



appeal hearing was held on May 13, 2025, which was more than 30 days after receipt of the request for appeal, pursuant to § 110.16(C). (*City Ex. 3.*)

At both the pre-hearing conference and the hearing, Appellant was advised of his right to retain counsel at his own expense to represent him in this matter, which he knowingly waived.

At the hearing, Appellant entered into evidence *Appellant Exhibits A-K*, without objection by the City. The City entered into evidence *City Exhibits 1-21* (including *Ex. 4A*), without objection by Appellant. Appellant presented testimony by McCarrell. The City presented testimony by License Official Stacey Freeman (“Freeman”).<sup>1</sup> Each party was given the opportunity to cross-examine the witnesses. Appellant advised that he also wished to call other City employees as witnesses, but the City declined to make them available. (*App. Ex. H.*) As set forth in § 110.16(C)(f), “[h]earsay, including affidavits, are allowed to be presented by either party.” Accordingly, the hearsay statements made in emails by these potential witnesses were admitted into evidence, as well as McCarrell’s testimony quoting his conversations with them, thus negating any potential prejudice due to the witnesses’ absence.

### STANDARD OF REVIEW

I have applied the following legal standards in evaluating the evidence and arguments for Appellant’s appeals. Business 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). A business license fee is a tax on the privilege of doing business within a county or municipality. 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

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<sup>1</sup> Prior to December of 2024, Freeman was known as Stacey Ritchie. For the sake of consistency, she will be referred to as “Freeman” throughout this Order.

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 Comm’n, 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).

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 Dev. 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 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 & Env’t Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Dunton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)).

In regard to the analysis of the applicable Code provisions, 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 Code 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.” Under § 10.07, “[t]he provisions of this code, so far as they are consistent with any prior ordinances, shall be construed as continuations of the prior provisions and not as new enactments.”

“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 Cnty. Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995)).

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 Cnty., 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 Cnty. 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)).

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 the words in an ordinance are unambiguous, the court should apply their literal meaning. Id. at 498, 640 S.E.2d at 459. Under § 10.06 of the Code, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.”

## FINDINGS

Having carefully considered the evidence and those arguments properly before the tribunal, 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. Every person engaged or intending to engage in any business . . . or activity engaged in/with the object of gain, benefit or advantage, in whole or in part within the limits of [City] is

required to pay an annual tax for the privilege of doing business and obtain a business license as herein provided.” § 110.01. (*City Ex. 16.*)

2. Pursuant to the South Carolina Business License Tax Standardization Act (“Standardization Act”), all municipal business licenses are issued for “a twelve-month period beginning May first and ending April thirtieth. Each business license issued must expire April thirtieth . . . . The business license must be renewed before May first of the year in which it expires.” S.C. Code Ann. § 6-1-400(B)(1). (*City Ex. 17.*) See also § 110.04(A). (*City Ex. 16.*)
3. Pursuant to § 117.03 of the Code, “[a]ny owner wishing to operate a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.” (*City Ex. 15.*) Business licenses and rental registration permits “must be obtained and renewed annually by the submittal” of the appropriate forms and paying the required fees in a timely manner. (*Id.*)
4. As a result of the submission of a citizen’s petition initiating adoption of an ordinance to cap the number investment short-term rental business licenses, the City held a special referendum election on February 7, 2023, in which a majority of the registered voters of Folly Beach voting in the election voted in favor of the cap. (*City Ex. 20.*)
5. In anticipation of the referendum and upon the acknowledgement that the City had issued 1,112 short-term rental licenses for the 2022 business license year, the City enacted Ordinance 32-22 on October 18, 2022, placing a moratorium on the issuance of new business licenses for short term rentals of residential dwellings taxed at a 6% property tax rate, with some exceptions. (*City Ex. 18.*) The moratorium exempted the renewals of short

term rental licenses for properties that were legally licensed as of October 18, 2022. (*Id.*)

The moratorium was extended via Ordinance 34-22. (*City Ex. 19.*)

