

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

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 II**

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<https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>

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2019

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About this capture

1,117 captures

12 Mar 2020 - 7 Jul 2020

Centers for Disease
Control and Prevention

Coronavirus Disease 2019 (COVID-19)

Coronavirus and Travel in the United States

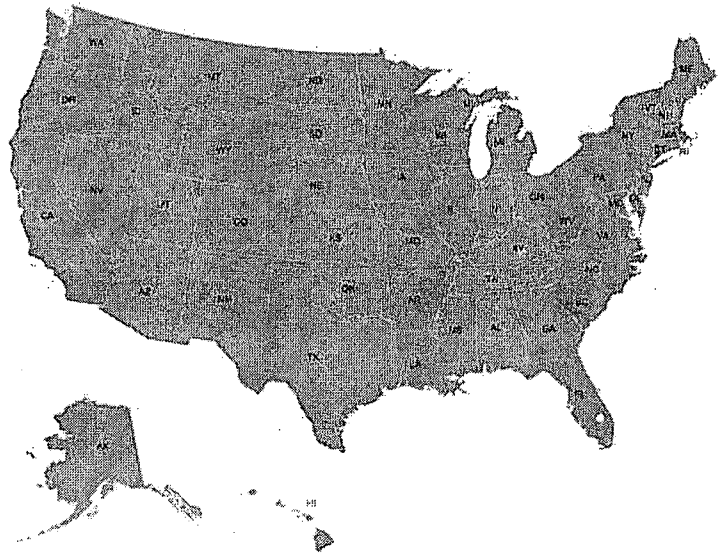
Avoid all nonessential travel in the United States

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.

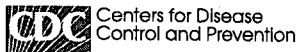
If you must travel, take steps to help prevent getting and spreading COVID-19.

CDC also recommends that you avoid all nonessential international travel (see: COVID-19 Travel Recommendations by Country).



Page last reviewed: April 6, 2020

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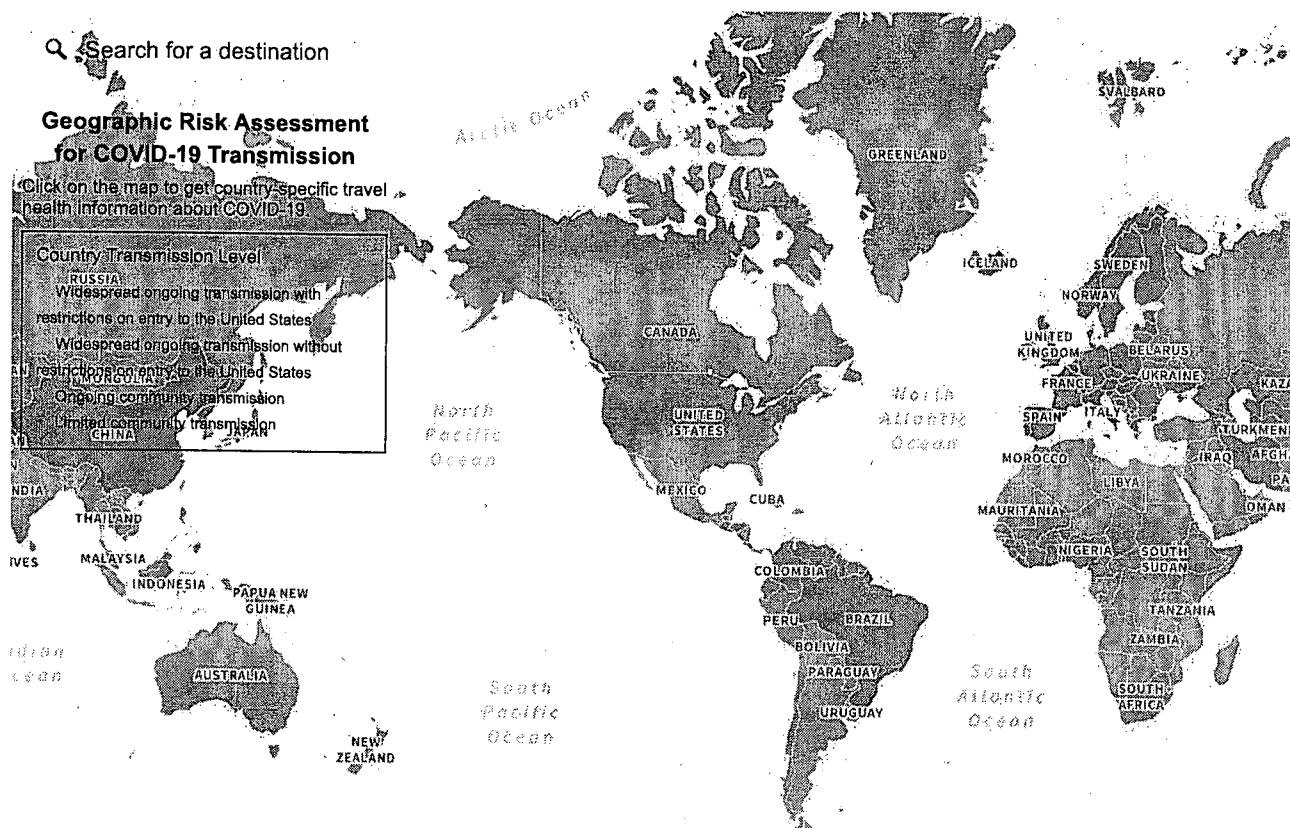


Coronavirus Disease 2019 (COVID-19)

COVID-19 Travel Recommendations by Country

Updated June 24, 2020

Current Travel Notices



© Mapbox (<https://www.mapbox.com/about/maps/>) © OpenStreetMap (<http://www.openstreetmap.org/about/>)

Level 3 Travel Health Notice: Widespread ongoing transmission with restrictions on entry to the United States

CDC recommends that travelers avoid all nonessential travel to the following destinations. Most foreign nationals who have been in one of these countries during the previous 14 days will not be allowed to enter the United States.

- Brazil
- China
- Iran
- Most European Countries
- United Kingdom and Ireland

Level 3 Travel Health Notice: Widespread ongoing transmission without restrictions on entry to the United States

CDC recommends that travelers avoid all nonessential travel to all global destinations:

- Global Pandemic Notice

Level 2 Travel Health Notice: Ongoing community transmission

CDC recommends that older adults and people of any age with serious chronic medical conditions should consider postponing nonessential travel to most global destinations.

Level 1 Travel Health Notice: Limited community transmission

CDC recommends travelers practice usual health precautions recommended for their destination.

Additional Resources

Notices of Arrival Restrictions Due to Coronavirus, Department of Homeland Security

Communication Resources for Travelers

About Coronavirus Disease 2019 (COVID-19)

Frequently Asked Question and Answers about COVID-19

* The Department of State has issued a Global Level 4 Health Advisory , advises U.S. citizens to avoid all international travel due to the global impact of COVID-19.

Page last reviewed: June 24, 2020

EXHIBIT NO. 14

Final Reading

EMERGENCY ORDINANCE 2020-08

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza;

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 117 countries and territories throughout the World, including the United States, and more specifically Broward County and 18 other counties in the State of Florida;

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic;

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States;

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19;

WHEREAS, the City of Isle of Palms is threatened by COVID-19 because of the apparent ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the citizens and visitors of the City of Isle of Palms;

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, the City of Isle of Palms is working with other government agencies in an effort to prevent the spread of disease;

WHEREAS, Governor Henry McMaster issued an executive order that closed all dine-in services at restaurants and bars beginning on Wednesday, March 18, and limiting all business to to-go/take out services only;

WHEREAS, limitations on take-out packaging by the City's Plastic Ban and the lack of products available have prohibited local businesses to provide needed food and beverage services during the state of emergency;

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, the City of Isle of Palms deems it proper and necessary to adopt this emergency ordinance in order to, among other things: (a) suspend the rental and use of Short-Term Rentals, Hotels, and Other Overnight Accommodations for 29 days or less

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Final Reading

beginning 10am Thursday, March 26, 2020 through April 30, 2020. Visitors currently checked in may remain until the end of their existing reservations.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Isle of Palms, in Council assembled, that:

1. Rental and use of Short-Term Rentals, Hotels, and Other Overnight Accommodations for 29 days or less beginning 10am Thursday, March 26, 2020 through April 30, 2020 shall be prohibited. Visitors currently checked in may remain until the end of their existing reservations.
2. Access restrictions stated in Section 7 of Emergency Ordinance 2020:01 are hereby extended to April 30th, 2020.
3. Any violation of any rule or regulation issued and set forth herein shall be punishable as provided in Title 9, Chapter 2, Section 3: Disorderly Conduct of the Code of Ordinances of the City of Isle of Palms.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE 25 DAY OF March, 2020.

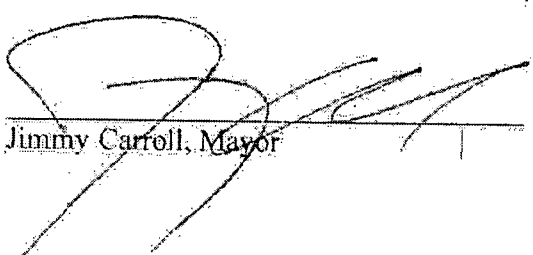

Jimmy Carroll, Mayor

EXHIBIT NO. 15



First In Service

City of Myrtle Beach
SOUTH CAROLINA
City Manager's Office

April 30, 2020

Emergency Executive Order #8: Requiring Accommodations Businesses to Implement Reasonable Steps to Comply with Sanitation and Hygiene Guidelines.

1. **Purpose** - The purpose of the Emergency Order is to protect the health and safety of Myrtle Beach residents and visitors by requiring accommodations businesses in the City of Myrtle Beach to take all steps reasonably necessary to minimize the spread of COVID-19.
2. **Soft Opening Period** - For the period of May 1 - May 15, accommodations businesses may operate with the reservations on their books as of the effective date of this Order. For the purposes of this Order, accommodations shall include hotels, motels, condo hotels, rental properties, inclusive of private management companies and Airbnb, VRBO style lodging, plus public and private campgrounds.
3. **Sanitation and Hygiene Measures** - Effective May 1, 2020, accommodations businesses shall implement all reasonable steps to comply with applicable sanitation guidelines, including future guidelines, promulgated by the CDC, DHEC, or any other state or federal public health official, including but not limited to measures outlined below, where such measures would not create an undue hardship for the individual business. For purposes of this Executive Order, "undue hardship" shall mean an action requiring significant difficulty or expenses as it relates to the individual business, taking into account the following factors: the nature and the costs of the measure at issue, the financial resources of the business, the type of operation of the business, the availability of material and supplies to implement the measure, and the impact of the measure on the operation of the business. A guest's failure to adhere to the measures implemented by the business hereunder shall not subject the business to a violation of this Executive Order. In addition to the sanitation and hygiene requirements, accommodations businesses are also subject to Governor McMaster's Executive Orders.
 - a. **Guest Arrival:**
 - Accommodations businesses should post signage at each public entrance to inform team members and guests that they should:
 - Avoid entering if they have a cough, fever, or generally feel unwell.
 - Maintain a minimum separation of at least six feet in accordance with social distancing guidelines.
 - Sneeze/cough into a cloth or tissue.

- Not shake hands or engage in any unnecessary physical contact.
 - Wear facemask or other facial covering.
 - Accommodations business should display posters instructing guests of check-in procedure to:
 - Ensure that social distancing practices are followed.
 - Encourage hand and respiratory hygiene.
 - Otherwise post tips on stopping the spread of the virus.
 - Ensure adequate air circulation.
 - During periods of low to medium occupancy, guests should be assigned non-adjacent rooms whenever possible.
 - Limit bellman and valet services to handicapped persons with placard or government issued handicap credential and persons requiring assistance because of advanced age. Bellmen should not travel to the guest room with the guest, but deliver luggage either before or after guests arrive to their room. Bellmen and valet should wear a facemask or other facial covering when interacting with guests and either wear gloves while carrying bags or parking/retrieving cars or sanitize their hands before and after performing the requested service.
 - Areas where guests check in should be no closer than six feet to the next closest check in area.
 - Front desk areas should have clear floor markings to indicate proper spacing distances from other guests.
 - Front desk team members and other lobby personnel, should wear face masks as protection for both themselves and guests.
 - Install plexiglass partitions at each front desk/check in station.
 - Assemble arrival packets in advance to limit the number of items passed between team member and guests.
 - Require adult guests to provide driver's license or other proof of residency to ensure compliance with Governor's Executive Order prohibiting reservations to persons from any country, state or 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.
 - Sanitize plastic key cards both before and after each guest use.
 - Remove all magazines, newspapers, promotional pamphlets, or other similar literature from common areas.
 - Install hand sanitizer stations in all public areas, at the most heavily used entrance/exits, outside lobby elevators, and on each floor.
- b. Guest Elevator Use Elevators:
- Guest elevators should not be occupied by more than one person at a time unless multiple occupants are part of the same party or family.
 - All guests should wear facemasks or face protection while occupying elevators for their safety and the safety of others.
- c. Cleaning Procedures – each accommodations business shall:
- Create a list of high-touch surfaces requiring routine disinfecting and environmental cleaning (e.g. workstations, countertops, handrails, doors and door knobs, bathrooms, breakrooms, elevators and other common areas). Such surfaces shall be disinfected hourly.

- Maintain a logbook of the cleaning/disinfection regiment including date and time cleaning was performed and the initials of the employee performing the cleaning.
 - Require cleaning employees to wear gloves; clean surfaces with soap and water if dirty before disinfecting; use EPA-registered household disinfectants, diluted bleach, or alcohol solutions; and provide disposable wipes for wiping down commonly used surfaces.
 - Provide no-touch trash bins for guest and staff use.
- d. Food & Beverage - Until further Order of Governor McMaster, restaurants are to remain closed to dine-in services. If in-house restaurants offer delivery or curbside pick-up, the following sanitation measures should be implemented:
- Use of single use disposable plates, bowls, cutlery and cups.
 - Use of single use disposable menus to be thrown away after each use.
 - Persons assisting in the food preparation shall wear facemasks and gloves.
 - If food is delivered, delivery person must wear a facemask and gloves.
- e. Pool Areas - Until further Order of Governor McMaster, pools shall remain closed.
- f. Accommodations Business Team Member Practices:
- When entering the building employees should avoid congregating, and should always keep at least six feet between each other.
 - Each business will issue each team member a facemask or other suitable facial covering to be worn at all times while team member is at work.
 - Employees should be scheduled to arrive and depart at staggered times.
 - Service elevators are restricted to one person.
 - Work spaces should be assigned so that team members can maintain at least six feet separation.
 - Inform team members that, if supplies run low, they are to contact the department manager to bring supplies to the workspace.
 - Authorize team members to eat lunch at his/her work station.
 - Promote etiquette for coughing, sneezing, handwashing, and the avoidance of face touching, and handshaking.
 - Post reminders and tips in all employee only areas about slowing virus spread through proper hygiene.
 - Discourage workers from sharing resources or other work tools or equipment, whenever possible.
- g. Monitoring Team Members for Symptoms - each accommodations business shall:
- Separate sick or symptomatic employees from other team members and customers. These employees should be immediately sent home. Areas visited by such employees should be immediately cleaned and disinfected.
 - Monitor employee's symptoms, especially fever. If a team member needs to take simple medications (e.g. acetaminophen, ibuprofen, or aspirin) his/her temperature should be taken beforehand.
 - Do not allow team members to come to work if they feel sick. Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation is met, in consultation with healthcare providers and state and local health departments.

- Implement non-punitive leave policies so that employees do not feel pressured to come to work if they are sick. Remind team members to report any illness to a manager/supervisor, especially if sick with fever, cough, muscle aches and pains, sudden changes in smell or taste, sore throat, and/or shortness of breath.
- If a team member is confirmed to have COVID-19, employers should inform fellow team members while maintaining confidentiality. Employer should instruct fellow employees about how to proceed based on CDC Public Health Recommendations for Community-Related Exposure.

h. Training – Each business shall:

- Provide training for every staff member on the requirements and expectations of this Executive Order.
- Train managers and supervisors to spot symptoms of COVID-19 and to be clear on relevant protocols.

3. Myrtle Beach Coronavirus Recovery Task Force

- Membership to be appointed by (May 12, 2020):
 - Medical Provider Representative.
 - City of Myrtle Beach Fire Chief.
 - City of Myrtle Beach Police Chief.
 - Hotel Owner or Manager.
 - Restaurant Owner or Manager.
 - City Convention Center Director.
 - Retail Business Owner or Manager.
 - Amusement/Attraction Owner or Manager.
 - Small Business Owner/Manager.
 - 3 Myrtle Beach Residents:
 - South End Resident (south City limits to 7th Avenue North).
 - Center City Resident (7th Avenue North to 29th Avenue North).
 - North End Resident (29th Avenue North to north City limits).
- Task Force Responsibilities:
 - To review the effect of this and all previous and subsequent Executive Orders, especially with respect to:
 - The health of our residents and visitors.
 - Local capacity to provide adequate medical treatment and facilities.
 - The supply of necessary commodities including food, medical supplies, and other essential materials.
 - Local economic conditions.
 - Enforcement of existing laws, Governor's Executive orders, and City Executive Orders impacting the recovery efforts.
 - To make recommendations to City Council regarding future phases of recovery.
 - Other issues as assigned by City Council.
- Meeting and Reporting Requirements:
 - The Task Force will be expected to meet as needed and as called by the Committee Chairperson.

- The Task Force will be expected to report to City Council at each City Council Meeting until the expiration of the Civil Emergency. At each meeting the Chairperson (or other designated member of the Task Force) shall report new developments and concerns to City Council along with relating to the city's economic recovery efforts.
- The Task Force shall conduct all meetings and dealings in conformance with the South Carolina Open Meetings Law.

4. **Enforcement of Executive Order** - A person who fails to comply with this Executive Order shall be guilty of a civil infraction, punishable by a fine of not more than \$100. Each day of a continuing violation of this Executive Order shall be considered a separate and distinct offense. In addition to the fines established by this Section 6, repeated violations of this Executive Order by a person who owns, manages, operates or otherwise controls a business subject to this Executive Order may, subject to all procedural protections set forth in the Myrtle Beach City Code, result in the temporary suspension of any occupancy permit or business license issued to the business where the repeated violations occurred. Repeated violation of this Executive Order may also be abated as allowed by the Myrtle Beach City Code and/or the laws of this State.

The foregoing notwithstanding, law enforcement shall seek voluntary compliance. For the purposes of this Executive Order, "person" shall be defined as any individual associated with the business who has the control or authority and the ability to enforce the hygiene and sanitation requirements of the Executive Order within the business, such as an owner, manager or supervisor. "Person" may also include an employee or other designee that is present at the business but does not have the title "Manager", "Supervisor", etc. but has the control or authority and the ability to ensure that the requirements of the Executive Order are met while the business is open to the public.

Accommodation businesses are required to maintain such records as necessary to document compliance with this Executive Order.

5. **Duration of Executive Order** - This Executive Order, and any subsequent amendment, shall remain in effect until rescinded by the City or subsequent Executive Order, or the expiration of the Declaration of Civil Emergency, whichever is first.

Approved By: John Pedersen Date: April 30, 2020 Time: 12:55 P.M.
John Pedersen, City Manager

EXHIBIT NO. 16

TOWN OF EDISTO BEACH

EMERGENCY ORDINANCE 2020-09

WHEREAS, the United States of America, the State of South Carolina, and the Town of Edisto Beach have declared emergencies related to the spread of COVID-19 virus; and

WHEREAS, in order to lessen the intensity and duration of the crisis, reduce the stress on our first responders and healthcare system, and to prevent unnecessary deaths, all citizens must prepare to make sacrifices; and

WHEREAS, as a tourist destination, social distancing requests and shelter in place requests from the South Carolina government officials have been less than successful in the Town of Edisto Beach; and

WHEREAS, short term rentals inflate the population of the Town placing additional strain on Town resources, for example the number of citizens in the Town is approximately 700 and during a typical tourism week, the population is 10,000; and

WHEREAS, the population change increases the risk of virus transmission; and

WHEREAS, certain additional measures need to be taken to continue to protect our citizens and guests from this pandemic.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Edisto Beach, in Council assembled, that:

1. That a local state of emergency is hereby declared for the Town of Edisto Beach, South Carolina pursuant to Section 26-33 of the Code of Ordinances of the Town of Edisto Beach.
2. The state of emergency shall continue for a period of not more than sixty days from the date of this declaration unless continued or renewed by the Council of the Town of Edisto Beach.
3. **Short-Term Rentals and Other Overnight Accommodations:** No new check ins are permitted beginning 10 a.m. Thursday, March 26, 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 a valid lease agreement.
4. **Physical businesses** (except essential businesses, listed below) may not allow patrons indoors or to shop on-premises and must follow Centers for Disease Control (CDC) guidelines. However, business employees may come to work with a pass as determined appropriate by the Police Chief from their employer confirming their work status, and businesses may continue to serve clients virtually, by delivery, or at a service window. The grocery store and gas station are deemed essential by the CDC and may continue to allow customers inside. Restaurants can continue with take out and delivery services. Private Boat charters are not allowed as they cannot practice social distancing.

5. **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.

6. **All Other Checkpoint Regulations:**

- Checkpoint will be operational 24 hours a day until further notice.
- Residents and property owners: Please bring one form of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, lease, etc.) If the property is owned by a LLC or other group, documentation must be provided showing owners.
- Edisto Island residents: will continue to be allowed to access essential businesses (BiLo and Gas station) and restaurants as long as they have proof of Edisto island residency.
- Relatives and family members: Immediate family members (defined as spouse, children, parents, grandparents) are allowed as long as accompanied by an owner.
- Guest passes are not permitted.
- Delivery persons who can demonstrate business on the beach at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
- Caretakers: Professional caretakers are limited to caretakers with professional medical service credentials.
- Essential Business Employees Essential business employees will still be allowed past the checkpoint.
- Media personnel with media credentials presented.
- Town Parks, playgrounds and facilities will be closed.

Enacted this 25th day of March, 2020, by Town Council of the Town of Edisto Beach, South Carolina.

This ordinance shall take effect immediately.

Attest:

Jane Darby, Mayor

Iris Hill, Town Administrator

EXHIBIT NO. 17

Enter keyword here

[HOME](#)[OPINIONS](#)[IMPORTANT LINKS](#)[CRIME VICTIM SERVICES](#)[MEDIA CENTER](#)[CONTACT](#)

ATTORNEY GENERAL WILSON'S STATEMENT ON LOCAL MASK ORDINANCES



(COLUMBIA, S.C.) – June 24, 2020 – My office has recently received a number of calls regarding the city ordinances passed by Greenville and Columbia that concern the wearing of masks within those cities' jurisdictions and under certain conditions. I want to provide a general answer to this issue.

Before I provide the answer I want to make it perfectly clear that our office is not endorsing, defending or even attacking these ordinances.

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 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.

LATEST NEWS

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Attorney General Wilson's statement on local mask ordinances

Jun 24, 2020

(COLUMBIA, S.C.) – June 24, 2020 – My office has recently received a number of calls regarding the city ordinances passed by Greenville and Columbia that concern the wearing of masks within those cities' jurisdictions and under certain conditions. I want to provide a general answer to this issue. Before I provide the answer I want to make it perfectly clear that our office is not endorsing, defending or even attacking these ordinances. 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...

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Mount Pleasant Man Arrested on Child Sexual Abuse Material* Charges

Jun 24, 2020

(COLUMBIA, S.C.) – June 24, 2020 – South Carolina Attorney General Alan Wilson announced the arrest of Layfe Dubb Farmer, 35, of Mt. Pleasant, SC, on 10 charges connected to the sexual exploitation of minors. Internet Crimes Against Children (ICAC) Task Force investigators with the Mt. Pleasant Police Department made the arrest. Investigators with the SC Attorney General's Office, also a member of the state's ICAC Task Force, assisted with the investigation. Investigators received a CyberTipline report from the National Center for Missing and Exploited Children (NCMEC) which led them to Farmer. Investigators state Farmer possessed multiple files of child...

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One other issue that has been brought to our attention involves a law (Section 16-7-110) that prohibits the wearing of masks in public and how this law could subject people to prosecution for obeying a city ordinance that requires the wearing of a mask in commercial establishments. Basically, you have state law that says you cannot wear a mask and city ordinance that says you must wear a mask. It is important to understand that this law was passed in 1962 with the intention of preventing members of the Ku Klux Klan from concealing their identities while committing acts of terrorism. With that in mind, this statute, in our opinion would not be applicable to the mask ordinances because the wearer is not attempting to conceal their identity but to comply with a city health ordinance.

Any other statutes which may have been cited to this office as conflicting with the city ordinances would be reconciled by a future court as inapplicable.

Many people are upset about these ordinances and I can understand their frustration. However, just because you believe something is bad government does not make it unconstitutional government. Sometimes the remedy for a bad government action is not a legal remedy but a political remedy at the ballot box. I hope this helps people understand my position better. If I thought these ordinances were unlawful, I promise you I would be seeking a legal remedy.



Attorney General Wilson attends Greenwood V.A.L.O.R. clinic free legal help for veterans, active-duty and Reserves

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Columbia, SC

Rembert Dennis Building | 1000 Assembly Street,
Room 519 | Columbia, S.C. 29201
Phone: 1-803-734-3970 | Fax: (803) 253-6283



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Money Services

Inside the Office

Internet Crimes Against Children
Legal Services
Tobacco
Medicaid Fraud
Medicaid Recipient Fraud
Securities
Victim Assistance
Sexually Violent Predator
Human Trafficking

EXHIBIT NO. 18

FILED FROM NCALY FILED - 2020 NOV 23 4:16 PM - CHARLESTON - COMMON PLEAS - CASE# 20200171 0003549

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3
4
5 FRED HOLLAND REALTY, INC. and
6 LAJUAN KENNEDY,

7 Appellants,

8 vs.

CASE NO. 2020-CP-10-03549

9 THE CITY OF FOLLY BEACH,

10 Respondent.

11
12 TRANSCRIPT OF PROCEEDINGS

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14
15 LOCATION: City of Folly Beach Municipal Court
16 21 Center Street
17 Folly Beach, SC

18 BEFORE: CHRISTIE VARNADOE, Hearing Officer
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APPEARANCES OF COUNSEL:

ATTORNEY FOR THE APPELLANTS

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ATTORNEYS FOR THE RESPONDENT

WILSON LAW FIRM
BY: JOE WILSON, ESQUIRE
P.O. Box 178
Folly Beach, SC 29439

(INDEX AT REAR OF TRANSCRIPT)

1 THE WITNESS: -- for the --

2 THE COURT: They're RFs?

3 THE WITNESS: Uh-huh. They're the
4 history of payments and everything else on the
5 reservation for a particular client. Every time the
6 record is touched, it's a date and all on there.

7 BY MR. CARRIGG:

8 Q. And so I'm looking at Exhibit S. It
9 indicates an entry by Anna Brown on 4/1/2020 at,
10 looks like, 1:20 and 1:21 p.m.?

11 A. Right.

12 Q. And that's when she's paying for the
13 extension?

14 A. Correct.

15 Q. So she was paying for an extension of time
16 because she couldn't return home?

17 A. She could not return home. Yes. That was
18 the request that we had to find some place for her.
19 She could not return home.

20 Q. And at the time there was nothing wrong
21 with it?

22 A. No.

23 Q. You could do long-term rentals. She
24 wanted another 30 days on the island, correct?

25 A. Yes. She needed to have more time on the

1 island. Yes.

2 Q. To get away from --

3 A. Her situation at home. Yes.

4 Q. So based upon all of the ordinance issues
5 at the time and -- that was in place, which was the
6 original 06-20?

7 A. Right.

8 Q. There was nothing wrong with moving the
9 reservation?

10 A. There was nothing wrong with moving the
11 reservation at that time. No.

12 Q. Okay. Now, she didn't physically move on
13 that date, correct?

14 A. No, she did not. She did not move until
15 the 13th -- 13th, 14th.

16 Q. And why was that?

17 A. Well, she was in the one property and she
18 could stay there until this given date and then she
19 had to leave. So that was the reason for her
20 leaving. She didn't want to get up out of one and go
21 to the other one immediately. She stayed out her
22 time at the 208 and then moved to the other property.

23 Q. Okay. And let me ask you this: I mean,
24 did you understand that you needed to call and okay
25 this with the city in advance?

1 later on in different rules that came up as to what
2 that really represented because it wasn't defined
3 originally.

4 MR. CARRIGG: I don't have anything
5 further. Please answer any questions Mr. Wilson may
6 have.

7 EXAMINATION

8 BY MR. WILSON:

9 Q. Do you have P2 and P3 in front of you? I
10 don't want to hover over you. So let's look at P2.
11 Is this a -- what looks like the kind of thing y'all
12 hand out to your rental guests?

13 A. This we -- we can send it to the rental
14 guests. We were using it during the time we're
15 talking about to prove that they were supposed to be,
16 you know, in that particular residence. So we
17 printed these for the different tenants, but normally
18 this is just something that they receive in an e-mail
19 when they make the reservation.

