for a period of less than ninety (90) days if such property is advertised, represented, or held out to the public as a place regularly rented to, or available for rental to, guests or if such property has been so advertised, represented, or held out to the public at any point during the preceding thirty (30) days.

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D. This Section does not prohibit any individual, entity, or establishment from providing Lodging to the following:

1. Individuals operating commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips); individuals employed by airlines; and individuals otherwise engaged in commercial transportation activities.

2. Individuals performing or assisting with military, healthcare, public safety, or emergency response operations, as well as any other operations or services identified by the United States Cybersecurity and Infrastructure Security Agency in its March 28, 2020 Memorandum, or any future amendments or supplements thereto, as essential to continued critical infrastructure viability.

E. I hereby modify and amend Section 2 of Executive Order No. 2020-14 to clarify that the provisions thereof shall not apply to individuals performing or assisting with those operations, services, or activities identified in Section 1(D)(1), (2) of this Order.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of

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Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 3rd DAY OF APRIL, 2020.

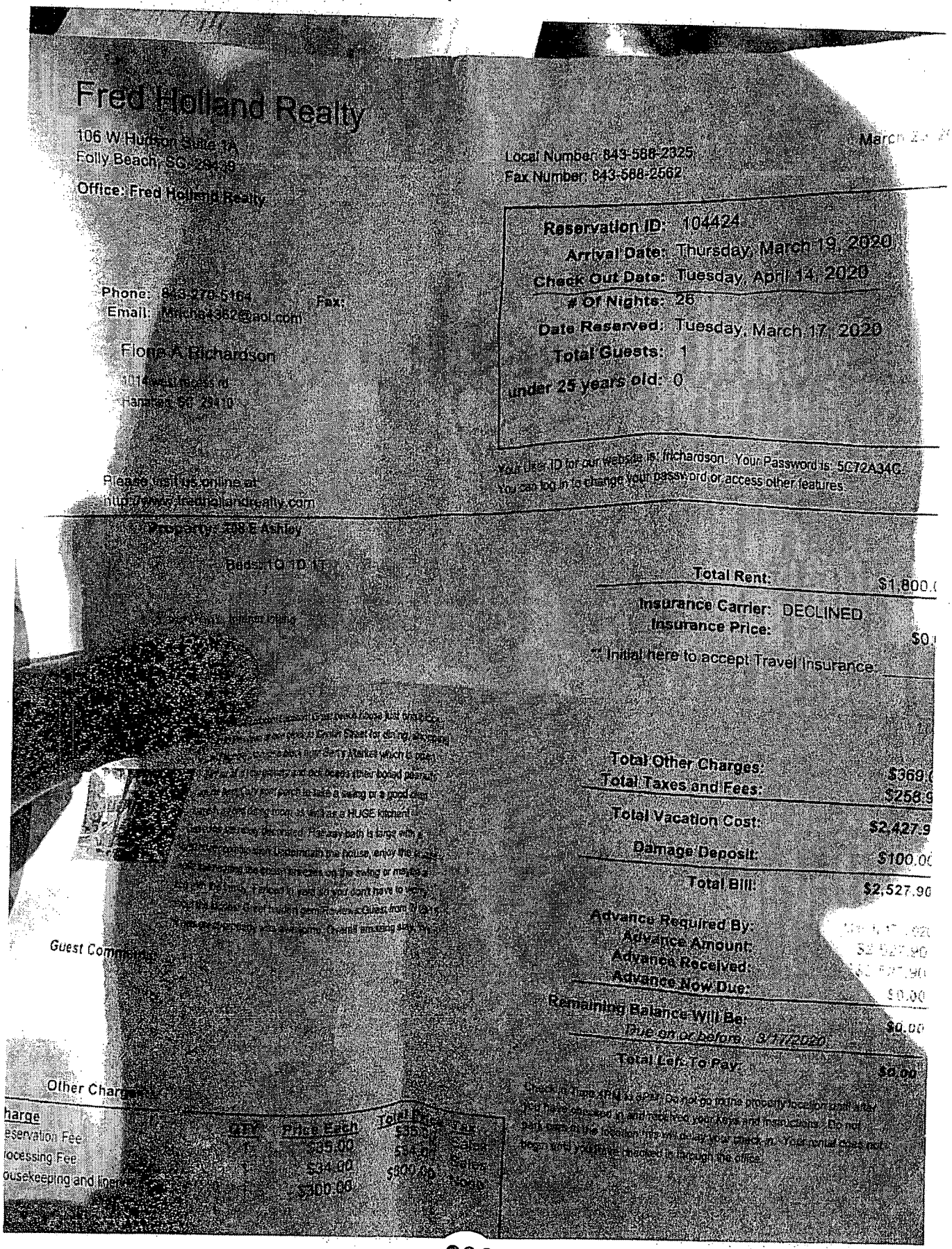
HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State

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EXHIBIT NO. 5 1st one



Fred Holland Realty

106 W Hudson Suite 1A
Folly Beach, SC 29439

Office: Fred Holland Realty

Local Number: 843-588-2325
Fax Number: 843-588-2562

March

Phone: 843-276-5164 Fax:
Email: fmh1943@aol.com

Reservation ID: 104424
Arrival Date: Thursday, March 19, 2020
Check Out Date: Tuesday, April 14, 2020
Of Nights: 25
Date Reserved: Tuesday, March 17, 2020
Total Guests: 1
under 25 years old: 0

Flone A Richardson

Your User ID for our website is: fricharson. Your Password is: 5C72A34C.
You can log in to change your password or access other features.

