

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

Lindsay Ritter and Jackson’s Pearl, LLC, )  
 )

Appellant, )

v. )

The City of Folly Beach, )

Respondent. )

**FINAL ORDER**

This matter comes before me as an appeal pursuant to § 110.16 of the Folly Beach Code of Ordinances by Appellants Lindsay Ritter (“Ritter”) and Jackson’s Pearl, LLC (“Jackson’s Pearl”) appealing the decision of the License Official of the City of Folly Beach (“City”) denying their application for an Investment Short Term Rental (“ISTR”) business license for the property located at 1112 E. Artic Ave. (“Property”).

The City’s License Official issued her letter of denial on July 31, 2023. (App. Ex. A.) Ritter served the City with notice of an appeal of the License Official’s denial on August 25, 2023. Ritter served an Amended Petition for Appeal on August 28, 2023. Appellants also submitted via email to the License Official on August 29, 2023, a Second Amended Petition for Appeal, that changed the caption to add Jackson’s Pearl as a named party to the appeal. I was not provided with a copy of the Second Amended Petition until the final hearing.

The parties appeared before me at a pre-hearing conference held on September 20, 2023, at which Appellants were represented by D. Keith Bolus, Esquire and the City was represented by City Attorney, Joseph C. Wilson, IV, Esquire. The parties were ordered to exchange exhibits by noon on September 22, 2023.

The appeal hearing was held on September 25, 2023, with counsel for both parties present. The hearing was timely held within 30 days after receipt of a request for appeal, pursuant to § 110.16(C).

At the start of the hearing, the parties entered a stipulation on the record as discussed below. Appellants presented testimony by Ritter. The City presented testimony by City License Official Stacey Ritchie (“Ritchie”). Each party was given the opportunity to cross-examine the witnesses. Appellants entered into evidence *Appellant Exhibits A-M*, without objection by the City. The City entered into evidence *City Exhibits 1-6*, ultimately without objection<sup>1</sup> by Appellants.

### 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. Pursuant to § 117.03 of the Folly Beach Code of Ordinances, “[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.” Business licenses and rental registration permits “must be obtained and renewed annually by the submittal” of the appropriate forms and paying the required fees. Id.
2. Prior to 2022, the City’s business license renewals were due in late December, but the South Carolina Business License Tax Standardization Act (“Standardization Act”) became effective on January 1, 2022, making the business license renewal process uniform for all counties and municipalities.

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<sup>1</sup> Appellants’ counsel initially objected to the entry of the City’s exhibits as a whole, but later posed no objection when each exhibit was offered individually and, indeed, used City Exhibit 2 during their own case in chief.

3. Pursuant to the Standardization Act, 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. If the tax is not paid before May first, then a taxing jurisdiction may impose penalties . . . .” S.C. Code Ann. § 6-1-400(B)(1).
4. Pursuant to § 110.12, “the License Official shall impose and collect a late penalty of 5% of the unpaid tax for each month or portion thereof after the due date until paid, not to exceed 100% of original license fee. Penalties shall not be waived. If any business license tax remains unpaid for 60 days after its due date, the License Official shall report it the Municipal Attorney for appropriate legal action.”
5. Folly Beach ISTR registration permit renewals must “be completed prior to June 1 of each year.” § 117.03(B)(1).
6. Pursuant to § 117.02(C),<sup>2</sup> the “maximum number of [ISTR] business licenses issued shall be 800, henceforth referred to as the cap.”
7. No new ISTR business licenses “shall be issued unless the total number of [ISTR] business licenses are below the cap.” § 117.02(C)(1).
8. Pursuant to § 117.02(C)(2): “Any existing [ISTR] business license issued prior to February 7, 2023 which remains in good standing may continue to be renewed annually, even if the number of [ISTR] business licenses exceeds the cap.”
9. Appellant Jackson’s Pearl, LLC has owned 1112 E. Artic Ave. in Folly Beach (“Property”) since September 10, 2020. Ritter is a principal of Jackson’s Pearl. Prior to the Property’s

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<sup>2</sup> Section 117.02 was amended on April 11, 2023.

transfer to Jackson's Pearl, the property was owed by a member of Ritter's family since at least 1984. (App. Ex. B.)

