EXHIBIT NO. 1

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE ADMINISTRATIVE COURT FOR THE CITY OF FOLLY BEACH BUSINESS LICENSE APPEAL
108 East Erie, LLC and John McFarland, Appellants, v. The City of Folly Beach, Respondent.	)	**FINAL ORDER**

This matter comes before me as an appeal pursuant to § 110.18 of the Folly Beach Code of Ordinances by Appellants 108 East Erie, LLC ("Appellant LLC") and John McFarland ("McFarland") of the decision by the License Official of the City of Folly Beach ("City") to require a separate business license under §§ 110.01 and 110.04(B) for each of the two apartments within Appellants' building located at 108 East Erie Ave., Folly Beach.

The parties appeared before me at a hearing held on October 22, 2020. McFarland appeared *pro se* and on behalf of 108 East Erie, LLC. The City was represented by City attorney, Joseph C. Wilson, IV, Esquire. The City presented testimony by City License Official Aaron Pope ("Pope"). McFarland served as Appellants' sole witness. Each party was given the opportunity to cross-examine the witnesses. The City entered into evidence Exhibits City 1 through 3, without objection. Appellants submitted numerous documents as potential exhibits, from which the Court extracted the submissions of legal authority and accepted into evidence Appellants' Exhibits 1 through 15, without objection.

FINDINGS OF FACT

Having carefully considered all testimony and arguments presented, taking into account the credibility of the witnesses, the accuracy of the evidence, and having reviewed all of the

exhibits, I make the following findings by a preponderance of the evidence:

1. Appellant LLC owns 108 East Erie Ave. ("the Property"), which contains one building that is divided into two separate apartments, now known as 108 East Erie Upper Unit and 108 East Erie Lower Unit (collectively "the Units").
2. It is undisputed that the Units are Class 8 long-term residential rentals as designated under § 110.37.
3. McFarland and Susan Nial ("Nial") purchased the Property in 1997. McFarland and Nial are the members of the Appellant LLC. They converted the Property's ownership to the Appellant LLC in January of 2018.
4. McFarland also has ownership interests in properties on Folly Beach located at 109 East Hudson Ave. (containing 2 houses) and 201 East Hudson Ave. (containing 1 house), which have been operated as long term residential rentals since at least 1997.
5. It is undisputed that from 1996 until 2017, the City required McFarland to obtain only one business license for all of his Folly Beach residential rentals.
6. The Units are separate dwelling units, rented to different tenants living independently of each other. They are advertised as separate apartments. The Units are not rented to members of the same family. Each Unit has its own bathroom, kitchen, heating and cooling unit, and porch.
7. The Units share the same roof of the building on the Property, as well as some walls, the waterline, septic system, parking lot, yard, recycle bin, and garbage container.
8. The building meets the definition of a Two-Family Dwelling under § 161.02: "a building arranged or designed to be occupied by two families living independently of each other."

9. The Units each meet the definition of Dwelling Unit under § 161.02: "a building, or portion thereof, providing complete and permanent living facilities for one family."
10. The business of providing rental units at the Property is classified under NAICS Code Description 531110: "establishments primarily engaged in acting as lessor of buildings used as residences or dwellings, including owner-lessor." Both Units fall under this classification.
11. After 2018, the License Official began interpreting § 110.04(B) to require properties containing more than one Dwelling Unit that are offered as long-term rentals to obtain a separate business license for each Dwelling Unit in the building or on the property. Accordingly, starting in 2018, Appellants were required to obtain separate business licenses for 108 East Erie Upper Unit and for 108 East Erie Lower Unit.[1] This represented a change in the way the License Official interpreted § 110.04(B) and coincided with the City's recognition of a distinction between short-term rentals and long-term rentals on the Island.
12. It is undisputed that City Council did not amend or alter § 110.04(B) between 2017 and 2018 and that the language in this controlling portion of the ordinance has remained unchanged since 2006 to the present.
13. It is further undisputed that the City Council did not hold public hearings to discuss a change in the interpretation of § 110.04(B) as it is now applied to long-term rentals nor did it formally approve the reinterpretation of the ordinance.
14. Under §110.02, Pope, as the Licensing Official, is vested with authority to administer the City's business license ordinance.

[1] Starting in 2018, McFarland was also required to obtain separate business licenses for his long-terms rental units at 109 and 201 East Hudson Ave. Appellants doe not include these properties as part of the appeal, however.

