

STATE OF SOUTH CAROLINA ) IN THE ADMINISTRATIVE COURT  
 ) FOR THE CITY OF FOLLY BEACH  
COUNTY OF CHARLESTON ) BUSINESS LICENSE APPEAL

HSI, LLC and 0 SANDBAR LANE,

Appellants,

v.

The City of Folly Beach,

Respondent.

**FINAL ORDER**

This matter comes before me as an appeal pursuant to Folly Beach Code of Ordinances § 110.16 by Appellants HSI, LLC (“HSI”) and 0 Sandbar Lane (the “Property”) of the decision by the License Official of the City of Folly Beach (“City”) refusing to issue a business license to HSI to operate a Short Term Rental (“STR”) business at the Property because the rental building has not yet obtained a Certificate of Occupancy (“CO”).

On May 10, 2022, Appellants served the City with notice of their appeal of the decision by the Business License Official denying HSI’s business license application. By consent and agreement of the parties, the ten business day hearing period set forth in § 110.16(A) was extended to accommodate the schedules of counsel. Counsel for the parties appeared before me at a pre-hearing conference held on May, 24, 2022, at which Appellants were represented by Ryan A. Earhart, Esquire and the City was represented by City attorney, Joseph C. Wilson, IV, Esquire. At that time, it was determined that as there were no questions of fact in dispute, the matter would be decided based on the parties’ briefs.<sup>1</sup> Counsel appeared before me for oral arguments on June 21, 2022. No witness testimony was taken.

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<sup>1</sup> I granted extensions of the briefing schedule to counsel as requested based on good cause and there being no objections by opposing counsel.

In response to an issue raised in Appellants' Reply Brief concerning a claim that the City had issued a business license to the owner of "Hotel Folly" while the building was still under construction, the City submitted the June 20, 2022 Affidavit of Eric Lutz, the City's Director of Public Works and the Building Official, which (together with its Exhibits 1-5) has been received and marked as *Exhibit A*. In response to my request, the City also provided a copy of Appellants' business license application, which has been marked as *Exhibit B*. A blank copy of the STR Rental Registration Form has been marked as *Exhibit C*. A sample copy of the City's Rental Registration Confirmation form has been marked as *Exhibit D*. An undated document on City of Folly Beach letterhead and titled "Topic: Mayor's STR Recommendations," accompanied Appellants' notice of appeal and has been marked as *Exhibit E*.

#### **FINDINGS OF FACT**

Having carefully considered all evidence and arguments presented, taking into account the credibility of the witnesses and the accuracy of the evidence, and having reviewed all of the parties' submissions, I make the following findings by a preponderance of the evidence:

1. Hunter Schimpff is the owner of HSI, a single member limited liability company. HSI owns the Property on Folly Beach on which it intends to construct a building to be used as a STR.
2. At the time HSI submitted its business license application there was no building with a CO on the Property.
3. It is undisputed that the Property is located within a zoning district that permits STRs.
4. It is further undisputed that HSI attempted to apply for a business license to operate a STR at the Property (*Ex. B*) and was denied the business license by the City Business

License Official on the basis that the City would not grant a business license for a STR to operate in a structure that did not yet have a CO.

5. Pursuant to § 117.02, in order to operate a STR, the owner must, in part, “maintain a current business license” and “comply with rental registration requirements,” which includes the submission of a completed STR Rental Registration Form (*Ex. C*) for each rental unit.
6. The City confirms that the STR Rental Registration Form is to be submitted after the owner receives a business license because the business license account number is required to complete the form.
7. Upon approval of a STR registration application, the City provides the applicant with a STR Registration Confirmation permit (*Ex. D.*)
8. It is undisputed that HSI did not submit a STR Rental Registration Form (*Ex. C*) or forms as part of its business license application and has not done so at any time thereafter in conjunction with its application process.
9. Although the date of the City’s formal denial of Appellants’ business license application has not been established in the record, the City has not objected to the timeliness of the appeal as set forth in §110.16(A), and the matter is properly before me at this time.
10. According to Eric Lutz, the Director of Public Works and Building Official for the City, the City’s current policy is that the License Official will not issue business licenses to STRs or hotels until after a CO been issued on the property to be rented. (*Ex. A, Lutz Aff.* ¶7.)
11. The City is considering revising its STR ordinance (Chapter 117), to potentially include a cap on the number of STRs and may also include a provision “grandfathering in” any

properties with an existing STR business license, regardless of whether the cap has been reached. (*Ex. E.*)