20 Q. And so the Richardsons checked in -- is
21 the information on this sheet accurate? Let me ask
22 you that.

23 A. It should be.

24 Q. Take your time.

25 A. As far as on the -- let's see. This is

1 moving the Richardsons to the 403 property to --

2 Q. No. Ms. Kennedy, let's just talk about
3 P2.

4 A. Okay. All right.

5 Q. Is the information on P2 accurate?

6 A. Yes. That information is, to my
7 knowledge, yes, is accurate.

8 Q. So the Richardsons rented 106 West Hudson?

9 A. No. That is my address --

10 Q. I'm sorry.

11 A. -- which is on the top there.

12 Q. Where is the rental address on this?

13 A. Okay.

14 THE COURT: It's below the first
15 line.

16 MR. WILSON: Is it under -- I don't
17 know.

18 THE COURT: It's just hard to read.

19 THE WITNESS: It's very hard to read.

20 BY MR. WILSON:

21 Q. 208 East Ashley, right?

22 A. Yes.

23 Q. Right above the top. Okay. So they
24 rented 208 East Ashley?

25 A. Yes.

1 Q. And the check-in date was March 19th?

2 A. Correct.

3 Q. And the check-out date was April 14th?

4 A. Correct.

5 Q. And then the rate was -- is there a daily
6 rate?

7 A. No, sir. This -- they were paying based
8 on a monthly rate of \$1,800. It's not a daily rate.

9 Q. Okay. But this was not a 30-day rental --
10 I mean, this was not a long-term rental?

11 A. This was not a long-term. This is a
12 short-term rental.

13 Q. Okay. Because it's less than 30 days?

14 A. It's less than 30 days.

15 Q. And just to be clear, I mean, you said
16 you're unaware of any ordinance defining short-term
17 rentals?

18 A. There may be some ordinances around, but
19 I'm not sure it says exactly what they are.

20 Q. Have you ever gone and looked at Folly
21 Beach's short-term ordinance?

22 A. No.

23 Q. Okay. So if I showed it to you, it would
24 be the first time ever?

25 A. It would be the first time I looked at it.

1 Yes.

2 Q. Okay. Well, I'm going to show you with my
3 computer, because that's what I've got, ordinance
4 117.01, which is the first section of our short-term
5 rental chapter, and I'm going to show you short-term
6 rentals. They are defined there down at the bottom,
7 and what does it say?

8 A. "Short-term rentals less than 30 days used
9 in a manner consistent with the residential character
10 of the dwelling. Tourist accommodations, hotels,
11 motels, bed and breakfasts, all considered short-term
12 rentals."

13 Q. Less than 30 days?

14 A. Less than 30 days. Yes.

15 Q. So that's news to you?

16 A. No. That would be something that I was
17 aware of, short-term rentals less than 30 days. Yes.
18 Before reading that particular ordinance, no.

19 Q. Because you had never read it?

20 A. I have not read it, no.

21 Q. In any case, P2, the first rental contract
22 that the Richardsons had, the rate -- the charge is
23 \$2,527.90s?

24 A. Well, that's with everything on it with
25 the taxes and everything on it. Yes. Their rental

1 rate for that time frame is \$1,800, and then you
2 would have 14 percent tax and so forth.

3 Q. Okay. The rental rate is \$1,800?

4 A. Uh-huh. Yes.

5 Q. Okay. So now let's look at P3. Now, is
6 this a different guest rental agreement?

7 A. This is a different agreement because this
8 is a different property. The owners -- you
9 couldn't -- you couldn't post them both on the 208
10 because the 208 owner would get all the money and the
11 403 owner would not get any money. So you have to
12 have two different reservations tied to the
13 particular owner. These reservations are tied to the
14 owner's account. So this shows on the 403, it shows
15 what the guest was being charged and, again, your
16 taxes and so forth that are on there and that's
17 what's on this one. And this is a different owner,
18 so it's going to be a different contract.

19 Q. So the Richardsons, this is their second
20 rental contract?

21 A. Correct.

22 Q. For the property that is a different
23 property, 403 West Ashley?

24 A. Correct.

25 Q. And the dates are 4/13 to 4/30?

2 Q. So it begins when the other one ended?

4 Q. And it's not a long-term. It's a
5 short-term rental, correct?

11 Q. Yes. This contract, though, is for less
12 than 30 days?

14 Q. Okay. And what is the rental rate?

16 Q. So it's a different rental rate?

20 Q. And something that has been overlooked.

24 | A. This one?

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,	)	
	)	RECORD ON APPEAL SUBMITTED BY
Appellants,	)	RESPONDENT CITY OF FOLLY BEACH
	)	
v.	)	
	)	
THE CITY OF FOLLY BEACH,	)	
	)	
Respondent.	)	

PLEASE TAKE NOTICE THAT Respondent City of Folly Beach hereby supplements the Record on Appeal by submitting Folly Beach's Memorandum in Opposition to Appellant Fred Holland's Arguments on Alleged Preemption and Constitutional Infirmity of Emergency Ordinance 06-20, including the Exhibits to same. This Memorandum was filed in the administrative proceeding that was held previously and which is now on appeal. Appellant Fred Holland submitted exhibits from the hearing on that administrative proceeding but failed to include the parties' memoranda of law that were submitted.

Respectfully submitted,

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November 4, 2020
 Folly Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE CITY OF FOLLY BEACH,

v.

FRED HOLLAND,

Appellant.

) IN THE ADMINISTRATIVE COURT
) FOR THE CITY OF FOLLY BEACH
) VIOLATION OF EMERGENCY
) ORDINANCE 06-20
)
)
) **DEFENDANT CITY OF FOLLY**
) **BEACH'S MEMORANDUM IN**
) **OPPOSITION TO APPELLANT'S**
) **ARGUMENTS ON ALLEGED**
) **PREEMPTION AND CONSTITUTIONAL**
) **INFIRMITY OF EMERGENCY**
) **ORDINANCE 06-20**
)

The City of Folly Beach, by and through undersigned counsel, hereby submits its Memorandum in Opposition to Appellant Fred Holland's arguments that the City's Emergency Ordinance 06-20 is preempted by state law or otherwise unconstitutional.

FACTS

Folly Beach Amended Emergency Ordinance 06-20, dated April 6, 2020 (the "Emergency Ordinance"), attached as Exhibit No. 1, 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. 1 (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 assessment of a civil fine April 14, 2020 for allowing a new rental check-in at property it managed located at 403 West Ashley Avenue, Folly Beach, South Carolina. Notice of Violation, Exhibit No. 2.

Based on admissions in Fred Holland's Appeal, as well as Lease Documents, Exhibit No. 3, provided by Fred Holland's renters, it is clear that Fred Holland violated the Emergency Ordinance banning new check-ins after April 7, 2020. A renter checked-in to the short-term rental located at 208 East Ashley on March 19, 2020 with a check out date of April 14, 2020. Lease Agreement, Page 1, Exhibit No. 3. 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 guests for 403 West Ashley starting on April 13, 2020 for a period of 17 days. Lease Agreement, Page 4, Exhibit No. 3; Fred Holland Appeal, Paragraph 6. 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 effect. Fred Holland Appeal, Section 6. The Lease Agreement provided by the renters confirms that the new reservation was for a new property, at a new rental rate, for a new time period. Lease Agreement, Page 4, Exhibit No. 3.¹ 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. 4. This ordinance included a ban on new check-ins starting on March 29, 2020 at any short-term rental, but did not cover long term rentals like the following version. Thus, the check-in on April 14, 2020 would

¹ In its appeal, Fred Holland notes that the renting family had health reasons for now wanting to move back home. Fred Holland Appeal, Section 6. 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. 2. 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.

have violated this prior ordinance, which was in place at the time that Fred Holland accepted the second reservation on April 1, 2020.

Fred Holland 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 adopted by the City on March 28, 2020. Fred Holland generated a new reservation sheet for the April 13, 2020 check-in. Lease Agreement, Page 4, Exhibit No. 3. 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.

LEGAL ARGUMENT

STANDARD OF REVIEW

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 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).

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 that the entity violated. 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 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. 1 (amendments adopted on April 6, 2020 in red type).

In its 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. 5.²

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 provisions. 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.”).

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

² To be clear, this Opinion is neither binding nor applicable nor persuasive as argued below.

under state law.

Several other municipalities have taken a similar approach and adopted civil fines rather than criminal fines in their emergency ordinances following the Attorney General's Opinion. *See* Edisto Beach Emergency Mask Ordinance, Exhibit No. 6; Myrtle Beach Emergency Ordinance, Exhibit No. 7; Kiawah Emergency Ordinance, Exhibit No. 8; Greenville Emergency Mask Ordinance, Exhibit No. 9; Charleston Emergency Mask Ordinance, Exhibit No. 10;³ Isle of Palms Emergency Mask Ordinance, Exhibit No. 11; Beaufort Emergency Mask Ordinance, Exhibit No. 12. Indeed, the Municipal Association of South Carolina (MASC) has published a model mask ordinance that includes a civil infraction penalty, not a criminal penalty. MASC Model Mask Ordinance, Exhibit No. 13.

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, and, therefore, has not violated 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, which 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**

³ The City of Charleston actually calls for a \$100 "infraction" not specified as civil or criminal, but the lack of potential incarceration, low fine amount, and lack of criminal language suggests it is a civil infraction. *See Mun. Ass'n of S.C. v. AT & T Commc'ns of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 471 (2004) ("A statute providing that on a conviction the party guilty of violating it shall be fined or imprisoned or both ordinarily contemplates a criminal proceeding only.") (quoting 36A C.J.S. *Fines* § 9 (2004)).

as a location with extensive community transmission of COVID-19 . . .” Executive Order No. 2020-19, Section 1(B), Exhibit No. 14 (emphasis added).

Executive Order No. 2020-19, like his 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. 14 (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 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 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).

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. 1.

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 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 Governor, if he wished, could explicitly limit the City's police powers.

Governor McMaster has steadfastly refused to impose any such explicit 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, and the continued implementation of restrictions is necessary and certainly justified during the peak of the COVID-

19 pandemic. 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 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. 14. 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

⁴ <https://www.cityoffollybeach.com/wp-content/uploads/2015/04/Folly-Beach-Econ-Impact-Exec-Summary.pdf>

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.

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 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. 14, 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. 14 (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 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. 15 (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. 16.⁷

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-notice.html> The archived website would not display the map on this page, but this page has not changed since the pandemic began in March.

Thus, every state and 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 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 are not in conflict, but rather impose identical restrictions.

In addition, the Governor authorized Folly Beach to enforce the Governor's orders. Executive Order No. 2020-19 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).

2. **EVEN IF FOLLY BEACH'S EMERGENCY ORDINANCE EXPANDED THE RESTRICTION ON THE GOVERNOR'S EXECUTIVE ORDER, THEY 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 regulation that merely supplements 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,

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

powers. Fred Holland Appeal, Paragraph 9(a). 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 belongs exclusively to the Governor. Nothing in Section 25-1-440 preempts all 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 contradict 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).

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 [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 22 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. 14 (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.

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 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. 17. 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. 7. Edisto Beach banned all new check-ins from March 26, 2020 through April 30, 2020, Exhibit No. 18. 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. 5 (hereinafter "Attorney General Opinion"). The Attorney General Opinion is not binding, not applicable to this matter, and, in any case, not persuasive.

First, the opinion offered by the Attorney General carries no legal weight. In the Opinion, the Attorney General expressly recognizes that the 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. 5.

No court has found that Folly Beach's emergency ordinances, or any other municipalities 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.

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, impose 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. 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 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 has recently altered his opinion. The Attorney General recently issued an opinion approving of local governmental entities passing

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.

emergency ordinances requiring mask use. Attorney General Wilson's Statement on Local Mask Ordinances, June 24, 2020, Exhibit No. 19. 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, as confirmed by the above cited law 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 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. 19 (emphasis added). The emphasized language suggests that the original Attorney General Opinion opposing local emergency ordinance was limited to "lock-down orders," not all local emergency ordinances.

It is difficult to reconcile the Attorney General's State 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.

CONCLUSION

Based on the foregoing, Defendant Folly Beach would ask that the Hearing Officer rule in favor of the City on Appellant Fred Holland's defenses asserting that the City's Emergency Ordinances are unenforceable, unconstitutional, or otherwise preempted. The City's action was authorized by the Home Rule Act, S.C. Code Ann. § 5-7-250(d), and Executive Order No. 2020-19, Section 1(B), Exhibit No. 14. 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 Order, which Fred Holland violated by admission, 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 Order was more expansive, it 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,

/s/ Joseph C. Wilson, IV
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July 10, 2020
Folly Beach, South Carolina

EXHIBIT NO. 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];"

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

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 food 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."

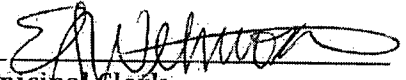
This emergency ordinance shall be terminated or extended by the issuance of another ordinance or shall automatically expire on ~~April 30, 2020~~ June 1, 2020.

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

Ayes: 7

Nays: _____

Abstains: _____


~~Municipal Clerk~~
City Administrator

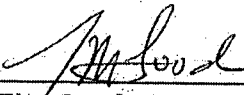
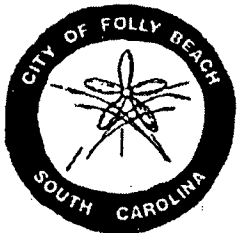

Tim Goodwin, Mayor

EXHIBIT NO. 2



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:

§ 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

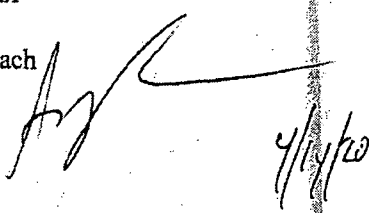


EXHIBIT NO. 3

1st one

ELECTRONICALLY FILED - 2020 Nov 04 11:30 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

Fred Holland Realty

106 W. Hudson Street
Folly Beach, SC 29429

Office: Fred Holland Realty

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

March 24, 2020

Phone: 843-270-6184 Fax:
Email: fhl@fredhollandrealty.com

Florida Richardson

1014 Westwood Dr.
Folly Beach, SC 29429

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

Reservation ID: 104424

Arrival Date: Thursday, March 19, 2020

Check Out Date: Tuesday, April 14, 2020

Of Nights: 26

Date Reserved: Tuesday, March 17, 2020

Total Guests: 1

under 25 years old: 0

Your User ID for our website is: richardson. Your Password is: 5C72A34C.
You can log in to change your password or access other features.

Property: 201 E Ashley

Room: 1010 11

Total Rent: \$1,800.00

Insurance Carrier: DECLINED

Insurance Price: \$0.00

** Initial here to accept Travel Insurance: _____

Total Other Charges: \$369.00

Total Taxes and Fees: \$258.90

Total Vacation Cost: \$2,427.90

Damage Deposit: \$100.00

Total Bill: \$2,527.90

Advance Required By:

Advance Amount:

Advance Received:

Advance Now Due:

Remaining Balance Will Be:

Due on or before: 3/17/2020

Total Left To Pay:

\$0.00

Guest Comments:

Other Charges:

Charge	Price Each	Total	Tax
Reservation Fee	\$35.00	\$35.00	
Processing Fee	\$36.00	\$36.00	
Housekeeping and Linen	\$300.00	\$300.00	

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 go to the location if it is not what you expect. Your rental does not include any food or drinks. Please do not smoke in the office.

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
Required PrePay:	\$ 2527.90	Markup:	\$ 0.00
(\$2,527.90)		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

Bottom

New

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
Required PrePay:	\$ 2527.90	Markup:	\$ 0.00
(\$2,527.90)		Owner Markup:	\$ 0.00

Reservation Comment History:

Bottom

New

Comments

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

2nd one

ELECTRONICALLY FILED - 2020 Nov 04 11:30 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

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 Reservation

Confirmation By:

Modified By:

Number in Party:

Marketing Code:

4/1/2020

Anna Brown

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
(\$1,386.86)

Damage Deposit: \$ 100.00

Discount: \$ 0.00

Markup: \$ 0.00

Owner Markup: \$ 0.00

Reservation Comment History:
Apr 1 2020 10:08AM
Moving from 208 E Arctic AB

Bottom

New Comments

Internal
use only):

HK
Comments:

Total:	Tax: \$156.44	Travel Insurance: \$0.00	Save	Reset
\$1,388.40	Paid:	Due: \$0.00	Refunded:	
	\$1,388.40	\$0.00	\$0.00	



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;

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 food 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.

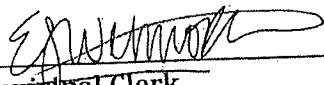
This emergency ordinance shall be terminated or extended by the issuance of another ordinance or shall automatically expire on April 30, 2020.

ADOPTED this 28th day of March 2020, at Folly Beach, South Carolina.

Ayes: 7

Nays: 0

Abstains: 0


Municipal Clerk

City Administrator

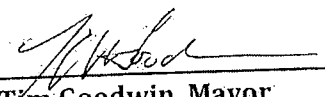

Tim Goodwin, Mayor

EXHIBIT NO. 5



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

The Hon. Jeff Bradley

March 29, 2020

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:

The Hon. Jeff Bradley

March 29, 2020

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.

The Hon. Jeff Bradley

March 29, 2020

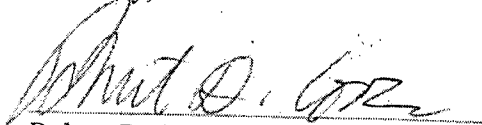
Conclusion:

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

EXHIBIT NO. 6**TOWN OF EDISTO BEACH
EMERGENCY ORDINANCE 2020-21****Emergency Ordinance Requiring that Face Coverings Be Worn in Certain Circumstances
in the Town of Edisto Beach During the COVID-19 Public Health Emergency**

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, on March 11, 2020, the World Health Organization declared a world-wide pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency for the United States and its territories to reduce the spread of the virus; and

WHEREAS, on March 13, 2020, the Governor of the State of South Carolina Henry McMaster declared a state of emergency for the State of South Carolina which he has renewed and is currently in effect; and

WHEREAS, S.C. Code Ann. §5-7-250 empowers Council to enact emergency ordinances affecting life, health, safety, or property; and

WHEREAS, on June 24, 2020 South Carolina Attorney General Alan Wilson issued a public written statement wherein he gave the opinion that municipalities in South Carolina may lawfully enact emergency ordinances requiring the wearing of masks as a measure to protect against the spread of COVID-19 and that generally these ordinances do not violate constitutional rights. A copy of this statement is attached to this ordinance as Exhibit A for reference; and

WHEREAS, COVID-19 has spread across the state with the South Carolina Department of Health and Environmental Control ("SCDHEC") confirming the localized person-to-person spread of COVID-19 in South Carolina, which indicates a significantly high risk of exposure and infection creating an extreme public health risk; and

WHEREAS, as of June 28, 2020, there were 33,221 confirmed cases throughout the State of South Carolina, 3380 cases in Charleston County and 306 cases in Colleton County, and 712 deaths statewide, 23 deaths in Charleston County and 21 deaths in Colleton County; and

WHEREAS, at the City of Columbia Council meeting on June 23, 2020, which has been broadcast via YouTube, Dr. Linda Bell, State Epidemiologist, stated "We are now a state on the national picture among a handful of other states considered to be hot spots" and that 42% of all reported positive cases since the start of reporting to SCDHEC in March have been reported in the last two weeks, noting that this is a very troubling trend telling us that not enough people are taking this pandemic seriously enough or adopting the measures that have been recommended such as mask wearing. Dr. Bell stated that masks have an important role in stopping the spread; and

WHEREAS, the MUSC COVID-19 Situation Assessment for the Tri-County area for June 24 now indicates status "RED" for three important indices: (1) the 7 day average of confirmed cases from day to day, which is above 8.3%, (2) the sustained reduction in new cases index in the number of daily cases for a 14 day period, which is actually now on an upward trajectory, and (3) the number of reported cases per 10,000 people per week where 5 or more moves the index into "RED" with the actual number this week being 18.5. The Situation Assessment also states the number of patients hospitalized for COVID-19 has increased substantially over the past several weeks at MUSC and "social distancing and mask use should be vigorously promoted or mandated"; and

WHEREAS, testing reports from SCDHEC as of June 28 indicate that percent positive graphs, which show trends in the percent of cases of COVID-19 relative to the number of tests performed, demonstrate a significant recent increase, measuring 19.6% on June 26 and 20.1% on June 27 compared to 7% to 9% at the end of May; and

WHEREAS, the number of cases is growing rapidly and if COVID-19 continues to spread in the Lowcountry, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, the private and public sector work force will be negatively impacted by absenteeism, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, it is vitally important that we all work together to decrease the widespread proliferation of COVID19 among us all now rather than suffer the unfortunate and devastating consequences later; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") and SCDHEC advise the use of cloth face coverings to slow the spread of COVID-19; and

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains the health and safety of the Town's residents, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, in order to protect, preserve, and promote the general health, safety and welfare and the peace and order of the community, the Town is taking steps to try to protect the citizens and employees of the Town and visitors to the Town from increased risk of exposure; and

WHEREAS, restaurants, business establishments which sell prepared food and beverages, retail stores, salons, barber shops, grocery stores, convenience stores, gas stations, and pharmacies are determined by the Council to be places where the public may patronize indoors in larger numbers, particularly due to the relatively few number of these businesses in town versus the tourist season population, and where social distancing practices may not be practical; and

WHEREAS, in light of the foregoing, Town Council deems it proper and necessary to adopt this Emergency Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Town of Edisto Beach, South Carolina this 29th day of June, 2020 that face coverings shall be required in public places within the Town to slow the spread of the novel coronavirus disease, known as COVID-19, as follows:

1. For the purposes of this Ordinance and as used herein, "face covering" means a uniform piece of cloth, fabric, or other material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands. Face coverings include, but are not limited to, bandanas, medical masks, cloth masks, scarves, and gaiters, provided that they are worn such that they securely cover the person's nose and mouth.

2. All persons entering a restaurant, business establishment which sells prepared food and beverages, retail store, salon, barber shop, grocery store, convenience store, gas station, and pharmacy in the Town shall wear a face covering at all times while inside the business establishment unless exempted as provided in Paragraphs 4 and 5 herein.

3. All restaurants, business establishment which sells prepared food and beverages, retail stores, salons, barber shops, grocery stores, convenience stores, gas stations, and pharmacies in the Town shall require their employees to wear a face covering at all times while having face to face interaction with the public unless the employee is exempted as provided in Paragraphs 4 and 5 herein.

4. Any person who is unable to safely wear a face covering due to age, an underlying health condition, or is unable to remove the face covering without the assistance of others is exempt from this Ordinance.

5. Face coverings are not required in the following circumstances:

- a. While drinking, eating, or smoking;
- b. When wearing a face covering would prevent the receipt of personal services;
- c. For people whose religious beliefs prevent them from wearing a face covering;
- d. When a person is 10 years of age or younger.

6. A person who fails to wear a face mask in compliance with Paragraph 2 violates this Ordinance and shall be guilty of a civil infraction, punishable by a fine of not more than \$25.00.

7. A person who fails to comply with Paragraph 3 violates this Ordinance and shall be guilty of a civil infraction, punishable by a fine of not more than \$100.00. Each day of a continuing violation of Paragraph 3 of this Ordinance shall be considered a separate and distinct offense. In addition to the fines established by this paragraph, repeated violations of this Ordinance by a person as defined in this Paragraph 7 may, subject to all procedural protections set forth in the Town Code, result in the suspension or revocation of any occupancy permit or business license issued to a business where the repeated violations occurred. Repeated violations of this Ordinance are additionally hereby declared to be a public nuisance, which may be abated by the Town by restraining order, preliminary and permanent injunction, or other means provided for by the laws of this State. For the purposes of enforcement of Paragraph 3 of this Ordinance, "person" shall be defined in this Paragraph 7 as any individual associated with the business establishment subject to Paragraph 3 of this Ordinance who has the control or authority and ability to enforce the

requirements of this Ordinance within the business establishment, such as an owner, manager, or supervisor. "Person" also includes an employee or other designee who is present at the business but does not have the title of manager, supervisor, etc., but has the authority and ability to ensure the requirements of this Ordinance are met while the business establishment is open to the public.

8. Should any provision, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

9. This Ordinance is effective as of 6:00 a.m., Tuesday, June 30, 2020. This Ordinance shall be terminated by the issuance of another ordinance or shall automatically expire on the 61st day after enactment of this Ordinance, whichever date is earlier.

Enacted this day of 29th day of June 2020, by the Town Council of the Town of Edisto Beach, South Carolina.

Jane Darby, Mayor

Attest:

Iris Hill, Town Administrator

Approved as to form: _____

EXHIBIT NO. 7

*First In Service*

City of Myrtle Beach
SOUTH CAROLINA
City Manager's Office

April 30, 2020

Emergency Executive Order #8: Requiring Accommodations Businesses to Implement Reasonable Steps to Comply with Sanitation and Hygiene Guidelines.

1. **Purpose** - The purpose of the Emergency Order is to protect the health and safety of Myrtle Beach residents and visitors by requiring accommodations businesses in the City of Myrtle Beach to take all steps reasonably necessary to minimize the spread of COVID-19.
2. **Soft Opening Period** - For the period of May 1 - May 15, accommodations businesses may operate with the reservations on their books as of the effective date of this Order. For the purposes of this Order, accommodations shall include hotels, motels, condo hotels, rental properties, inclusive of private management companies and Airbnb, VRBO style lodging, plus public and private campgrounds.
3. **Sanitation and Hygiene Measures** - Effective May 1, 2020, accommodations businesses shall implement all reasonable steps to comply with applicable sanitation guidelines, including future guidelines, promulgated by the CDC, DHEC, or any other state or federal public health official, including but not limited to measures outlined below, where such measures would not create an undue hardship for the individual business. For purposes of this Executive Order, "undue hardship" shall mean an action requiring significant difficulty or expenses as it relates to the individual business, taking into account the following factors: the nature and the costs of the measure at issue, the financial resources of the business, the type of operation of the business, the availability of material and supplies to implement the measure, and the impact of the measure on the operation of the business. A guest's failure to adhere to the measures implemented by the business hereunder shall not subject the business to a violation of this Executive Order. In addition to the sanitation and hygiene requirements, accommodations businesses are also subject to Governor McMaster's Executive Orders.
 - a. **Guest Arrival:**
 - Accommodations businesses should post signage at each public entrance to inform team members and guests that they should:
 - Avoid entering if they have a cough, fever, or generally feel unwell.
 - Maintain a minimum separation of at least six feet in accordance with social distancing guidelines.
 - Sneeze/cough into a cloth or tissue.

- Not shake hands or engage in any unnecessary physical contact.
 - Wear facemask or other facial covering.
 - Accommodations business should display posters instructing guests of check-in procedure to:
 - Ensure that social distancing practices are followed.
 - Encourage hand and respiratory hygiene.
 - Otherwise post tips on stopping the spread of the virus.
 - Ensure adequate air circulation.
 - During periods of low to medium occupancy, guests should be assigned non-adjacent rooms whenever possible.
 - Limit bellman and valet services to handicapped persons with placard or government issued handicap credential and persons requiring assistance because of advanced age. Bellmen should not travel to the guest room with the guest, but deliver luggage either before or after guests arrive to their room. Bellmen and valet should wear a facemask or other facial covering when interacting with guests and either wear gloves while carrying bags or parking/retrieving cars or sanitize their hands before and after performing the requested service.
 - Areas where guests check in should be no closer than six feet to the next closest check in area.
 - Front desk areas should have clear floor markings to indicate proper spacing distances from other guests.
 - Front desk team members and other lobby personnel, should wear face masks as protection for both themselves and guests.
 - Install plexiglass partitions at each front desk/check in station.
 - Assemble arrival packets in advance to limit the number of items passed between team member and guests.
 - Require adult guests to provide driver's license or other proof of residency to ensure compliance with Governor's Executive Order prohibiting reservations to persons from any country, state or 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.
 - Sanitize plastic key cards both before and after each guest use.
 - Remove all magazines, newspapers, promotional pamphlets, or other similar literature from common areas.
 - Install hand sanitizer stations in all public areas, at the most heavily used entrance/exits, outside lobby elevators, and on each floor.
- b. Guest Elevator Use Elevators:
- Guest elevators should not be occupied by more than one person at a time unless multiple occupants are part of the same party or family.
 - All guests should wear facemasks or face protection while occupying elevators for their safety and the safety of others.
- c. Cleaning Procedures – each accommodations business shall:
- Create a list of high-touch surfaces requiring routine disinfecting and environmental cleaning (e.g. workstations, countertops, handrails, doors and door knobs, bathrooms, breakrooms, elevators and other common areas). Such surfaces shall be disinfected hourly.

- Maintain a logbook of the cleaning/disinfection regiment including date and time cleaning was performed and the initials of the employee performing the cleaning.
 - Require cleaning employees to wear gloves; clean surfaces with soap and water if dirty before disinfecting; use EPA-registered household disinfectants, diluted bleach, or alcohol solutions; and provide disposable wipes for wiping down commonly used surfaces.
 - Provide no-touch trash bins for guest and staff use.
- d. Food & Beverage - Until further Order of Governor McMaster, restaurants are to remain closed to dine-in services. If in-house restaurants offer delivery or curbside pick-up, the following sanitation measures should be implemented:
- Use of single use disposable plates, bowls, cutlery and cups.
 - Use of single use disposable menus to be thrown away after each use.
 - Persons assisting in the food preparation shall wear facemasks and gloves.
 - If food is delivered, delivery person must wear a facemask and gloves.
- e. Pool Areas - Until further Order of Governor McMaster, pools shall remain closed.
- f. Accommodations Business Team Member Practices:
- When entering the building employees should avoid congregating, and should always keep at least six feet between each other.
 - Each business will issue each team member a facemask or other suitable facial covering to be worn at all times while team member is at work.
 - Employees should be scheduled to arrive and depart at staggered times.
 - Service elevators are restricted to one person.
 - Work spaces should be assigned so that team members can maintain at least six feet separation.
 - Inform team members that, if supplies run low, they are to contact the department manager to bring supplies to the workspace.
 - Authorize team members to eat lunch at his/her work station.
 - Promote etiquette for coughing, sneezing, handwashing, and the avoidance of face touching, and handshaking.
 - Post reminders and tips in all employee only areas about slowing virus spread through proper hygiene.
 - Discourage workers from sharing resources or other work tools or equipment, whenever possible.
- g. Monitoring Team Members for Symptoms - each accommodations business shall:
- Separate sick or symptomatic employees from other team members and customers. These employees should be immediately sent home. Areas visited by such employees should be immediately cleaned and disinfected.
 - Monitor employee's symptoms, especially fever. If a team member needs to take simple medications (e.g. acetaminophen, ibuprofen, or aspirin) his/her temperature should be taken beforehand.
 - Do not allow team members to come to work if they feel sick. Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation is met, in consultation with healthcare providers and state and local health departments.