15. Pope explains that his interpretation of § 110.04(B) is based on the fact that the Property "has two individual units that are rented independently under separate contracts. Each functions as a complete dwelling unit with no common uses. For that reason, we consider this property to have two separate places of business."

16. Pope further explains that "[f]or this class of license and for short-term rentals, the City considers the place of business to be the dwelling unit being rented. Our Code defines a unit as a complete living facility for one family and recognizes that a duplex consists of two independent dwelling units."

17. Appellants do not assert that they are being singled out for disparate treatment, but rather agree that since 2018 all similarly-situated properties in the City have been required to obtain separate business licenses where more than one business is being operated on the same property.

LEGAL STANDARDS

A municipal business license ordinance should be interpreted based on the general rules of statutory construction. Olds v. City of Goose Creek, 424 S.C. 240, 246, 818 S.E.2d 5, 9 (2018). "The cardinal rule of statutory interpretation is to ascertain and effectuate the 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 statute 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 statute should be read "as a whole and in a manner consonant and in harmony with its purpose." CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct.App. 2008), *aff'd as modified,* 386 S.C. 339, 688 S.E.2d 569 (2010)).

It is well settled that 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). A business license ordinance is an excise tax. 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). "The construction of a statute 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. 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)).

DISCUSSION

Under § 110.01, "[e]very person engaged in . . . any calling, business, occupation or profession listed in the rate classification index . . ., in whole or in part, within the limits of the city, is required to pay an annual license fee for the privilege of doing business and obtain a business license as herein provided. This includes the operation of any . . . business . . . from a residence located within the limits of the city." Appellants do not contend that they are exempt from the ordinance which requires them to obtain business licenses for their rental properties nor do they challenge the City's ability to levy a business license fee on the businesses operated at the Property, but rather they object to bring required to obtain two licenses for the two Units on the Property because they are within the same building.

I. Does the License Official's change in the interpretation of this provision improperly depart from the plain and ordinary meaning of the words "business" and "place of business" as used in the ordinance?

Section 110.04(B) reads as follows: "A separate license shall be required for each place of business and for each classification or business conducted at one place." (Emphasis added). A plain reading of this provision makes clear that each place of business must have at least one business license. In addition, if more than one classification of business is operated at one location, each classification must have its own license. The change in the interpretation of the Section appears to be the recognition of the impact of the words "or business" also contained in the sentence. The interpretation in regard to rental properties used prior to 2018 overlooked the "or business" portion of the clause. Giving equal weight to the terms "classification" and "business" in the clause plainly means that a separate license is required if more than one business is conducted in one place, just as it would if more than one classification of business was being operated in the same location.

A place of business has been defined to include "[a]ll parts of one's place of business, including rooms, closets, stairs, yard or courts, used in connection with the place of business itself." State v. Shumpert, 195 S.C. 387, 11 S.E.2d 523 (1940). Here, it is conceded that the building on the property contains at least one place of business. Appellants conceded that if a building used as a place of business housed two separate kinds or classifications of businesses, each business must obtain a separate license under the ordinance. Indeed, the plain language of the ordinance treats two separate businesses being operated in the same building in the same manner even if the businesses share the same classification. If, for example, a building housed a woman's dress shop on the first floor and a separate children's clothing store on the second floor, each of these would be deemed a separate business if the stores were operated separately (different names, separate entrances, separate accounting, etc.) even if they may share the same classification and may be owned by the same person or entity. There would be no debate that each clothing establishment should be required to obtain its own license. Similarly, if these Units are separate businesses, they, too, are required to be separately licensed despite sharing the same roof.

Business is defined in §110.02 of the ordinance as a "calling, occupation, profession, or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly." Pope deems the Units to each be a separate business because each functions as its own compete dwelling unit and are rented independently under separate contracts. This interpretation is consistent with the definitions of "Dwelling Units" ("a building, or portion thereof, providing complete and permanent living facilities for one family") and "Two-Family Dwelling" ("a building arranged or designed to be occupied by two families living independently of each other") under § 161.02. (Emphasis added.)