6. Following the passage of the referendum, the number of ISTR business licenses that may be issued by the City is capped at 800. § 117.02(C). (*City Ex. 15.*)
7. As of the adoption of the cap, the number of ISTR business licenses issued by the City has exceeded the cap.
8. Even though the number of ISTR licenses exceeds the cap, any ISTR business license that was in existence prior to the referendum may be renewed so long as the license remains in good standing. § 117.02(C)(2). (*City Ex. 15.*)
9. Because the cap of 800 has been exceeded, the City may not issue any new ISTR business licenses at this time and may not do so in the future unless and until the total number of ISTR business licenses falls below the cap, except in instances of hardship or inheritance. § 117.02(C)(1). (*City Ex. 15.*)
10. ISTR business licenses terminate upon transfer or sale of the properties for which they are issued and are non-transferable. § 117.02(D)(2). (*City Ex. 15.*)
11. Appellant fell in love with Folly Beach upon his first visit to the island and desired to own property there to allow him to visit as often as possible and make it available to others to enjoy during the rest of the year.
12. He purchased the Properties in 2017, with the intention of using them for short-term or vacation rental units, in the same manner as they had been operated by the previous owners.
13. The rental units on the Properties were constructed in the late 1940s or early 1950s and have been used as vacation rentals for decades. (*City Ex. 3.*)

14. Appellant sold his business and retired in 2015 and now derives his primary source of income from the proceeds of the rentals of the Properties. He avers that if he cannot operate his Properties as ISTRs, he will be forced to sell them.
15. When he purchased the Properties, Appellant adopted the Airbnb and VBRO rental accounts from the previous owners and assumed that Airbnb and VBRO would handle all of the necessary business matters for the Properties. He subsequently learned that, although those entities collected some sales and accommodations taxes for the rentals booked through their platforms, the companies did not procure or maintain City business licenses or rental registration permits.
16. Appellant mistakenly believed that the fees he was paying to Airbnb and VBRO included maintaining and renewing the City business licenses held by the previous owners, but he did not review any written contracts or acknowledgments to this effect from those companies.
17. In fact, the City does not have any record of ISTR or short term rental business licenses or rental permits for the Properties being issued to Appellant at any time during Appellant's ownership from 2017 through 2025, although Appellant has been advertising and renting out the Properties at least through March of this year. Appellant does not contest that this is true.
18. Appellant further testified that because he believed he was purchasing on-going rental businesses and did not intend to change how they were operated, he did not review the City's websites or the short term rental ordinances to gain an understanding of the requirements for operating short-term rentals in the City.

19. Appellant also did not consult with or use the services of a property management company for the operation of the Properties.
20. In or around 2021 or 2022, in conjunction with learning that the potential of limits or caps on City ISTR licenses was being discussed, Appellant became aware that his Properties lacked the appropriate business licenses and that Airbnb and VBRO had not undertaken any responsibility in that regard on his behalf. (*City Ex. 3 & 4.*)
21. On June 14, 2022, Appellant emailed Tami Fralick (“Fralick”) with Charleston County to inquire about the process for obtaining business licenses to operate his rental units in the City. (*App. Ex. A.*)
22. Appellant explained that because he lived outside of South Carolina and was not “well-versed” in the licensing requirements and ordinances, he “felt that [his] best solution to was to work with the proper city officials to help [him] correct the situation.” (*App. Ex. A.*)
23. On June 15, 2022, Fralick advised Appellant that her office only handles business license renewals and added City Administrator Aaron Pope (“Pope”) to the email discussion, indicating that Appellant would need to address obtaining the new licenses directly with the City. (*Id.*)
24. Pope promptly forwarded Appellant’s email to License Official Freeman, asking her to assist Appellant with the short term rental license applications. (*Id.*)
25. Within two hours, Freeman emailed Appellant, asking him to give her a call so that she could walk him through the licensing process. (*Id.*)
26. Appellant testified that he called Freeman on two or three occasions during the summer of 2022, but was unable to reach her so he left voicemail messages, believing Freeman was

busy but would get back with him; he did not receive a return call in response to his voicemails.