- Implement non-punitive leave policies so that employees do not feel pressured to come to work if they are sick. Remind team members to report any illness to a manager/supervisor, especially if sick with fever, cough, muscle aches and pains, sudden changes in smell or taste, sore throat, and/or shortness of breath.
- If a team member is confirmed to have COVID-19, employers should inform fellow team members while maintaining confidentiality. Employer should instruct fellow employees about how to proceed based on CDC Public Health Recommendations for Community-Related Exposure.

h. Training – Each business shall:

- Provide training for every staff member on the requirements and expectations of this Executive Order.
- Train managers and supervisors to spot symptoms of COVID-19 and to be clear on relevant protocols.

3. Myrtle Beach Coronavirus Recovery Task Force

- Membership to be appointed by (May 12, 2020):
 - Medical Provider Representative.
 - City of Myrtle Beach Fire Chief.
 - City of Myrtle Beach Police Chief.
 - Hotel Owner or Manager.
 - Restaurant Owner or Manager.
 - City Convention Center Director.
 - Retail Business Owner or Manager.
 - Amusement/Attraction Owner or Manager.
 - Small Business Owner/Manager.
 - 3 Myrtle Beach Residents:
 - South End Resident (south City limits to 7th Avenue North).
 - Center City Resident (7th Avenue North to 29th Avenue North).
 - North End Resident (29th Avenue North to north City limits).
- Task Force Responsibilities:
 - To review the effect of this and all previous and subsequent Executive Orders, especially with respect to:
 - The health of our residents and visitors.
 - Local capacity to provide adequate medical treatment and facilities.
 - The supply of necessary commodities including food, medical supplies, and other essential materials.
 - Local economic conditions.
 - Enforcement of existing laws, Governor's Executive orders, and City Executive Orders impacting the recovery efforts.
 - To make recommendations to City Council regarding future phases of recovery.
 - Other issues as assigned by City Council.
- Meeting and Reporting Requirements:
 - The Task Force will be expected to meet as needed and as called by the Committee Chairperson.

- The Task Force will be expected to report to City Council at each City Council Meeting until the expiration of the Civil Emergency. At each meeting the Chairperson (or other designated member of the Task Force) shall report new developments and concerns to City Council along with relating to the city's economic recovery efforts.
- The Task Force shall conduct all meetings and dealings in conformance with the South Carolina Open Meetings Law.

4. **Enforcement of Executive Order** - A person who fails to comply with this Executive Order shall be guilty of a civil infraction, punishable by a fine of not more than \$100. Each day of a continuing violation of this Executive Order shall be considered a separate and distinct offense. In addition to the fines established by this Section 6, repeated violations of this Executive Order by a person who owns, manages, operates or otherwise controls a business subject to this Executive Order may, subject to all procedural protections set forth in the Myrtle Beach City Code, result in the temporary suspension of any occupancy permit or business license issued to the business where the repeated violations occurred. Repeated violation of this Executive Order may also be abated as allowed by the Myrtle Beach City Code and/or the laws of this State.

The foregoing notwithstanding, law enforcement shall seek voluntary compliance. For the purposes of this Executive Order, "person" shall be defined as any individual associated with the business who has the control or authority and the ability to enforce the hygiene and sanitation requirements of the Executive Order within the business, such as an owner, manager or supervisor. "Person" may also include an employee or other designee that is present at the business but does not have the title "Manager", "Supervisor", etc. but has the control or authority and the ability to ensure that the requirements of the Executive Order are met while the business is open to the public.

Accommodation businesses are required to maintain such records as necessary to document compliance with this Executive Order.

5. **Duration of Executive Order** - This Executive Order, and any subsequent amendment, shall remain in effect until rescinded by the City or subsequent Executive Order, or the expiration of the Declaration of Civil Emergency, whichever is first.

Approved By: John Pedersen Date: April 30, 2020 Time: 12:55 P.M.
John Pedersen, City Manager

EXHIBIT NO. 8

TOWN OF KIAWAH ISLAND

ORDINANCE 2020-02

AN EMERGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF KIAWAH ISLAND REGARDING ADVERTISING OF SHORT-TERM RENTALS AND SOCIAL DISTANCING

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

WHEREAS, the Town has previously ordered that property managers and owners of Short-Term Rentals (STR) are prohibited from accepting new reservations for Short-Term Rental stays with the first day of occupancy commencing on March 25, 2020, through April 15, 2020; and

WHEREAS, it has come to the attention of the Town that some property managers and owners of STR continue to advertise their STR's without noting the ordered restrictions and continue to show the units as "available" in online booking calendars; and

WHEREAS, the Governor of the State of South Carolina continues to issue Executive Orders setting forth restrictions related to the Coronavirus outbreak, including orders regarding social distancing; and

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

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF KIAWAH ISLAND, SOUTH CAROLINA, AS FOLLOWS:

1. The Town's prior Emergency Ordinance, Ordinance No. 2020-01, remains in full force and effect with the exception that Section 8 of 2020-01 is amended to read the Property managers or owner of a Short-Term Rental (STR) is prohibited from accepting new reservations for a STR stay with the first day of occupancy commencing on March 25, 2020 through May 15, 2020.
2. The following emergency procedures are hereby adopted, effective immediately, and to remain in effect until May 22, 2020, unless otherwise noted, subject to termination, amendment, or extension by Council.
3. Pursuant to CDC guidelines, social gatherings of 10 or more people, for any reason other than working at or receiving essential services, is prohibited. Essential services include healthcare operations, utilities, gas stations, grocery stores and all food and beverage stores, pharmacies, convenience stores, restaurants and bars but only for take-out or delivery, hardware and building material stores, commercial delivery of products to homes or businesses, trash collection, mail and shipping services, building cleaning and maintenance, child care services, news media, financial institutions and professional services operations, construction, pastoral care, government operations, and any other essential services to maintain the safety, sanitation, and essential

operations of residences and other essential businesses. In addition, pursuant to Governor Henry McMaster's Executive Order No. 2020-13, issued March 23, 2020, law enforcement persons are authorized "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 law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a treat to public health."

4. Property managers, owners, and anyone else involved in the advertising of a Short-Term Rental are prohibited from advertising the STR's availability from March 25, 2020 through May 15, 2020. As part of this prohibition, any online booking calendars for units shall indicate that the unit is not available from March 25, 2020 through May 15, 2020.
5. Property managers must inform all renters in writing of the restrictions contained in Section 3 of this Emergency Order, as well as the self-quarantine restrictions imposed by Governor McMaster's Executive Order No. 2020-14, Section 1, which states:

Required Self-Quarantine 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:

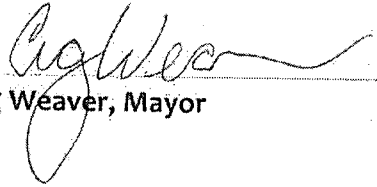
- A. I hereby order and direct that an individual who enters the State of South Carolina from an area with substantial community spread, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut) and the City of New Orleans, Louisiana, shall isolate or self-quarantine 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. This Order shall not apply to individuals employed by airlines and individuals performing or assisting with military, healthcare, or emergency response operations. Any individual required by this Order, or any directives issued in connection therewith, to isolate or self-quarantine shall be responsible for any and all costs associated with such isolation or self-quarantine, including transportation, lodging, food, and medical care.
 - B. I hereby authorize and instruct the South Carolina Department of Health and Environmental Control ("DHEC") to provide any necessary and appropriate supplemental guidance regarding the interpretation, application, or enforcement of this Order.
6. Violators of the STR provisions contained in Sections 4, 5, or 8 of this Emergency Order are in violation of the Town of Kiawah Island Municipal Code Ordinance Section 14-507, et seq., and will be subject to a civil fine of up to \$500.00 plus required statutory assessments. Each day of the infraction shall be considered a separate offense. Punishment for the infraction shall not relieve the offender of liability for delinquent

taxes, penalties, and any other costs. The failure of the rental business licensee to comply with any sections of this chapter shall constitute grounds for the immediate suspension or revocation of the license for up to one year, and such suspension or revocation will not be suspended or stayed by an appeal. Violators may also be charged as an infraction with any other relevant civil penalties contained in the Kiawah Island Municipal Code, or civil or criminal penalties under state law, or federal law, including violations of S.C. Code Section 16-7-10 (Illegal acts during state of emergency), and penalties authorized 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.

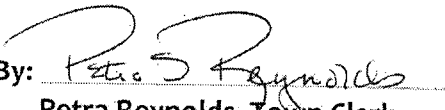
7. The Town adopts all Emergency Orders issued by the State of South Carolina Governor Henry McMaster related to the coronavirus. As part of that adoption, the Town also adopts the "President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)", first referenced in the Governor's Executive Order No. 2020-10, and recommends that persons "avoid social gatherings of more than 10 people".
8. Starting on April 4, 2020, no new check-ins or reservations are permitted at any STR or any other rental of less than ninety (90) days. Guests currently checked in may remain at the same property and under the same terms of the existing rental agreement or lease. Property owners and their immediate family may reside at the property owner's residence. Guests or property owners may apply to the Town for a special exception for relief from these provisions upon a showing of special and extraordinary needs.
9. All retail establishments that are allowed to stay open pursuant to Executive Orders issued by the Governor must comply with social distancing guidelines issued by those Executive Orders, and must also limit customers entering the retail establishment to a single person per family or group at a time, except for shoppers with small children when no other adult is present, and persons who, for medical reasons, require assistance.
10. The services offered by commercial businesses providing services on the beach such as, but not limited to beach chairs and umbrella are hereby suspended for thirty (30) days effective, Thursday, April 9, 2020 at 5:00 p.m.
11. Violators of any provision contained in this Emergency Ordinance will be subject to a civil fine of up to \$500.00 plus required statutory assessments. Each day of the infraction shall be considered a separate offense. In addition, any violation may be charged as an infraction with any other relevant civil penalties contained in the Kiawah Island Municipal Code, or civil or criminal penalties under state law, or federal law, including violations of S.C. Code Section 16-7-10 (Illegal acts during state of emergency), and penalties authorized 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.

12. All net fines (not including assessments or other payments directed elsewhere under State law) paid to the Town for violations of this Emergency Ordinance will be earmarked and donated to a nonprofit or charitable organization to be chosen at a later date.

MOVED, APPROVED AND ADOPTED THIS 8th DAY OF APRIL, 2020.


Craig Weaver, Mayor

ATTEST:

By: 
Petra Reynolds, Town Clerk

1st Reading: April 8, 2020

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

EXHIBIT NO. 9**AN EMERGENCY ORDINANCE****REQUIRING INDIVIDUALS TO WEAR FACE COVERINGS IN CERTAIN CIRCUMSTANCES, AND MATTERS RELATED THERETO**

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

WHEREAS, on March 11, 2020, the World Health Organization declared a world-wide pandemic; and

WHEREAS, on March 13, 2020, the President of the United States has declared a National Emergency for the United States and its territories in an effort to reduce the spread of the virus; and

WHEREAS, on March 13, 2020, the Governor of the State of South Carolina Henry McMaster has declared a state of emergency for the State of South Carolina; and

WHEREAS, on March 18, 2020, City Council declared a state of emergency for the city of Greenville ("City"), which has been subsequently renewed and remains in place; and

WHEREAS, S.C. Code Ann. §5-7-250 empowers Council to enact emergency ordinances affecting life, health, safety, or property; and

WHEREAS, COVID-19 has spread across the state with the South Carolina Department of Health and Environmental Control ("SCDHEC") confirming the localized person-to-person spread of COVID-19 in South Carolina, which indicates a significantly risk of exposure and infection and creating an extreme public health risk; and

WHEREAS, as of June 20, 2020, the total number of confirmed cases in the South Carolina is approximately 23,756 and the number of confirmed deaths is 644, with the number of reported cases in Greenville County is 3,536, the number of estimated cases is 21,721, and the number of possible cases is 25,257; and

WHEREAS, the number of cases is growing rapidly and if COVID-19 continues to spread in the City, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, the private and public sector work force will be negatively impacted by absenteeism, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, it is vitally important that we all work together to decrease the widespread proliferation of COVID-19 among us all now rather than suffer the unfortunate and devastating consequences later; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") and SCDHEC advise the use of cloth face coverings to slow the spread of COVID-19; and

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains the health and safety of the City's residents, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, in order to protect, preserve, and promote the general health, safety and welfare and the peace and order of the community, the City is taking steps to try to protect the citizens and employees of the City from increased risk of exposure; and

WHEREAS, in light of the foregoing, City Council deems it proper and necessary to adopt this emergency Ordinance to require (a) patrons of grocery stores and pharmacies to wear face coverings while inside the store in light of the fact these establishments sell essential goods such that individuals do not have meaningful choice to decide not shop there and (b) all employees of restaurants, bars, retail establishments, salons, grocery stores, and pharmacies to wear face coverings at any time there is face to face interaction with the public;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA:

1. All persons entering a grocery store or pharmacy in the City must wear a face covering while inside the establishment. For purposes of this Ordinance, the term grocery store shall mean a retail establishment that primarily sells food, but may also sell other convenience and household goods; the term does not include a convenience store. The business shall not have responsibility for enforcing this requirement, but shall post conspicuous signage at all entrances informing its patrons of the requirements of this section.
2. All restaurants, retail stores, salons, grocery stores, and pharmacies in the City must require their employees to wear a face covering at all times while having face to face interaction with the public.
3. Any person who is unable to safely wear a face covering due to age, an underlying health condition, or is unable to remove the face covering without the assistance of others is exempt from this Ordinance.
4. A person who fails to comply with Section 1 of this Ordinance shall be guilty of a civil infraction, punishable by a fine of not more than \$25.00.
5. A person who fails to comply with Section 2 of this Ordinance shall be guilty of a civil infraction, punishable by a fine of not more than \$100.00. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense. In addition to the fines established by this section, repeated violations of this Ordinance by a person who owns, manages, operates or otherwise controls a business subject to this Ordinance may, subject to all procedural protections set forth in the City Code, result in the suspension or revocation of any occupancy permit or business license issued to business where the repeated violations occurred. Repeated violations of this Ordinance is additionally hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by the laws of this State. The foregoing notwithstanding, every effort shall be made to bring the business into voluntary compliance with the terms of this Ordinance prior to the issuance of any citation. For the purposes of Section 2 of this Ordinance, "person" shall be defined as any individual associated with the business who has the control or authority and ability to enforce the social distancing requirements of the Ordinance within the business, such as an owner, manager or supervisor. "Person" may also include an employee or other designee that is present at the business but does not have the title of manager, supervisor, etc. but has the authority and ability to ensure that the requirements of this Ordinance are met while the business is open to the public.

6. Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.
7. This emergency Ordinance shall be terminated by the issuance of another ordinance or shall automatically expire on the 61st day after enactment of this Ordinance, whichever date is earlier.

DONE, RATIFIED AND PASSED THIS THE ____ DAY OF _____, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

EXHIBIT NO. 10



EMERGENCY ORDINANCE REQUIRING PERSONS TO WEAR FACE COVERINGS IN CERTAIN CIRCUMSTANCES IN CITY OF CHARLESTON TO REDUCE RISK OF EXPOSURE TO COVID-19 DURING THE PUBLIC HEALTH EMERGENCY AND RECOVERY.

Section 1. Chapter 21, Section 111 of the Code of the City of Charleston is hereby amended by deleting the struck through text, which shall read as follows:

"Sec. 21-111. - ~~Masked or Disguised persons; Halloween exceptions.~~

- (a) No person over sixteen (16) years of age shall appear on any street, highway, alley, public park or other public place in the city in any ~~mask or~~ disguise which conceals the identity of such person, without the permission of the chief of police."

Section 2. Findings. City Council does hereby make the following findings:

WHEREAS, in December 2019, an outbreak respiratory illness due to a novel coronavirus (COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, across the world, including the United States; and,

WHEREAS, it is well recognized that COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance; and,

WHEREAS, on January 23, 2020, the Center for Disease Control ("CDC") activated its Emergency Response System to provide ongoing support for the response to COVID-19; and,

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency to assist with combating the coronavirus, and,

WHEREAS, on March 13, 2020, Governor Henry McMaster (the "Governor") declared a state of emergency in South Carolina, Executive Order 2020-10, based on a determination that "COVID-19 poses an actual or imminent public health emergency"; and,

WHEREAS, on March 16, 2020, Mayor John J. Tecklenburg declared a local state of emergency in the City of Charleston; and,

WHEREAS, both the State of South Carolina and the City of Charleston remain in a state of emergency due to the COVID-19 pandemic; and,

WHEREAS, the State and City's efforts to slow the spread of the virus, by way of limiting public gatherings and certain retail operations, contributed to the flattening of the curve; however, maintaining such efforts became unviable; and,

WHEREAS, since returning to more public interaction, the number of COVID-19 cases in the State and the City have dramatically increased; and,

WHEREAS, as of June 24, 2020, there were 26,572 confirmed cases throughout the State of South Carolina and 673 deaths, with 2,251 cases in Charleston County, with 20 deaths and 695 cases in Berkeley County, with 20 deaths; and,

WHEREAS, the Centers for Disease Control and Prevention ("CDC") and SCDHEC strongly advise, in addition to social distancing, the use of cloth face coverings to slow the spread of COVID-19; and,

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains the health and safety of the City's residents, and limits the spread of infection in our community and within the healthcare delivery system; and,

WHEREAS, in order to protect, preserve, and promote the general health, safety and welfare and the peace and order of the community, the City has and will continue to take steps to try to protect the citizens, employers, and employees of the City from an increased risk of exposure; and,

WHEREAS, Council finds that it is in the best interest of the public peace, health, welfare, and safety, and to help preserve the lives of citizens of the City of Charleston, to require that masks, consisting of at least simple cloth face coverings, be worn by persons when interacting in public spaces in the City of Charleston.

Section 3. The use of a face covering or mask is required by every person within the boundaries of the City of Charleston as detailed below:

1. All persons entering any restaurant, retail store that includes but is not limited to a salon, barber shop, grocery store, pharmacy, or other building open to the public in the City must wear a face covering while inside the establishment;
2. All restaurants, retail stores that include but are not limited to salons, barber shops, grocery stores, pharmacies, or other buildings open to the public in the City must require their employees to wear a face covering at all times while having face-to-face interaction with the public;
3. While interacting with people in outdoor spaces, including, but not limited to, curbside pickup, delivery, and service calls;

4. While providing or utilizing public or commercial transportation, including tours;
5. When walking in public where maintaining a distance of six (6) feet between other members of public at all times is not possible; or
6. When participating in a permitted or allowable gathering.

Section 4. While the City is requiring the use of face coverings or masks in public, the following shall be exempt from the provisions of this emergency ordinance:

1. Any person who is unable to safely wear a face covering due to age, an underlying health condition, or is unable to remove the face covering without the assistance of others;
2. Any person traveling in their personal vehicles;
3. When a person is alone or only with other household members in an enclosed space;
4. While participating in an outdoor physical activity, provided the active person maintains a minimum of six (6) feet from other people at all times; and
5. While actively drinking, eating or smoking.

Section 5. **Enforcement.**

1. Any person, after first being warned, found violating any provision of this Ordinance shall be deemed guilty of an infraction and shall be subject to a fine of fifty dollars (\$50.00).
2. With the exception of their own employees, businesses shall not have responsibility for enforcing the above requirements, but shall post conspicuous signage at all entrances informing its patrons of the requirements of this Ordinance.

Section 6. Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 7. This Ordinance shall take effect at noon the day after its adoption by City Council and shall be terminated by the issuance of another ordinance or shall automatically expire on the 61st day after its enactment, whichever date is earlier.

Ratified in City Council this ____ day of
____ in the Year of Our Lord, 2020, and in the
____th Year of the Independence of the United
States of America.

By: _____
John J. Tecklenburg
Mayor, City of Charleston

ATTEST: _____
Vanessa Turner Maybank
Clerk of Council

EXHIBIT NO. 11

Final Reading

EMERGENCY ORDINANCE 2020-09

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and,

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 117 countries and territories throughout the World, including the United States, and more specifically Broward County and 18 other counties in the State of Florida; and,

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and,

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States; and,

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19; and,

WHEREAS, it is well recognized that COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance; and,

WHEREAS, the City of Isle of Palms is threatened by COVID-19 because of the apparent ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the citizens and visitors of the City of Isle of Palms; and,

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19; and,

WHEREAS, on March 13, 2020, Governor Henry McMaster (the "Governor") declared a state of emergency in South Carolina, Executive Order 2020-10, based on a determination that "COVID-19 poses an actual or imminent public health emergency"; and,

WHEREAS, on March 16, 2020, Mayor Jimmy Carroll declared a local state of emergency in the City of Charleston; and,

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

WHEREAS, on March 17, 2020, the Governor issued Executive Order 2020-10, ordering and directing that any and all restaurants or other food-service establishments to suspend on-premises or dine-in consumption; and,

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WHEREAS, on March 20, 2020, City Council passed Ordinance 2020-01 limiting access to the island in order to prevent the spread of the virus to its residents and staff, with certain exceptions for residents and those performing essential business; and

WHEREAS, on March 21, 2020, the Governor issued Executive Order 2020-13, authorizing and directing law enforcement officers to prohibit or disburse 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 his or her discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and,

WHEREAS, on March 25, 2020, City Council passed Ordinance 2020-02 suspending short term rentals through April 30, 2020; and

WHEREAS, on March 27, 2020, the Governor issued Executive Order 2020-14, directing that individuals who enter the State of South Carolina from an area with a substantial community spread of COVID-19 be required isolate or self-quarantine; and,

WHEREAS, on March 28, 2020, the Governor issued Executive Order 2020-15, declaring a separate and distinct state of emergency "due to the evolving nature and scope of the public health threat or other risks posed by COVID-19 and the actual, ongoing, and anticipated impacts associated with the same" and extending certain previous Executive Orders for the duration of the state of emergency; and,

WHEREAS, on March 30, 2020, the Governor issued Executive Order 2020-16, closing any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings; and,

WHEREAS, on March 31, 2020, the Governor issued Executive Order 2020-17, closing or restricting access to certain non-essential businesses, venues, facilities, services, and activities; and,

WHEREAS, on April 3, 2020, the Governor issued Executive Order 2020-18 closing additional non-essential businesses; and,

WHEREAS, on April 3, 2020, the Governor issued Executive Order 2020-19 prohibiting short-term rentals, vacation rentals, or other lodging accommodations or operations from any individual residing in or travelling from any country, state, municipality or other geographic area subject to or identified in a CDC travel advisory with extensive community transmission of COVID-19; and,

WHEREAS, on April 6, 2020, the Governor, recognizing that public health officials had reported over 2,000 cases of COVID-19 in South Carolina, issued a Work or Home Executive Order (2020-21) which limited individuals from moving outside their homes except to engage in

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Essential Businesses; Essential Activities, and Critical Infrastructure Operations as defined in the Order; and,

WHEREAS, on April 12, 2020, the Governor issued Executive Order 2020-23, recognizing that public health officials had reported over 3,319 confirmed cases of COVID-19 throughout South Carolina, and stating that "the extraordinary circumstances and conditions that necessitated" the Governor's "prior emergency declarations have not subsided and have, in fact, evolved and expanded to present different and additional risks and dangers," and explaining that the State "has transitioned from the investigation, reporting, and initiation phases of the COVID-19 pandemic to the acceleration phase"; and,

WHEREAS, in Executive Order 2020-23, the Governor declared a separate and distinct state of emergency based on a determination "that the accelerated spread of COVID-19 throughout the State poses an actual, ongoing, and evolving public health threat to the State of South Carolina, which now represents a new and distinct emergency and requires additional proactive action by the [State] and the implementation and enforcement of further extraordinary measures to slow the spread of COVID-19, minimize the strain on healthcare providers, and otherwise respond to and mitigate the expanding public health threat imposed by [the] emergency"; and,

WHEREAS, on April 16, 2020, the Governor issued Executive Order 2020-25, determining that "the ongoing, evolving, and accelerating public health threat imposed by COVID-19 requires additional proactive action by the [State] and the implementation, extension, or modification of additional extraordinary measures to cope with the existing or anticipated situation, to include mitigating the significant economic and other impacts and burdens on individuals, families and businesses," while generally reopening public boat ramps or boat landings, as well as adjacent or associated public parking lots, for the purpose of launching and retrieving boats; and,

WHEREAS, on April 16, 2020, President Donald Trump issued guidelines entitled "Opening Up America Again," describing criteria that state and local officials should satisfy before proceeding to a phased opening of the economy; and,

WHEREAS, on April 20, 2020, Governor McMaster issued Executive Order 2020-28, reopening retail businesses previously determined to be non-essential including department stores, furniture stores, luggage stores, flower shops, book, craft and music shops subject to certain emergency rules and restrictions, including but not limited to an emergency maximum occupancy rate, social distancing practices, and compliance with certain sanitation guidelines and further ordered any local ordinance that conflicts with the Order is superseded; and,

WHEREAS, on April 20, 2020, Governor McMaster issued Executive Order 2020-28, rescinded restrictions to all public beach access points, to include any adjacent or associated public parking lots or other public facilities, but while also authorizing any municipality having jurisdiction

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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 close, in whole or in part, to include any adjacent or associated public parking lot or other public facilities if it determines such action is necessary to preserve or protect public health; and

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WHEREAS, on April 21, 2020, City Council passed Ordinance 2020-03 further detailing restrictions on beach access and use to residents and in conformance with CDC guidelines; and

WHEREAS, on May 3, 2020, Governor McMaster issued Executive Order 2020-31, modifying the stay-at-home order further by authorizing restaurants to provide outdoor customer dining services; and,

WHEREAS, on May 8, 2020, Governor McMaster issued Executive Order 2020-34, modifying the stay-at-home order further by authorizing restaurants to provide limited indoor, on-premises customer dining services to resume; and,

WHEREAS, on May 15, 2020, Governor McMaster issued Executive Order 2020-36, modifying the stay-at-home order further by authorizing close-contact service providers and specific recreational and athletic facilities and activities to resume; and,

WHEREAS, on May 21, 2020, Governor McMaster issued Executive Order 2020-37, modifying the stay-at-home order further by authorizing entertainment venues and facilities and additional facilities and recreational and athletic facilities and activities to resume; and,

WHEREAS, as of June 19, 2020, despite these gradual steps, the total number of cases of persons infected with COVID-19 in South Carolina has now grown to 22,631 with 621 deaths; including 1,554 confirmed cases in Charleston County and 9 confirmed cases on the Isle of Palms; and,

WHEREAS, as of June 19, 2020, the State of South Carolina has not seen a two-week downward trajectory of documented cases; and,

WHEREAS, the significant reopening of its economic, cultural and civic life, bringing more people into contact with each other, the State of South Carolina and Charleston County has brought with it a sizable increase in the number of positive cases reported daily; -with positive result rates as high as fourteen-percent (14%); and,

WHEREAS, in order to limit the probability of continued spread of COVID-19 to its residents and visitors, it is prudent to take more stringent measures; and,

WHEREAS, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order to limit the spread of COVID-19; and

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WHEREAS, in order to protect residents and visitors of the Isle of Palms while further advancing economic recovery, all must adhere to the recommendations provided by CDC on social distancing and wearing face coverings; and

WHEREAS, the use of face coverings and social distancing are important public health approaches to slow the transmission of COVID-19; and

WHEREAS, during a public health crisis, protecting the health and safety of Isle of Palms' residents and visitors is among the most important functions of City government.

WHEREAS, the City of Isle of Palms will continue to monitor on a daily basis the number of new cases and deaths and other circumstances related to COVID-19 in the City, including the impact of the coronavirus on our vulnerable and minority populations; and,

WHEREAS, in the upcoming weeks, as the City monitors this situation and the evolving medical and scientific information, we are prepared to take additional restrictive measures to limit any increase in the outbreak of COVID-19 on the island; 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, the City of Isle of Palms has experienced an unprecedented influx of beachgoers and visitors, creating multiple public safety issues for the City's police department and homeowners;

WHEREAS, in light of the foregoing, the City of Isle of Palms deems it proper and necessary to amend Emergency Ordinance 2020-08 in order to, among other things: extend the state of emergency and require the use of face coverings in public settings where social distancing measures are difficult to maintain and amend City Ordinance 8-2-45 (p) to allow City officers to enforce parking restrictions; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Isle of Palms, in Council assembled, that:

1. The City of Isle of Palms temporarily suspends the normal operating procedures of City Council meetings and hereby allows for the Mayor and Councilmembers to remotely participate in voting and operational procedures by telephone or other means of electronic communication provided that the provisions of the South Carolina Freedom of Information Act are complied with.
2. Local businesses on the island are authorized to purchase, use and distribute containers that do not comply with the City's plastic ban during this state of emergency.

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3. All deadlines imposed by City Ordinance, applicable to the municipality or applicant, shall be suspended until July 15, 2020.
4. 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.
5. 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 _____, 2020.
6. Any person on the beach will be required to maintain social distancing.
7. Starting May 12, 2020, all Short-Term Rentals on the island will be subject to the Safety Standards and Guidelines provided by the City's taskforce and attached hereto as **Exhibit A**. The requirements of these Safety Standards shall expire Upon the expiration of the State of Emergency.