10. Appellants (or their predecessors) were issued an ISTR business license and registration permit for the Property for 2018, 2019, 2020, 2021, and 2022.
11. Appellants renewed their ISTR business license for the Property late in 2018 and 2019, but were permitted to renew the license upon payment of a penalty.
12. Although Appellants' 2022 business license renewal was due on May 2, 2022, the fee was not paid until September 8, 2022, and Appellants paid a late fee of \$84.75 as the penalty. (City Ex. 1, p. 6.)
13. The City issued Appellants a 2022 ISTR business license for the Property in September of 2022. (App. Ex. G.)
14. Appellants' late renewal of their 2022 ISTR business license took place prior to the City's adoption of Ordinance 32-22 on October 18, 2022, which placed a moratorium on the issuance of new business licenses for ISTRs within the City, and prior to the ordinance adopting the cap as a result of the referendum held on February 7, 2023.
15. Appellants' 2022 ISTR business license for the Property was in good standing at the time of the February 7, 2023 referendum.
16. Appellants' 2022 business license for the Property expired on April 30, 2023. (App. Ex. G; City Ex. 2.)
17. The deadline for business license renewals was extended to May 1, 2023, because April 30 was a Sunday.

18. The parties stipulated that Appellants submitted a completed application to renew their business license on May 3, 2023, which was 2 days after the May 1, 2023 business license renewal deadline. (App. Ex. B, p.1.)
19. Appellants also submitted their application to renew their ISTR registration permit on May 3, 2023, although Ritchie asserted the permit application was incomplete. (App. Ex. B, pp. 2-5.)
20. Appellants did not timely submit payment for the renewal of the ISTR business license for the Property by May 1, 2023.
21. Appellants' ISTR business license was not in good standing on May 3, 2023.
22. Appellants' failure to timely renew the ISTR business license for the Property prior to May 1, 2023 was inadvertent.
23. On May 15, 2023, Ritchie instructed Appellants they needed to submit a business license application to request a new ISTR rather than a renewal of the existing license because the 2022 business license had expired. (App. Ex. C.)
24. On May 17, 2023, Appellants submitted a new business license application for an ISTR. (App. Ex. D.)
25. In a letter dated July 31, 2023, Ritchie denied Appellants' renewal application for a 2023 ISTR business license and their application for a 2023 ISTR rental registration permit for the Property. (App. Ex. A.) The reason stated for the denial was that the current number of ISTR business licenses exceeds the cap.
26. Ritchie testified that since the passage of the referendum establishing the cap, it is City policy that when a business license for an ISTR has expired, the ISTR business license is no longer valid and cannot be renewed just by paying a penalty. Rather, an applicant with

an expired ISTR business license must submit a new registration application and is no longer considered a renewal. The new application will be subject to the cap.

27. Ritchie further testified that she did not have authority to issue business license renewals in violation of City policy.

### 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 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 v. Hardee, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007). 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 the plain meaning rule, a court has no right to employ the rules of statutory interpretation where an ordinance 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). On the other hand, where an ordinance is ambiguous, the courts must construe its terms by following the "settled rules of construction." Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001).

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the [enacting body]." Sloan, 371 S.C. at 498, 640 S.E.2d at 459. "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)). 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 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)).

“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 Denton v. S.C. Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)). On the other hand, a business license fee is a tax on the privilege of doing business within a county or municipality, the imposition of which has 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 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).

## **DISCUSSION**

In their Second Amended Petition for Appeal, Appellants assert their 2023 ISTR business license application should not have been denied for exceeding the cap because it was a renewal

rather than a new application. They further contend that the Licensing Official abused her discretion by denying the renewal and in instructing Appellants they must instead submit a new ISTR permit application, which was foreclosed by the cap. Appellants also contend that the Licensing Official failed to give a valid reason for denying Appellants' applications other than stating that the request exceeded the cap.

Appellants had a valid 2022 ISTR business license and permit for the Property. Had Appellants timely submitted their business license renewal application and paid the fee on or before May 1, 2023, the License Official would have processed the renewal application without issue and Appellants would have had until June 1, 2023 to submit the ISTR rental registration permit renewal forms to complete their renewal for 2023. Because, however, Appellants did not attempt to renew their business license until May 3<sup>rd</sup>, which was two days after the business license renewal deadline, under current City policy applicable only to ISTRs, the 2022 business license was deemed invalid and could not be renewed. Accordingly, the Licensing Official instructed Appellants to submit applications for a new ISTR business license and rental registration permit, which would be denied because the number of ISTRs registered in the City exceeds the 800 cap set forth in § 117.02(C), and would trigger the appeal procedure under § 110.16.

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.” Similarly, under § 117.03, [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.”

Looking at what the Short Term Rental Ordinance states about renewals: “Any existing [ISTR] business license issued prior to February 7, 2023 which remains in good standing may continue to be renewed annually, even if the number of [ISTR] business licenses exceed the cap.” § 117.02(C)(2). Appellants’ 2022 ISTR business license was issued prior to February 7, 2023, and, therefore, was eligible for renewal as long as it remained in good standing. The City takes the position that because the business license renewal deadline of May 1 had passed, the license was no longer valid, or in other words, not in good standing, on May 3 when Appellants sought to renew it. This is so even though the deadline for the ISTR registration permit renewal did not expire until May 30.