Please visit us online at
http://www.fredhollandrealty.com

Property: 238 E Ashley

Total Rent: $1,800.0

Insurance Carrier: DECLINED
Insurance Price: $0.

"I" Initial here to accept Travel Insurance

Total Other Charges: $369.0
Total Taxes and Fees: $258.9
Total Vacation Cost: $2,427.9
Damage Deposit: $100.0
Total Bill: $2,527.90

Advance Required By:
Advance Amount:
Advance Received:
Advance Now Due: $0.00
Remaining Balance Will Be: $0.00
Due on or before 3/17/2020
Total Left To Pay: $0.00

Guest Comments:

Other Charges

Charge	Qty	Price Each	Total
Reservation Fee	1	$35.00	$35.00
Processing Fee	1	$34.00	$34.00
Housekeeping and linen	1	$300.00	$300.00

Check in Time (4PM) is open. Do not go to the property location until after you have received keys and instructions. Do not park cars on the location until you check in. Your rental does not begin until you have checked in through the office.

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Property: 208 E Ashley
Reservation ID: 104424
Dates: 3/19/2020 - 4/14/2020

Guest: Fiona and Mark A Richardson
Guest Type: Member
Property Summary -- -- NOTES

General | Member Info | Travel Agencies | Other Charges | Custom Charges | Summary

Change Date | Pay Upl | Undo Check In | Check Out

Confirmation By: 3/17/2020

Modified By: Anna Brown

Number in Party: 1 **Underage:** 0

Marketing Code: Returning Guest

Days Reserved: 26
Date Reserved: 3/17/2020 at 4:26 PM
Status: Checked In

Hold Deposit ☐ VRA Signed ☑ Receives Emails

@ Travel Insurance: NONE / DECLINED

@ Rental Price:	$ 1800.00		Damage Deposit:	$ 100.00	
Management Fee:	10.00	Percent	Discount:	$ 0.00	
Required PrePay: ($2,527.90)	$ 2527.90		Markup:	$ 0.00	
			Owner Markup:	$ 0.00	

Reservation Comment History:
Bottom
Apr 13 2020 12:41PM
Tenant has to move to 403 W Ashley on 4/14/2020. AB

New

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Property: 208 E Ashley
Reservation ID: 104424
Dates: 3/19/2020 - 4/14/2020

Guest: Fiona and Mark A Richardson
Guest Type: Member
Property Summary -- -- NOTES

General | Member Info | Travel Agencies | Other Charges | Custom Charges | Summary

Change Date | Pay Up! | Undo Check In | Check Out

Confirmation By: 3/17/2020

Modified By: Anna Brown

Number in Party: 1 Underage: 0

Marketing Code: Returning Guest

Days Reserved: 26
Date Reserved: 3/17/2020 at 4:26 PM
Status: Checked In

☐ Hold Deposit ☐ VRA Signed ☑ Receives Emails

Travel Insurance: NONE / DECLINED

Rental Price: $ 1800.00
Management Fee: 10.00 Percent
Required PrePay: $ 2527.90
($2,527.90)

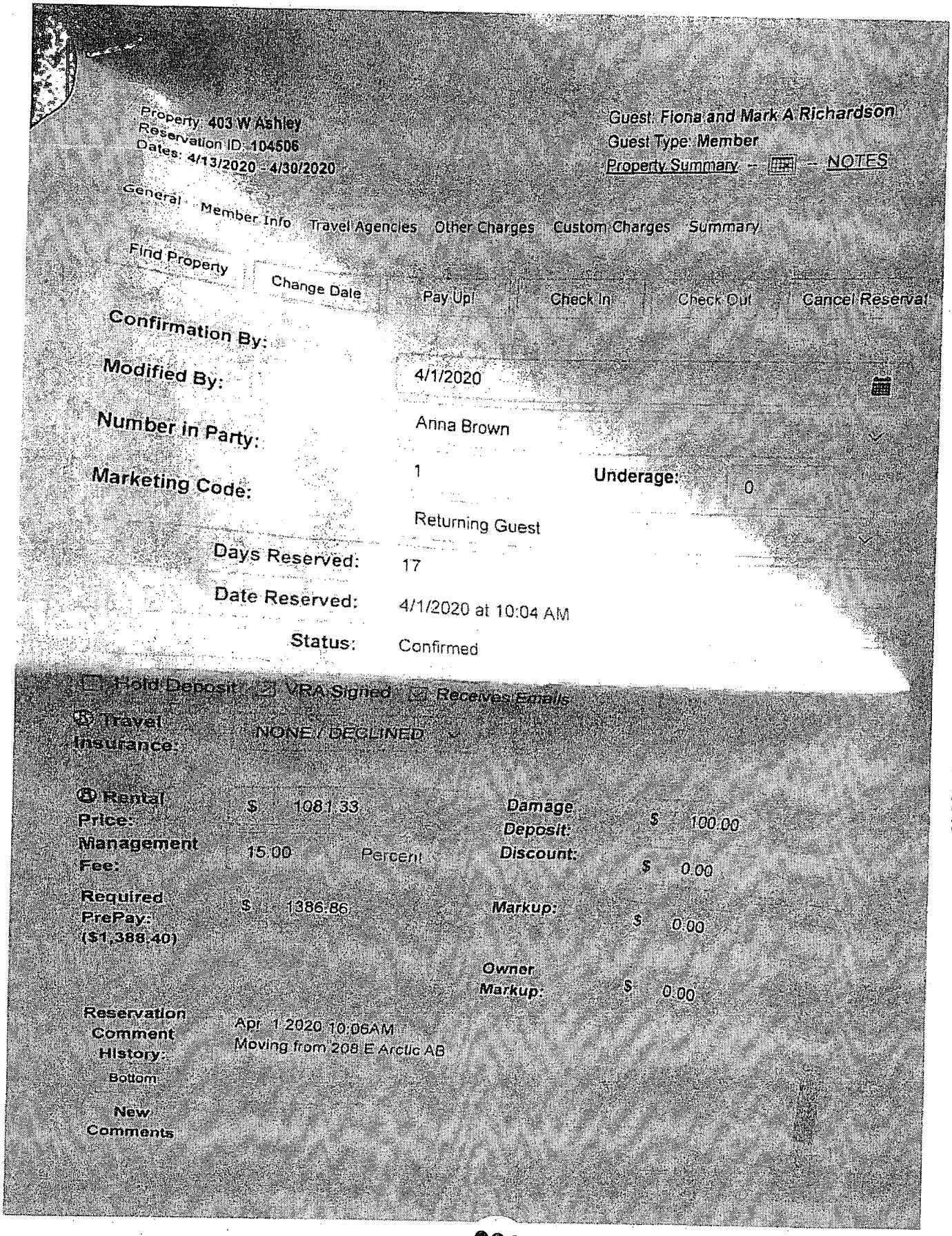
Damage Deposit: $ 100.00
Discount: $ 0.00
Markup: $ 0.00
Owner Markup: $ 0.00