27. Appellant further testified that he found the on-line information about the application process confusing and felt it did not apply to his unique situation in which he needed to obtain new licenses but had already been paying the accommodations taxes on the rentals for several years. Thus, he felt he needed personal assistance in order to properly submit his applications.

28. Appellant admitted that he attended a City Council meeting in 2022 during which the ISTR cap was debated and voted down, but he did not take any further steps to meet in person with Freeman or another member of the License Official's staff to address his questions about business licenses during that visit to the City.

29. Freeman testified that if Appellant had submitted business license applications prior to enactment of the moratorium on October 18, 2022, even if they were incomplete, the City would have processed the applications and awarded the licenses once completed. The City would have used the application date as the marker of submission rather than the date the paperwork was processed.

30. In January of 2023, City Director of Public Works Eric Lutz ("Lutz") reached out to Appellant to enquire about renting 110 W. Cooper for the City's firefighters to use while their crew quarters were under renovation. (*App. Ex. E.*) Appellant did not discuss with Lutz whether 110 W. Cooper was properly licensed or the ISTR business license application process in general. Ultimately, the City opted to house the firefighters at the Holiday Inn, instead. (*App. Ex. F.*) Despite having blocked off several dates in anticipation

of the possible rental, after the City opted to go with another facility, Appellant kindly declined Lutz's offer to compensate him for holding the reservation open. (*App. Ex. E.*)

31. Lutz would not have access to the City's business license records as part of his work in the Public Works Department.

32. There are no records of any follow-up emails or other communications or attempted communications between Appellant and Freeman or Appellant and the County in 2022 or 2023. (*City Ex. 21.*)

33. Appellant did not submit any business license applications to the City to operate the Properties as short-term rentals in 2022 or 2023.

34. In January of 2024, the City began operating a new program which significantly increased the License Official's ability to identify businesses in the City that were operating without proper business licenses in place.

35. On February 11, 2024, City Ordinance Compliance Officer Carla Frye ("Frye") issued Appellant a citation for advertising 720 E. Ashley for rent without a business license. (*City Ex. 6.*)

36. On February 19, 2024, City Ordinance Compliance Officer Peyton Smith ("Smith") sent a certified letter to Appellant concerning 110 W. Cooper, advising that Appellant was in violation of § 117.03 and § 110.01 for advertising and operating a short-term rental business without a license and instructing him to immediately cease rental operations. (*City Ex. 7.*)

37. For the first time since June of 2022, Appellant reached out to Freeman via email on February 21, 2024, to "inquire about the process for clearing up some confusion on business license and rental registrations" with the Properties. (*App. Ex. B.*) Freeman

promptly responded to Appellant, stating that according to the City's records Appellant had never had City short-term rental licenses or rental registration permits for the Properties and advising that, as a result, ISTR licenses for the Properties could not be grandfathered in under the Code due to the cap. (*Id.*) Freeman explained that Appellant needed to immediately stop renting the Properties for any periods of 29 days or less to avoid fines and penalties. She further advised him of his options regarding applying for long-term rental licenses or submitting applications for ISTR licenses that would be denied due to the cap so that he could start the appeal process. (*Id.*)

38. On February 23, 2024, Appellant responded that he would make both Properties unavailable for future rentals through February of 2025, until the licensing issues were resolved, but intended to honor existing reservations to "avoid causing havoc to people who already have reservations for later this year." (*City Ex. 4.*) There is no indication that the City agreed to his proposal to continue operations without the proper licensing in place.