12. I have been provided with no evidence that at the time HSI submitted its business license application, the City Council had given any readings of proposed revisions to its Business License Ordinance (Chapter 110) or its STR Ordinance or had announced an intention to hold public hearings regarding proposed revisions.
13. Neither the Business License Ordinance or the STR Ordinance contains an explicit statement that an applicant for a business license to operate a STR must demonstrate that the building in which the applicant intends to operate the business has a CO at the time the application is made.
14. The City admits that the earliest date on which a business license can be obtained “is not explicitly addressed” in the City’s Business License Ordinance or its STR Ordinance.
15. The City contends that Appellants are “attempting to use the business license procedure to stockpile or “hoard” a business license to obtain grandfather status and to avoid the dictates of any new ordinance that may well become effective before HSI’s dwelling is even finished.” Appellants deny this contention. It is not necessary for me to make a determination as to Appellants’ motive in submitting a business license application prior to the completion of the construction of a building on the Property in order to render my decision on the matters at issue and, therefore, I have made no finding on this contention.

#### **LEGAL STANDARDS**

I have applied the following legal standards in evaluating the evidence and arguments. A municipal business license ordinance should be interpreted based on the general rules of statutory construction. Olds v. City of Goose Creek, 424 S.C. 240, 246, 818 S.E.2d 5, 9

(2018). Similarly, § 10.02 of the City's Ordinances instructs "[u]nless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law."

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the [enacting body]." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used." City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001) (citing Charleston County Parks and Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995)). The terms in the ordinance should be given their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the [ordinance's] operation." Sloan, 371 S.C. at 499, 640 S.E.2d at 459. Where words are unambiguous, the court should apply their literal meaning. *Id.* at 498, 640 S.E.2d at 459.

In addition, "the [ordinance] must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Similarly, the ordinance should be read "in a manner consonant and in harmony with its purpose." CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct.App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010)). Moreover, "[t]he construction of a[n ordinance] by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Brown v. S.C. Dep't of Health & Ent' l Control, 348 S.C. 507, 515,

560 S.E.2d 410, 414 (2002) (quoting Denton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)).

A business license fee is a tax on the privilege of doing business within a county or municipality, the imposition of which has have been upheld as a constitutional exercise of municipal powers. Town of Hilton Head Island v. Kigre, Inc., 408 S.C. 647, 648, 760 S.E.2d 103, 103 (2014); City of Columbia v. Niagara Fire Ins. Co., 249 S.C. 388, 391, 154 S.E.2d 674, 675 (1967). “It is a well-established principle of law that tax statutes cannot be extended by implication beyond the clear import of the language used, and in case of doubt, such doubt must be resolved against the government, and in favor of the taxpayer.” Hadden v. S.C. Tax Common, 183 S.C. 38, 190 S.E. 249, 251 (1937); Triplett v. City of Chester, 209 S.C. 455, 40 S.E.2d 684 (1946).

## DISCUSSION

Under § 110.01 of the Business License Ordinance, “[e]very person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in/with the object of gain, benefit or advantage, in whole or in part, within the limits of [the City], is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.” The key issue in this matter concerns the timing as to when a business license may be obtained. The City concedes that neither the Business License Ordinance nor the STR Ordinance explicitly addresses the earliest date on which a business license can be issued. Indeed, this situation is unusual as, generally, owners are not in a hurry to pay a business license fee where one is not yet being required by a municipality, so much of the applicable case law is geared to assessing the point at which a business must obtain its license.<sup>2</sup> Here, however, given

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<sup>2</sup> The City asserts that acts which are performed as “preliminary and preparatory” steps of creating a business do not require a business license, citing Pee Dee Chair Co. v. City of Camden, 165 S.C. 86, 162 S.E. 771, 772 (1932). In

the acknowledged likelihood of a change in the STR Ordinance,<sup>3</sup> there is a possible benefit to those who wish to operate a STR in the future to obtain a license to operate the STR prior to the enactment of a potential cap on the number of such businesses which will be permitted in the City. Further, the City contends that there is also some potential harm of landowners (and even future landowners) “hoarding” STR licenses for properties where suitable buildings do not yet exist.