Reservation Comment History: Bottom

Apr 13 2020 12:41PM
Tenant has to move to 403 W Ashley on 4/14/2020 AB

New Comments

EXHIBIT NO. 6 2nd one



Property: 403 W Ashley
Reservation ID: 104506
Dates: 4/13/2020 - 4/30/2020

Guest: Fiona and Mark A Richardson
Guest Type: Member
Property Summary -- NOTES

General | Member Info | Travel Agencies | Other Charges | Custom Charges | Summary

Find Property | Change Date | Pay Up! | Check In | Check Out | Cancel Reserval

Confirmation By:

Modified By: 4/1/2020

Number in Party: Anna Brown

Marketing Code: 1 Underage: 0

Returning Guest

Days Reserved: 17

Date Reserved: 4/1/2020 at 10:04 AM

Status: Confirmed

Hold Deposit | VRA Signed | Receives Emails

Travel Insurance: NONE / DECLINED

Rental Price: $ 1081.33

Management Fee: 15.00 Percent

Required PrePay: $ 1386.86
($1,388.40)

Damage Deposit: $ 100.00

Discount: $ 0.00

Markup: $ 0.00

Owner Markup: $ 0.00

Reservation Comment History: Bottom

Apr 1 2020 10:06AM
Moving from 208 E Arctic AB

New Comments

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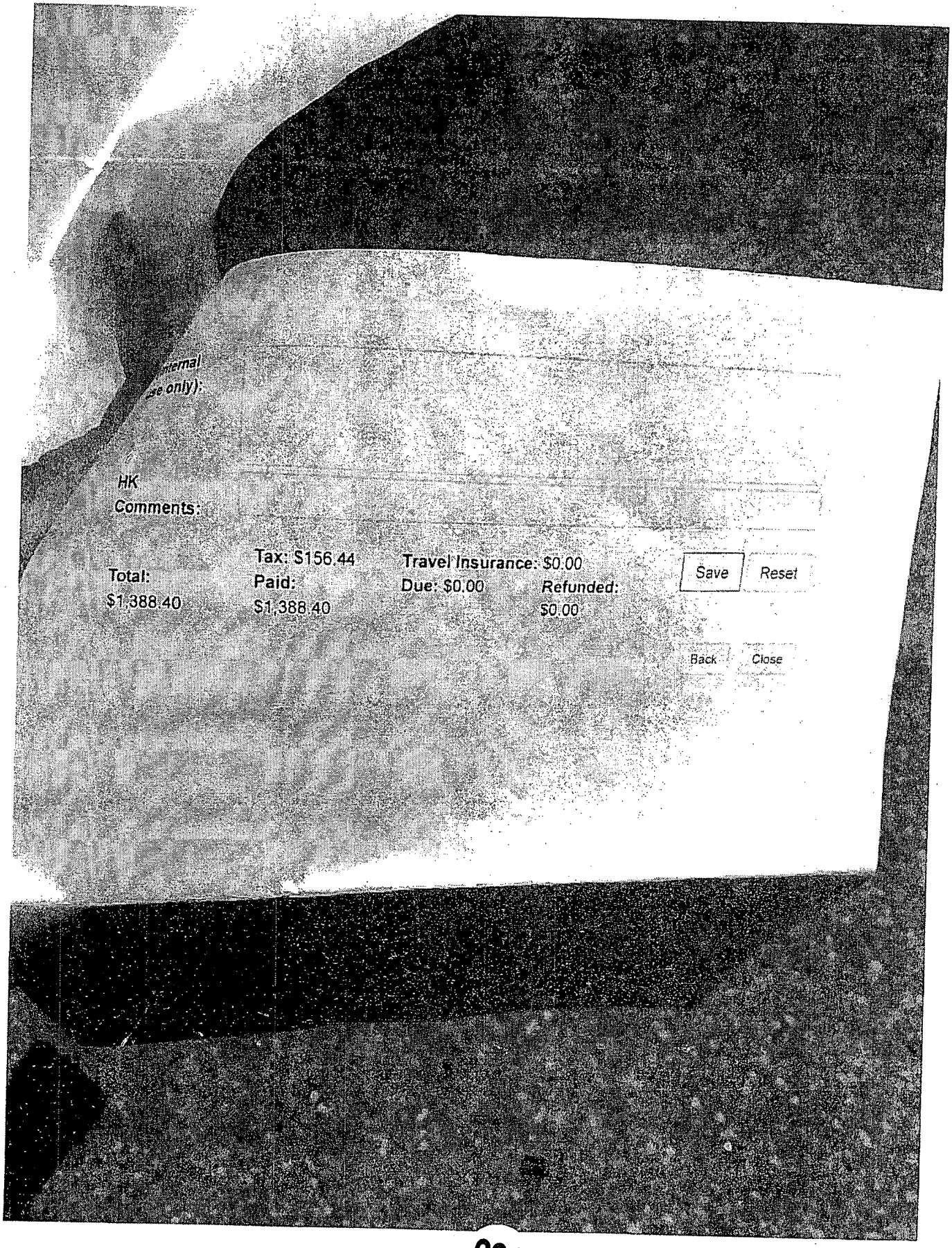