8. Face Coverings Required

- a. ~~a.~~ Every person working, living, visiting, or doing business in Isle of Palms is required to wear a Face Covering consistent with the current CDC guidelines while in any public place where social distancing cannot be maintained.
- b. ~~b.~~ Medical and surgical face masks, such as "N95" masks or similar medical or surgical masks should be reserved for health care personnel and other first responders with the greatest need for such personal protective equipment. Persons are encouraged to review and comply with the CDC and SCDHEC guidelines on personal protective equipment, including with the respect to the use of a medical or surgical face mask, such as "N95" mask or similar medical or surgical mask.
- c. All businesses are strongly encouraged to follow CDC guidelines or industry standards (if any) on face coverings and social distancing, unless the wearing of the patron's face mask or covering would impede the patron's service, in which case only the service provider must wear a face mask or covering.
- d. Any person in violation of this provision shall be subject to a written and/or verbal warning; a civil penalty up to \$100 for first violation; and a civil penalty up to \$500 for any additional violation.
- e. Any person aggrieved by a decision may appeal the decision to the City Council by written request stating the reasons filed with the City Administrator within ten (10) days after the payment under protest. An appeal or a hearing on revocation shall be held by the City Council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice, unless continued by agreement. City Council shall by majority vote of members present render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.

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Exceptions:

- a. Persons under the age of two years old; or
- b. Persons for whom a face covering would cause impairment due to an existing health condition or disability; or
- c. Persons working in a profession where use of a face covering will impede the ability to perform the duties of the profession; or
- d. Persons exercising while observing social distancing in accordance with the CDC guidelines.

9. In order to allow ease of enforcement for its Officers, the City desires to amend Ordinances Sec. 8-2-2 by adding "(v) while within designated beach parking zones, no closer than four feet (4') to the pavement or farther than fourteen feet (14') from the pavement, except as otherwise posted beach parking" and Sec. 8-2-45(p) to read: "closer than four feet (4') to the pavement or farther than fourteen feet (14') from the pavement, except as otherwise posted". Any violation will be subject to penalties described in Ordinance Sec. 8-2-14.

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9. ~~Any violation of any rule or regulation issued and set forth herein shall be punishable as provided in Title 9, Chapter 2, Section 3: Disorderly Conduct of the Code of Ordinances of the City of Isle of Palms, or b) 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.~~

Unless stated otherwise, the provisions of this Emergency Ordinance shall become effective immediately.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE ___TH DAY OF JUNE, 2020.

Jimmy Carroll, Mayor

EXHIBIT NO. 12

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84322206688?pwd=NWRWNmVzRTNacnRRSDBOOEI3dGFqdz09>

Password: 460747 Meeting ID: 843 2220 6688 Call in Phone #: 1+929+205+6099

CITY OF BEAUFORT



1911 Boundary Street
BEAUFORT, SOUTH CAROLINA 29902

Special Emergency Council Meeting

June 29, 2020

Please note, this meeting will be conducted electronically via Zoom and broadcasted via livestream on Facebook. You can view the meeting live via Facebook at the City's page City Beaufort SC.

Electronic Meeting

10:00 AM

I. **New Business**

A. *Emergency Ordinance of the City of Beaufort, South Carolina* – Ordinance to require individuals to wear Face Coverings in certain circumstances and locations in the Municipal limits of the City of Beaufort, South Carolina, and providing for severability and an effective date

II. **Adjourn**

STATEMENT OF MEDIA NOTIFICATION

"In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media was duly notified of the time, date, place and agenda of this meeting."

EMERGENCY ORDINANCE 2020-_____**AN EMERGENCY ORDINANCE TO REQUIRING INDIVIDUALS TO WEAR FACE COVERINGS IN CERTAIN CIRCUMSTANCES AND LOCATIONS IN THE MUNICIPAL LIMITS OF THE CITY OF BEAUFORT, SOUTH CAROLINA, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE**

WHEREAS, it is well recognized the 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, on March 13, 2020, the Governor of the State of South Carolina Henry McMaster declared a State of Emergency for the State of South Carolina; and,

WHEREAS, on March 13, 2020, Beaufort Mayor Billy Keyserling , under his authority , declared that a State of Emergency exists throughout the City as a result of impacts arising from the COVID-19 pandemic; and,

WHEREAS, reported COVID-19 daily cases are on the rise in both Beaufort County and the State of South Carolina; and

WHEREAS, on June 30, 2020 the State of Emergency still exists in State of South Carolina and the City of Beaufort; the Centers for Disease Control and Prevention ("CDC") and South Carolina Department of Health and Environmental Control ("SCDHEC") have advised the use of cloth or other types face coverings to slow the spread of COVID-19; and

WHEREAS, the CDC and SCDHEC recommend taking measures to control the spread of COVID-19 such as wearing cloth or other types of face coverings, both of which limit the spread of COVID-19 in our communities and reduce the demand on the local the health care delivery system; and

WHEREAS, there are currently large numbers of people who patronize grocery stores, pharmacies, restaurants, retail establishments and other businesses open to the public within the municipal limits of the City; and

WHEREAS, public reporting and other sources reveal that the advice from the Centers for Disease Control and SCDHEC encouraging the wearing of cloth or other types of face coverings is not being widely followed within the municipal limits of the City; and

WHEREAS, in order to protect, preserve, and promote the general health, safety, welfare, and the peace and order of the community, the City has and will continue to take steps to try and protect the citizens, employers, and employees within the City from an increased risk of exposure to and transmission of COVID-19 ; and,

WHEREAS, the City has received a strong message from the medical community, that unless citizens curb the rising spread of COVID-19 through wearing facemasks and following social distancing protocol, established by the CDC, community medical facilities could be faced with more patients than any one institution can accommodate, and,

WHEREAS, the City Council finds it is necessary and in the best interest of the City and its citizens that an Emergency Ordinance requiring the wearing of cloth or other types of face

coverings in certain circumstances be adopted by the City Council, and that it be put into immediate effect; and

WHEREAS, City Council may, by majority vote of those members present, adopt emergency ordinances as are authorized and limited by S. C. Code Ann. §5-7-250(d)(Supp. 2019), during this State of Emergency.

NOW, THEREFORE, BE IT ORDERED, AND ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BEAUFORT, SOUTH CAROLINA, DULY ASSEMBLED AND BY THE AUTHORITY OF THE SAME, AS FOLLOWS:

1. For the purpose of this Ordinance, a "Face Covering" is a cloth or other type of masking device that covers the wearer's nose and mouth.
2. All persons entering any building open to the public in the City must wear a face covering while inside the building.
3. All restaurants, retail establishments of every description, salons, grocery stores, and pharmacies in the municipal limits of the City shall require their employees to wear a Face Covering at all times that the employees are in any area where the general public is allowed or when the employees must be in close proximity to one another. This requirement also applies to all persons providing or utilizing public or commercial transportation, including tours; and all businesses or employees while interacting with people in outdoor spaces, including, but not limited to, curbside pickup, delivery, and service calls.
4. The following individuals are exempt from this Ordinance: any person who is unable to safely wear a Face Covering due to age or an underlying health condition, or who is unable to remove the Face Covering without the assistance of others; and any person traveling in a personal vehicle, or when a person is alone or is in the presence of only household members in an enclosed space, and people who are actively drinking or eating. This Ordinance does not relieve business establishments and restaurants from other social distancing requirements imposed by the Governor's Executive Orders.
5. Education and voluntary compliance are the desired means of enforcement. However, any person who, after being first duly warned, is found to have violated any mandatory provision of this Ordinance shall be deemed guilty of a civil infraction, and shall be subject to a Civil Summons punishable by a fine of fifty dollars (\$50.00). Police officials, or a City representative appointed by the City Manager, shall be authorized to issue such a Summons for violations personally witnessed.
6. Repeated violations of this Ordinance at any business or establishment that is subject to this Ordinance is hereby declared a nuisance, and the City may seek a restraining order, preliminary injunction, permanent injunction or any other means authorized under the Laws of the State of South Carolina to abate the nuisance. The City may also seek suspension or revocation of the business license issued by the City to any business or establishment where repeated violations of the Ordinance occur, under the authority of the City Code of Ordinances.

- 7, With the exception of their own employees, owners or lease holders of buildings open to the public shall not have responsibility for enforcing the above requirements, but shall post conspicuous signage at all entrances informing its patrons of the requirements of this Ordinance.
8. Should any provision, section, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.
9. This Ordinance becomes effective 11:59 PM June 30, 2020, upon adoption by City of Beaufort Council, and will be extended or expire upon the thirty first day following adoption or the end of the State of Emergency in the City of Beaufort, whichever occurs first.

MOVED, APPROVED, AND ADOPTED AS AN EMERGENCY ORDINANCE
THIS _____ DAY OF JUNE 2020.

Billy Keyserling, Mayor

ATTEST:

By: _____
Ivette Burgess, City Clerk

APPROVED AS TO FORM:

William B Harvey, City Attorney

EXHIBIT NO. 13

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[DRAFTING NOTE #1: This Draft Ordinance has options that must be selected by the municipality. In the text below, material that is locally dependent (for example, [City/Town]) or optional is marked by brackets. Municipalities should consult with their own attorneys in selecting the options and preparing this ordinance for enactment. Notes are in italics and are for reference only – they should not appear in the final document.]

[DRAFTING NOTE #2: Municipalities should carefully consider the scope of the face covering requirement. This model assumes maximal scope, both with respect to the establishments to which it applies and the persons who must wear face coverings. Individual municipalities may choose to exclude certain establishments, or may limit its individual application – for example, it may apply only to employees and not customers in certain situations. In general, the broader the scope of the face covering requirement, the more likely the ordinance is to be challenged and/or difficult to enforce. Therefore, municipalities should respond to local conditions, should consult with their own attorneys, and should give careful thought to how the ordinance will be received and, in particular, enforced.]

AN ORDINANCE

REQUIRING INDIVIDUALS TO WEAR FACE COVERINGS IN RETAIL AND FOODSERVICE ESTABLISHMENTS, AND MATTERS RELATED THERETO

WHEREAS, the 2019 Novel Coronavirus ("COVID-19") is a respiratory disease that can result in serious illness or death by the SARS-CoV-2 virus, which is a new strain of coronavirus previously unidentified in humans and which can spread from person to person;

WHEREAS, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on January 30, 2020;

WHEREAS, the Centers for Disease Control and Prevention (the "CDC") has warned of the high public health threat posed by COVID-19 globally and in the United States;

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency in the United States for COVID-19 under Section 391 of the Public Health Service Act;

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020;

WHEREAS, also on March 13, 2020, the Governor of the State of South Carolina (the "State") issued Executive Order 2020-08, declaring a State of Emergency based on a determination that the COVID-19 poses an actual or imminent public health emergency for the State;

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WHEREAS, the Governor of the State has subsequently declared a continued State of Emergency in Executive Orders 2020-15 (March 28), 2020-23 (April 12), 2020-29 (April 27), 2020-35 (May 12), 2020-38 (May 27), and 2020-40 (June 11);

WHEREAS, the State is experiencing a dramatic increase in the number of identified new COVID-19 cases, and as of June 25, 2020, the South Carolina Department of Health and Environmental Control ("DHEC") is reporting that there have been 27,842 confirmed COVID-19 cases and 683 confirmed COVID-19 deaths in the State;

WHEREAS, if COVID-19 cases continue to increase in the State and in the [CITY/TOWN], the demand for medical, pharmaceutical, personal, and general cleaning supplies may overwhelm sources of supply; the private and public sector work force may be negatively impacted by absenteeism; and the demand for medical facilities may exceed locally available resources;

WHEREAS, health authorities, including the CDC, the Surgeon General of the United States, and DHEC have recommended the use of face coverings as a means of preventing the spread of COVID-19; and

WHEREAS, S.C. Code § 5-7-250(d) provides that "[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances ... 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;"

WHEREAS, the [CITY/TOWN] Council of the [CITY/TOWN] of [MUNICIPALITY] has determined, based on the recommendations of public health experts and responsive to a serious threat to the public health, safety, and welfare of its citizens, that it would serve the public interest and be within the [CITY/TOWN]'s police powers under Home Rule and S.C. Code § 5-7-60 to require that individuals wear face coverings in certain situations and locations;

WHEREAS, the South Carolina Attorney General, on June 25, 2020, issued a public statement that enacting local mask requirements is within the police power of municipalities and is not preempted by State law;

WHEREAS, this Ordinance has been approved by at least two-thirds of the Councilmembers present at the meeting in which it was considered;

NOW, THEREFORE, be it ordained by the [CITY/TOWN] Council of the [CITY/TOWN] of [MUNICIPALITY] as follows:

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Section 1. Definitions. As used herein, the terms below shall have the following meanings *[Drafting note: Municipalities should give careful consideration to the scope of the ordinance. The definitions below are intended to be maximally broad. Municipalities may choose to limit the scope by excluding certain businesses or establishments. If so, the scope may be modified throughout the document by changing the definitions.]*:

- 1) "Establishment" means a Foodservice Establishment or Retail Establishment.
- 2) "Face Covering" means a uniform piece of cloth, fabric, or other material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands. Face Coverings include, but are not limited to, bandanas, medical masks, cloth masks, scarves, and gaiters, provided that they are worn such that they securely cover the person's nose and mouth.
- 3) "Foodservice Establishment" means any establishment within the [CITY/TOWN] that sells prepared food on a delivery, carry-out, or drive-through basis.
- 4) "Responsible Person," with respect to an Establishment, means any individual associated with the Establishment who has the authority and ability to enforce the requirements of the Ordinance within the Establishment, such as an owner, manager, or supervisor. "Responsible Person" may also include an employee or other designee that is present at the Establishment but does not have the title of manager or supervisor, but who has the temporary or designated authority and ability to ensure that the requirements of this Ordinance are met while the Establishment is open to the public.
- 5) "Retail Establishment" means any retail business, organization, establishment, or facility open to the public within the [CITY/TOWN], including without limitation:
 - a) grocery stores, convenience stores, and any other establishment engaged in the retail sale of non-prepared food;
 - b) commercial stores engaged in the retail sale of goods or services to the public including without limitation sporting goods stores; furniture and home-furnishings stores; clothing, shoe, and clothing-accessory stores; jewelry, luggage, and leather goods stores; department stores; hardware and home-improvement stores; book, craft, and music stores; florists and flower stores; and all other stores that sell supplies for household consumption or use;
 - c) pharmacies and other stores that sell medications or medical supplies;
 - d) alcoholic beverage stores; and
 - e) laundromats.

Section 2. Use of Face Coverings. Effective as of [TIME] on [DATE], 2020 *[Drafting note: Again, the terms below are intended to be maximally broad and would cover both employees and customers in all Foodservice Establishments and Retail Establishments. Municipalities may choose to limit the scope by changing or deleting the provisions below.]*:

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- 1) all customers are required to wear Face Coverings while inside the enclosed area of any Retail Establishment or Foodservice Establishment;
- 2) all Retail Establishments shall require staff to wear, and those staff shall wear, Face Coverings while working in areas open to the general public and areas in which interactions with other staff are likely in which social distancing of at least six feet cannot be observed; and
- 3) all Foodservice Establishments shall require staff who interact with customers (including, without limitation, delivery personnel) to wear, and those staff shall wear, Face Coverings while working.

Section 3. Exemptions. Face Coverings shall not be required:

- a) in outdoor or unenclosed areas appurtenant to Retail Establishments or Foodservice Establishments in which social distancing of at least six feet is possible and observed;
- b) for people whose religious beliefs prevent them from wearing a Face Covering;
- c) for those who cannot wear a Face Covering due to a medical or behavioral condition;
- d) for children under [AGE CUTOFF] years old, provided that adults accompanying children age two through [AGE CUTOFF] shall use reasonable efforts to cause those children to wear Face Coverings while inside the enclosed area of any Retail Establishment or Foodservice Establishment *[Drafting Note: The age cutoff is the age below which children are not required to wear masks. The CDC recommends masks for children above age two years, but most jurisdictions have chosen a higher cutoff. Examples from other jurisdictions suggest an age cutoff of between eight and twelve years, but municipalities should choose their own cutoff];*
- e) for patrons of Foodservice Establishments while they are dining;
- f) in private, individual offices;
- g) when complying with directions of law enforcement officers;
- h) in settings where it is not practical or feasible to wear a Face Covering, including when obtaining or rendering goods or services such as the receipt of dental services or while swimming;
- i) while exclusively with members of a family or the same household, and no person other than such family or household is within the same enclosed area.

Section 4. Individual Violations: Civil Infraction. Any person violating the provisions of this Ordinance by failing to wear a Face Covering when required shall be guilty of a civil infraction, punishable by a penalty of not more than [PENALTY AMOUNT, NOT TO EXCEED \$100]. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense.

The Municipal Association of South Carolina (the "Association") is offering this document as a resource to its members. The document does not and is not intended to constitute legal advice; instead, this document is offered for general informational purposes only. You should not act or refrain from acting on the basis of any content included herein without consulting your own municipal attorney to obtain advice with respect to any particular legal matter. Access to or use of this document does not create an attorney-client relationship between you, the Association, or any member of the Association's staff.

Section 5. Responsible Person Violations: Civil Infraction. Any Responsible Person violating the provisions of this Ordinance by failing to require employees of the Establishment to wear a Face Covering when required shall be guilty of a civil infraction, punishable by a penalty of not more than [PENALTY AMOUNT, NOT TO EXCEED \$100]. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense.

Section 6. Responsible Person Violations: Revocation of Permits and Licenses. In addition to the penalties established by Section 5 hereof, repeated violations of this Ordinance by a Responsible Person by failing to require employees of the Establishment to wear a Face Covering may, subject to all procedural protections set forth in the [CITY/TOWN] Code, result in the suspension or revocation of any occupancy permit or business license issued to business where the repeated violations occurred.

Section 7. Responsible Person Violations: Public Nuisance. In addition to the penalties established by Section 5 hereof, repeated violations of this Ordinance by a Responsible Person by failing to require employees of the Establishment to wear a Face Covering are additionally hereby declared to be a public nuisance, which may be abated by the [CITY/TOWN] by restraining order, preliminary and permanent injunction, or other means provided for by the laws of this State. The foregoing notwithstanding, every effort shall be made to bring Establishments into voluntary compliance with the terms of this Ordinance prior to the commencement of any enforcement action.

Section 8. Duties of Establishments and Responsible Persons. Establishments and Responsible Persons shall have a duty to enforce the provisions of this Ordinance only against employees of the Establishment. Without limiting the generality of the foregoing, no Establishment or Responsible Person shall have any duty to require that customers, visitors, or other members of the general public wear Face Coverings.

Section 9. Suspension of Contrary Local Provisions. During the Emergency Term (as defined in Section 12 below), any ordinance, resolution, policy, or bylaw of the [CITY/TOWN] that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

Section 10. Expiration of Ordinance; Extension of Emergency Term. As provided by S.C. Code § 5-7-250(d), this Ordinance shall expire automatically as of the sixty-first day following the date of enactment (the "Emergency Term"). Notwithstanding the foregoing, however, Council may extend the Emergency Term by emergency ordinance for one or more additional terms, each of no more than sixty days, provided that the total duration of the Emergency Term shall not exceed six months without enacting an ordinance in the ordinary course.

The Municipal Association of South Carolina (the "Association") is offering this document as a resource to its members. The document does not and is not intended to constitute legal advice; instead, this document is offered for general informational purposes only. You should not act or refrain from acting on the basis of any content included herein without consulting your own municipal attorney to obtain advice with respect to any particular legal matter. Access to or use of this document does not create an attorney-client relationship between you, the Association, or any member of the Association's staff.

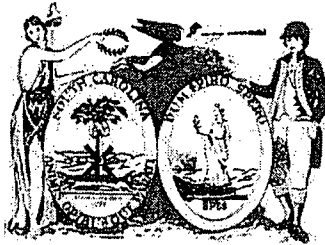
Section 11. Severability. Should any provision, section, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 12. Effective Date and Time. This emergency Ordinance shall take effect at [TIME] on [DATE], 2020.

[LOCAL SIGNATURE BLOCK]

EXHIBIT NO. 14

State of South Carolina Executive Department



FILED

APR 03 2020

Mark Hammond
SECRETARY OF STATE

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

Executive Order No. 2020-19

April 3, 2020

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

Executive Order No. 2020-19

April 3, 2020

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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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

Executive Order No. 2020-19

April 3, 2020

“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.

April 3, 2020

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.

Executive Order No. 2020-19

April 3, 2020

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 1 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

April 3, 2020

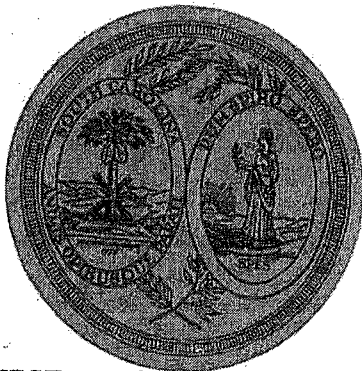
Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject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

A handwritten signature in black ink, reading "Henry McMaster".

HENRY MCMASTER
Governor

ATTEST:

A handwritten signature in black ink, reading "Mark Hammond".

MARK HAMMOND
Secretary of State

<https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>

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About this capture

Centers for Disease
Control and Prevention

Coronavirus Disease 2019 (COVID-19)

Coronavirus and Travel in the United States

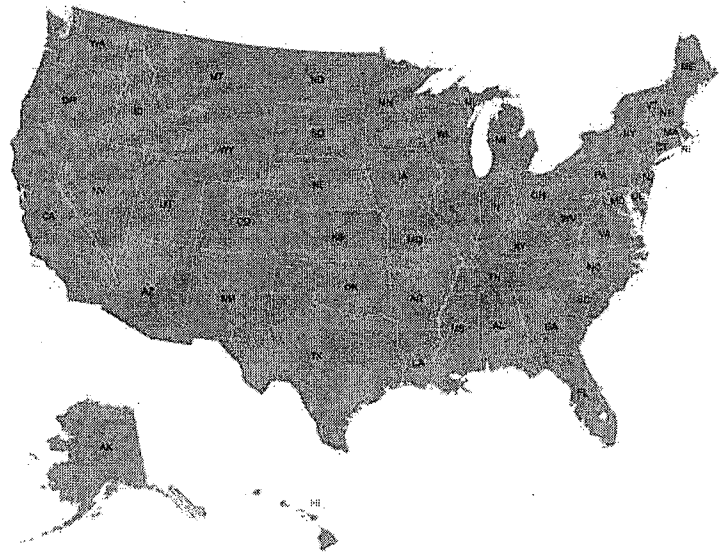
Avoid all nonessential travel in the United States

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 .

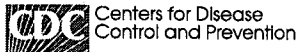
The State or local government where you are may have issued orders or provided guidance more restrictive than these federal guidelines. In that case, follow the state or local orders and guidance.

If you must travel, take steps to help prevent getting and spreading COVID-19.

CDC also recommends that you avoid all nonessential international travel (see: COVID-19 Travel Recommendations by Country).



Page last reviewed: April 6, 2020

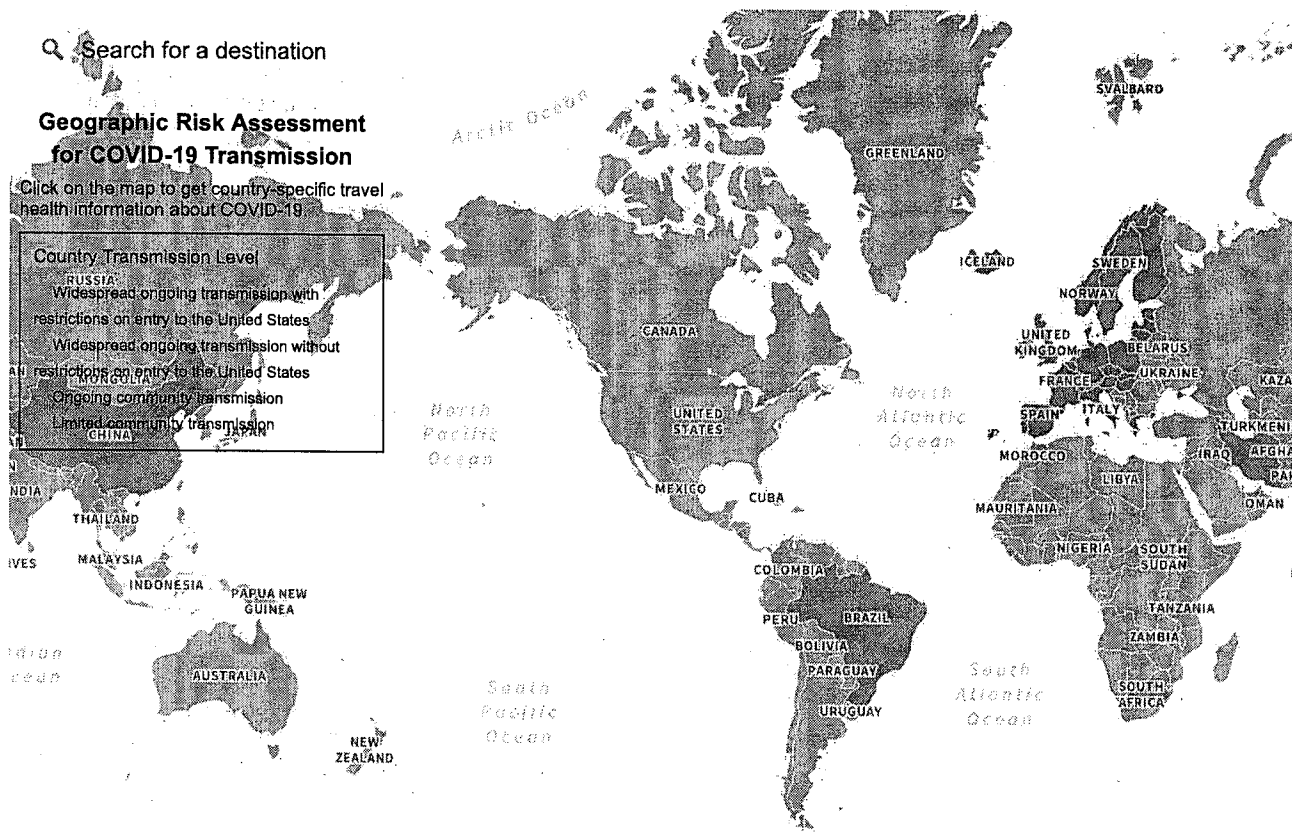


Coronavirus Disease 2019 (COVID-19)

COVID-19 Travel Recommendations by Country

Updated June 24, 2020

Current Travel Notices



© Mapbox (<https://www.mapbox.com/about/maps/>) © OpenStreetMap (<http://www.openstreetmap.org/about/>)

Level 3 Travel Health Notice: Widespread ongoing transmission with restrictions on entry to the United States

CDC recommends that travelers avoid all nonessential travel to the following destinations. Most foreign nationals who have been in one of these countries during the previous 14 days will not be allowed to enter the United States.

- Brazil
- China
- Iran
- Most European Countries
- United Kingdom and Ireland

Level 3 Travel Health Notice: Widespread ongoing transmission without restrictions on entry to the United States

CDC recommends that travelers avoid all nonessential travel to all global destinations:

- Global Pandemic Notice

Level 2 Travel Health Notice: Ongoing community transmission

CDC recommends that older adults and people of any age with serious chronic medical conditions should consider postponing nonessential travel to most global destinations.

Level 1 Travel Health Notice: Limited community transmission

CDC recommends travelers practice usual health precautions recommended for their destination.

Additional Resources

Notices of Arrival Restrictions Due to Coronavirus, Department of Homeland Security

Communication Resources for Travelers

About Coronavirus Disease 2019 (COVID-19)

Frequently Asked Question and Answers about COVID-19

* The Department of State has issued a Global Level 4 Health Advisory [\[link\]](#), advises U.S. citizens to avoid all international travel due to the global impact of COVID-19.

Page last reviewed: June 24, 2020

EXHIBIT NO. 17

Final Reading

EMERGENCY ORDINANCE 2020-08

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza;

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 117 countries and territories throughout the World, including the United States, and more specifically Broward County and 18 other counties in the State of Florida;

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic;

WHEREAS, the Centers for Disease Control and Prevention (CDC) is predicting that it is likely that widespread transmission of COVID-19 will also occur in the United States;

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19;

WHEREAS, the City of Isle of Palms is threatened by COVID-19 because of the apparent ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the citizens and visitors of the City of Isle of Palms;

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, the City of Isle of Palms is working with other government agencies in an effort to prevent the spread of disease;

WHEREAS, Governor Henry McMaster issued an executive order that closed all dine-in services at restaurants and bars beginning on Wednesday, March 18, and limiting all business to to-go/take out services only;

WHEREAS, limitations on take-out packaging by the City's Plastic Ban and the lack of products available have prohibited local businesses to provide needed food and beverage services during the state of emergency;

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, the City of Isle of Palms deems it proper and necessary to adopt this emergency ordinance in order to, among other things: (a) suspend the rental and use of Short-Term Rentals, Hotels, and Other Overnight Accommodations for 29 days or less

ELECTRONICALLY FILED - 2020 Nov 04 11:30 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003549

Final Reading

beginning 10am Thursday, March 26, 2020 through April 30, 2020. Visitors currently checked in may remain until the end of their existing reservations.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Isle of Palms, in Council assembled, that:

1. Rental and use of Short-Term Rentals, Hotels, and Other Overnight Accommodations for 29 days or less beginning 10am Thursday, March 26, 2020 through April 30, 2020 shall be prohibited. Visitors currently checked in may remain until the end of their existing reservations.
2. Access restrictions stated in Section 7 of Emergency Ordinance 2020.01 are hereby extended to April 30th, 2020.
3. Any violation of any rule or regulation issued and set forth herein shall be punishable as provided in Title 9, Chapter 2, Section 3: Disorderly Conduct of the Code of Ordinances of the City of Isle of Palms.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE 25 DAY OF March, 2020.