The City correctly argues that Appellants do not have a right to a business license at any particular time. Licenses are not property rights, but rather are permits issued by a governmental entity. Army Navy Bingo, Garr. No. 2196 v. Plowden, 281 S.C. 226, 314 S.E.2d 339 (1984.) To the extent that Appellants argue that the City must accept the payment of their fees and, thereby, issue a business license merely because Appellants seek to pay it, they are incorrect. Licensing officials who are given administrative duties under an ordinance are vested with discretionary powers in administering the law. Momeier v. John McAlister, Inc., 203 S.C. 353, 27 S.E.2d 504, 509–10 (1943); *see also*, Landing Development Corp. v. City of Myrtle Beach, 285 S.C. 216, 329 S.E.2d 423 (1985); Kerr v. City of Columbia, 232 S.C. 405, 102 S.E.2d 364 (1958). The power to issue a license also involves the power to refuse the license in accordance with the controlling ordinance. *See* Wall v. South Carolina Alcoholic Beverage Control Comm’n, 269 S.C. 13, 235 S.E.2d 806 (1977). The City may not, however, refuse to issue a license to a person

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that case, however, the question turned on whether the company charged was “engaging in” or “carrying on” business by its one-time delivery of chairs to a customer in the city limits. The ordinance at issue in the Pee Dee Chair opinion, however, does not include the phrase “or intending to engage” as does in the City’s ordinance. Therefore, I do not find Pee Dee Chair and the cases it cites as being persuasive in this instance because the City’s ordinance applies not only to those engaging in business, but also those who are intending to do so.

<sup>3</sup> The parties did not raise or brief the “pending ordinance doctrine” in support or defense of their positions. Therefore this principle is not being considered in my analysis. *See* Continental Southeastern Gp. v. City of Folly Beach, 290 S.C. 206, 208, 348 S.E.2d 837, 838 (1986) (acknowledging the Supreme Court’s adoption of this doctrine in Sherman v. Reavis, 273 S.C. 542, 257 S.E.2d 735 (1979)).

or entity in a discriminatory manner thus violating equal protection rights or for a reason that is inconsistent with the language or intent of the ordinance.

The City points out that under the plain meaning rule, a court has no right to employ the rules of statutory interpretation where an ordinance's meaning is plain and unambiguous and conveys a clear and definite meaning. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998). But here, the City is asserting that its ordinances require an owner to have a CO on its building before it can obtain a license to operate a STR, while admitting that neither ordinance expressly so states. Rather, the meaning must be implied. The City could have included language concerning the earliest date on which an owner may apply for a license or set forth an explicit requirement regarding a CO as a prerequisite for a building to be licensed for business use, but it has not. Therefore, it is appropriate for this tribunal to employ the rules of statutory construction to interpret these ordinances using the rules for statutory construction. This includes the provision that "where substantial doubt exists as to the construction and interpretation of legislative action with respect to the enactment and enforcement of tax statutes, the doubt must be resolved against the government." Hadden, 183 S.C. at 38, 190 S.E. at 252.

In so doing, I note that although the parties have phrased their arguments in a manner that suggests that applying for a business license to operate a STR and submitting a STR registration application are a simultaneous process, as the STR Ordinance is written and as the process operates, they are not. In fact, an owner must first obtain a business license before submitting the necessary paperwork to register a STR and obtain a STR permit. While the City may not treat STR businesses differently than other businesses in applying its Business License Ordinance without there being a clearly articulated rational basis for the distinction, the City has set forth in Chapter 177 a rational basis for regulating the use of residential units as short term rentals in

general under its process for requiring their registration. I find this distinction important in making my analysis.

The Business License Ordinance does not contain any provision explicitly stating that a business with a physical presence must have obtained the CO on the building prior to obtaining a business license. The City argues, however, that the requirement for a CO is implied in the language used in the ordinance. With the above-stated principles regarding ascertaining and effectuating the intention of City Council in enacting the ordinance in mind, I note the stated purposes in § 110.03, which are “providing such regulation as may be required for the business subject thereto, and for the purpose of raising revenue for the General Fund through a privilege tax.”