EXHIBIT NO. 7

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§ 110.17 SUSPENSION OR REVOCATION OF LICENSE.

(A) When the License Official 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 the license was issued or has failed to comply with the provision of this chapter; 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, including any communications made by the licensee or its agent in the application process; 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, including but not limited to a violation of city, county, state or federal law, ordinance or regulation;

(6) The licensee's operation of the business constitutes a public nuisance; or

(7) The applicant, licensee, or a prior licensee for a short term rental has failed to comply with the requirements of Chapter 117, or has received four or more notifications that an occupant or guest has received a written warning or citation for noise, trash, turtle lighting, requirements for special events, or exceeding maximum occupancy during any rolling six-month period. The number of allowable notices and violations shall be reset upon a change of ownership that results in no overlap with prior common ownership; or

(8) A licensee is delinquent in the payment to the city of any tax or fee.

(B) When the License Official determines that a violation of § 110.17(A) has occurred, the License Official 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. In the case of short term rental businesses, notice shall be given to the person listed as agent on the city rental registration form. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this chapter. If written appeal of the suspension is not filed with the License Official within 30 days after receiving the notice of suspension, the license shall be revoked. A licensee may surrender the business license and cease doing business at any time.

(C) Licensees or businesses that continue operations:

(1) Thirty days after a notice of suspension;

(2) Ten business days after receipt of the hearing officer's adverse written decision after a revocation hearing; or

(3) Immediately following the surrender of a license;

shall be subject to prosecution for doing business without a license.

(D) A licensee or business that has a license revoked may apply for a new license no sooner than six months after the revocation. The application for a new license must be accompanied with an explanation of the steps that have been taken to remedy the reasons for the revocation.

(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7-12-16; Am Ord. 26-17, passed 1-9-18; Am. Ord. 02-18, passed 3-13-18)

§ 110.18 APPEALS FROM DECISIONS OF THE LICENSE OFFICIAL.

(A) Any person aggrieved by a license revocation, final assessment, charge backs from an audit or a denial of a business license by the License Official may appeal the decision by written request stating the reasons for the appeal. The appeal must be filed with the License Official within 30 days after service by certified mail or personal service of the notice of the License Official's decision. A written notice of appeal must be accompanied with a $250 fee that will be used to partially defray the costs incurred in connection with the administration of appeals. The fee will be refunded in the event of

final resolution of the appeal in favor of the appellant.

(B) A hearing on an appeal shall be held within 20 business days after receipt of a request for appeal, unless continued by agreement. A licensee may surrender the business license and cease doing business prior to the revocation hearing date. The License Official has the discretion to cancel the hearing and to return some or all of the appeal fee after surrender of the business license.

(C) At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded by the city. A party who wants a transcript of the hearing shall bear the expense of preparing the transcript and shall provide a copy to the other party at no cost. A hearing officer, who shall be a member of the South Carolina Bar selected by the City Administrator, will preside over the hearing and determine the rules of evidence and procedure, including the imposition of time limitations upon the parties. Hearsay evidence will be allowed. Subpoenas will not be allowed. Within 15 business days of the hearing, the hearing officer shall render a written decision, based upon findings of fact and the application of the standards herein, that shall be served upon all parties or their representatives. The decision of the hearing officer shall be final.

(Ord. 34-06, passed 9-26-06; Am. Ord. 18-16, passed 7-12-16; Am. Ord. 02-18, passed 3-13-18)

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EXHIBIT NO. 8

City of Folly Beach

Aaron Pope, AICP
License Official
PO Box 48
Folly Beach, SC 29439

Fred Holland c/o Lajuan Kennedy
PO Box 270
Folly Beach, SC 29439

Notice of Violation
and Assessment of Civil Fine

Date: April 14, 2020

Property Address: 403 West Ashley Avenue, Folly Beach, SC; TMS: 3281300075

This notice of violation (NOV) is to inform you that the City of Folly Beach verified a new rental check in at the property you manage at 403 West Ashley Avenue on 4/14/20. New rental checks are currently prohibited by Emergency Ordinance 06-20.