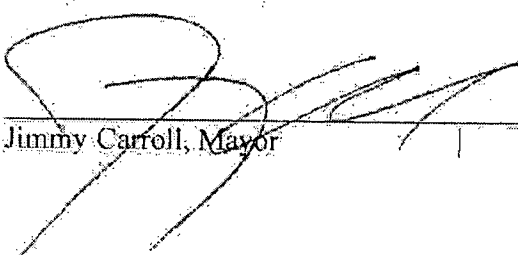

Jimmy Carroll, Mayor

EXHIBIT NO. 18

TOWN OF EDISTO BEACH EMERGENCY ORDINANCE 2020-09

WHEREAS, the United States of America, the State of South Carolina, and the Town of Edisto Beach have declared emergencies related to the spread of COVID-19 virus; and

WHEREAS, in order to lessen the intensity and duration of the crisis, reduce the stress on our first responders and healthcare system, and to prevent unnecessary deaths, all citizens must prepare to make sacrifices; and

WHEREAS, as a tourist destination, social distancing requests and shelter in place requests from the South Carolina government officials have been less than successful in the Town of Edisto Beach; and

WHEREAS, short term rentals inflate the population of the Town placing additional strain on Town resources, for example the number of citizens in the Town is approximately 700 and during a typical tourism week, the population is 10,000; and

WHEREAS, the population change increases the risk of virus transmission; and

WHEREAS, certain additional measures need to be taken to continue to protect our citizens and guests from this pandemic.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Edisto Beach, in Council assembled, that:

1. That a local state of emergency is hereby declared for the Town of Edisto Beach, South Carolina pursuant to Section 26-33 of the Code of Ordinances of the Town of Edisto Beach.
2. The state of emergency shall continue for a period of not more than sixty days from the date of this declaration unless continued or renewed by the Council of the Town of Edisto Beach.
3. **Short-Term Rentals and Other Overnight Accommodations:** No new check ins are permitted beginning 10 a.m. Thursday, March 26, 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 a valid lease agreement.
4. **Physical businesses** (except essential businesses, listed below) may not allow patrons indoors or to shop on-premises and must follow Centers for Disease Control (CDC) guidelines. However, business employees may come to work with a pass as determined appropriate by the Police Chief from their employer confirming their work status, and businesses may continue to serve clients virtually, by delivery, or at a service window. The grocery store and gas station are deemed essential by the CDC and may continue to allow customers inside. Restaurants can continue with take out and delivery services. Private Boat charters are not allowed as they cannot practice social distancing.

5. **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.
6. **All Other Checkpoint Regulations:**
- Checkpoint will be operational 24 hours a day until further notice.
 - Residents and property owners: Please bring one form of identification showing residency or ownership (driver's license, utility bill, deed, tax bill, lease, etc.) If the property is owned by a LLC or other group, documentation must be provided showing owners.
 - Edisto Island residents: will continue to be allowed to access essential businesses (BiLo and Gas station) and restaurants as long as they have proof of Edisto island residency.
 - Relatives and family members: Immediate family members (defined as spouse, children, parents, grandparents) are allowed as long as accompanied by an owner.
 - Guest passes are not permitted.
 - Delivery persons who can demonstrate business on the beach at the checkpoint (including pharmacy, FedEx, UPS, Amazon, building supply, and food delivery) by showing delivery order, address, and goods at the checkpoint.
 - Caretakers: Professional caretakers are limited to caretakers with professional medical service credentials.
 - Essential Business Employees Essential business employees will still be allowed past the checkpoint.
 - Media personnel with media credentials presented.
 - Town Parks, playgrounds and facilities will be closed.

Enacted this 25th day of March, 2020, by Town Council of the Town of Edisto Beach, South Carolina.

This ordinance shall take effect immediately.

Attest:

Jane Darby, Mayor

Iris Hill, Town Administrator

EXHIBIT NO. 19

Enter keyword here

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ATTORNEY GENERAL WILSON'S STATEMENT ON LOCAL MASK ORDINANCES



(COLUMBIA, S.C.) – June 24, 2020 – My office has recently received a number of calls regarding the city ordinances passed by Greenville and Columbia that concern the wearing of masks within those cities' jurisdictions and under certain conditions. I want to provide a general answer to this issue.

Before I provide the answer I want to make it perfectly clear that our office is not endorsing, defending or even attacking these ordinances.

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 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.

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Attorney General Wilson's statement on local mask ordinances

Jun 24, 2020

(COLUMBIA, S.C.) – June 24, 2020 – My office has recently received a number of calls regarding the city ordinances passed by Greenville and Columbia that concern the wearing of masks within those cities' jurisdictions and under certain conditions. I want to provide a general answer to this issue. Before I provide the answer I want to make it perfectly clear that our office is not endorsing, defending or even attacking these ordinances. 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...

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Mount Pleasant Man Arrested on Child Sexual Abuse Material* Charges

Jun 24, 2020

(COLUMBIA, S.C.) – June 24, 2020 – South Carolina Attorney General Alan Wilson announced the arrest of Layfe Dubb Farmer, 35, of Mt. Pleasant, SC, on 10 charges connected to the sexual exploitation of minors. Internet Crimes Against Children (ICAC) Task Force investigators with the Mt. Pleasant Police Department made the arrest. Investigators with the SC Attorney General's Office, also a member of the state's ICAC Task Force, assisted with the investigation. Investigators received a CyberTipline report from the National Center for Missing and Exploited Children (NCMEC) which led them to Farmer. Investigators state Farmer possessed multiple files of child...

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One other issue that has been brought to our attention involves a law (Section 16-7-110) that prohibits the wearing of masks in public and how this law could subject people to prosecution for obeying a city ordinance that requires the wearing of a mask in commercial establishments. Basically, you have state law that says you cannot wear a mask and city ordinance that says you must wear a mask. It is important to understand that this law was passed in 1962 with the intention of preventing members of the Ku Klux Klan from concealing their identities while committing acts of terrorism. With that in mind, this statute, in our opinion would not be applicable to the mask ordinances because the wearer is not attempting to conceal their identity but to comply with a city health ordinance.

Any other statutes which may have been cited to this office as conflicting with the city ordinances would be reconciled by a future court as inapplicable.

Many people are upset about these ordinances and I can understand their frustration. However, just because you believe something is bad government does not make it unconstitutional government. Sometimes the remedy for a bad government action is not a legal remedy but a political remedy at the ballot box. I hope this helps people understand my position better. If I thought these ordinances were unlawful, I promise you I would be seeking a legal remedy.



Attorney General Wilson attends Greenwood V.A.L.O.R. clinic free legal help for veterans, active-duty and Reserves

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Columbia, SC

Rembert Dennis Building | 1000 Assembly Street,
Room 519 | Columbia, S.C. 29201
Phone: 1-803-734-3970 | Fax: (803) 253-6283



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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FRED HOLLAND REALTY, INC. and
LAJUAN KENNEDY,

Appellants,

vs.

CASE NO. 2020-CP-10-03549

THE CITY OF FOLLY BEACH,

Respondent.

TRANSCRIPT OF PROCEEDINGS

LOCATION: City of Folly Beach Municipal Court
21 Center Street
Folly Beach, SC

BEFORE: CHRISTIE VARNADOE, Hearing Officer

1 APPEARANCES OF COUNSEL:

2 ATTORNEY FOR THE APPELLANTS

3 CARRIGG LAW FIRM
4 BY: JOHN W. CARRIGG, JR., ESQUIRE
5 120 North Lake Drive
6 Lexington, SC 29072
7 (803) 785-5511
8 jcarrigg@carrigglaw.com

9 ATTORNEYS FOR THE RESPONDENT

10 WILSON LAW FIRM
11 BY: JOE WILSON, ESQUIRE
12 P.O. Box 178
13 Folly Beach, SC 29439

14
15
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17
18 (INDEX AT REAR OF TRANSCRIPT)
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25

1 THE COURT: Good morning. So we are
2 recording so that I know everyone, you know -- we are
3 creating a record. This is a non-jury proceeding.
4 And so in terms of what we are doing today, well,
5 we'll operate like a hearing in terms -- in terms of,
6 you know, the city will -- will start and then the
7 defense will have its time and we'll go through
8 witnesses and exhibits. There's no need to put on a
9 show like there's a jury here. I mean, I'm going to
10 take everything under advisement and read it and --
11 and come up with a written opinion within ten days.

12 So -- and, you know, I'm familiar
13 with -- with the matters. I've -- we've already
14 addressed the legal issue of preemption. So what you
15 need to do for the record, you say for the record,
16 but obviously what lawyers say isn't the record.
17 It's the -- it's the evidence. So there's no need
18 for long openings or that type of thing. Okay. All
19 right. Are we ready?

20 MR. WILSON: My recollection is you
21 said no openings.

22 THE COURT: Right. What I mean --
23 right. No openings, no summations. I mean, we just
24 -- we don't need to do any long type of that thing.
25 Let's just get right to the evidence.

1 MR. WILSON: Okay.

2 THE COURT: Okay. Mr. Wilson.

3 MR. WILSON: Okay. You want us to go
4 first?

5 THE COURT: Uh-huh.

6 MR. WILSON: I guess I have just one
7 housekeeping matter. So there were some exhibits
8 that I've marked that were not exchanged. I had
9 forgotten about its existence until this morning. I
10 mean, they're just some e-mails from Ms. Kennedy
11 regarding some comments she made about statutes. I
12 don't know --

13 MR. CARRIGG: And I'm going to look
14 at these. I may have an objection --

15 THE COURT: Go right ahead.

16 MR. CARRIGG: -- since they weren't
17 submitted prior.

18 MR. WILSON: I put copies of all of
19 our exhibits there. The three e-mails are on top.
20 So I'll just -- we're not going to cover those
21 until --

22 THE COURT: Okay.

23 MR. WILSON: -- that gets resolved.

24 THE COURT: All right. Okay.

25 MR. WILSON: So I'm just -- we have

1 one witness to testify.

2 THE COURT: Okay.

3 MR. WILSON: Lieutenant
4 Brandon Upton.

5 THE COURT: Okay.

6 MR. WILSON: And I'm just going to
7 let him basically explain his -- what he saw in a
8 narrative and I may fill in some parts later.

9 THE COURT: Okay. Thank you.

10 STATEMENT BY LIEUTENANT BRANDON UPTON

11 MR. UPTON: Yes, ma'am. On April 14,
12 2020, I was approached by Chief Gilreath and he
13 advised that we got a complaint for the residents at
14 403 West Ashley. He said that some of the neighbors
15 called and stated that new renters had just moved
16 into that location. Now, per our emergency ordinance
17 06-20, as of April 7, 2020, there is to be no more
18 check-ins at all regardless of length of stay. So I
19 was tasked with going over there and making contact
20 and finding out what was going on.

21 I made contact with Ms. Richardson,
22 which was on the -- on the lease agreement for 403
23 West Ashley. She advised me that they were
24 previously renting a residence at 106 West Hudson,
25 Suite 1A, and that they had just moved in prior to

1 that day's date, which was the 14th, which I believe
2 was Thursday -- or, excuse me, not Thursday. It
3 would have been the day prior, which would have been
4 the 13th, into that new residence.

5 MR. WILSON: April 13th?

6 MR. UPTON: I'm sorry. Yeah, April
7 13th. Yes. Excuse me. I said that was fine. I
8 asked if I could just see the lease agreement or
9 rental agreement. What she advised me was that her
10 husband was currently at his -- they owned a business
11 and he was actually off the island and he had the new
12 lease agreement, that she had the previous agreement
13 that she could show me, which was the lease agreement
14 for 106 West Hudson. Your Honor, that reservation
15 I.D. number --

16 MR. WILSON: Just so it's clear,
17 that's Prosecution Exhibit E2, is the first.

18 THE COURT: Thank you.

19 MR. UPTON: I took a picture of this
20 -- of that specific rental agreement while I was
21 there. I just noted that the reservation I.D. number
22 on that specific one was 104424 and the arrival date
23 was going to be March 19, 2013, which was a Thursday,
24 and the checkout date was going to be April 14, 2020,
25 which she indicated they moved out early. The reason

1 she gave me for moving out early was -- and I don't
2 want to speculate too much. There was something to
3 do with the homeowners moving back into the residence
4 at 106 West Hudson.

5 I asked Ms. Richardson when her
6 husband would be home so I could take a look at the
7 other lease agreement. She said it would probably be
8 a while. So I took it upon myself to respond out to
9 Dorchester Road. His place of business is Marvin's
10 Seafood. Excuse me, Your Honor. Myself and Deputy
11 Chief Burke went out to Marvin's Seafood to find
12 Mr. Richardson. We made contact with him who had
13 that other rental agreement on him, and this new
14 rental agreement was for 403 West Ashley.

15 MR. WILSON: And this is Prosecution
16 Exhibit E3.

17 MR. UPTON: That reservation I.D. was
18 different from the previous reservation I.D. This
19 new I.D. reservation was 104506. The date of arrival
20 was supposed to be April 13, 2020 and the departure
21 date was supposed to be April 30, 2020. I will note
22 on both of these, Your Honor, they have two separate
23 amounts. The very first one for 106 West Hudson, the
24 total amount was \$2,527. The amount for the new
25 agreement at 403 West Ashley was \$1,388.40, which

1 indicated on our side that they were two separate
2 agreements due to the reservation I.D. numbers, the
3 dates, moving to a separate house, and the amounts at
4 the bottom -- total amounts, Your Honor.

5 I also took a picture of that lease
6 agreement there, Your Honor, when I was at Marvin's
7 Seafood, and I forwarded all of this information back
8 to Chief Gilreath after I got home. And from there,
9 I was advised that they were issued a citation. I
10 believe it was Fred Holland that was issued a
11 citation, but I'm not 100 percent correct on who
12 actually got the citation, Your Honor.

13 MR. WILSON: The citation is
14 Plaintiff's P5 -- Exhibit P5.

15 MR. UPTON: And I was advised that it
16 was based off of emergency ordinance 06-20-7 under
17 subsection 11, which specifically states the no more
18 new rentals.

19 From there we were just advised to
20 keep an eye on the residence. I was advised that the
21 renters were told that they were supposed to move out
22 due to the violation, and we were asked to keep an
23 eye on the residence just to see if the renters were
24 still in the residence after they were told that they
25 had to vacate. And as of the last date that we

1 checked, Mr. Richardson's truck came onto the island
2 on April 30th, which was the very last day of the
3 lease agreement for -- I apologize, Your Honor, April
4 30th for 403 West Ashley. Ms. Richardson was also
5 seen as late as the 23rd of April taking out the
6 trash receptacles early that morning with a vehicle
7 in the driveway, and that would have been ten days
8 after they moved into that new residence at 403 West
9 Ashley. That all indicated to us that they were
10 still living at that residence.

11 THE COURT: Mr. Wilson, do you have
12 anything else of this witness?

13 EXAMINATION

14 BY MR. WILSON:

15 Q. Well, we marked as Exhibit P4 the -- I
16 don't know what you call this.

17 A. That's the ALPR. That's our -- yeah.
18 That's our tracking that we --

19 THE COURT: And they're marked at the
20 top of the page.

21 MR. CARRIGG: I don't think they've
22 been marked.

23 MR. WILSON: The one has -- I put all
24 the exhibits --

25 MR. CARRIGG: Okay.

1 BY MR. WILSON:

2 Q. Can you just explain what this shows?

3 A. Yeah. The ALPR is -- that -- that, Your
4 Honor, is the system that we have coming onto the
5 island. It's very common throughout the --
6 throughout Charleston County. What it does is read
7 every license tag that comes through and it time
8 stamps when they came through, what day they came
9 through, whether they were leaving the island,
10 whether they are coming onto the island, and that's
11 for every vehicle. It will tell us if something was
12 suspended, if it was stolen, what have you. That
13 indicated that they actually came onto the island.
14 At least as of April 30th, Mr. Richardson's truck --

15 Q. Was still coming on the island --

16 A. That's correct.

17 Q. -- as of April 30th?

18 A. That's correct.

19 THE COURT: So just looking at 4 --
20 Exhibit 4, just so I'm understanding it, so we've got
21 a date and time -- just on the first page there's a
22 date and time, April 11, 2020. Where is the -- okay.
23 So the April 30th time entry is on Page 3?

24 MR. UPTON: Page 3.

25 THE COURT: All right. And the

1 vehicle on Page 1, do we -- do you have a
2 registration for that license tag, the HUM207?

3 MR. UPTON: I don't actually have
4 that registration out. That was the vehicle that was
5 parked at their residence when we made contact.

6 THE COURT: Okay. Then on the third
7 page there's a QNY882. Is that Mr. Richardson's --
8 registered to Mr. Richardson?

9 MR. UPTON: The BMW is actually
10 registered to Fleck, Incorporated on Dorchester
11 Road -- 4224 Dorchester Road, and it was at the
12 residence as well. I didn't ask any -- I'm not
13 exactly sure if that's Marvin's or not.

14 THE COURT: Okay.

15 MR. WILSON: She asked about the
16 truck.

17 MR. UPTON: Oh, I'm sorry. Which
18 one?

19 MR. WILSON: Page 3, the QNY.

20 MR. UPTON: Yeah. The QNY is
21 registered directly to Mr. Richardson himself. His
22 2017 Dodge Ram. I apologize.

23 MR. WILSON: Your Honor, can I just
24 explain --

25 THE COURT: Uh-huh.

1 MR. WILSON: -- real briefly?

2 THE COURT: Yes.

3 MR. WILSON: On the page -- it should
4 have been corrected earlier. The citation cites
5 multiple day violations right at \$500 a day. We -- I
6 agreed to cap that at \$2,500. So we're just trying
7 to demonstrate that these people were there at least
8 five days. We have evidence that they were there
9 throughout the month of May.

10 THE COURT: Okay.

11 MR. WILSON: We're just -- we agreed
12 to a cap --

13 MR. CARRIGG: April.

14 MR. WILSON: I'm sorry. April. But
15 we agreed to cap it at \$2,500.

16 THE COURT: Okay. All right. And so
17 -- and then this on Page 4, the vehicle -- excuse me.
18 Page 1 of Exhibit 4, the vehicle with HUN207, that
19 vehicle was also observed to be at the --

20 MR. UPTON: At the residence.

21 THE COURT: -- at the residence? But
22 you don't have information as to who that's
23 registered to?

24 MR. UPTON: I do not, ma'am.

25 THE COURT: Okay. And then on the

1 second page there's an NGL475. Those are all in
2 March.

3 MR. CARRIGG: Yeah, before.

4 THE COURT: Right.

5 BY MR. WILSON:

6 Q. Do you know what the NGL is? Was that one
7 observed at the residence?

8 A. That I'm not aware of, NGL. No, sir. I
9 didn't -- this one I did not get.

10 THE COURT: Okay. Do you have
11 anything else for the witness, Mr. Wilson?

12 BY MR. WILSON:

13 Q. Just -- I just want to clarify one thing.
14 Lieutenant, you were aware that we had -- the city
15 had initially passed a short-term rental ban,
16 correct?

17 A. That's correct. Yes, sir.

18 Q. On March 28th. I'll put that in front of
19 you.

20 MR. CARRIGG: Can we take our masks
21 off?

22 MR. WILSON: Excuse me?

23 MR. CARRIGG: Can we all take our
24 masks off?

25 THE COURT: When you're speaking, if

1 you need to --

2 MR. CARRIGG: Can we take our masks
3 off?

4 MR. WILSON: When I'm talking -- I
5 mean, it's up to you. I mean, I guess.

6 BY MR. WILSON:

7 Q. This is an earlier version of our
8 ordinance, and so this ordinance went into effect on
9 March 29th, which was before the April 1st
10 reservation -- second reservation was made. And so,
11 Lieutenant, my question is -- well, and then we ended
12 up with the second --

13 A. Change as of April 7th.

14 Q. Yes, April 7th. And that was to encompass
15 all reservations, right?

16 A. Yes, sir.

17 Q. Not just short-term?

18 A. Both.

19 Q. All right. Tell your understanding --
20 please tell the court of why that change was made.

21 A. We were getting a lot of complaints, Your
22 Honor, of rental companies all encompassed -- all
23 encompassing rental companies that they were
24 basically handing out --

25 MR. CARRIGG: I have an objection. I

1 mean, I think the city council can obviously come in
2 and testify why an ordinance was amended, but I don't
3 know that an officer can testify why an ordinance was
4 amended.

5 THE COURT: Your objection is noted,
6 but we'll make a record.

7 MR. UPTON: We were getting
8 complaints that the rental companies were basically
9 giving out false leases that were stating 30 days so
10 they could serve as short-term rentals, Your Honor.

11 THE COURT: And were the short-term
12 rentals, was that defined in the ordinance what a
13 short-term --

14 MR. WILSON: Well, that was the
15 problem. The initial ordinance, which I just handed
16 to you, I mean, it was defined in terms of -- I
17 believe it said -- hold on. No. It's not in this
18 ordinance. But our short-term rentals, I think, are
19 defined in our regular code of ordinances as 30 days
20 or less.

21 THE COURT: Okay.

22 MR. CARRIGG: Well (inaudible.)

23 MR. WILSON: Excuse me?

24 MR. CARRIGG: Do you have the code
25 section?

1 MR. WILSON: No, I don't. I think
2 Rick does.

3 THE COURT: All right. Anything else
4 you have for this witness, Mr. Wilson?

5 MR. WILSON: No, ma'am.

6 THE COURT: Okay.

7 EXAMINATION

8 BY MR. CARRIGG:

9 Q. It's lieutenant, correct?

10 A. Yes, sir. Yes, sir.

11 Q. Hey, lieutenant. How are you doing?

12 A. Fine, sir.

13 Q. A couple of --

14 THE COURT: If you need to remove
15 your mask, I have no objection.

16 MR. CARRIGG: I hate this.

17 THE COURT: I'm trying to maintain
18 distance.

19 MR. CARRIGG: It's actually hard to
20 breathe with the mask on.

21 THE COURT: Well, we need to make a
22 record and everybody needs to be able to hear.

23 BY MR. CARRIGG:

24 Q. All right. So let me just ask you with
25 respect to the license plate photograph information.

1 A. Yes, sir.

2 Q. We don't know what license plate HUN207 is
3 registered to, correct?

4 A. I do not. No, sir.

5 Q. We don't know what vehicle that is?

6 A. Only it's at the residence. No, sir.

7 Q. You went there the day they moved -- she
8 was moving, correct?

9 A. Yes, sir. Well, no. She had already
10 moved in the day -- the day prior.

11 Q. All right. NGL475, you don't know who
12 that is?

13 A. No, sir.

14 Q. Okay. And QNY882, do we know who that is?

15 A. That is Mr. Richardson's truck.

16 Q. So he came out here June 1st?

17 A. Yes, sir.

18 Q. Just to visit, maybe?

19 A. I'm guessing, sir. Basically what you --
20 you can run the tag and it will give you every single
21 time they come on.

22 Q. And it looks like he only came out here
23 two days, June -- or April 15th and April 30th,
24 correct?

25 A. With that truck. Yes, sir.

1 Q. Okay. I know you didn't run this and you
2 don't -- you don't operate this machinery. Does it
3 miss tags every now and again?

4 A. Yes, sir, it can.

5 Q. So we don't know how accurate it is?

6 A. I couldn't give you the specifics. No,
7 sir.

8 Q. Do you know who -- who operates this
9 system?

10 A. It's from SLED.

11 Q. And do you know if it is considered
12 reliable information so as to be admitted in the
13 court?

14 A. Yes, sir. We've had several court
15 proceedings with this information.

16 Q. And it's always admitted?

17 A. If it's part of the case. Yes, sir.

18 Q. Do we know who the IPT259 is?

19 A. That's the one that's referenced to Fleck,
20 Incorporated. It comes back to 4224 Dorchester Road,
21 North Charleston.

22 Q. Okay. So we don't know who -- I mean,
23 other than the other corporation in North Charleston
24 who owns it, we don't know who the driver was?

25 A. No, sir.

1 Q. In fact, this camera doesn't tell you who
2 the driver was in any of those vehicles?

3 A. No, sir.

4 Q. Just that the vehicle came onto the
5 island?

6 A. That's correct.

7 Q. All right. So you were instructed by, I
8 believe you said, the chief to investigate what you
9 thought were new people moving in a new check-in to
10 403 West Ashley?

11 A. Yes, sir.

12 Q. All right. The ordinance prohibits new
13 check-ins, correct?

14 A. That's correct.

15 Q. What's your understanding of a new
16 check-in?

17 A. Somebody moving into a residence and
18 having a lease.

19 Q. So if they had been on the island for a
20 month, they are still a new check-in?

21 A. If they are moving to a different
22 residence.

23 Q. And who told you that definition?

24 A. That's what the chief and I discussed.

25 Q. Okay. So any time someone was moved from

1 one residence -- if they were on the island and they
2 moved from one residence to another, that's a new
3 check-in?

4 A. Yes, sir. Especially when they have a
5 separate lease agreement.

6 Q. Well, I'm just asking because if -- I
7 mean, obviously they need paperwork. But if they've
8 been here for 30 days and the air condition goes out
9 in the unit -- in a house and they are moved to
10 another residence to complete their reservation, you
11 would consider that a new check-in?

12 A. It's case-by-case, sir.

13 Q. Case-by-case?

14 A. That specific case that you are
15 indicating, possibility, but that's not the same
16 thing here with this case.

17 Q. Okay. Are you aware of other instances
18 where individuals have been moved from one
19 residential rental to another residential rental and
20 Folly Beach Police Department did not do anything
21 about it?

22 A. I am not aware, honestly.

23 Q. You're not aware of any other circumstance
24 around this time -- actually, a little time after
25 this where another incident was investigated with

1 very similar facts?

2 MR. WILSON: Objection.

3 THE WITNESS: I'm not.

4 BY MR. CARRIGG:

5 Q. You're not?

6 A. No, sir.

7 Q. Do you recall having a conversation with
8 Ms. Brown at Fred Holland Realty?

9 A. I had a conversation -- not at Fred
10 Holland.

11 Q. I mean, at some point later you told them
12 you were surprised that anyone was charged over this?

13 A. I don't remember that.

14 Q. You don't remember that?

15 A. I remember it was a lengthy conversation.
16 She was very upset.

17 Q. All right. Did -- when you investigated
18 this, what were the circumstances of the Richardsons,
19 specifically Ms. Richardson?

20 A. Ms. Richardson told me, while I was there,
21 that she had some kind of health conditions, and I
22 don't recall what kind it was. That she -- they
23 specifically rented at Folly Beach during the COVID
24 issue because they were afraid of Hanahan and they
25 kind of wanted to get away from it.

1 Q. All right. Do you recall that she told
2 you she has COPD?

3 A. She may have, sir. I just remember she
4 said she had health issues.

5 Q. Do you recall that she related to you
6 whether or not her daughter was at a nurse at a
7 hospital treating COVID patients?

8 A. I believe she told me that.

9 Q. And she lived with her at the time,
10 correct?

11 A. That I don't recall.

12 Q. At the house in Hanahan?

13 A. I don't recall that.

14 Q. And that that's why she had to extend the
15 stay at Folly Beach. Do you recall her telling you
16 that?

17 A. I just recall her telling me that's why
18 she came down here, sir.

19 Q. So let me ask you a question. Do you know
20 that the extension was done for them on April 1,
21 correct?

22 MR. WILSON: Objection.

23 BY MR. CARRIGG:

24 Q. Your paperwork shows that?

25 A. I just want to go back and double check.

1 MR. WILSON: The paperwork shows that
2 there was a second rental.

3 THE WITNESS: That's correct. One --
4 one was supposed to be until April 14th, and then
5 they had a separate lease agreement that was a
6 check-in of April 13th.

7 BY MR. CARRIGG:

8 Q. Okay. What's the date that it was done?
9 Does it show you that on there?

10 MR. WILSON: Which, the second one?

11 MR. CARRIGG: Uh-huh.

12 THE WITNESS: The only...

13 BY MR. CARRIGG:

14 Q. Do you see reservation comments?

15 THE COURT: Where are you looking?

16 MR. CARRIGG: On Page 3 at the bottom
17 of the first page.

18 BY MR. CARRIGG:

19 Q. What does that say?

20 A. April 1, 2020.

21 Q. Okay. Moving from 208 East Hartwick,
22 correct?

23 A. That's correct.

24 Q. So does that seem to indicate to you that
25 on April 1st, there was a decision made that they

1 would have to move to the new unit?

2 A. That didn't jump out to me that that was
3 the case because it says from 208 East Hartwick and
4 that's not where they were moving from. They were
5 moving from 106 West Hudson. So I don't know why
6 that was there. Excuse me. I'm sorry -- 106 West
7 Hudson is Fred Holland.

8 Q. All right. It's Fred Holland Realty.
9 They were not staying at the office?

10 A. That's correct.

11 Q. So, I mean, you do agree that there's --
12 even in your evidence it shows that this extension
13 was negotiated and the move was contemplated on
14 April 1st, right?

15 A. Reservation paperwork.

16 Q. And that was before the new ordinance?

17 A. It started April 7th.

18 Q. Right? Correct? So if someone has got a
19 reservation as of April 1st it involves a move showed
20 that they have not been allowed to carry out that
21 move even though they did it when it was perfectly
22 legal?

23 A. Well, the new ordinance would have been
24 April 7th, which the old ordinance was still in
25 effect on April 1st. Therefore, they would have been

1 moving into a new short-term rental.

2 Q. A new check-in, correct?

3 A. Right. They would have been --

4 Q. A new check-in is what's prohibited.

5 Not -- not -- it doesn't say anything about moving
6 from one unit to another. Later on there are -- I
7 mean, there are amendments almost daily to the laws
8 out here during that period of time. Do you agree
9 with that?

10 A. There was a lot of them. I wouldn't
11 justify it as daily.

12 Q. Well, almost daily there for a while. I
13 mean, they were coming out with the COVID updates,
14 basically a new law almost every other day. Fair
15 enough?

16 A. Okay.

17 Q. I mean, that's correct, right?

18 MR. WILSON: Your Honor, objection.

19 BY MR. CARRIGG:

20 Q. And so, I mean, you would agree it was a
21 bit of a task for people who rent there to keep up
22 with all of the new regulations that were changing
23 very frequently?