Looking then to the language used in the ordinance, the City makes several arguments that certain sections of the Business License Ordinance cannot be complied with until the business exists and, in the case of a STR, it is defining the existence of the business based on having a building with a CO that is ready to be rented to the public. These arguments are not persuasive, however, in large part because the Business License Ordinance itself expressly applies not only to those actively engaged in business but also those who are “intending to engage” in business. § 110.01 (emphasis added). Similarly, as set forth in § 110.05(A), “a new business shall be required to have a business license prior to operation within the municipality.” (Emphasis added.) Therefore, while the City asserts that the definition of “Business” found in § 110.02 supports its arguments that a business must be active, this assertion is negated by the “intending to engage” and “prior to operation” language in subsections .01 and .05.

The City also argues that §100.04(B) requires that the business license fee for a new business is based on gross income collected “for the balance of the license year” and that for

Appellants this “could well be zero,” but this could be true for any new business. Here, Appellants estimated the total gross revenue amount as \$50,000. (*Ex. B.*) I find no support for the City’s argument in § 100.04(B).

The City further argues that under § 110.08, the license must be displayed in the business establishment, which the City contends is not possible until the building is complete, however there are also provisions in the section for an owner to carry the license so long as it is readily available for inspection by the City and, as noted by Appellants, the license could be displayed in the box on the property along with the plans and construction permit. Similarly, the City points out that under § 110.10, the business’ premises are subject to inspection, but an owner can make its premises available for inspection without a CO.

Finally, there is nothing in § 110.14(A), which sets forth the grounds under which a business license may be denied, that supports the City’s contention that the denial based on a lack of CO for the intended business property is appropriate. The business license application contains no provisions or requirements that HSI could not truthfully and fully complete concerning its intended business operations. While I acknowledge that deference is due to the licensing official’s discretion and construction of the ordinance, I find no bases to support such an interpretation of the Business License Ordinance.

On the other hand, the stated purpose in §117.01 of the STR Ordinance “is to regulate the use of residential units as short term rentals” to, among other things, “protect the health and safety of occupants.” This evidences the City’s interest in ensuring that buildings to be used as STRs are safe and habitable. In furtherance of this purpose, the City requires that the “owner wishing to operate a [STR] must . . . comply with rental registration requirements.” § 117.02. The ordinance refers to the registration and regulation of “residential dwellings” to be used as

STRs. §117.01(B). A dwelling or “dwelling house” is defined as a “house or other structure in which a person lives; a residence or abode.” BLACK’S LAW DICTIONARY 546 (8th ed. 2004). Therefore, it follows that for a building to be registered under the ordinance, it would need to have a CO in place so that it could be used as a dwelling.


Although the STR Ordinance does not explicitly discuss a CO, the ordinance is written in such a manner that it cannot be fully complied with until there is a building on the property ready to be occupied. It is a violation of the chapter to provide inaccurate or incomplete registration information on the registration form. §117.02(B)(4). Pursuant to §117.02(A), the business license account number and maximum occupancy must be “prominently displayed in the rental unit.” (Emphasis added.) Similarly, the rental registration form includes a certification that the owner *has* already complied with § 117.02(B)(3)(j) by having posted a summary of the applicable city ordinances *in the units*. Specifically, the owner applying for a STR registration must affirmatively acknowledge: “I have posted the *Beach Rules* prominently within all rental units I am licensed to rent.” (*Ex. C*, emphasis added.) This affirmation cannot be truthfully made at the time the form is signed unless the STR units are built. Unlike § 110.08 of the Business License Ordinance, which references the business premises in general and, therefore could be met by posting the license within the box with the construction permit, § 117.02 (B)(3)(j) specifically references each individual rental unit, which is a specific location (or locations) on the property.

As §117.02(D)(2)(a) makes clear that “[n]o permit may be issued or approved unless the requirements of this chapter . . . are complied with,” I find that even if not explicitly stated in the text of the STR Ordinance, the licensing official would be correct in refusing to issue a STR certificate to a property without a CO.

## CONCLUSION

Therefore, for the foregoing reasons, the appeal is granted in part and denied in part (insomuch as Appellants have linked the business license applications process with the STR application process). The City improperly denied Appellants' application for a business under the current language of the Business License Ordinance, but is proper in requiring that a building to be used as a STR have a CO in place prior to issuing a STR permit.

IT IS SO ORDERED.

  
Christie Companion Varnado  
Hearing Officer  
City of Folly Beach

July 12, 2022

Charleston, South Carolina