Emergency Ordinance 06-20 states that violation of the Emergency Ordinance can be penalized as a civil infraction pursuant to the provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of a business license. Accordingly, pursuant to Ordinance Section 110.99, this letter shall serve as your notice that a civil penalty of $500.00 (Five Hundred Dollars and No Cents) is hereby assessed against Fred Holland Realty on this date, April 14, 2020. In addition, each day that the renters at 403 West Ashley remain in place at that address shall be considered a separate offense.

Any further violations of Emergency Ordinance 06-20 will result in a suspension and/or revocation of your business license.

If you chose to appeal this finding of a violation, such appeal will be governed by Section 110.18, which states:

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§ 110.18 APPEALS FROM DECISIONS OF THE LICENSE OFFICIAL.

(A) Any person aggrieved by a license revocation, final assessment, charge backs from an audit or a denial of a business license by the License Official may appeal the decision by written request stating the reasons for the appeal. The appeal must be filed with the License Official within 30 days after service by certified mail or personal service of the notice of the License Official's decision. A written notice of appeal must be accompanied with a $250 fee that will be used to partially defray the costs incurred in connection with the administration of appeals. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.

(B) A hearing on an appeal shall be held within 20 business days after receipt of a request for appeal, unless continued by agreement. A licensee may surrender the business license and cease doing business prior to the revocation hearing date. The License Official has the discretion to cancel the hearing and to return some or all of the appeal fee after surrender of the business license.

(C) At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded by the city. A party who wants a transcript of the hearing shall bear the expense of preparing the transcript and shall provide a copy to the other party at no cost. A hearing officer, who shall be a member of the South Carolina Bar selected by the City Administrator, will preside over the hearing and determine the rules of evidence and procedure, including the imposition of time limitations upon the parties. Hearsay evidence will be allowed. Subpoenas will not be allowed. Within 15 business days of the hearing, the hearing officer shall render a written decision, based upon findings of fact and the application of the standards herein, that shall be served upon all parties or their representatives. The decision of the hearing officer shall be final.

Aaron Pope, AICP
License Official
City of Folly Beach

4/14/20

EXHIBIT NO. 9

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511

120 North Lake Drive
Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com
Website: CARRIGGLAW.COM

May 7, 2020

Aaron Pope, AICP
License Official, City of Folly Beach
P.O. Box 48
Folly Beach, SC 29439

RE: Appeal of Notice of Violation and Assessment of Civil Fine for Fred Holland Realty, Inc. and LaJuan Kennedy

Dear Aaron,

Enclosed please find Appeal in the above matter along with filing fee check in the amount of $250.00 as required by Folly Beach Ordinance Section 110.18. Please contact me to schedule this matter for hearing.

With kind regards,

JOHN CARRIGG
Attorney for Appellants

CC: Joseph C. Wilson, IV, Esquire
P.O. Box 178
Folly Beach, SC 29439

LaJuan Kennedy
P.O. Box 270
Folly Beach, SC 29439

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE CITY OF FOLLY BEACH
THE CITY OF FOLLY BEACH, vs. FRED HOLLAND REALTY, INC. AND LAJUAN KENNEDY, Appellant.	)	APPEAL OF NOTICE OF VIOLATION AND ASSESSMENT OF FINE

TO AARON POPE, LICENSE OFFICIAL:

Appellants hereby Appeal the Notice of Violation served on April 14, 2020 along with the Assessment of Civil Fine.

Appellants would respectfully allege the following particulars as to their appeal:

1. That pursuant to the threats posed by the Novel Corona Virus (COVID-19) the Governor of the State of South Carolina declared a State of Emergency on March 13, 2020, for the entire State and has been issuing proclamations on a regular basis to provide for the health, safety and welfare of the citizens of South Carolina.

2. That on March 16, 2020 Mayor Tim Goodwin of the City of Folly Beach declared a "Proclamation of Emergency" and on March 28, 2020 The Defendant City of Folly Beach acting by and through its chief executive and its council, passed Ordinance 06-20 which among other acts declared a "State of Emergency" in the City of Folly Beach separate and distinct from the State of Emergency declared by the Governor. The Ordinance further authorized the Mayor to rule the city by decree. Goodwin has issued several proclamations which are styled as "COVID Updates," these "laws" or "declarations of law" set forth laws, rules and regulations

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which the citizens and residents of The City of Folly Beach are required to obey upon pain of penalties provided by state law as provided for in Ordinance 06-20.

3. The Original version of the Folly Beach Declaration of Emergency, 06-20 passed on March 28, 2020, suspended all new short term rentals but allowed long term rentals. It prohibited "new check-ins" of short term renters. The ordinance itself does not define or reference a definition of "short term" and "long term." The amended version of the ordinance passed on April 6, 2020 prohibited "new check-ins" for short term or long term renters. The mayor's proclamation "COVID Update 5" issued on March 24th defined long term rental as one of 30 days or more.