The City is authorized by the Standardization Act to impose penalties if a business license renewal tax is not paid before May first. S.C. Code Ann. § 6-1-400(B)(1). Under § 110.12 of its Code of Ordinances, the City’s standard penalty for late renewals of business licenses is to impose a late fee “of 5% of the unpaid tax for each month or portion thereof after the due date until paid, not to exceed 100% of original license fee.” If the business license is delinquent for 60 days, the License Official is instructed to report the delinquency to the Municipal Attorney “for appropriate legal action.” *Id.* This section of the Folly Beach Code does not distinguish between ISTRs and other types of business licenses. And in years prior to 2023, Appellants had been able to renew their ISTR business license several weeks or months after the deadline with the only penalty being the payment of a late fee. With the imposition of the cap and the changes to the ISTR ordinance that accompanied it, however, the City now treats ISTR businesses differently.<sup>3</sup>

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<sup>3</sup> While the City may not treat ISTR 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. Included among the articulated purposes are “ensur[ing] “a level playing field for individuals in the short term rental market” and “protect[ing] the residential character of the residential districts of the city.” § 117.01(A)(4) & (5). The imposition of the cap on the number of ISTRs and regulating a grandfather clause concerning prior-licensed ISTRs is rationally related to those goals.

Looking at the current operable language with respect to ISTRs in particular, to be eligible for renewal, the ISTR business license must be “in good standing.” § 117.02(C)(2). The term “in good standing” is not defined in the ordinance, but the “plain and ordinary meaning” of the term is generally understood to indicate being up-to-date with all requirements, including the payment of fees and taxes. Conversely, an entity whose business license is expired is not “in good standing.” Because I find the meaning of “in good standing” is unambiguous here, no further statutory construction is necessary. *See In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (finding a court has no right to employ the rules of statutory interpretation where an ordinance is plain and unambiguous and conveys a clear and definite meaning).

Section 117.03 sets forth the requirements for an ISTR, which include maintaining “a current business license.” The Standardization Act states that business licenses “expire” on April 30<sup>th</sup> of each year and “must be renewed before May first.” S.C. Code Ann. § 6-1-400(B)(1). This deadline was also published on the City’s website on its page concerning ISTRs. (App. Ex. F.) Accordingly, when Appellants sought to renew their ISTR business license on May 3<sup>rd</sup>, their license was not in good standing and, therefore, was not eligible for renewal by the plain meaning of the ordinance. Thus, the Licensing Official’s denial of the renewal application was proper.

While I am not without sympathy for Appellants’ situation in missing the renewal deadline by only two days, nonetheless, “citizens are presumed to know the law and are charged with exercising ‘reasonable care to protect [their] interest[s].’” Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting Smothers, 322 S.C. at 210–11, 470 S.E.2d at 860. Here, pursuant to § 117.01, Appellants had a duty to ensure that they had an up-to-date business license in order to operate an ISTR property.

Appellants next contend that the Licensing Official abused her discretion in various ways. 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). Licensing officials may not issue a license to a person or entity for a reason that is inconsistent with the language or intent of the ordinance and refusing to do so does not constitute failing to exercise discretion. Here, the ordinance as written does not give the Licensing Official the option to excuse Appellants' failure to timely renew their business license once it was no longer in good standing. Accordingly, I find no merit in this ground for appeal.

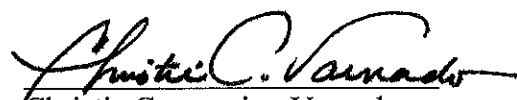
Finally, Appellants assert the Licensing Official failed to provide an accurate written statement of the reasons for the denial of their application as required by § 110.16(A)(1). The only reason stated for the denial in Ritchie's written notice of the denial was that the current number of ISTR business licenses exceeds the cap. (App. Ex. A.) While that was the reason for the denial of Appellants' May 17<sup>th</sup> application for a new ISTR business license and registration permit, as discussed above, that statement does not convey the reason why Appellants' May 3<sup>rd</sup> renewal application was denied.

Appellants do not contend that the error in setting forth all of the reasons for the denial prejudiced them in any way, however. Indeed, Appellants' Second Amended Petition discusses in detail its arguments why they should have been permitted to renew the business license despite being delinquent in paying the fees. Accordingly, I find the error was harmless.

**CONCLUSION**

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

IT IS SO ORDERED.

  
Christie Companion Varnado  
Hearing Officer  
City of Folly Beach

October 25, 2023

Charleston, South Carolina