24 A. I'm sure it was probably hard for
25 everybody.

1 Q. Okay. So if this change is agreed to by
2 them on April 1st, would they be considered a new
3 check-in on April 14th?

4 A. Yes, sir.

5 Q. In your mind it would be?

6 A. Yes, sir.

7 Q. Okay. Where is the new check-in defined
8 in the law?

9 A. I don't have it in front of me. Don't
10 know.

11 Q. Well, you're testifying about why the law
12 was changed. Do you know where in there where it
13 defines a new check-in?

14 A. The law, to my understanding, was not
15 changed due to a new check-in.

16 Q. I understand that. But do you know if it
17 defines a new check-in?

18 A. I couldn't tell you that off the top of my
19 head. No, sir.

20 MR. CARRIGG: Thank you. I have
21 nothing further.

22 THE COURT: Mr. Wilson.

23 REEXAMINATION

24 BY MR. WILSON:

25 Q. I just want to clarify one thing. There

1 were a lot of questions about the license plate
2 exhibit. Setting that aside, do you have information
3 that the tenants stayed at 403 West Ashley from
4 April 13th forward?

5 A. Yes, sir. Specifically to the 23rd when
6 we saw Ms. Richardson taking out the trash that day.

7 Q. Taking out the trash that day on
8 April 23rd?

9 A. Yes, sir. Ten days after they checked in,
10 essentially.

11 Q. And do you know, again -- well, I think
12 you already testified, but one of the reasons that
13 the ordinance was being adjusted, certainly not
14 daily, perhaps weekly at this point, was because
15 property managers are trying to get around the
16 existing ordinance?

17 MR. CARRIGG: Objection. Leading.

18 THE COURT: We'll make the record.

19 THE WITNESS: Yeah. As I testified
20 to earlier, that was part of it. The lease
21 agreements were being in place for 30 days out so
22 they wouldn't meet the standard of a long-term rental
23 and when, in fact, they were obviously there for a
24 week.

25 MR. WILSON: That's all I have.

1 THE COURT: Okay.

2 MR. CARRIGG: I have one question
3 based on the new evidence listed in the redirect.

4 BY MR. CARRIGG:

5 Q. Ms. Kennedy is not charged with that,
6 correct?

7 A. With what?

8 Q. With falsifying a lease agreement?

9 A. No.

10 Q. So that's not even part of this case, is
11 it?

12 A. Not to my knowledge.

13 Q. Is the fact that other agencies were --

14 MR. WILSON: Your Honor --

15 THE COURT: We don't need to argue.

16 MR. CARRIGG: Okay.

17 THE COURT: But I do have a question.

18 In Exhibit 4, is this -- does this record vehicles
19 coming onto the island or off the island or both?

20 THE WITNESS: Both.

21 THE COURT: All right. So how do
22 we -- how are we able to tell?

23 THE WITNESS: If you see the
24 passenger side of the vehicle, it's coming on the
25 island. If you see the driver's side, it's leaving.

1 THE COURT: Got you. Anything else
2 of this witness?

3 MR. CARRIGG: No.

4 THE COURT: Lieutenant, thank you
5 very much.

6 MR. UPTON: Thank you, ma'am.

7 THE COURT: Mr. Wilson, anything
8 else?

9 MR. WILSON: I guess I would like to
10 ask that the court -- well, I mean, I assume that the
11 exhibits P to P6 are admitted. These were the ones
12 that were previously exchanged.

13 THE COURT: Yes. So we will admit P1
14 through P6.

15 MR. WILSON: I have some other -- I
16 have some e-mails from Ms. Kennedy to the town marked
17 P7. I've not given you a set of these yet.

18 THE COURT: Okay.

19 MR. WILSON: So P7, P8, and P10, I
20 skipped P9 by mistake, discussing some of the -- it's
21 just her e-mails from the town back and forth and it
22 really just -- it shows that she understood what was
23 going on. It also shows -- there's some suggestion
24 here that -- well, there is a discussion of whether
25 or not the 30 day leases are fake or not and she

1 makes some statements about that that I feel like are
2 -- it goes to why we're, as Mr. Carrigg would like to
3 say, altering our -- amending our emergency
4 ordinance, and that was because the entire island was
5 in an uproar over property managers still moving
6 people in and trying to get around the existing
7 ordinances. So I didn't bring that up. Mr. Carrigg
8 felt to bring it up, but that is why. So it's, to
9 me, you know, complaining about the confusing nature
10 of our emergency ordinances, this would contradict
11 all of that.

12 THE COURT: Okay. And, Mr. Carrigg,
13 do you have an objection to --

14 MR. CARRIGG: Yes.

15 THE COURT: -- those e-mails?

16 What is your objection?

17 MR. CARRIGG: The grounds are that
18 initially if we were going to get into e-mail
19 exchanges, I should have been afforded the
20 opportunity to introduce the other parts of these
21 e-mails. These are parts -- only snippets of
22 conversations and I don't even know what the rest of
23 them are because I haven't had an opportunity to
24 investigate it. You set the rules for this hearing.
25 You said submit the exhibits. We did. I'm living by

1 that term, and I expect he needs to live by that term
2 too and I would object to these. I mean, it doesn't
3 give me the opportunity to do what I needed to do. I
4 mean, there's no discovery here.

5 THE COURT: I understand.

6 MR. CARRIGG: But I would have been
7 able to go through the e-mails that my client had
8 that related to these.

9 THE COURT: Is there a reason why you
10 didn't have these?

11 MR. WILSON: I had forgotten they
12 existed.

13 THE COURT: Okay.

14 MR. WILSON: But, again, you know, I
15 would have hesitated to even bring it up. But the
16 fact that Mr. Carrigg wants to make some point that
17 people were confused by this, that ordinances were
18 changing on a daily basis, this addresses those
19 points.

20 THE COURT: Got you.

21 MR. WILSON: Which, of course, I was
22 unaware of until today.

23 MR. CARRIGG: We've got all this to
24 submit that show that, all the COVID updates that are
25 relevant.

1 THE COURT: Well, if that is an
2 issue -- if that is an issue in this case, then --
3 then I think that's part of the record. But what I
4 will do is give you an opportunity to submit e-mails
5 at a later date, the next three days -- three
6 business days, to address anything that are in these
7 e-mails that in 7, 8, and 10.

8 MR. CARRIGG: Well, I appreciate that
9 Your Honor. My objection is that, one, they're not
10 relevant. She's not charged with not knowing the
11 law. She's not charged with -- I mean, she either --
12 she either violated it or didn't violate it.

13 THE COURT: Right. But if you are
14 making an issue it was confusing and they didn't
15 understand or something to that effect, then that
16 issue becomes relevant. If that's not your argument
17 that it's not confusing --

18 MR. CARRIGG: It is confusing.

19 THE COURT: Right.

20 MR. CARRIGG: We were given a set of
21 rules and --

22 THE COURT: We didn't say nothing
23 else would be admitted, but that certainly was
24 implied. But in this instance, like I said, we can
25 cure that by allowing you to provide --

1 MR. CARRIGG: We'll look into it.

2 THE COURT: -- the rest of the
3 e-mails or whatever is missing in three business
4 days. So we'll take those and admit those in the
5 record as P7, P8, and P10.

6 MR. WILSON: And I don't -- are we
7 going to do maybe closings at the end of everything?

8 THE COURT: Yeah. We'll do a -- we
9 can do a summation at the end sort of linking
10 everything together.

11 MR. WILSON: Then I rest my case.

12 THE COURT: All right.

13 MR. CARRIGG: Your Honor, just as a
14 housekeeping matter, we would offer into evidence
15 exhibits, I think, A through F that were previously
16 forwarded to Your Honor.

17 THE COURT: Yes.

18 MR. CARRIGG: I don't know if you
19 want paper exhibits handed up given all this COVID
20 stuff. You've got them.

21 THE COURT: You've got them -- if
22 you've got them, I will take them. I know it's COVID
23 issues, but I'm --

24 MR. CARRIGG: I haven't tested
25 positive. We've actually been very careful. My wife

1 is on county council in Lexington and we had dinner
2 with someone whose son later testified positive. So
3 we were very restrictive with ourselves until her
4 test came back negative.

5 THE COURT: Got you.

6 MR. CARRIGG: So -- so we don't think
7 we've been around anybody?

8 THE COURT: I'm all right.

9 MR. CARRIGG: All we know Mr. Wilson
10 may have been.

11 THE COURT: Who knows? Anyone one of
12 us could have been.

13 MR. CARRIGG: So I will hand you
14 up --

15 THE COURT: I will take them. You
16 don't have to give them right now.

17 MR. CARRIGG: But I do have them all
18 printed out.

19 THE COURT: I will take them. I like
20 to have the paper. I have -- I have read them all
21 already.

22 MR. WILSON: Can I have a copy of
23 them as well?

24 MR. CARRIGG: Absolutely not. Yes.
25 I'll give you a copy.

1 THE COURT: I've read them all.

2 MR. WILSON: If you're going to be
3 talking about them.

4 MR. CARRIGG: If you will give me a
5 moment --

6 THE COURT: Sure.

7 MR. CARRIGG: -- just to get this
8 together. Some of these actually relate to the
9 preemption argument.

10 THE COURT: Right.

11 MR. WILSON: John, if you just want
12 to just hand them to me as you are discussing them
13 and showing them to the witness, that will work.

14 MR. CARRIGG: That's fine. I've
15 already started, so I might as well finish.

16 THE COURT: All right. And so you
17 have marked these A through S.

18 MR. CARRIGG: That's what they were
19 identified in the e-mail to you.

20 THE COURT: Right.

21 MR. CARRIGG: It was submitted
22 pursuant to your prehearing scheduling order. I
23 guess we can call it that.

24 THE COURT: You can call it that.

25 MR. CARRIGG: As I said, Your Honor,

1 some of these will not be referred to. They really
2 err on the preemption issue. The code, I think, is
3 what they address.

4 THE COURT: All right. Go ahead.

5 MR. CARRIGG: All right. Your Honor,
6 we would call Lajuan Kennedy. I was going to ask she
7 not be required to stand. I assume this microphone
8 works?

9 MR. WILSON: Yeah. And they set it
10 up this way because that's how they do in municipal
11 court.

12 MR. CARRIGG: As long as she can
13 speak into this microphone, I think you probably can
14 hear her.

15 THE COURT: Right. And it's not so
16 much me hearing her as making the record in the
17 recording.

18 THE WITNESS: I will talk loud enough
19 you can hear me.

20 MR. CARRIGG: And I don't remember
21 you swearing the officer in.

22 THE COURT: You know, we did not do
23 that.

24 MR. CARRIGG: Which is interesting.

25 THE COURT: Yes, that is.

1 MR. CARRIGG: I don't have a
2 problem --

3 MR. WILSON: Why don't we do that?

4 THE COURT: Because we don't have a
5 bailiff, which is what our issue is, but we will do
6 that. And I apologize.

7 (Lieutenant Brandon Upton sworn in.)

8 THE COURT: And I apologize.

9 MR. CARRIGG: No problem.

10 THE COURT: Normally we have a court
11 reporter or somebody who does that. Ma'am, you're
12 raising your right hand.

13 LAJUAN KENNEDY,
14 being duly sworn, testified as follows:

15 MR. CARRIGG: I had a trial in
16 Kingstree where the judge forgot to swear in the
17 jury in --

18 THE COURT: There you go.

19 MR. CARRIGG: -- which we caught
20 about midway through the opening statements.

21 EXAMINATION

22 BY MR. CARRIGG:

23 Q. All right. Ms. Kennedy, you are the owner
24 and operator of Fred Holland Realty; is that correct?

25 A. Yes.

1 Q. Where do you reside?

2 A. 32 11th Street on Folly Beach.

3 Q. And how long have you lived on Folly
4 Beach?

5 A. Seventy-five years.

6 Q. And how long have you operated or been
7 part of that Fred Holland Realty?

8 A. Since 1973. Forty-something years.

9 Q. So Fred Holland Realty essentially
10 pre-existed the City of Folly Beach?

11 A. Correct.

12 Q. When you came out here, what form of
13 government did they have?

14 A. We were under the county. Just all of our
15 dealings with the city were under county -- ruled by
16 the county of Charleston.

17 Q. And originally you worked for Fred Holland
18 Realty, correct?

19 A. Correct.

20 Q. And you now own and operate Fred Holland
21 Realty?

22 A. I do, yes.

23 Q. During the -- have you always had a
24 business licenses since the business license
25 ordinance was enacted?

1 A. Yes. The business license for the City of
2 Folly Beach -- we didn't have a business license
3 until after we became a city in 1976, and then they
4 did put in -- and we've had a business license ever
5 since.

6 Q. During the course of that time when you
7 worked for and since you have been operating Fred
8 Holland Realty, has Fred Holland Realty ever had a
9 business license violation?

10 A. No.

11 Q. All right. And does -- is that part of
12 the reason that you are fighting this allegation?

13 A. Absolutely.

14 Q. Do you have a reputation in the community?

15 A. I do.

16 Q. Do you -- are you a Folly Beach public
17 official?

18 A. I am. I chair the planning commission.

19 Q. So you are appointed by the --

20 A. City council.

21 Q. -- city council of Folly Beach?

22 A. Yes.

23 Q. And do you feel like it would be a black
24 mark or detriment on your reputation to have this
25 violation?

1 A. Absolutely.

2 Q. And do you feel like this violation is
3 warranted?

4 A. No, sir.

5 Q. All right. I want to talk to you just
6 briefly about the circumstances here. You're
7 familiar with the onset of COVID?

8 A. Yes.

9 Q. Okay. And when COVID started, the laws
10 out here at Folly Beach started changing; is that
11 correct?

12 A. Yes, yes.

13 Q. Is it a fair assessment to say that there,
14 for a while, things were changing pretty rapidly?

15 A. Yes. Every day or two. Yes. New
16 regulations. Yes.

17 Q. And you were trying to keep up with those?

18 A. Yes.

19 Q. Have you ever intentionally tried to
20 violate or skirt the regulations here on Folly Beach?

21 A. No.

22 Q. Okay. There is this underlying innuendo
23 from opposing counsel that you submitted fake lease
24 agreements and things of that nature. Have you done
25 that?

1 A. No.

2 Q. Okay. You're not charged with that here,
3 correct?

4 A. No.

5 Q. I want to go to Exhibit M. Is this a copy
6 of the notice of violation you received?

7 A. Yes.

8 Q. So this is the -- this encompasses the
9 charge, so to speak?

10 A. Yes.

11 Q. Okay. And what does it say they did? The
12 first paragraph.

13 A. The first -- they moved in a new rental
14 into 403 West Ashley. That was a new check-in
15 meaning, to me, that they just came on the island and
16 checked in the unit, which was not the case.

17 Q. All right. So you contend that was false,
18 correct?

19 A. Correct.

20 Q. And Mr. Pope hand-delivered this to you?

21 A. He did.

22 Q. And Mr. Pope is not here today?

23 A. I don't see him.

24 Q. So let's go back. When the original --
25 there were -- obviously there were orders from the

1 governor's office regarding COVID -- executive orders
2 from the governor's office?

3 A. Yes.

4 Q. Correct?

5 A. Yes.

6 Q. You're required to comply with those?

7 A. Yes.

8 Q. Also, the City of Folly Beach passed an
9 ordinance, 06-20, initially on March 28th; is that
10 correct?

11 A. Yeah. I don't see that in front of me.
12 But, yes, there were several ordinances that were
13 being passed at that time. Yes.

14 Q. So I have, as Exhibit B, submitted a copy
15 of 06-20 which shows its content on -- when passed on
16 March 28th and the amended content as of April 6th.
17 In other words, it shows what they changed on there,
18 correct?

19 A. Yes.

20 Q. Okay. And if you look back on number
21 nine -- excuse me, paragraph nine, originally --
22 yeah. I'm sorry. Paragraph 11. Paragraph 9 dealt
23 with who could come on the island. Originally it
24 said, "Starting on March 29, 2020 at nine o'clock, no
25 new check-ins are permitted and any short-term

1 rentals, hotel or other overnight accommodation,"
2 correct?

3 A. Correct.

4 Q. And then it says, "Visitors currently
5 checked in may remain until the end of their existing
6 reservation."

7 A. Correct.

8 Q. So that only -- to your understanding,
9 that only governs short-term rentals?

10 A. Yes.

11 Q. Did the ordinance define short-term
12 rentals?

13 A. No.

14 Q. It's an emergency ordinance they're
15 putting out there and there's all these new rules,
16 right?

17 A. Yes.

18 Q. Did they tell you what a short-term rental
19 was?

20 A. No.

21 Q. Is there a -- to your knowledge, is there
22 a provision in the Folly Beach code of laws or code
23 of ordinances that define short-term rentals?

24 A. I'm not aware of it if it's there.

25 Q. Did anyone serve you or did they give you

1 any notice of what a short-term rental is?

2 A. No.

3 Q. I mean, you just took it to be a week-long
4 rental?

5 A. Well, a short-term rental, to me, is
6 anything under 30 days. That's my definition.

7 Q. That's -- that's what you understood?

8 A. That's what I understood short-term rental
9 was.

10 Q. Did anyone at the city confirm that to
11 you --

12 A. No.

13 Q. -- at any point?

14 So that was what everyone was sort of
15 operating under?

16 A. Yes. That's the assumption. Yes.

17 Q. Anything over 30 would have been --

18 A. A long-term rental.

19 Q. -- a long-term rental?

20 A. Uh-huh.

21 Q. So long-term rentals were permitted?

22 A. Yes.

23 Q. Under this ordinance?

24 A. Under this one. Yes.

25 Q. Okay. Now, let's get to the COVID

1 updates. What is a COVID update?

2 A. They were reacting to what was going on
3 and trying to pass ordinances for the best interest
4 of the city. If the governor was changing something,
5 then the city needed to match what was going on. It
6 was -- it was under a fluid situation moving.

7 Q. So we have Exhibit C. This is actually
8 COVID update No. 5. So there had been four other
9 ones before that, correct?

10 A. Yes, yes.

11 Q. And COVID update No. 5 was passed on --
12 was sent out Tuesday, March 24th; is that correct?

13 A. That's the date here. Yes.

14 Q. This is actually an e-mail?

15 A. Yes.

16 Q. I used to receive these by e-mail, but I
17 was taken off the e-mail. In any event, it basically
18 says no new check-ins are permitted and it parrots
19 what's in the ordinance, correct?

20 A. Yes, it does. Yes. Uh-huh.

21 Q. There's another COVID update that was done
22 March 27th. This is COVID update No. 7, correct?

23 A. Yes.

24 Q. Okay. And it basically -- a lot of these
25 were changing the situation with the gate, correct?

1 A. Yes.

2 Q. The roadblock that they had?

3 A. Roadblock and then taking the roadblock
4 down. Yes.

5 Q. Putting it back up?

6 A. Putting it back up. Yes.

7 Q. Moving it from --

8 A. Right. Blocking the accesses, opening the
9 accesses. All of the above.

10 Q. Right. So there were a lot of things
11 going on, and you're getting these COVID updates and
12 you're trying to comply?

13 A. Yes.

14 Q. And I think this one, COVID update No. 7,
15 does deal with short-term rentals?

16 THE COURT: Is that Exhibit F?

17 THE WITNESS: Yes.

18 MR. CARRIGG: Yes, Your Honor.

19 BY MR. CARRIGG:

20 Q. It says, "Short-term rentals and other
21 rental accommodations may permit new check-ins." So
22 they're opening up. Everybody can check in?

23 A. Uh-huh.

24 Q. Right?

25 A. Correct.

1 Q. So short-term, hotels, anything, but
2 they've got to comply with the governor's orders?

3 A. Correct.

4 Q. Sometime between the 24th -- the 24th and
5 COVID update 5, there was a COVID update 6 and then a
6 COVID update 7 and the rules were completely changed,
7 correct?

8 A. Correct.

9 Q. Okay. Did you book anything new while
10 this was in place?

11 A. The only things we were booking were
12 things that were -- that we felt like were safe, were
13 things in the summertime.

14 Q. All right. Let me show you G. That was,
15 what, the next day, the 28th, Saturday, in fact, at
16 four o'clock in the afternoon and things completely
17 changed again?

18 A. Yes, sir.

19 Q. So the 27th, you're good to check in
20 anybody. The 28th, nobody can check in?

21 A. Right.

22 Q. Not nobody, but no short-term?

23 A. No short-term rentals. Correct.

24 Q. So, I mean, when you were saying that
25 things were changing on a very fluid basis on

1 March 24th, 25th, and 26th, you couldn't check
2 anybody in, the 27th you could check people in, and
3 the 28th you couldn't check people in?

4 A. Correct.

5 Q. So it's not an unfair statement to say
6 things were a bit confusing?

7 A. Very. Yes.

8 MR. WILSON: Your Honor, I just -- I
9 have to object because that's a gross misstatement of
10 what was going on.

11 THE COURT: All right.

12 MR. WILSON: There were two
13 ordinances on short-term rentals, which you've got.

14 MR. CARRIGG: These are ordinances
15 being sent out by the City of --

16 THE COURT: Mr. Carrigg, hold on.
17 These aren't ordinances. These are updates. Have we
18 established -- Ms. Kennedy, did you get these
19 updates?

20 THE WITNESS: Yes, I did.

21 THE COURT: Okay. All right.

22 MR. WILSON: I mean, the city will
23 stipulate that we did our best to keep everyone
24 informed throughout this pandemic and that's what an
25 update is.

1 THE COURT: Sure. Okay. All right.
2 So we've got the -- okay. So we've got the updates.

3 MR. CARRIGG: I understand. I'm just
4 going through -- you know, he was saying everything
5 was -- that we said it was confusing. I'm just --
6 he's submitting the e-mails about lack of confusion.
7 I'm just showing you evidence that there was a good
8 bit of confusion.

9 THE COURT: And you brought up the --
10 right. Okay.

11 MR. CARRIGG: So what's good for the
12 goose is good for the gander, so to speak.

13 MR. WILSON: Well, I mean, to be
14 clear, this issue was raised by Mr. Carrigg. I mean,
15 I -- that's all. These are -- to be clear, we had --
16 we've charged her under one short-term rental
17 ordinance that was amended from a prior one --

18 THE COURT: Right.

19 MR. WILSON: -- in response to people
20 trying to get around it, and that's the beginning and
21 the end of our ordinances until we lifted the ban on
22 short-term rentals. All these other ordinances, all
23 these other updates, as he's acknowledged, are mostly
24 about access to the island, which we did have to
25 tweak a lot for the same reason because people were

1 using all kinds of loopholes to get out on the island
2 and we had to close those loopholes. And these
3 updates are nothing but trying to keep people
4 informed about what we're doing. I would also say
5 the ignorance of the law is, obviously, not an
6 excuse, which seems to me to be wandering very far
7 field.

8 THE COURT: I get it. I get it.

9 MR. CARRIGG: Well, Your Honor, and I
10 don't mean to belabor the point, but, I mean, I'm
11 only introducing the ones that changed the rental
12 situation. I'm just trying to give Your Honor a
13 flavor of --

14 THE COURT: I understand what you're
15 doing.

16 MR. CARRIGG: -- how fluid the
17 situation was with all of this.

18 THE COURT: I understand what you're
19 doing.

20 MR. CARRIGG: And the reason for that
21 is this: The way the facts of this thing lay out is
22 the ordinance was only amended one time, so -- but
23 there are always updates that seem to be regulations.
24 We don't know what they -- we're not 100 percent what
25 they are. It's illegal to not do it.

1 MR. WILSON: Your Honor --

2 THE COURT: Let him finish his point.

3 MR. CARRIGG: But the way this thing
4 lays out, you had rules about no short-term rentals,
5 being new check-ins, that was established on, I
6 think, March 24th. On April 1st --

7 MR. WILSON: That was a state rule.

8 MR. CARRIGG: Your Honor, I would
9 appreciate it if he will just wait until I'm
10 finished.

11 So you had rules that were in place
12 on March -- I think the -- whenever the first
13 COVID -- excuse me, whenever the first ordinance was
14 enacted on Folly Beach, March the -- I may be getting
15 the date wrong. I don't want to -- but the first
16 06-20 ordinance. It was -- so they were operating
17 under those set of rules. These people were staying
18 at one address. It was necessary for them to move to
19 another address to complete their stay, and so that
20 was done April the 1st before the change in the
21 rules. The rules changed April 6th to say no new
22 people out here, period.

23 So, you know, they -- what I'm
24 getting at is this: Is what you have is the -- they
25 put in place a set of rules, which I've shown is

1 really kind of fluid. My client is trying to live by
2 those rules. She makes a reservation. This lady --
3 and you'll hear that testimony in a little bit. The
4 lady has COPD. The people live in Hanahan. I mean,
5 they're not from, like, New York City or anything.
6 The lady had COPD. Her daughter who is a nurse at a
7 hospital treating COVID patients who lives with her.
8 Now the daughter is building a house --

9 THE COURT: Right. But what does
10 that have to do with the definition of short-term
11 rental, which is exactly -- we are looking at the
12 short-term rental. We'll do -- you can do your
13 summation later, but the issue right now which y'all
14 are arguing over is talking about these -- these
15 various updates.

16 MR. CARRIGG: Right.

17 THE COURT: To me, really, you're
18 just arguing at this point because we're already
19 considering these updates. So just proceed with your
20 evidence so you can make your record. We'll do our
21 arguments at the end.

22 MR. CARRIGG: That's fine. I'm just
23 saying that's why I'm putting this in, is because the
24 people were extended before the law was changed.

25 THE COURT: I understand. I

1 understand that point. I understand that's your
2 point. All right. So just proceed with the
3 evidence, please.

4 MR. CARRIGG:

5 Q. All right. So -- and just to reference,
6 we also included in the evidence H, I, J, K, L, O --
7 and O were all additional COVID updates issued by the
8 mayor of Folly Beach, correct? Those were all
9 additional COVID updates issued by the mayor?

10 MR. WILSON: Objection, Your Honor.
11 They're not coming from the mayor.

12 MR. CARRIGG: (Inaudible.)

13 THE WITNESS: These were city updates
14 and, yes, they were coming out rather frequently.
15 Yes.

16 BY MR. CARRIGG:

17 Q. Okay. And these are all in evidence, and
18 I assume y'all are trying to comply with each and
19 every one of these, correct?

20 A. Yes.

21 Q. All right. So let's get to the
22 circumstance of the Richardsons' reservation. When
23 did -- and I'm going to show you Exhibit P which is a
24 calendar, Exhibit Q which is another calendar, and
25 Exhibit R and S which I don't have extra copies of,

1 and I want you to, if you can, please explain to us
2 what the timeline was with these folks checking in.

3 A. When the Richardsons were in the property
4 at 208 Ashley, they checked in there. They were
5 going to need more time than was available at this
6 particular residence because she couldn't go home at
7 that particular time.

8 Q. All right. So let me ask you -- let me
9 just ask you, was it kind of extenuating
10 circumstances with these folks?

11 A. Yes, yes.

12 Q. What?

13 A. She could not -- she could not go back
14 home. Her daughter was still living in her house
15 waiting for a home to be built and the daughter
16 worked with COVID patients. Ms. Richardson has COPD.
17 So she needed to stay out or away from that situation
18 and she was already on the island. She had already
19 checked in prior to any of this going on. We didn't
20 see -- I mean, she was there. She was already
21 checked in. What was the difference in her staying
22 at 208 or 403? She was already on the island.

23 Q. All right. Let me ask you a question:
24 What is a new check-in?

25 A. A new check-in would be the first time

1 somebody checked into Folly Beach.

2 Q. Is it uncommon for you to have to move
3 people from one residential address to another
4 residential address?

5 A. No. I wish it was uncommon, but it's not.
6 Things happen. They need to stay longer for whatever
7 reason. And this was happening in the spring. The
8 air conditioning goes down, the boardwalk collapses.
9 Any number of things that we would have to move a
10 person from Point A to Point B after they checked
11 into one unit and moved to another. Yes.

12 Q. All right. Are they considered a new
13 check-in?

14 A. No. They are already with us. They've
15 already checked in. They are already part of the
16 system.

17 Q. They are already registered. They already
18 got their --

19 A. They've signed -- they've signed their
20 license agreement and -- yes. And they only sign a
21 license agreement once.

22 Q. So there is no new check-in if they move
23 to a different --

24 A. No.

25 Q. -- residential address?

1 A. No.

2 Q. All right. And what were the
3 circumstances that caused this individual to have to
4 move to a different address?

5 A. 208, the owner needed to have his house
6 and could not allow her to be extended. We called
7 him first to see if he would allow her to be extended
8 and he said no, he had to have the house. So then we
9 had to look for some place for her to go.

10 Q. Okay. And that was done when?

11 A. I'm not sure exactly when that was. Anna
12 can probably tell us a little bit more on that.

13 Q. Well, based on the records, was that done
14 on April 1st?

15 A. Yes. It looks to be so.

16 Q. And these were entries in the record
17 from --

18 A. These are -- these are -- yeah. Every
19 time the record is touched, there's a date on it.

20 Q. There's a date on it?

21 A. Uh-huh.

22 THE COURT: What are we looking at?

23 THE WITNESS: These are reservation
24 histories --

25 MR. CARRIGG: RFs.

1 THE WITNESS: -- for the --

2 THE COURT: They're RFs?

3 THE WITNESS: Uh-huh. They're the
4 history of payments and everything else on the
5 reservation for a particular client. Every time the
6 record is touched, it's a date and all on there.

7 BY MR. CARRIGG:

8 Q. And so I'm looking at Exhibit S. It
9 indicates an entry by Anna Brown on 4/1/2020 at,
10 looks like, 1:20 and 1:21 p.m.?

11 A. Right.

12 Q. And that's when she's paying for the
13 extension?

14 A. Correct.

15 Q. So she was paying for an extension of time
16 because she couldn't return home?

17 A. She could not return home. Yes. That was
18 the request that we had to find some place for her.
19 She could not return home.