4. The Governor issued Executive order 2020-19 governing short term rentals in the State of South Carolina. In direct contradiction to the Governors Order the City of Folly Beach continues to prohibit both short term and long term rentals allowable under the Governors Order. The Governors Order which defines short term rental as any rental less than 90 days and prohibits all short term rental only to person from "hot spots" as define by the CDC.

5. On March 29, 2020 the South Carolina Attorney General issued an opinion which clearly set out that counties and municipalities were prohibited from enacting emergency ordinances and that the power to enact such ordinances rests solely with the Governor.

6. On March 16, 2020, Fred Holland Realty, Inc., took a reservation for a long term rental from an unnamed family. One of the customers suffers from COPD. They were originally placed at a unit located at 208 East Ashley. On or about April 1, 2020, the customer contacted Fred Holland and discussed their desire to extend their stay until the end of April because their daughter who lived in their home worked at a local hospital and was treating COVID patients. This posed a dangerous situation for the family member with COPD. The stay was extended on

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April 1, 2020, but the extension potentially required the family to be moved to a new unit at some point in the future if the owner of 208 East Ashley wished to use his home. On April 13, 2020 the family was moved to 403 W. Ashley for the remainder of their stay.

7. A citizen of Folly Beach complained to the Elected Officials of the City of Folly Beach and the city police investigated the Family for moving to 403 W. Ashley. They determined that the move constituted a "New Check-in" even though the family had been on Folly Island prior to the Mayor or the Council Limiting Rentals. Aaron Pope issued a violation letter to Plaintiffs' on April 14, 2020. The Letter levies a fine of $500.00 per day and continues to accrue so long as the Family stays on Folly Beach. On the same day Goodwin clarified his previous proclamations stating that "Visitors currently checked in may remain until the end of their reservation, and may extend only for the same guests, on the same rental terms, and at the same location." (See COVID-19 Update 11).

8. Initially Plaintiff attempted to persuade the Family to vacate the Island but they refused to do so because of the serious health risks moving back to their home in North Charleston would pose. The City of Folly Beach has chosen not to take any enforcement action against the Family and instead wishes to only punish Appellants.

9. Further Appellants would show that in another circumstance on or about April 1, 2020, with the exact same facts that involved a long term renter being moved to another location the City investigated the matter but because if the involvement of a city Council member on behalf of the renter no action was taken by the City.

9. That Appellant would assert that:

a. The provisions of the Folly Beach Declaration of Emergency and Ordinance No. 06-20 prohibiting rentals is null and void as the same violates the Constitution and Laws of the

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State of South Carolina in whole or in part. South Carolina Code Ann. Section 25-1-440(a) (2018), specifically provides that the Governor is charged with the authority to exercise emergency powers as delegated by the general assembly. The Governors authority to act preempts the ability of Defendants to act.

b. That the provisions of Folly Beach Ordinance 35.01 through 35.05 that allow The City to restrict rentals are null and void as they violate the Constitution and Laws of the State of South Carolina.

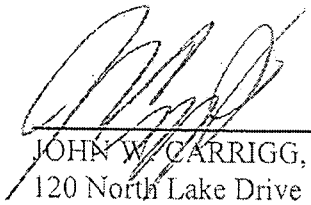
c. That the laws, rules and regulations declared by Defendants as COVID Updates are null and void as being in violation of the Constitution of the Laws of the State of South Carolina in whole or in part.

d. That the Folly Beach Emergency Ordinance 06-20; Folly Beach Ordinance 35.01 through 35.05; COVID update 2 through 14 (along with any successive update) are null and void to the extent that they violate Article VIII Section 14(5) of the Constitution of the State of South Carolina in that these laws make acts which are legal under state law criminal within the municipal boundaries of Folly Beach.

e. That the City has allowed other rental companies to move individuals from one unit to another without imposing any fine or penalty and should not be allowed to "pick and choose" what businesses they punish and which businesses they favor.

10. That Appellants have been required to employ attorneys at great expense to bring this appeal in defense of a quasi-criminal action and violation levied and prosecuted by City of Folly Beach, through no fault of her own and pursuant to the statutes and laws of the State of South Carolina and the South Carolina Rules of Civil Procedure they are entitled to an award of Attorney's fees, costs and expenses incurred in this appeal.

WHEREFORE, Plaintiff prays for this Tribunal to issue its judgment in accordance with the requests and demands set forth above and dismiss the Notice of Violation and notice of Civil Fine and award Appellant costs and Attorney's fees along with such other and further relief as the Tribunal deems just and proper.

By: 

JOHN W. CARRIGG, JR.
120 North Lake Drive
Lexington, South Carolina 29072
Phone (803) 785-5511

Lexington, South Carolina

Dated: 5-07-20

ATTORNEY FOR PLAINTIFF

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EXHIBIT NO. 10

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CITY OF FOLLY BEACH

1st Reading: March 28, 2020 Introduced by: Mayor Goodwin

No Second Reading per S.C. Code § 5-7-250 Date: March 28, 2020

ORDINANCE 06-20

AN EMERGENCY ORDINANCE TO DECLARE A STATE OF EMERGENCY, TEMPORARILY SUSPEND THE NORMAL OPERATING PROCEDURES OF FOLLY BEACH CITY COUNCIL MEETINGS, AND TAKE ADDITIONAL MEASURES TO PROTECT THE PUBLIC

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that the following Emergency Ordinance be adopted pursuant to South Carolina Code § 5-7-250:

WHEREAS, it is well recognized that SARS-CoV-2, the virus that causes the disease COVID-19, presents a public health concern that requires extraordinary protective measures and vigilance; and

WHEREAS, these matters have taken many forms across the nation including travel bans, school closures, individual quarantines, and cancellation of major events, among other measures; and

WHEREAS, the Governor of South Carolina declared a State of Emergency on March 13, 2020, to enhance the state's response to the COVID-19 virus's impact on the state; and

WHEREAS, the City of Folly Beach is working with other government agencies in an effort to prevent the spread of disease; and

WHEREAS, Section 5-7-250 of the South Carolina Code of Laws empowers Council to enact emergency ordinances affecting life, health, or safety; and

WHEREAS, in light of the foregoing, City Council of the City of Folly Beach deems it proper and necessary to adopt this emergency ordinance in order to address how the City and Council will proceed in light of the above emergency;

WHEREAS, pursuant to Executive Order No. 2020-14, March 27, 2020, the Governor has authorized law enforcement officers of any municipality "to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by [the Governor];"

WHEREAS, as part of the record, the City relies on public testimony from Dr. Edward O'Bryan, Chief Medical Officer for MUSC Business, which outlines the danger of allowing beach visitors and short-term rentals;

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ii. Residents may obtain a pass to give to professional medical caretakers through locations and methods established by staff.

iii. Employees of local businesses must have a previously-issued red or yellow reentry pass issued by the City and employee credentials.

iv. Contractors and service businesses with a Folly Beach Business License vehicle sticker. Contractors must stay on site.

v. Delivery persons who can demonstrate business on the island at the checkpoint, including pharmacy, FedEx, UPS, Amazon, and food delivery, by showing delivery address and goods at the checkpoint.

10. The Mayor is authorized to other protective measures and may authorize Public Safety to do whatever may be deemed necessary to maintain peace and good order and protect the public health, as authorized by Executive Order No. 2020-14, Section 2, and any other Executive Orders issued by the Governor.

11. Starting on March 29, 2020 at 9:00 a.m., no new check-ins are permitted at any short-term rental, hotel, or other overnight accommodation. Visitors currently checked-in may remain until the end of their existing reservation.

12. All retail, non-essential businesses are hereby ordered closed. Grocery stores, liquor stores, gas stations, healthcare providers, and financial services (including appraisers and real estate agents without clients) are deemed essential. Per Executive Order No. 2020-10 restaurants and food-service establishments may not permit on-premises or dine-in consumption but may continue to offer feed or beverages for off-premises consumption.

13. Any failure to comply with this ordinance, including efforts to circumvent this ordinance, may be penalized pursuant to provisions of the City of Folly Beach Code of Ordinances, including Section 110.17 allowing for suspension or revocation of business license may result in the loss of a business license or other measures.

This emergency ordinance shall be terminated or extended by the issuance of another ordinance or shall automatically expire on April 30, 2020.

ADOPTED this 28th day of March 2020, at Folly Beach, South Carolina.

Ayes: 7 **Nays:** 0 **Abstains:** 0

~~**Municipal Clerk**~~
City Administrator

Tim Goodwin, Mayor

EXHIBIT NO. 11

ALAN WILSON
ATTORNEY GENERAL

March 29, 2020

The Hon. Jeff Bradley
South Carolina House of Representatives District 123
306B Blatt Bldg.
Columbia 29201

Dear Rep. Bradley:

We received your request seeking an opinion on the extraordinary powers of the Governor during a state of emergency. This expedited opinion sets out our Office's understanding of your question and our response. Our guidance herein, as with any other opinion of this Office, is advisory only.

In view of the Governor's issuance of a new declaration of emergency on March 28, 2020, and with the benefit of additional time, we are adding additional authorities to our original opinion. These authorities supplement the original opinion but do not in any way change the reasoning or conclusion. We note that the new declaration of emergency states the following:

> If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

Executive Order of Governor of South Carolina 2020-15 §6(B).

Issue:

Do the Governor's extraordinary powers in a state of emergency preempt similar orders of counties and municipalities during the same state of emergency?

Law/Analysis:

This opinion has been expedited and will not undertake an exhaustive analysis of all applicable law. It should be read and understood in the context of the law cited and the current circumstances.

We affirm that the previous opinion of this Office dated September 5, 1980 and relating to compulsory evacuations by municipalities controls in this instance. *Op. S.C. Att'y Gen.*, 1980

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WL 81975 (September 5, 1980). That opinion concluded that only the Governor was empowered to exercise extraordinary emergency powers under Section 25-1-440. *Id.* The opinion noted that "there is no enumerated power expressly conferred upon such political subdivisions as would reasonably include the extraordinary authority . . . ." *Id.* It further observed that "within such extraordinary power lies the extraordinary opportunity for abuse," but also that "no one would seriously challenge that such an emergency power may be needed given the ever present potential of enemy attack, epidemic, natural disaster or nuclear accident." *Id.* (emphasis added). The opinion reasoned that the Legislature had balanced those competing interests by vesting the power in the Governor exclusively. *Id.*

Additionally, we highlight this language from our 1980 opinion in particular:

> Each provision [of Home Rule] makes clear that the grant of power is subject to the general law of the State.
>
> . . .
>
> The empowering of any government or officials with the authority to order and compel an evacuation, thereby forcibly separating its citizens from their homes, businesses, property and even families is clearly at odds with the fundamental rights, freedoms and privileges which are the bedrock of our nation.