39. In March of 2024, Appellant went to the City Hall in person and completed applications for new ISTR business licenses for the Properties. The application for 720 E. Ashley Ave. was missing documentation regarding the septic tank inspection and was, therefore, incomplete. (*App. Ex. C.*)

40. On March 12, 2024, Appellant emailed the documentation of the septic tank inspection to Smith and Freeman. (*App. Ex. C.*) Smith acknowledged receipt of the inspection report, indicating it would be placed with Appellant's application. (*Id.*) In that email, Appellant acknowledged his understanding that his applications would be denied and that he would be able to go through the appeal process once the denial letters were issued. (*Id.*)

41. The City misplaced Appellant's March of 2024 applications and did not issue any denial letters to him in 2024.
42. On October 18, 2024, Frye issued a citation to Appellant for operating a rental business without a license at 720 E. Ashley. (*City Ex. 8 & 9.*) Appellant was tried in absentia and found guilty on November 11, 2024, and paid the \$500 fine. (*Id.*)
43. On November 26, 2024, Frye issued a citation to Appellant for operating a rental business without a license at 110 W. Cooper, as well as a letter advising Appellant to cease advertising the property immediately. (*City Ex. 10.*) Appellant responded via email that he intended to argue his case in person because the City would not let him "get in compliance with a license for rentals that I've had since well before the cap and thought were in compliance" and he was being forced "into an impossible situation." (*City Ex. 4.*)
44. On February 11, 2025, Frye issued a citation to Appellant for operating a rental business without a license at 110 W. Cooper, as well as a letter advising Appellant to cease renting the property immediately. (*City. Ex. 11.*)
45. Appellant responded via email that he would like to request a meeting with the appropriate City officials to discuss resolving the licensing issues with the Properties. (*App. Ex. D.*) Frye referred Appellant to Freeman and reiterated that there were no new ISTR licenses available at that time and he would continue to receive fines and citations if he continued to rent or advertise his Properties without business licenses in place. (*Id.*)
46. On February 17, 2025, Freeman reiterated via email to Appellant that business licenses do not transfer to the new owners of properties when they are sold and provided Appellant with information concerning the current ordinances and the application and appeal process.

(*Id.*) Appellant responded, stating he had submitted new business license applications almost a year prior but had not heard back from the City.

47. Also on February 17, 2025, Frye issued a citation to Appellant for operating a rental business without a license at 720 E. Ashley. (*City Ex. 12 & 13.*) Appellant emailed Frye, informing her that he had friends and family who stay at his Properties and that he did not want the City to enter his Properties and harass his guests. (*City Ex. 4A.*)

48. On February 24, 2025, Appellant emailed Pope asking for his intervention to get the Properties grandfathered in under the Code, asserting that Freeman had not been responsive in assisting him with the licensing process over the years. (*App. Ex. A.*) Pope responded that he would research the matter and get back with Appellant. (*Id.*)

49. On February 27, 2025, Freeman advised Appellant that she could not locate his March 2024 applications, although she found confirmations that Appellant had applied for the ISTR waitlist. (*App. Ex. D.*)

50. Following receipt of Freeman's email, Appellant again followed up with Pope indicating that he could not understand why Freeman did not have a copy of the March 2024 applications and asserting that he had been trying since 2022 to get his Properties properly licensed. (*App. Ex. A.*)

51. On March 6, 2025, Appellant, Freeman, and Pope participated in a conference call to discuss Appellant's application status. (*App. Ex. G.*)

52. On March 20, 2025, Appellant requested a continuance of his March 21, 2025 hearing for three citations concerning 720 E. Ashley and one citation concerning 110 W. Cooper. (*City Ex. 14 & 5.*) The hearing was continued to June 6, 2025. (*City Ex. 5.*)

53. The City received Appellant's new applications for ISTR business licenses for the Properties on March 20, 2025. (*City Ex. 1 & 2.*)
54. On March 24, 2025, Freeman issued letters to Appellant denying his applications for 2025 ISTR business licenses for the Properties pursuant to § 117.02(C)(1), because the number of ISTR licenses issued exceeded the cap at that time. (*City Ex. 1 & 2.*)
55. Appellant timely appealed the License Officials' denial of his 2025 applications. (*City Ex. 3.*)
56. By waiting from June of 2022 until February of 2024 to renew his request for assistance with Freeman, Appellant failed to exercise reasonable care in protecting his interests.
57. As of the date of Appellant's 2025 application, the number of ISTRs issued by the City was 943, which exceeds the 800 cap set forth in the Code.
58. The License Official processes over 7000 business license applications annually, of which over 1000 concern short-term rentals.
59. While Appellant submitted evidence that he had paid sales and accommodations taxes for the Properties over the years he has owned them (*App. Ex. J*), it remains undisputed that he has never paid business license taxes.
60. I find no evidence that the City or Freeman failed to act in good faith in regard to Appellant's business licenses.
61. Appellant operated the Properties as ISTRs from 2017 to 2015 without obtaining business licenses or rental registration permits in violation of the South Carolina Code and the City ordinances.