20 Q. And at the time there was nothing wrong
21 with it?

22 A. No.

23 Q. You could do long-term rentals. She
24 wanted another 30 days on the island, correct?

25 A. Yes. She needed to have more time on the

1 island. Yes.

2 Q. To get away from --

3 A. Her situation at home. Yes.

4 Q. So based upon all of the ordinance issues
5 at the time and -- that was in place, which was the
6 original 06-20?

7 A. Right.

8 Q. There was nothing wrong with moving the
9 reservation?

10 A. There was nothing wrong with moving the
11 reservation at that time. No.

12 Q. Okay. Now, she didn't physically move on
13 that date, correct?

14 A. No, she did not. She did not move until
15 the 13th -- 13th, 14th.

16 Q. And why was that?

17 A. Well, she was in the one property and she
18 could stay there until this given date and then she
19 had to leave. So that was the reason for her
20 leaving. She didn't want to get up out of one and go
21 to the other one immediately. She stayed out her
22 time at the 208 and then moved to the other property.

23 Q. Okay. And let me ask you this: I mean,
24 did you understand that you needed to call and okay
25 this with the city in advance?

1 A. I did not at that time. No.

2 Q. Have you had a circumstance subsequent to
3 this under the new ordinance where the same
4 circumstances occurred?

5 A. Yes. We had a property on the west end of
6 the beach that some people were from New York. They
7 couldn't go home, needed to extend. We could not
8 extend on that particular property because the owner
9 was doing some work on it. So we extended those
10 people and moved them from 1002 West Ashley to 1707
11 East Ashley, and I did call Aaron and ask him if it
12 was okay for that move and he okayed me to do that
13 move. Yes.

14 Q. So that one was perfectly fine?

15 A. That was fine, yes, to move that resident.

16 Q. And when was that?

17 A. The date is on it, you're going to tax my
18 memory.

19 Q. Here. I'm going to let you look at it.

20 A. Okay. All right. These are the people
21 and they were staying at a property on the west end
22 of the beach and they needed to have more time, so we
23 moved them. They would have been there --

24 MR. WILSON: Excuse me. Are those
25 exhibits?

1 THE WITNESS: No. These are -- these
2 are records --

3 MR. WILSON: Can we make those part
4 of the record?

5 MR. CARRIGG: Not all of them.

6 MR. WILSON: Well, then she can't
7 read from them.

8 THE COURT: If she's reviewing them,
9 then they need to be part of the record.

10 MR. CARRIGG: That's fine. We can
11 move them in evidence. That's fine.

12 MR. WILSON: Show me which ones they
13 are.

14 THE WITNESS: Okay. All right. The
15 property -- she moved to the 1707 property on
16 March 15th, stayed until May 31st. And then there
17 should be another one in here that shows where she
18 was -- it should be one that shows her where she's at
19 1002 West Ashley.

20 BY MR. CARRIGG:

21 Q. Are we missing something here?

22 A. Yeah. We're missing the 1002 West Ashley
23 where the couple was there and needed -- then they
24 needed more time.

25 Q. All right. Well, I --

1 A. And that particular one could not return
2 to New York at that point, so we had to find some
3 place for them.

4 Q. All right. So you're missing -- let's
5 see.

6 A. We're missing the 1002 West.

7 Q. Here's an e-mail -- this is an e-mail to
8 Aaron Pope from Anna.

9 A. Right. Anna is -- is, yeah, telling him
10 what is going to happen, we're transferring them from
11 1002 West Ashley to 1707 East Ashley.

12 Q. And that was April 29th?

13 A. Yes.

14 MR. CARRIGG: We offer these two into
15 evidence.

16 THE COURT: Okay.

17 MR. CARRIGG: I don't have extra
18 copies.

19 THE COURT: So what we have is
20 Exhibit T is a Wednesday, April 29 e-mail from
21 Anna West to Mr. Pope -- Aaron Pope, and a Fred
22 Holland Realty document dated April 29, 2020
23 concerning reservation 104408.

24 MR. CARRIGG: For 77 nights.

25 THE COURT: Okay.

1 MR. CARRIGG: I think that's what it
2 says.

3 THE COURT: Yes. This one says 77
4 nights.

5 BY MR. CARRIGG:

6 Q. All right. So there was -- was there any
7 difference in that circumstance and the Richardsons'?

8 A. No. The same scenario. They couldn't
9 stay where they were. They needed to stay on the
10 island longer. So we moved them from Point A to
11 Point B.

12 Q. And these were people from New York City,
13 correct?

14 A. These were New York City for the 1022.
15 Yes.

16 Q. And they just didn't want to go back to
17 New York?

18 A. They didn't want to go back to New York.
19 No.

20 Q. And you spoke --

21 THE COURT: Let me pause you here.
22 So what I have here is we've got an arrival March
23 15th, check out May 31st, 77 nights.

24 THE WITNESS: Yes. That's the second
25 reservation that the people were moved to.

1 THE COURT: So I don't see where
2 they're moved.

3 MR. CARRIGG: I have -- I wasn't
4 planning on offering it. I was just going to let her
5 use her records to testify.

6 THE WITNESS: We don't have a copy of
7 the record that shows where they were staying at 1002
8 West Ashley.

9 MR. CARRIGG: We can provide that.

10 THE WITNESS: We can provide that
11 information showing the time frame that they stayed
12 at 1002 and then the fact that they needed to stay
13 longer. So they could not stay in that particular
14 property, so we moved them to another property on the
15 opposite end of the beach.

16 THE COURT: All right. So this is --
17 they were initially at 1002 West Ashley?

18 THE WITNESS: Yes.

19 THE COURT: This property -- so this
20 has an arrival date of March 15th, but they actually
21 did not arrive and check in -- when they checked in,
22 they did not check into the property on this page?

23 THE WITNESS: No. And we do not have
24 a copy here of the reservation for the 1002 West
25 Ashley because they were -- and they're January,

1 February, part of March, and didn't -- didn't want to
2 go home, couldn't go home, whatever the scenario was,
3 so they were moved from the property on the west end
4 of the beach to the one on the east end.

5 THE COURT: And they moved on
6 March 15th?

7 THE WITNESS: They moved on
8 March 15th because the owner was coming onto the
9 property on the west end. Yes. I think we were just
10 trying to show that this does happen. We have to
11 move people from Point A to Point B at times.

12 THE COURT: Sure. All right.

13 BY MR. CARRIGG:

14 Q. All right. So did -- when you were moving
15 the Richardsons --

16 A. Yes.

17 Q. -- did you in any way feel like you were
18 violating any of the provisions of the Folly Beach
19 laws?

20 A. No, no.

21 Q. What is -- I guess, does Folly -- did
22 Folly Beach give you any guidance as to what a new
23 check-in was?

24 A. No. I think it was very new to them as to
25 what they were doing, and so a new check-in involved

1 later on in different rules that came up as to what
2 that really represented because it wasn't defined
3 originally.

4 MR. CARRIGG: I don't have anything
5 further. Please answer any questions Mr. Wilson may
6 have.

7 EXAMINATION

8 BY MR. WILSON:

9 Q. Do you have P2 and P3 in front of you? I
10 don't want to hover over you. So let's look at P2.
11 Is this a -- what looks like the kind of thing y'all
12 hand out to your rental guests?

13 A. This we -- we can send it to the rental
14 guests. We were using it during the time we're
15 talking about to prove that they were supposed to be,
16 you know, in that particular residence. So we
17 printed these for the different tenants, but normally
18 this is just something that they receive in an e-mail
19 when they make the reservation.

20 Q. And so the Richardsons checked in -- is
21 the information on this sheet accurate? Let me ask
22 you that.

23 A. It should be.

24 Q. Take your time.

25 A. As far as on the -- let's see. This is

1 moving the Richardsons to the 403 property to --

2 Q. No. Ms. Kennedy, let's just talk about
3 P2.

4 A. Okay. All right.

5 Q. Is the information on P2 accurate?

6 A. Yes. That information is, to my
7 knowledge, yes, is accurate.

8 Q. So the Richardsons rented 106 West Hudson?

9 A. No. That is my address --

10 Q. I'm sorry.

11 A. -- which is on the top there.

12 Q. Where is the rental address on this?

13 A. Okay.

14 THE COURT: It's below the first
15 line.

16 MR. WILSON: Is it under -- I don't
17 know.

18 THE COURT: It's just hard to read.

19 THE WITNESS: It's very hard to read.

20 BY MR. WILSON:

21 Q. 208 East Ashley, right?

22 A. Yes.

23 Q. Right above the top. Okay. So they
24 rented 208 East Ashley?

25 A. Yes.

1 Q. And the check-in date was March 19th?

2 A. Correct.

3 Q. And the check-out date was April 14th?

4 A. Correct.

5 Q. And then the rate was -- is there a daily
6 rate?

7 A. No, sir. This -- they were paying based
8 on a monthly rate of \$1,800. It's not a daily rate.

9 Q. Okay. But this was not a 30-day rental --
10 I mean, this was not a long-term rental?

11 A. This was not a long-term. This is a
12 short-term rental.

13 Q. Okay. Because it's less than 30 days?

14 A. It's less than 30 days.

15 Q. And just to be clear, I mean, you said
16 you're unaware of any ordinance defining short-term
17 rentals?

18 A. There may be some ordinances around, but
19 I'm not sure it says exactly what they are.

20 Q. Have you ever gone and looked at Folly
21 Beach's short-term ordinance?

22 A. No.

23 Q. Okay. So if I showed it to you, it would
24 be the first time ever?

25 A. It would be the first time I looked at it.

1 Yes.

2 Q. Okay. Well, I'm going to show you with my
3 computer, because that's what I've got, ordinance
4 117.01, which is the first section of our short-term
5 rental chapter, and I'm going to show you short-term
6 rentals. They are defined there down at the bottom,
7 and what does it say?

8 A. "Short-term rentals less than 30 days used
9 in a manner consistent with the residential character
10 of the dwelling. Tourist accommodations, hotels,
11 motels, bed and breakfasts, all considered short-term
12 rentals."

13 Q. Less than 30 days?

14 A. Less than 30 days. Yes.

15 Q. So that's news to you?

16 A. No. That would be something that I was
17 aware of, short-term rentals less than 30 days. Yes.
18 Before reading that particular ordinance, no.

19 Q. Because you had never read it?

20 A. I have not read it, no.

21 Q. In any case, P2, the first rental contract
22 that the Richardsons had, the rate -- the charge is
23 \$2,527.90s?

24 A. Well, that's with everything on it with
25 the taxes and everything on it. Yes. Their rental

1 rate for that time frame is \$1,800, and then you
2 would have 14 percent tax and so forth.

3 Q. Okay. The rental rate is \$1,800?

4 A. Uh-huh. Yes.

5 Q. Okay. So now let's look at P3. Now, is
6 this a different guest rental agreement?

7 A. This is a different agreement because this
8 is a different property. The owners -- you
9 couldn't -- you couldn't post them both on the 208
10 because the 208 owner would get all the money and the
11 403 owner would not get any money. So you have to
12 have two different reservations tied to the
13 particular owner. These reservations are tied to the
14 owner's account. So this shows on the 403, it shows
15 what the guest was being charged and, again, your
16 taxes and so forth that are on there and that's
17 what's on this one. And this is a different owner,
18 so it's going to be a different contract.

19 Q. So the Richardsons, this is their second
20 rental contract?

21 A. Correct.

22 Q. For the property that is a different
23 property, 403 West Ashley?

24 A. Correct.

25 Q. And the dates are 4/13 to 4/30?

1 A. Correct.

2 Q. So it begins when the other one ended?

3 A. Correct.

4 Q. And it's not a long-term. It's a
5 short-term rental, correct?

6 A. A little different on that one. She was
7 to be there for the -- for a month at the one
8 property, but couldn't stay for the month at the one
9 property. She actually accumulatively stayed for 30
10 days, but in two different properties.

11 Q. Yes. This contract, though, is for less
12 than 30 days?

13 A. It is.

14 Q. Okay. And what is the rental rate?

15 A. The rental rate on that is \$1,081.33.

16 Q. So it's a different rental rate?

17 A. It is a different rental rate. You're
18 dividing it between two different owners for the time
19 frame.

20 Q. And something that has been overlooked.
21 Do you have the ordinance, P1? You've got right in
22 front of you there. Yeah. Right where your hand is.
23 There you go?

24 A. This one?

25 Q. Yes, ma'am.

1 A. All right. Got it.

2 Q. I don't know which -- okay. Yeah. So if
3 you go -- I just want to clarify the provision that
4 we're talking about. We're looking at P1, section
5 11, which is the provision that you've been charged
6 under.

7 A. Starting on April 7, 2020 at 9:00 a.m.?

8 Q. Yes.

9 A. That's the one we're referencing?

10 Q. Yes. The -- what does the last sentence
11 says?

12 A. "Visitors currently checked in may remain
13 until the end of their existing reservations."

14 Q. Okay. So that much was clarified in the
15 ordinance, correct?

16 A. It is.

17 Q. And you testified that you tried to comply
18 with all of the governor's orders as well?

19 A. The ones we could get ahold of. He was
20 issuing orders pretty fast as well.

21 Q. The ones you could --

22 A. Well, we got updates for things that
23 applied to us as much as we could.

24 Q. From whom?

25 A. Well, you could go on the Charleston -- I

1 mean, the South Carolina government website and pick
2 them up.

3 Q. You can, can't you?

4 A. Uh-huh.

5 Q. And the updates that Folly Beach provided
6 you also?

7 A. Yes. Folly Beach actually sent them to
8 me.

9 Q. Well, there you go. So beginning -- at
10 one point the governor ordered no more new check-ins
11 from anyone from a COVID hot spot under a CDC travel
12 advisory. Do you recall that?

13 A. Yes, I do.

14 Q. All right. What did you do to comply with
15 that?

16 A. Well, at that particular time we had to
17 look to where our people were coming from, if they
18 were coming from areas like that. That didn't last
19 very long, but we had to take that into
20 consideration. Many of the guests for our springtime
21 were pretty well local. Not so many of them coming
22 from New York like the one guest that was there for
23 several months.

24 Q. Did you check in anyone from New York, New
25 Jersey, or Connecticut during that time?

1 A. Not that I'm aware of.

2 Q. Did you do -- did anyone go look at the
3 CDC website to see if there was a CDC notice as to a
4 location with extensive community transmission of
5 COVID-19?

6 A. No, we probably did not.

7 Q. Just to clarify, y'all went on at length
8 about a situation where the city allowed you to move
9 a New York family or couple to another property,
10 right?

11 A. Correct.

12 Q. Isn't the difference there is that you
13 reached out to the city before you moved them?

14 A. Yes.

15 Q. Okay. And the city decided to work with
16 you on that?

17 A. The city okayed the move. Yes.

18 Q. They didn't say, "Oh, this isn't a
19 violation of our ordinance"?

20 A. They didn't say anything other than they
21 said we could move them. Yes.

22 Q. Okay. But the city did not say, "Oh, this
23 is not a violation"?

24 MR. CARRIGG: Well, Your Honor, I
25 mean, I don't know --

1 MR. WILSON: Excuse me. I didn't
2 interrupt you during your --

3 MR. CARRIGG: I'm objecting.

4 THE COURT: He can object. What's
5 your objection?

6 MR. CARRIGG: Is he's testifying. I
7 mean, I understand --

8 THE COURT: Well, he's asking
9 questions. He's asking questions. Go ahead.

10 BY MR. WILSON:

11 Q. I mean, the implication was that the city
12 has been -- there's not a violation here because the
13 city allowed you to do it. So I just want to clarify
14 that it was the city allowed you to move those people
15 because you reached out beforehand?

16 A. Yes.

17 Q. At no point did anyone from the city --
18 did anyone from the city tell you, no, that's not
19 even a violation. They just decided they weren't
20 going to enforce the ordinance because you reached
21 out?

22 A. I guess that might be true, but the only
23 thing I was asking -- we were asking the city is we
24 have a situation with a guest. Is it possible to
25 move the guest from Point A to Point B, and we got an

1 okay from the city that it was.

2 Q. For that one guest?

3 A. That's correct.

4 Q. And nobody said because it's not a
5 violation of the ordinance?

6 A. Nobody referenced the ordinance, period.

7 THE COURT: My question is: When did
8 that happen? When did you talk to the city? On
9 April 29th, is that --

10 THE WITNESS: Yes, yes.

11 MR. CARRIGG: I've got another
12 witness here for that.

13 THE COURT: You've got another
14 witness for that. All right.

15 MR. CARRIGG: She's going to deal
16 with that.

17 THE WITNESS: She'll have a little
18 more on the date.

19 THE COURT: Sure. All right.

20 MR. WILSON: That's all the questions
21 I have. Thank you.

22 THE COURT: Okay. All right.
23 Anything else for this witness?

24 REEXAMINATION

25 BY MR. CARRIGG:

1 Q. I just have one question about the -- this
2 last series of questions you were asked. Did you --
3 did you understand that the city was allowing you to
4 break the law?

5 A. No.

6 Q. You wouldn't want to do that, correct?

7 A. Not. If it was against the law, no. We
8 were asking was it possible to move the guest, and we
9 were given the okay it was.

10 Q. Did they say, "Hey, this is a violation of
11 the law, but we're going to let you do it anyway"?

12 A. No. They just said it was okay to make
13 the move.

14 Q. Okay. So they said it was okay?

15 A. Uh-huh. They said it was okay.

16 Q. All right. Now, let me ask you this: Are
17 these documents that have been submitted, these
18 photographs of these rental authorizations, are they
19 absolute -- do they reflect when the person first
20 checks in?

21 A. There is a -- if you pull the history of
22 it, it will -- every transaction every time on
23 that -- whatever goes on with that reservation, yes,
24 it tracks it.

25 Q. Right. But that's -- those exhibits are

1 not the complete tracking of the reservation?

2 A. No.

3 Q. It's only part of it?

4 A. Part of it. Yeah.

5 Q. So they don't reflect when the original
6 call was made at the time?

7 A. You can go into the history of this, but
8 it's not printed out on a document like this that you
9 would use to give to the guests.

10 Q. That's Exhibit P2 and P3?

11 A. Right. You would have to go in and look
12 at the history of the reservation. The history of
13 the reservation would tell you what you needed to
14 know.

15 Q. Those are the -- those are the exhibits
16 that we submitted, correct, that have the history of
17 the reservation?

18 A. It has the history of the reservations.

19 Q. It's on the table here. I think it's Q
20 and S or R and S, maybe.

21 A. This is a more detailed history. It dates
22 on each side when the reservation was made; if
23 there's any changes, when; if payments are posted,
24 when; and a brief explanation as to what it was, and
25 then the distributions on the monies going to the

1 owner, distributions on the money going to the
2 plaintiff and so forth. It's a complete record of
3 that reservation.

4 Q. All right. And this is basically input by
5 you, but this is a -- this is --

6 A. This is a program -- this is a VRN, a
7 virtual resort manager, and their program tracks the
8 history of every transaction on that reservation.

9 Q. And part of that is your accounting
10 software so you know who you're sending money to?

11 A. That's correct.

12 MR. CARRIGG: All right. I don't
13 think I have any further questions.

14 THE WITNESS: Okay.

15 THE COURT: All right. Let's take a
16 five-minute break, if we can.

17 (Off the record.)

18 THE COURT: We are currently back on
19 the record.

20 MR. WILSON: I don't know -- how many
21 witness are we going to have?

22 MR. CARRIGG: Three.

23 MR. WILSON: Three more or two?

24 MR. CARRIGG: Two more.

25 MR. WILSON: I would just make a

1 point that we're now an hour into y'all's
2 presentation. The city took 30 minutes. I think the
3 points have been made. I would ask, at the very
4 least, that it be done swiftly.

5 THE COURT: Proceed.

6 MR. CARRIGG: Thank you.

7 BY MR. CARRIGG:

8 Q. Ms. Brown --

9 THE COURT: First of all, who do we
10 have here?

11 MR. CARRIGG: State your name,
12 please.

13 THE WITNESS: My name is Anna Brown
14 West.

15 THE COURT: Anna Brown West.

16 THE WITNESS: Yes.

17 THE COURT: Let me swear you in, Ms.
18 West.

19 ANNA BROWN WEST,
20 being duly sworn, testified as follows:

21 EXAMINATION

22 BY MR. CARRIGG:

23 Q. All right. Are you Ms. Brown or Ms. West?

24 A. Call me Anna.

25 Q. There you go. That solves the problem.

1 All right. Anna, who are you employed with?

2 A. Huh?

3 Q. Who are you employed with?

4 A. I'm employed with Fred Holland Realty.

5 Q. And how long you have you worked there?

6 A. I have been there since 2016.

7 Q. All right. And do you handle

8 reservations?

9 A. Yes, sir.

10 Q. All right. Did you -- were you involved
11 in the Richardson reservation?

12 A. Yes, sir, I was.

13 Q. All right. Were you also involved in the
14 New York reservation we talked about?

15 A. Yes, sir, I was.

16 Q. So you had involvement with both renters?

17 A. Yes, sir.

18 Q. Okay. The Richardson reservation, did you
19 personally speak to one of the Richardsons, either
20 Ms. Richardson or Mr. Richardson, about the extension
21 of the reservation?

22 A. Yes, sir.

23 Q. They actually made their reservation back
24 before any emergency ordinances were passed on Folly
25 Beach, correct?

1 A. Correct.

2 Q. March...

3 A. 17th.

4 Q. 17th. We were just living by regular old
5 law, right?

6 A. Correct.

7 Q. No emergency ordinances, nothing?

8 A. No.

9 Q. So they made a reservation and at some
10 point in time they -- did they extend the
11 reservation? What exactly occurred?

12 A. Their intent was to extend the reservation
13 because she was an immune, compromised person, and
14 her husband wanted to bring her down to the beach to
15 isolate herself because of her conditions at home.

16 Q. So that's why she originally got here?

17 A. Yes, sir.

18 Q. And was it April 1st when the reservation
19 was extended so their whole stay was over 30 days?

20 A. Correct. Yes, sir.

21 Q. Okay. So in your mind in making this
22 extension, were they now long-term renters?

23 A. Yes, sir.

24 Q. Because they're going to be there -- they
25 had gotten there on March 14th or 15th?

1 A. They made the reservation on March 17th,
2 and they arrived on March 20th.

3 Q. March 20th. And they were going to stay
4 on until May, correct?

5 A. Correct.

6 Q. And, to your knowledge, you were trying to
7 keep track of the laws as they were changing --

8 A. Yes, sir.

9 Q. -- on Folly Beach?

10 A. Yes, sir.

11 Q. To your knowledge, were you violating any
12 laws by extending them on April 1st?

13 A. No, sir. Not at all.

14 Q. Okay. They didn't -- they weren't
15 required to move immediately, correct?

16 A. Correct. Because they had paid their
17 money for 208 East Ashley.

18 Q. And so you try to get the original owner
19 the most amount you can?

20 A. Correct.

21 Q. So they stayed there until the 14th?

22 A. Correct.

23 Q. And then they were relocated to this
24 other --

25 A. On the 13th. Monday the 13th.

1 Q. Were they rechecked in?

2 A. No, sir.

3 Q. Did they sign a new license agreement?

4 A. No, sir.

5 Q. Did you bring them down -- when someone
6 checks in, they come to the office, right?

7 A. He had to come by and pick up the key
8 because this home was not a code door lock. So he
9 had to pick up a key.

10 Q. But when he was there, did he sign any
11 paperwork or anything?

12 A. No, sir.

13 Q. Okay. I mean, no new formalities for the
14 new change?

15 A. No, sir.

16 Q. In your mind, was he a new change?

17 A. No, sir. He was a move.

18 Q. He was a move?

19 A. Yes, sir.

20 Q. Do y'all often move people -- residents --
21 I mean, renters?

22 A. Unfortunately, sometimes we have to. You
23 know, houses do not -- houses tear up and we -- they
24 have to be moved. I mean --

25 Q. If there's bedbugs, you move them?

1 A. Yeah. If there's bedbugs, you have to
2 move them. I mean --

3 Q. Immediately, right?

4 A. Right. I mean, it's 100 degrees outside
5 now. If the house loses, you know, the A/C --

6 Q. What do you do?

7 A. You can't stay in a house -- you can't
8 expect someone to stay in a house when it's 100
9 degrees outside. So they have to be moved.

10 Q. So they have to be moved. So that's not
11 an uncommon event?

12 A. No, sir.

13 Q. And you don't -- it's not a new
14 reservation?

15 A. No, sir.

16 Q. It's not a new check-in?

17 A. No, sir.

18 THE COURT: Okay. We don't --
19 remember, we don't have a jury.

20 MR. CARRIGG: I understand.

21 THE COURT: Okay. I get your point.
22 So you've made your record. Let's -- let's not
23 rehash, please.

24 BY MR. CARRIGG:

25 Q. So they were moved at that point, correct?

1 A. Uh-huh.

2 Q. What happened then, to your knowledge?

3 A. On -- they -- they moved in on Monday. On
4 Tuesday, I got a phone call from Ms. Richards.

5 Q. Richardson.

6 A. Ms. Richardson. I'm sorry. Fiona. I
7 call her Fiona. And she said the Folly Beach police
8 had been there and she was -- she was not -- she was
9 very upset because her health is declined and she was
10 a little rattled, thought that she had done something
11 wrong -- her and her husband had done something wrong
12 and she just wanted to notify us. And then her
13 husband called and said that Lieutenant Upton had
14 been to North Charleston to pull his paperwork -- you
15 know, to pull the paperwork. And then we got the
16 violation, I guess, the next day, I'm not sure of the
17 date of the violation, and I called the Richardsons
18 and told them that they were going to have to leave.

19 Q. All right. Is that what you were assumed
20 you were supposed to do?

21 A. Yes, sir.

22 Q. And that was by the word of the City of
23 Folly Beach?

24 A. Yes, sir.

25 Q. And what did they say?

1 A. She got very upset. She said -- and I
2 quote. She said, "This will sign my death sentence
3 if I go home." She was scared. And I think then she
4 asked if it would be -- if it would help matters if
5 she contacted her physicians, which she did, and I
6 believe they sent a note to us. And then from there,
7 I think the communication was between the Richardsons
8 and the city.

9 Q. Okay. So, to your knowledge, the city
10 never had them move out, to your knowledge?

11 A. No, sir.

12 Q. All right. So the city let them stay?

13 A. That was my understanding. Yes, sir.

14 Q. And with respect to the other reservation,
15 which was the New York reservation, when did those
16 people get there?

17 A. They got here in March.

18 Q. In March?

19 A. Yes, sir.

20 Q. All right. Do you know when in March?

21 A. I do not know the exact date. No, sir.
22 We checked them in at 1002 on March 15th. Yes.

23 Q. Again, before any of the Folly Beach
24 ordinances?

25 A. Yes, sir.

1 Q. And the -- they were -- they were extended
2 as well?

3 A. Yes, sir.

4 Q. They were rented for a month -- how long
5 were they originally renting for?

6 A. They were going to rent for several
7 months.

8 Q. So was it after this violation that y'all
9 called to see if they could be moved?

10 A. Yes, sir.

11 Q. So you had gotten this violation from the
12 city?

13 A. Yes, sir.

14 Q. So you called the city. I assume you
15 spoke to --

16 A. Correct.

17 Q. -- Mr. Pope?

18 A. Yes.

19 Q. And you asked them was it okay for these
20 people to be moved?

21 A. Yes, sir.

22 Q. And what was the response you received?

23 A. I sent an e-mail to Aaron and --

24 Q. Aaron who?

25 A. Aaron Pope, city administrator, and I told

1 him the circumstances. These people had been here
2 since March. The owner needed to get in there
3 because there were septic issues with the draining
4 field and I explained it all to Aaron, sent him an
5 e-mail. We -- we discussed the issue on the phone.
6 We chatted on the phone about it, and he called me
7 back and he said yes, they can be moved due to the
8 issues there at that home. So I moved them to 1707,
9 and he asked that I do a new contract -- you know, a
10 contract, which was the contract I think that Your
11 Honor has. And I sent him the new contract showing
12 the original date that they came in to the end of the
13 reservation.

14 Q. To Aaron? Mr. Pope?

15 A. Yes. Mr. Pope. Yes.

16 Q. Did they ever relate to you that, "Oh, by
17 the way, you're breaking the law. We're just going
18 to let you do it"?

19 A. No, sir.

20 Q. So you thought it was within the law?

21 A. I thought I -- yes, sir. I thought I was
22 doing the right thing. Yes, sir.

23 Q. I don't have anything further. Oh, wait.
24 I do have one more. Did you have a conversation with
25 Lieutenant Upton after this charge?

1 A. Yes. I had a conversation with
2 Lieutenant Upton.

3 Q. What did you discuss?

4 A. He and I -- Lieutenant Upton and I have a
5 very good relationship and, you know, we -- we talk a
6 lot about things. My impression was that neither one
7 of us liked this whole thing that was going on all
8 over Folly Beach. I mean -- and we had talked about
9 how things had turned into a witch hunt and I was a
10 little -- I was a little upset and he was -- he was
11 kind of -- he did not realize at that time, I do not
12 believe, that the city was taking this kind of action
13 against Fred Holland with this violation. That's
14 what I believe.

15 MR. CARRIGG: All right. I don't
16 have any further questions. Please answer any
17 questions Mr. Wilson has for you.

18 THE WITNESS: Okay.

19 EXAMINATION

20 BY MR. WILSON:

21 Q. Ms. West, who from the city told you --
22 did someone from the city tell you that the tenants
23 had to leave? Did someone from the city actually
24 tell you that?

25 A. There was a violation going in and --

1 Q. No, ma'am. Did someone from the city
2 actually tell you that the tenants had to leave?

3 A. I think they were told -- it was conveyed
4 to Lajuan and, yes, I had to call them and tell them
5 that they had to leave.