Op. S.C. Att'y Gen., 1980 WL 81975 (September 5, 1980).

This conclusion that the Governor's emergency powers preempt those of counties and municipalities is equally applicable to the pandemic created by COVID-19. Accordingly the 1980 opinion is affirmed and is provided as guidance to counties and municipalities.

Furthermore, Section 25-1-440 expressly begins by stating that during a state of emergency, "the Governor . . ., as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State." S.C. Code Ann. § 25-1-440(a) (2018). To that end, the Governor "is empowered with the following additional authority to adequately discharge this responsibility." *Id.* The corollary to this is that while local governments retain their Home Rule powers during a state of emergency, they do not have extraordinary emergency powers. They cannot exercise the emergency powers delegated to the Governor by the General Assembly. As additional persuasive support for this conclusion, consider this reasoning of the Michigan Supreme Court:

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> It is conceded in the present case that, in the event the Governor exercises any of the powers granted to him by [the emergency powers law], local government has no power to act. Conversely, it must be concluded, if the Governor does not elect to exercise any of the powers granted to him, local government is without power to act since the field of permitted action has been entirely preempted by the State law.

Walsh v. City of River Rouge, 385 Mich. 623, 189 N.W.2d 318 (Mich. 1971).

Additional authority may be found in Art. VIII § 14(5) of the State Constitution which prohibits local governments from setting aside the State's criminal laws. As our Supreme Court consistently has held, Art. VIII § 14 forbids a local government from making activity criminal which is legal under state law. *See Beachfront Entertainment, Inc. v. Town of Sullivan's Island*, 379 S.C. 602, 606, 666 S.E.2d 912, 914 (2008) (smoking); *Palmetto Princess, LLC v. Town of Edisto Beach*, 369 S.C. 50, 631 S.E.2d 76 (2006) (day cruises); *Op. S.C. Att'y Gen.*, 2015 WL 4596713 (July 20, 2015) (and cases cited therein). Here the Governor's executive orders have made certain actions criminal, but others remain legal, for the duration of the executive order. However, the emergency ordinances in question deem these same actions, which are legal under state law, to be criminal within the limits of that political subdivision – arguably in violation of Art. VIII § 14(5).

Of course, all of these powers are subject to any applicable constitutional limitations. We do not undertake to set out an exhaustive list of those constitutional protections here, and any particular case would have to be considered on its merits. We refer the reader to our opinion issued March 24 to Chief Mark Keel concerning enforcement of Section 16-7-10 for more discussion of this issue. *Op. S.C. Att'y Gen.*, (March 24, 2020) ("Some examples of these fundamental constitutional protections are the freedom of religion inherent in a church or other religious meeting, or a wedding or funeral; the constitutional protections of the family unit; and the freedom of assembly for political purposes.") (internal citations omitted).

Additionally, as we have reiterated on numerous occasions, "the autonomy and authority of counties has increased significantly since the advent of Home Rule." *Op. S.C. Att'y Gen.*, 2012 WL 1036301 (March 20, 2012). This Office has consistently supported the broad Home Rule powers of counties and municipalities. Nothing in this opinion should be construed in derogation of the numerous prior opinions of this Office expounding on that power entrusted to local officials.

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The Hon. Jeff Bradley

March 29, 2020

Conclusion:

In conclusion, consistent with our 1980 opinion, we reaffirm that local government cannot exercise the emergency powers delegated to the Governor by the General Assembly. As our General Assembly codified into the law of our State, "the Governor . . . as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State." S.C. Code Ann. § 25-1-440(a) (2018). Therefore, counties and municipalities should be aware that any unauthorized exercise of such emergency powers could subject these political subdivisions to liability at the behest of a private citizen with requisite legal standing.

However, this Office has opined on many prior occasions that a municipal ordinance is a legislative enactment and is presumed to be constitutional." *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999). The unconstitutionality of an ordinance must be proven beyond a reasonable doubt. *Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 532, 476 S.E.2d 477, 481 (1996). While this Office may comment upon constitutional problems or a potential conflict with general law, only a court may declare an ordinance void as unconstitutional, or preempted by or in conflict with state statutes. Thus, we have recognized that an ordinance must continue to be enforced unless and until set aside by a court of competent jurisdiction. *See, e.g., Op. S.C. Att'y Gen.*, 2010 WL 1808719 (April 9, 2010).

Of course, all of these powers are subject to any applicable constitutional limitations. We refer the reader to our opinion issued March 24, 2020 to Chief Mark Keel concerning enforcement of Section 16-7-10 for more discussion of this issue. This Office has consistently supported the broad Home Rule powers of counties and municipalities. However your questions do not concern day-to-day Home Rule authority, but the extraordinary powers delegated to the Governor during these extraordinary times. Those powers are exclusive and may be exercised only by the Chief Executive of the State.

Sincerely,

Robert D. Cook
Solicitor General

cc: The Hon. Henry McMaster, Governor of South Carolina (via counsel)
Mark Keel, Chief of SLED

The Hon. Jeff Bradley

March 29, 2020

Ryan Alphin, South Carolina Police Chief's Association
Jarrod Bruder, South Carolina Sheriff's Association
South Carolina Association of Counties
Municipal Association of South Carolina

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