#### **DISCUSSION**

In his appeal, Appellant asserts that he approached the City in good faith and paid his property and accommodations taxes in good faith and had the expectation that the City would assist him in

getting the business license issues corrected in good faith. He believes that his 2022 request for assistance “fell through the cracks” and that the City should have assisted him in obtaining the proper business licenses for the Properties prior to the cap being put in place. Appellant further asserts that his delinquency in obtaining the proper business licenses to operate should be excused based on his mistaken belief that the licenses from the prior owners transferred with the Properties and that Airbnb and VBRO were keeping the licenses current. Finally, he asserts that the cap should not apply to his Properties because he requested assistance from the City License Official in 2022 prior to the enactment of the cap and she failed to timely follow up with him.

As an initial matter, I find no basis under § 117.03 to reverse the License Official’s denial of Appellant’s March 20, 2025 ISTR business license applications for the Properties. In her March 24, 2025 letters, the License Official explained she was denying Appellant’s applications because the number of ISTR rental licenses currently issued by the City exceeds the allowable number under the cap pursuant to § 117.02. (*City Ex. 1 & 2.*) Appellant does not challenge the License Official’s finding in this regard as part of his appeal. Based on a plain reading of the ordinance, which is clear and unambiguous, and the evidence presented, Appellant did not have existing ISTR business licenses in good standing prior to February 7, 2023, for the dwelling units on the Properties. The Properties also did not meet any of the exceptions to the cap when Appellant submitted his completed ISTR applications in 2025 and the number of ISTRs issued by the City remained in excess of the cap. Accordingly, the License Official properly followed § 117.03 in denying the applications.

I further find that this outcome would have been no different had the City not misplaced Appellants’ applications submitted in March of 2024. The lost applications were submitted after the cap was put in place, which would have prevented the License Official from approving the new applications for the same reason the 2025 applications were denied. If anything, the delay occasioned by the City’s failure to process the 2024 applications benefited Appellant in that the City also failed to

detect the continued operation of his unlicensed businesses until it implemented new enforcement software several months later and Appellant was able to earn rental income during those months.

I do not find compelling Appellant's request to overlook his failure to obtain ISTR business licenses in time to be grandfathered in to avoid the cap because he asserts it was caused by his mistaken understanding or ignorance of the laws or because the License Official delayed in following up with him to help him with the application process. A business license is a special privilege that "is to be enjoyed only so long as the licensee complies with the restrictions and conditions governing its continuance." Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22, 25 (1943). It is incumbent on all business owners (as with all citizens) to know and timely comply with the laws. Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008). Moreover, they are "charged with exercising 'reasonable care to protect [their] interest[s].'" Id. (quoting Smothers v. U.S. Fidelity & Guar. Co., 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct. App. 1996).

These duties apply to all of the laws concerning a business owners' actions, not just a portion of them, and requires owners to stay abreast of changes in the laws, as well. Here, Appellant admits he made erroneous assumptions about the transferability of the licenses, as well as his rental companies' obligations in regard to license renewals, but did not undertake a review of the applicable ordinances or the City's website when he purchased the Properties and did not consult with an attorney or local property management company to ensure he understood his duties as business owner operating in the City. Pursuant to the clear language of Code, Appellant had a duty to ensure he maintained up-to-date business licenses in order to offer the Properties for rent to paying customers. The Code makes clear that business licenses are not transferrable to new owners. Nonetheless, even if he was mistaken in his understanding of whether the prior owners' licenses transferred to him when he first purchased the Properties, by June 14, 2022, at the latest, Appellant was on actual notice that was not possible and that he needed to take appropriate actions to obtain the proper business licenses for the Properties. Appellant's neglect in taking reasonable steps to become informed of all of the requirements to legally

operate rental properties in the City does not relieve him of the consequences of his failure to timely submit applications and payments under the City's business license and short-term rental ordinances. Had he acted promptly in 2022 to submit the Code-required applications, he would have been able to secure the licenses for his Properties prior to the enactment of the cap.