6 Q. Did anyone from the city tell you that
7 the tenants --

8 A. Not me directly. No.

9 Q. -- had to leave?

10 And the people from New York City that
11 y'all were talking about, were they all staying --
12 their reservations were all for greater than 30 days?

13 A. Yes.

14 MR. WILSON: Thank you. No other
15 questions.

16 MR. CARRIGG: I have no further
17 questions.

18 THE COURT: Okay. Thank you, ma'am.
19 You have one more witness?

20 MR. CARRIGG: Janet Mullins.

21 THE COURT: All right. Remember, we
22 don't need to rehash.

23 MR. CARRIGG: Oh, we're going to real
24 quick.

25 JANET MULLINS,

1 being duly sworn, testified as follows:

2 EXAMINATION

3 BY MR. CARRIGG:

4 Q. Ms. Mullins, you're part of a social media
5 group, correct?

6 A. Oh, yeah. A couple of them.

7 Q. And are you aware of the very similar
8 circumstance to the one we're here about today --

9 A. Yes.

10 Q. -- occurring?

11 Tell -- tell the court what you're aware
12 of?

13 A. Are you okay with me taking this off?

14 Q. I am.

15 A. I'm having trouble breathing.

16 Q. Yes, I am.

17 A. That's why I sent this to Lajuan, yes,
18 because it was a very similar situation.

19 MR. WILSON: Your Honor, this is -- I
20 mean, I know we're allowing hearsay, but this is
21 rumor mongering. And if we can engage in rumor
22 mongering --

23 THE COURT: No. I --

24 MR. CARRIGG: This is a response from
25 a city council member.

1 THE WITNESS: I have the response
2 here. Did you get a copy of it?

3 MR. WILSON: No.

4 THE WITNESS: This is not rumor
5 mongering. This is in response to people freaking
6 out about the situation. That's the only reason I
7 sent it to Lajuan because it was similar.

8 THE COURT: What are we dealing with?

9 MR. CARRIGG: It's a response from
10 Mr. Ellis who was a city council member at the time
11 regarding basically the exact same set of facts.

12 THE COURT: So is this -- this is a
13 new exhibit?

14 MR. CARRIGG: I was just going to let
15 her read it, but I'll admit it.

16 THE COURT: It's a Facebook post?

17 MR. CARRIGG: It is.

18 THE WITNESS: I can summarize for you
19 in two sentences.

20 THE COURT: It's a Facebook post?

21 MR. CARRIGG: I believe so, yes.

22 THE COURT: Is she an active
23 participant in this or is she a witness or is she
24 just --

25 MR. CARRIGG: She's a member of the

1 group that --

2 THE COURT: That this post is on?

3 MR. CARRIGG: Yes. So she was aware
4 of it.

5 THE COURT: So she's just aware of
6 it?

7 MR. CARRIGG: Apparently you can have
8 hearsay.

9 THE COURT: Well, yes, you can have
10 hearsay here, but...

11 MR. CARRIGG: She knows -- she has
12 personal knowledge of the circumstances.

13 THE COURT: I will allow you to make
14 your record on it. But, at this point, I'm not
15 inclined to consider this.

16 MR. CARRIGG: Well, Your Honor, I
17 don't know that there's any rule of evidence to
18 prohibit it. It is yet another circumstance similar
19 to the one my client is charged with where you have a
20 city council member saying if they were on the
21 island, they're legal.

22 THE COURT: Let's hear the evidence.

23 BY MR. CARRIGG:

24 Q. So tell me what you know about the
25 circumstance.

1 A. Well, to start with, it was just -- people
2 were getting a little crazy at one point. So on this
3 site -- I can't remember whether it was I Love Folly
4 Beach, but it was one of the groups that was out
5 there. And there were probably 20-plus complaints,
6 which is why in my sentence to her I can't find the
7 original complaint April 9th regarding 1667 East
8 Ashley, but this was Eddie's response. Hope it
9 helps.

10 Q. And what was Eddie's response?

11 A. I sent that to Lajuan because the
12 complaints on there was that these people had moved
13 into this house. I thought the laws had changed
14 because -- not to get off the subject, but D.J. Rich
15 was posting the ordinances for us on this site so
16 that the locals could keep up with it. Anyway, so I
17 sent this to Lajuan, and it's just Eddie's response
18 to all the complaints about the house at 1667, which
19 apparently they had moved them from another house
20 because they saw them unloading the luggage and
21 that's what sent all the neighbors into a frenzy. So
22 do you want me to read it?

23 THE COURT: We don't need to have
24 people read that.

25 MR. CARRIGG: Well, I'll offer it.

1 THE COURT: I'll take it, but this
2 is -- this has nothing -- this has nothing to do with
3 this.

4 THE WITNESS: They just asked me to
5 come because on the date that I sent this on
6 April 16th, this was a post from April 9th. And I
7 just sent it to Ms. Kennedy so she could see it was
8 similar to what -- that's all.

9 THE COURT: Well, we'll mark it as
10 being offered. Let's see. We're at -- this will be
11 Exhibit U.

12 MR. CARRIGG: Yes. I mean,
13 basically, if you look at it, Your Honor, it's
14 Mr. Ellis saying that because these folks were
15 previously on the island and they only moved to
16 another house on the island, that it was checked into
17 through city hall and they were okay with it.

18 THE COURT: But we don't have any
19 other evidence on this?

20 MR. CARRIGG: None other than they
21 were on -- they were on the island --

22 THE COURT: We just have this -- we
23 just have this statement. We don't have anything
24 more that you're offering in terms of their rental
25 agreements or anything like that, correct?

1 MR. CARRIGG: Well, I mean, she
2 can -- if she has any recollection of what was on the
3 social media site.

4 THE COURT: I really am not
5 interested in listening to social media rumors and
6 arguments. That's -- that's -- there's a -- that's
7 not worth in terms of real evidence. All right. You
8 have anything more for this witness?

9 MR. CARRIGG: Nothing.

10 THE COURT: Mr. Wilson?

11 MR. WILSON: No. No questions, Your
12 Honor.

13 THE COURT: All right. Thank you.

14 THE WITNESS: You're welcome.

15 THE COURT: So let's -- if you have
16 anything more? You finished?

17 MR. CARRIGG: That's it.

18 THE COURT: All right. So we'll have
19 some summation here.

20 MR. WILSON: Well, actually, Your
21 Honor, it's a little unorthodox, but I would like to
22 present a brief rebuttal.

23 THE COURT: That's fine.

24 MR. WILSON: And I'd like to testify
25 because I have --

1 THE COURT: All right.

2 MR. WILSON: -- direct knowledge of
3 some of the issues that were brought up.

4 THE COURT: Okay.

5 MR. WILSON: Do I have to be sworn
6 in?

7 THE COURT: Yes. Just a second.

8 JOE WILSON,
9 being duly sworn, testified as follows:

10 THE COURT: And you are being sworn
11 in to testify in your role as the city attorney?

12 THE WITNESS: The city attorney.

13 STATEMENT BY ATTORNEY JOE WILSON

14 MR. WILSON: And I'm just going to
15 address some of these other rentals very, very
16 briefly. The situation with the New York people that
17 moved in -- that were allowed to switch houses, the
18 difference was that Fred Holland contacted the city,
19 the situation was explained, and we decided to give
20 them relief and exercise our discretion on whether or
21 not to prosecute. Relatedly, we also made the
22 decision that this ordinance was directed towards
23 people renting property, not the tenants, and
24 certainly not going to throw tenants out. That's not
25 what the city does.

1 The other situation brought up by
2 Ms. Mullins -- I don't even know if this is the one
3 that they've been talking about before, 1667 East
4 Ashley. But I can say that the city investigated, as
5 has been indicated, there were a lot of people
6 calling in about new check-ins and the city
7 investigated those, and frequently there was a reason
8 they didn't fall under the ordinance. 1667 East
9 Ashley would have been one of those situations. So
10 these are all -- so that's -- there was plenty of
11 investigation done. There were reasons people didn't
12 fall under the ordinance. Sometimes if there was a
13 situation involved like the one with the Richardsons,
14 if we had known about it, we probably could have
15 worked something out. But we didn't know about it
16 because we weren't told and the move was made without
17 us knowing.

18 So that's my rebuttal.

19 THE COURT: Do you have questions?

20 MR. CARRIGG: Sure.

21 EXAMINATION

22 BY MR. CARRIGG:

23 Q. So your statement is that if you had known
24 about it, you probably would have worked it out,
25 correct?

1 A. Maybe. I don't know.

2 Q. You just said that, correct?

3 A. I don't know if we could have worked it
4 out or not.

5 Q. Well, you said it.

6 A. I said we could have discussed it.

7 Q. Okay. You would consider that given the
8 fact that the tenant was susceptible to COVID and
9 that her home was likely -- at least presented a
10 great risk of infection would present, I guess, good
11 circumstances to try to help this individual?

12 A. We never had that opportunity to make that
13 assessment.

14 Q. I'm asking you if you would agree in
15 retrospect, those facts that --

16 A. I don't have enough facts. We did not
17 have that opportunity to make that assessment.

18 Q. Yes, you did. I mean, you had the --

19 A. No, sir.

20 Q. When your investigator investigated --

21 A. No, sir.

22 Q. -- you had the facts, correct?

23 A. After they had been moved.

24 THE COURT: Let me ask this question:

25 Mr. Wilson, do you -- are you the one who makes the

1 final decision on those things?

2 THE WITNESS: No.

3 THE COURT: All right. Then this is
4 back and forth. He doesn't make the final decision.
5 I understand your point.

6 MR. CARRIGG: That's what he
7 testified to.

8 THE COURT: I understand your point,
9 but -- I heard what he testified to is that they
10 would -- may have been able to work it out. He is
11 not the one with the final decision, so he would only
12 be guessing at this point. So let's move on.

13 BY MR. CARRIGG:

14 Q. All right. But you were involved in the
15 decision in the New York case?

16 A. I have not -- yes. I want to be clear. I
17 didn't make that decision, but I know why the
18 decision was made and how the decision was made. It
19 was not made because it was determined that the
20 people did not violate the ordinance. It was made
21 as -- to give these people relief because we were
22 contacted beforehand and we could figure out what the
23 appropriate action could be done. I did not make
24 that decision.

25 Q. All right. So is it fair to say that

1 y'all -- the City of Folly Beach sometimes enforces
2 its ordinance and sometimes chooses not to enforce
3 the ordinance?

4 A. It is fair to say that the city, like all
5 other governments, has discretion in enforcement.

6 Q. And what part of those 06-20 indicates
7 discretion?

8 A. It's -- it's baked into everything.

9 Q. Just baked into everything?

10 A. That's called police power. I mean, I
11 could refer you to the tort claims act, among other
12 things. It talks about -- at length about the
13 discretion that cities have.

14 Q. Well, that's when you're liable.

15 A. Have you ever heard of prosecutorial
16 discretion?

17 Q. I have. But I'm just being clear that
18 with respect to 06-20, sometimes y'all found leeway
19 that you didn't -- didn't --

20 A. Well, I would say that we're not going to
21 be sending people back to places like -- we're not --
22 we were trying to take into account all the issues
23 that everyone has faced during this local pandemic
24 and make reasonable decisions based on that.

25 Q. All right. Well, let me ask you that --

1 A. Which we didn't have the opportunity to do
2 in this case.

3 Q. Since the basis of this is to protect
4 people from the local pandemic, if the person had
5 actually been on the island for 30 days, did she pose
6 any risk other than the one the normal residents
7 faced?

8 A. There had been ones. There were
9 additional people coming onto the island, namely the
10 owners, that y'all's actions allowed to happen.

11 Q. Additional people?

12 A. Yes.

13 Q. The property owners?

14 A. That's correct.

15 Q. You're excluding the property owners from
16 the island?

17 A. No. I'm saying that your actions -- you
18 asked and I'm telling you one of the problems with
19 the situation is you were adding people to the
20 island.

21 Q. But there wasn't a ban from property
22 owners coming to the island?

23 A. You were adding people. You could have
24 let them stay in that property...

25 Q. I guess what I'm asking --

1 A. -- and made the decision to bring the
2 owners in instead.

3 Q. All right. So what I'm asking is: There
4 was no -- even if -- if I had my house rented, I
5 could still come on the island?

6 A. That's right.

7 Q. So how are they adding people to the
8 island?

9 A. They are physically adding people to the
10 island.

11 Q. Okay. Well, I don't understand that.
12 Anyhow, is there anywhere in those ordinances that
13 define a new check-in?

14 A. Well, it does say -- it elucidates on
15 that, as I pointed out to Ms. Kennedy. Visitors
16 currently checked in may remain until the end of
17 their existing reservation. So that's what it --

18 Q. But does it define a new check-in?

19 A. We don't have a lot of words that are
20 defined in the ordinance. It does not. But there is
21 a guidance on what it means built into the very
22 ordinance.

23 Q. But in this particular case, the term "new
24 check-in" is pivotal in this. Would you agree?

25 A. It has become pivotal in this matter. I

1 think it's not, in any doubt, that this was a new
2 check-in. So I don't see any point of -- you guys
3 are the ones who are complaining about new and
4 additional ordinances. So, you know, we could
5 have -- there's a limit in how much we can define.
6 We didn't define new -- we didn't define "short-term
7 rental" because it's already defined. We didn't
8 define "hotel." We didn't define the word
9 "accommodation." We didn't define the term "length
10 of stay." We didn't define existing. We didn't
11 define the term "reservation."

12 Q. Well, let me --

13 A. There's not a definition for the word
14 "check-in." There is guidance on what it means,
15 though, because it says, "Visitors currently checked
16 in may remain until the end of their existing
17 reservation."

18 Q. So let me ask you this question: If you
19 were staying in a hotel, any hotel, you're in your
20 room and the plumbing goes out and you've got to be
21 moved to another room in the hotel, do you consider
22 that a new check-in?

23 A. There is not enough information. If there
24 is a new length of stay, if the check-in -- if the
25 original check-in has already come to an end and they

1 sign a new contract for a new length of time, at a
2 new rate, in a new location, yes, that is a new
3 check-in.

4 Q. There was no new contract, though,
5 correct?

6 A. There is.

7 Q. Where is it?

8 A. P3.

9 Q. That's just a print-off from a computer.

10 A. That's what was given and Ms. Kennedy
11 defined -- explained what it was.

12 Q. Well, you do work for the City of Folly
13 Beach?

14 A. I do. Well, no. I'm an independent
15 contractor.

16 Q. But you're paid --

17 A. I'm not an employee.

18 Q. You're paid by the City of Folly Beach,
19 correct?

20 A. I am.

21 Q. And you're here to support the City of
22 Folly Beach, correct?

23 A. I am their attorney, but you have raised
24 issues that are easily addressed and that I have
25 direct knowledge of.

1 MR. CARRIGG: Thank you.

2 THE COURT: All right. So stepping
3 down as the witness, and now we'll take your final
4 summations.

5 MR. WILSON: I'll be very brief, Your
6 Honor, because this is not --

7 THE COURT: Yes, please. Yeah.
8 Please do be brief, both of y'all. I do understand
9 the facts. We don't have a jury. So just -- just
10 make your points that -- that you feel we need to
11 consider. I don't want to rehash arguments. I get
12 it. I do get it.

13 MR. WILSON: So just this case begins
14 and ends with comparing P2 to P3. The dates are all
15 there. This was another short-term check-in,
16 different rate, different property, different time
17 frame. As I mentioned, ignorance of the law is not
18 an excuse. But, you know, heaven forbid the city
19 should make efforts to inform its residents and its
20 rental property owners about the city's laws, about
21 the governor's executive orders, and provide them.
22 And how this is a problem, I don't know. If we
23 didn't do that, no doubt there would be complaints if
24 the city didn't do enough to inform people about
25 their -- the rules and the amendments.

1 But that's really it. I mean, this
2 case is -- as you've figured out for us, boils down
3 that this was a new check-in and I frankly think it's
4 quite clear that this was a new check-in,
5 particularly with this P3. Thank you.

6 THE COURT: Thank you. Mr. Carrigg.

7 MR. CARRIGG: Your Honor, I think
8 that this case does really kind of boil down to
9 whether or not it was new check-in. Because of the
10 timing that all this occurred, it -- I think it may
11 have appeared to the residents who made the complaint
12 and -- that, oh, you had someone new on the island.
13 That's what they were trying to vent. He even
14 testified, well, we're trying to keep new people off
15 the island. Somehow what we did added people to the
16 island. I haven't figured that out yet.

17 But, in any event, the question is,
18 was this a new check-in. In this case, it wasn't.
19 These people were already here. That's why that --
20 that -- I know you don't put much stock in a Facebook
21 post, but you've got people from city council saying
22 if they were already here, it's okay. They're legal
23 to be on the island to extend or rent a new place.
24 If you will note in our exhibits, they later changed
25 the rules and clarified them after Ms. Kennedy is

1 charged, and that is found at -- give me one second,
2 Your Honor, because I think this is of great
3 importance, and it was really unaddressed by the
4 city. Here it is. April 14th. Exhibit J. They
5 changed the definition for short-term rental. This
6 is after my client is charged. They said short-term
7 rentals -- and this is, like, bullet point two on
8 Exhibit J. Short-term rentals, hotels, other -- no
9 new checks-in are permitted between April 7th and May
10 31st, regardless of length of stay. Visitors
11 currently checked in may remain until the end of
12 their existing reservation and the same may be
13 extended -- may be extended only for the same guests,
14 on the same rental terms, at the same address. So
15 you see they changed it to cover the circumstance
16 that Ms. Kennedy had done. And this, I would submit
17 to you -- and this was COVID update 11 -- changed the
18 rules. But when Ms. Kennedy did it, that rule wasn't
19 in place. So if the other one prohibited it, why did
20 they need to change it? That's all.

21 THE COURT: Okay.

22 MR. WILSON: Well, I mean, since this
23 was -- this terribly important e-mail was brought up
24 at the last point, I will address it.

25 MR. CARRIGG: We sent that, I mean,

1 months ago.

2 MR. WILSON: Again, this was just us
3 reacting to owners like Ms. Kennedy who needed some
4 clarification, and so we provided it.

5 THE COURT: And you're talking about
6 Exhibit J?

7 MR. WILSON: Yes.

8 THE COURT: Okay. All right.

9 MR. WILSON: That's all it is.
10 Nothing was changed. It was a clarification.

11 THE COURT: Okay. All right. I
12 understand your position is that it was a change
13 and -- and Mr. Wilson's position is it was just
14 merely providing additional information. All right.
15 So pursuant to the ordinance that governs this
16 hearing, I will be taking everything under advisement
17 and I will issue a written ruling.

18 Mr. Carrigg, you have three business
19 days if you need to provide additional e-mails in
20 rebuttal to the e-mails that Mr. Wilson provided. To
21 give Mr. Wilson the same consideration, there were
22 two exhibits, Exhibit S and --

23 MR. WILSON: And U.

24 THE COURT: -- and T and U?

25 MR. WILSON: Right. I understand.

1 Actually, I don't have T. So if --

2 THE COURT: Yes. And, actually, let
3 me --

4 MR. WILSON: If you could e-mail me.
5 Actually, we could make a copy.

6 THE COURT: Could we get some copies
7 made? Because I don't want to have this --

8 MR. WILSON: I have U. I think T is
9 the only one I'm missing.

10 THE COURT: T? You should have it.
11 This is Exhibit U.

12 MR. WILSON: I have that.

13 THE COURT: Is that the one you have?

14 MR. WILSON: I have U.

15 THE COURT: Oh, I'm sorry.

16 MR. WILSON: I need T. Actually,
17 yeah, I do have it. I'm sorry.

18 MR. CARRIGG: I may need a copy of
19 that myself because --

20 MR. WILSON: T?

21 MR. CARRIGG: Yeah.

22 MR. WILSON: Just make three copies.

23 SPEAKER: Will do.

24 THE COURT: So U is the Facebook.

25 MR. CARRIGG: Yeah.

1 THE COURT: And it's an e-mail with a
2 portion of a Facebook comment. And then T was the
3 information about the other -- the New York rental.
4 And I did not write in my notes, what is Anna's job
5 title?

6 MS. KENNEDY: I'm sorry?

7 THE COURT: Anna?

8 MS. KENNEDY: She's a reservationist.

9 THE COURT: Reservationist?

10 MS. KENNEDY: Yes.

11 THE COURT: All right. Thank you
12 everyone. I appreciate it.

13 (The proceedings concluded.)
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CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter
and Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is typed from a previously recorded
proceeding in which I was not physically present;
that this transcript is typed to the best of my
ability.

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 by official seal this 8th day of October,
2020, at Lexington, Lexington County, South Carolina.

Kimberly T. Power, Court Reporter
My Commission Expires: 4/24/2025

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STATE OF SOUTH CAROLINA	)	COMMON PLEAS CASE NO.:2020-CP-10-3549
	)	
COUNTY OF CHARLESTON	)	APPEAL FROM THE ADMINISTRATIVE COURT
	)	FOR THE CITY OF FOLLY BEACH
	)	VIOLATION OF EMERGENCY
Fred Holland Realty Inc. and LaJuan Kennedy,	)	ORDINANCE 06-20
	)	
Appellants	)	
	)	RETURN
v.	)	
	)	
The City of Folly Beach	)	
	)	
Respondent.	)	

This Return is made pursuant to S.C. Code Ann. § 18-7-60, following service of a Notice of Appeal by Fred Holland Realty Inc. and LaJuan Kennedy (collectively "Appellants") on August 14, 2020. This matter involves Appellants' appeal from the judgment of the City of Folly Beach's administrative court upholding the Notice of Violation of Emergency Ord. 06-20 and Assessment of Fine issued by the City to Appellants on April 14, 2020.

PROCEEDINGS

The City issued a citation and fine to Appellants on April 14, 2020, asserting that Appellants had permitted a new check-in on a short term rental property that was prohibited by Emergency Ord. 06-20. Appellants filed an appeal of the citation on May 7, 2020, pursuant to § 110.18 of the Folly Beach Code of Ordinances, which provides for a hearing before the City's Business License Hearing Officer. Following a pre-trial conference with the parties, I determined that it was advisable to address as a preliminary matter the assertion by Appellants that Emergency Ord. 06-20 is null and void as a matter of law prior to proceeding with a trial. Counsel for the City and Appellants submitted memoranda of law in support of their positions. On July 17, 2020, I issued an Order finding (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. (Ex. 1.)

Thereafter, the parties and counsel appeared before me at a trial held on July 30, 2020. The City presented testimony by City Public Safety Officer Lt. Upton and by City attorney, Joseph C. Wilson, IV, Esquire in rebuttal. Appellants' witnesses were LaJuan Kennedy, Anna Brown West, and Janet Clark Mullins. Each party was given the opportunity to cross-examine the witnesses, and the proceedings were recorded.

The City entered into evidence documents marked as 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 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 documents marked as Exhibits A through U into evidence. The City objected to Exhibit U, which is a copy of an email from Janet Clark Mullins to LaJuan 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.

I took the matter under advisement and thereafter issued a Final Order on August 10, 2020, denying the appeal and upholding the citation and fine. (Ex. 2.)

TESTIMONY

Counsel for Appellants has advised that they are obtaining a transcript of the trial from the recording made by the City and will file it with the Court.

JUDGMENT

In my Final Order of August 10, 2020, I denied the appeal and found that Appellants violated Emergency Ord. 06-20, ¶11 as set forth in the Notice of Violation and Assessment of Civil Fine dated April 14, 2020, by allowing a new rental check-in after April 7, 2020, and that they continued to violate the ordinance for each night the renters remained in 403 West Ashley, which exceeded 5 nights, thus upholding the fine of \$2500 issued by the City. (Ex. 2.) The Final Order incorporated by reference the July 17, 2020 Order, finding that the City adopted Emergency Ord. 06-20 in a valid exercise of the City's police powers and that Emergency Ord. 06-20 is not preempted by the Governor's Executive Order 2020-19 and does not violate state law or the Constitution of South Carolina. (Ex. 1.)

THE SEIBELS LAW FIRM, P.A.

s/Christine Companion Varnado
Christine Companion Varnado (66185)
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Hearing Officer
City of Folly Beach

August 31, 2020

Charleston, South Carolina

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.

NOTICE OF APPEAL

The appellants named above hereby give notice of appeal from the judgments of the Municipal Business License Hearing Officer. Specifically Appellants give notice of appeal of the Order Issued on July 17, 2020 (Exhibit A) and the Order issued on August 10, 2020 (Exhibit B) in the above captioned matter. Appellants to date have not been served with a copy of the aforementioned orders but concede that the orders were emailed to Appellants on the respective dates that the orders were issued. Appellant hereby seeks judicial review of the judgment imposed by the governing body of respondent pursuant to South Carolina Code Ann. Section 18-7-10 *et seq.* and Rule 74 SCRCF. Appellant's exceptions of fact and law to the judgment of the Hearing Officer are as follows:

1. The Hearing Officer erred in holding that the City of Folly Beach had independent authority to enact an emergency ordinance governing

short term rentals when the Governor had acted. (Order Dated 7-17-20).

2. The Hearing Officer erred in holding that the City of Folly Beach Emergency Ordinance 06-20 provisions restricting short term rentals were not preempted by the Governor's Executive Order No. 2020-19. (Order Dated 7-17-20).
3. The Hearing Officer erred in holding that the City of Folly Beach Emergency Ordinance 06-20 did not criminalize conduct that was otherwise legal. (Order Dated 7-17-20).
4. The Hearing Officer erred in holding that the City of Folly Beach Emergency Ordinance 06-20 was adopted in a valid exercise of the City's police powers, it was not preempted by the Governors Executive Order 2020-19 and did not violate the statutes and Constitution of the State of South Carolina. (Order Dated 7-17-20).
5. The Hearing Officer erred in holding that the relocation of the subject renters created a "New Check-in" thereby causing a violation of the Emergency Ordinance 06-20. (Order Dated 8-10-20).
6. The Hearing Officer erred in holding that the relocation of the subject renters created an extension that constituted a violation of the Emergency Ordinance 06-20. (Order Dated 8-10-20).

7. The Hearing Officer erred in holding that the relocation of the subject renters created a violation of the Emergency Ordinance 06-20. (Order Dated 8-10-20).
8. The Hearing Officer erred in holding that it should disregard the evidence that the City of Folly Beach applied the Ordinance unequally by allowing some transactions that were identical to this instance while using these facts to charge Appellant. (Order Dated 8-10-20).
9. The Hearing Officer erred in holding that the actions taken by Appellants in this matter constituted a violation of Folly Beach Emergency Ordinance 06-20. (Order Dated 8-10-20).

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 08-14-2020

ATTORNEY FOR PLAINTIFF

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003549

Fred Holland Realty Inc et al
PLAINTIFF(S)

Folly Beach City Of The
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.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCF; ☐ Rule 41(a), SCRCF (Vol. Nonsuit); ☐ Rule 43(k), SCRCF (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCF; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Upon review of the record on appeal from the Municipal Business License Hearing Officer, and in full consideration of the arguments presented by counsel at the hearing in circuit court dated November 6, 2020, this court hereby upholds the decision of the Hearing Officer and denies the appeal. Counsel for the City of Folly Beach shall prepare a formal order within 10 days (or request an extension if necessary).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/10/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Charleston Common Pleas

Case Caption: Fred Holland Realty Inc , plaintiff, et al VS Folly Beach City Of The
Case Number: 2020CP1003549
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-12-10 14:11:31 page 3 of 3

495

Emergency Preparedness

35.01 Intent

35.02 Director designated

35.03 Responsibilities of the Director

35.04 Funding beyond statutory limits

35.05 Emergency powers of the Mayor

EMERGENCY PREPAREDNESS

§ 35.01 INTENT.

The intent of, and reason for, the provisions in this subchapter is to provide a means for the assumption of the responsibilities, costs and obligations which form a part of federal, state and local emergency preparedness property programs. It is the intent of the City Council that the city be prepared to operate under emergency conditions and have limited authority as necessary depending on the circumstances of emergency situations..

('95 Code, § 2-3-1) (Am. Ord. 21-16, passed 8-9-16)

§ 35.02 DIRECTOR DESIGNATED.

The Director of Public Safety is hereby charged with the responsibility of coordinating the city's emergency preparedness program and supervising the use and care of any equipment acquired under that program.

('95 Code, § 2-3-2) (Am. Ord. 21-16, passed 8-9-16)

§ 35.03 RESPONSIBILITIES OF THE DIRECTOR.

(A) *Emergency plan.* The Director of Public Safety shall be responsible for maintaining an emergency plan and training city staff and officials on their responsibilities during an emergency according to the plan.

(B) *Equipment.* The Director of Public Safety shall be responsible for carrying out all federal emergency management requirements relating to the legal use, storage, maintenance, resale and reports on civil defense property. He or she shall be prepared for inspections of the property by qualified state or federal representatives, and shall assist inspectors upon request.

(C) *State of Emergency orders.* The Director of Public Safety shall be responsible for carrying out any orders given by the Mayor once a state of emergency has been declared.

('95 Code, § 2-3-3). (Am. Ord. 21-16, passed 8-9-16)

§ 35.04 FUNDING BEYOND STATUTORY LIMITS.

In the event of a natural or manmade disaster, the city shall be allowed to expend those funds otherwise reserved as a minimum balance of the general fund.

('95 Code, § 2-3-4) (Am. Ord. 21-16, passed 8-9-16)

§ 35.05 EMERGENCY POWERS OF THE MAYOR.

(A) The Mayor, or Mayor Pro Tem in the Mayor's absence, may declare a state of emergency in the event of a natural disaster, manmade disaster, riot, or other situation that endangers health and welfare. The declaration shall be in writing and posted at City Hall if physically possible. It shall reference § 35.04 and include the nature of the emergency and the scope of the state of emergency including its duration. The duration should be no longer than 30 days unless extended by a new declaration.

(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.

(Ord. 21-16, passed 8-9-16)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 22 2021

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material
Proposed to be included by any of the parties and not other material.

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Dated: _____