Appellants cite several Attorney General opinions in support of their argument that the License Official's interpretation of the ordinance deviates from the plain meaning of the term "business." These opinions, however, are not persuasive and, in fact, contain support for the License Official's current interpretation. In short these opinions recognize that while component parts of the same business should not be taxed separately, where separate businesses are conducted on the same premises by the same owner, it is lawful to impose more than one license tax. *See* Inf. Op. S.C. Att'y Gen., 1996 WL 766549 (Dec. 30, 1996); 1966 S.C. Op. Att'y Gen. 2134, 1996 WL 8589 (Aug. 22, 1996). They recognize that a distinction is properly drawn between activities that are "merely incidental" or "inseparable components" of a primary or single business versus activities that constitute separate businesses. *See* Wood-Mendenhall Co. v. City of Greer, 88 S.C. 249, 70 S.E. 724 (1911) (finding that blacksmith who also performed painting work outside of and not connected with the work of blacksmithing was deemed to be operating a second business separate and independent from that of the business under his license as a blacksmith).

Here, the rental of one Unit is not inseparable or incidental to the rental of the other Unit. They are rented to separate families or individuals and are advertised separately. Most of elements other than the structure itself are not commonly shared by the tenants in terms of the living space. Appellants could chose to rent out only one of the Units and reserve the second Unit for personal use, for example, without hampering the rental operation of the rented Unit. Accordingly, I find that the Units are properly defined as separate businesses under the plain meaning of the words in the ordinance.

II. Does the Licensing Official's actions in reinterpreting these provisions amount to an unconstitutional undertaking to amend or extend a taxing statute thereby usurping the authority of City Council?

Appellants contend that only City Counsel has the authority to levy a tax and by reinterpreting the ordinance under which he has authority to collect the tax, the Licensing Official is improperly undertaking City Council's role. In support of this argument, Appellants cite cases which stand for the proposition that regulations and administrative orders may not materially alter or add to a statute. *See* Soc'y of Prof'l Journalists v. Sexton, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984); Milliken & Co. v. S.C. Dep't of Labor, Div. of Occupational Safety & Health, 275 S.C. 264, 267, 269 S.E.2d 763, 764 (1980). As discussed above, however, Pope's current interpretation is consistent with the plain meaning of the ordinance, even if differs from how the ordinance was previously interpreted by his office.

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). Indeed, great deference is given to the official who is designated in the ordinance as being charged with its enforcement such that courts have estopped a municipality from altering the administering official's interpretation of a statute. *See* 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). Thus, in Landing Development, a county was prevented from revoking a zoning permit that was awarded by the zoning director acting within the proper scope of his authority, for example.

Here, Pope as the License Official is the person designated under § 110.02 with administering the ordinance. Since his current interpretation of this section is consistent with the purpose and plain meaning of the words in the ordinance, his decision to alter the way in which the ordinance is enforced is a proper exercise of his discretion and does not usurp the City's authority.

III. Should the City be estopped from enforcing the revised interpretation of the ordinance against the Appellants' Property, deeming it "grandfathered" under the prior interpretation?

Appellants further argue that even if the Licensing Official's current interpretation of the ordinance is valid, the Property should be exempted from the revised interpretation since it was not taxed in this manner previously. They cite no legal authority in support of this argument, however.

There are circumstances where government agents' actions can "give rise to estoppel against a municipality." Landing Dev. Corp., 285 S.C. at 221, 329 S.E.2d at 426. Equitable estoppel may be warranted under the following circumstances:

> (1) conduct by the party estopped which amounts to a false representation or concealment of material facts or which is calculated to convey the impression that the facts are otherwise than and inconsistent with those which the party subsequently attempts to assert; (2) the intention or at least expectation that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the true facts; (4) lack of knowledge or the means of knowledge of the facts by the other party; (5) reliance upon the conduct by the other party; and (6) a detrimental change of position by the other party because of his reliance.

McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill, 360 S.C. 301, 305, 599 S.E.2d 617, 619 (Ct.App. 2004). The burden of proof lies with the party asserting an estoppel. Pamplico Bank & Trust Co. v. Prosser, 262 S.C. 153, 159, 203 S.E.2d 110, 112 (1974).

Here, Appellants have not alleged any concealment or falsity on behalf of the Licensing Official nor have they demonstrated that they suffered any material detriment by their reliance on the Official's prior interpretation of the ordinance as opposed to his present interpretation. At most, they demonstrated that they benefitted in the past from a more lenient interpretation of the ordinance. This analysis might differ if the Licensing Official was seeking to retrospectively collect business license fees in this manner for the years prior to 2018, but that is not the case.

Accordingly, I find no reason for estoppel or to support an argument that Appellants' Property should be grandfathered under the prior method of collection.

CONCLUSION

Therefore, for the foregoing reasons, the appeal is denied.

IT IS SO ORDERED.

Christie Companion Varnado
Hearing Officer
City of Folly Beach

November 13, 2020

Charleston, South Carolina