As for the alleged failure by the License Official to follow-up with Appellant in 2022 to assist him with correctly submitting the applications, Appellant not only had a duty to know the law, but also was responsible for taking reasonable care to protect his interests. While he may have been confused as to the process and wished to have help with the applications, that does not excuse his waiting from June of 2022 until after he received a citation in February of 2024, to pursue his request for assistance if it was not timely forthcoming. This is especially true because he was aware that capping the number of allowable ISTR licenses was being hotly debated in 2022. It was incumbent on Appellant to do more than leave a few voicemails in order to protect his interests. He had experienced that both Pope and Freeman promptly responded to his emails requesting assistance, yet Appellant did not renew his request for help via email at any point during 2022. He was even in the City Hall during that time period, but did not stop by the License Official's office to seek help. The fault here lies with Appellant, not with any perceived lack of timely response by the License Official. Accordingly, I find that Appellant failed to take reasonable care to protect his interests in 2022 before the implementation of the moratorium in October. After that time, there was no assistance the License Official could provide to him that would have overcome his failure to timely submit the applications.

To the extent Appellant's argument could be classified as one sounding in equitable estoppel in which Appellant asserts the City should be prevented from enforcing the cap in this instance because Appellant reached out to the City for assistance prior to the enactment of the cap and the City was not diligent in following up with him to assist him with submitting the applications, it must also fail. A governmental entity can be subject to equitable estoppel under certain circumstances. Ahrens v. State, 392 S.C. 340, 352-53, 709 S.E.2d 54, 60 (2011)(citing Townes Assoc., Ltd. v. City of Greenville, 266

S.C. 81, 87, 221 S.E.2d 773, 776 (1976) *abrogated on other grounds by* Matter of Est. of Kay, 423 S.C. 476, 816 S.E.2d 542 (2018)). Government agents, acting within the proper scope of their authority, can by their acts give rise to estoppel against a municipality. Landing Dev. Corp., 285 S.C. at 220, 329 S.E.2d at 425 (citing Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716, 718 (1979)). In addition, “the government may be estopped in matters that do not affect the exercise of its police power or the application of public policy.” Grant v. City of Folly Beach, 346 S.C. 74, 81, 551 S.E.2d 229, 232 (2001).

Appellant did not provide evidence of any statement or conduct by the City or its officials that misled him into believing the full requirements under the business license ordinance would not apply to his Properties. Similarly, he provides no evidence that any City official misled him as to the requirements to timely obtain the licenses or that the City provided him with incorrect information about the applicable ordinances or process. As previously noted, Appellant’s incorrect assumptions that he could adopt or transfer the prior owners’ business licenses or that Airbnb and VBRO were taking care of renewing the licenses came not from the City but rather were founded in his personal failure to review the ordinances or otherwise become educated about the legal requirements. This is not sufficient for estoppel to apply. *See Grant*, 346 S.C. at 81–82, 551 S.E.2d at 233 (holding City not estopped from enforcing its zoning/flood ordinance precluding residential use of downstairs floor where owner had the means of ascertaining the ordinance’s effect but failed to do so); Town of Sullivans Island v. Byrum, 306 S.C. 539, 413 S.E.2d 325 (Ct.App.1992) (finding town not estopped from challenging use of garage as apartment where homeowner presented no evidence of any statement or conduct by town that reasonably misled homeowner into believing garage apartment was a permitted use).

Further, equity does not provide relief from the consequences of a mistake of law absent undue influence or fraud. Smothers, 322 S.C. at 210, 470 S.E.2d at 860 (citing 27 Am.Jur.2d *Equity* § 41). Appellant does not allege fraud or undue influence was at play here. Rather, despite being aware of the

potential implementation of a cap, Appellant, simply failed to use any diligence in becoming compliant with the City's ordinances, which he blames on Freeman's failure to return his phone calls in 2022.

"Estoppel is an equitable doctrine, essentially flexible, and therefore to be applied or denied as equities between the parties may preponderate." Landing Dev. Corp., 285 S.C. at 220, 329 S.E.2d at 425 (quoting Pitts v. New York Life Ins. Co., 247 S.C. 545, 148 S.E.2d 369, 371-72 (1966)). "To prove estoppel against the government, the relying party must prove (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Grant, at 80, 551 S.E.2d at 232 (citing Midlands Util., Inc. v. S.C. Dep't of Health & Env't. Control, 298 S.C. 66, 378 S.E.2d 256 (1989)). All three elements must be present in order for estoppel to lie against a government entity. Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008).

A governmental entity's delay in processing certain matters may be a basis for equitable estoppel in the proper context, as long as the plaintiff can prove all three elements of the test. Id. Here, Appellant fails at least two of the three prongs, however. As to the first element, rather than a lack of knowledge, Appellant admits that in 2022, when he requested assistance from the City in submitting his business license applications, he was aware that he did not have the necessary licenses in place and that the licenses were required under the law to operate the rental businesses. Moreover, he admits he was aware of the potential enactment of a cap on ISTR licenses and the need for him to take action before any cap was in place. While he may have had some questions about the application process, the information was available both in the City's ordinances and on its website to which he had access. Thus, Appellant fails to satisfy the first prong.

As for the "justifiable reliance" prong, while Appellant testified that when he called the office in the summer of 2022, he received a message that informed him the staff was busy and would get back with him, such messages on a voicemail standing alone are not sufficient to carry this burden. When his phone calls to Freeman were not returned within a few business days, Appellant could have reached

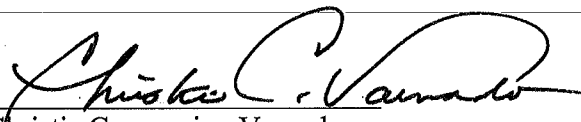
out to Freeman again via email, sought assistance from Pope as her supervisor, or gone to the office in person to request aid – all of which he eventually did in 2024 and 2025. He did none of those things in 2022, however, but rather simply waited well over a year to follow up despite his clear understanding that his Properties were not properly licensed and his calls for assistance had not been promptly returned. Therefore, his reliance on a message that staff would get back with him was not justifiable under the circumstances. Accordingly, having failed this prong, equitable estoppel is not an available to him as a remedy here.

While I am not without sympathy for Appellant's' situation, I am also not in a position to grant Appellant any other form of equitable relief. "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011)(citing Lochar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)). To the extent this court has the authority to fashion a remedy based in equity, those "powers must yield in the face of an unambiguously worded statute." Id. (quoting Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)). Here, the Code is clear and unambiguous in its terms that (1) upon his purchase of the Properties and initial operation of them as short-term rentals in 2017, he was required to obtain the proper licenses and permits; (2) he was required to renew the licenses and permits in 2018 and each year thereafter; (3) that operating a short-term rental in the City without the proper license and permits was a violation of the law; (4) following his failure to maintain business licenses in good standing prior to the enactment of the cap, Appellant was not eligible to obtain new ISTR licenses while the number of ISTR licenses issued exceeded the limit; and (5) there are no exceptions or other mechanisms under the Code which allow for the retroactive award of "grandfather" status to him. Accordingly, I find that the City is not estopped from denying Appellant's ISTR license and Appellant is not entitled to equitable relief.

**CONCLUSION**

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

IT IS SO ORDERED.

  
Christie Companion Varnado  
Hearing Officer  
City of Folly Beach

June 12, 2025

Charleston, South Carolina