

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

)
Elizabeth Spratt-Cooper and Park Lane)
Partners, LLC (602 W. Ashley Avenue),)

)
Appellants,)

)
v.)

)
The City of Folly Beach,)

)
Respondent.)

ORDER
(In re: 602 W. Ashley Avenue)

This matter comes before me pursuant to § 110.16 of the Folly Beach Code of Ordinances (“Code”) by Appellants Elizabeth Spratt-Cooper and Park Lane Partners, LLC (“Appellants”) appealing the decision of the License Official of the City of Folly Beach (“City”) revoking Appellants’ Investment Short Term Rental (“ISTR”) business license for the property located at 602 West Ashley Ave. (“Property”).

PROCEDURAL BACKGROUND

By letter dated October 24, 2023, the City’s Business License Official Stacey Ritchie (“Ritchie”) provided Appellants with notice of the suspension of LIC004136 issued for the rental of the dwelling unit located at 602 W. Ashley Ave. pursuant to § 110.15(A) of the Code. (*City Ex. 1.*) Appellants received the notice on November 3, 2023, and submitted a Notice of Appeal on December 1, 2023, setting forth several grounds for appeal. (*City Ex. 3.*)

The parties participated in a pre-hearing conference held via teleconference on December 15, 2023, at which time counsel for the parties agreed to a briefing schedule, with the understanding that a hearing would be set shortly after briefs were submitted if questions of fact remained. As a result, with the consent of the parties and to accommodate the schedules of all

involved, the appeal hearing was set for more than 30 days after receipt of the notice of appeal, pursuant to § 110.16(C).

Appellants submitted their brief of legal issues on February 12, 2024, which was accompanied by *Appellants' Exhibits 1-8*. The City submitted its legal brief on March 18, 2024, which included *City's Exhibits 1-31*. Appellants submitted a reply brief on April 11, 2024, which included *Appellants' Exhibit 9*.

The parties and counsel appeared at the hearing before me on May 8, 2024, with City Attorney Joseph C. Wilson, IV, Esquire representing the City and Ainsley F. Tillman, Esquire representing Appellants. Appellants presented in-person testimony by Appellant Elizabeth Spratt-Cooper ("Spratt-Cooper") and her husband Chris Cooper ("Cooper") testified via remote link (without objection from the City). Appellants also provided testimony via the affidavit of Melissa Carr ("Carr"), which was marked as *Appellants' Exhibit 13*. The City presented testimony by License Official Stacey Ritchie ("Ritchie"). Each party was given the opportunity to cross-examine the witnesses.

Appellants entered into evidence *Appellants' Exhibits 1-6¹ and 9-13*, all without objection by the City. The City entered into evidence *City Exhibits 1-31*, without objection by Appellants. Counsel for the parties were permitted to make opening statements and closing arguments setting forth their positions and responding to questions posed by the Hearing Officer. Thereafter, both parties submitted supplemental briefs on May 13, 2024, further addressing legal issues argued at the hearing.

¹ Although it was not admitted into evidence at the hearing, both parties referenced *Appellants' Ex. 7*, the Municipal Association of South Carolina's *Business License Handbook* (Feb. 2022), as a source in their arguments and, therefore, I am by necessity including it as part of the Record and will refer to it accordingly in addressing the arguments.

On June 13, 2024, the Hearing Officer advised counsel of her concerns regarding subject matter jurisdiction over several of Appellants' issues which amount to challenges to the validity or constitutionality of Chapter 117 in its entirety, the process by which Chapter 117 (or a portion of it) was enacted, or the propriety of the City's exercise of its police powers regulating short term rental properties via a business license ordinance rather than under its zoning code. While both parties mentioned jurisdiction in passing in their well-researched briefs, the topic as not a main focus of discussion by either party. Because there is no provision for a motion for reconsideration in the appeal process before the Hearing Officer, I requested that counsel provide supplemental briefs addressing subject matter jurisdiction by July 3, 2024, and response briefs by July 12, 2024, with the understanding that I would issue my Final Order by July 19, 2024. Upon later request and consent of opposing counsel, the deadline for the supplemental briefs was extended to July 5, 2024.

ISSUES ON APPEAL

Appellants have appealed the License Official's decision to revoke their 2023 license (the "Decision"), asserting the revocation was unlawful because Appellants have fulfilled the conditions necessary for the issuance and renewal of their business license, and further aver the City's licensing practices and procedures for regulating short term rentals are unlawful and invalid as a matter of law. The grounds stated in the Notice of Appeal are summarized as follows:

1. The 2023 license was properly issued and improperly suspended in compliance with South Carolina law, including the Standardization Act and § 110 of the Code.
2. The 2023 license is not contrary to any valid or enforceable law in place at the time of application.
3. No material fact was evaded or suppressed in the application process.

4. The License Official does not have authority over the use and/or conformance of “specific structures” or real property in the City and, in any event, Appellants have complied with all applicable Land Usage Ordinances.
5. Chapter 117 violates S.C. Code § 5-7-30 because a municipality is without power or authority to levy a business license tax based on anything other than gross income, including ties the license to “specific structures” not gross income.
6. Chapter 117 violates S.C. Code § 6-1-400 by improperly transforming a tax into a restriction on the use of real property; by violating the requirement that upon payment of the “business license tax [which] must be computed based on gross income for the calendar year preceding the due date, for the business’s twelve-month fiscal year preceding the due date,” a “business license must be issued to a taxpayer;” by requiring the submittal of a different application for a business license other than that established by the South Carolina Director of Revenue and Fiscal Affairs Office; imposing an improper, discriminatory, and non-uniform application procedure; calling for the revocation of a business license for reasons other than nonpayment of taxes or fines; and imposing non-standard, unreasonable regulation that is contrary to the statutorily required standardized class schedule.
7. Chapter 117 is invalid because it violates S.C. Code § 6-1-310, which prohibits the imposition of new local taxes.
8. The Decision deprives Appellants of the economically viable use of their property, for which the property is zoned, and interferes with Appellants’ reasonable expectations, including its investment expectations.
9. The Decision infringes on Appellants’ vested rights, including the right to use real property in the manner for which it is zoned, in compliance with the Land Usage provisions of the Folly Beach Code of Ordinances (Title XV).
10. Chapter 117 constitutes invalid, illegal, and impermissible zoning.
11. The Decision amounts to a taking for which the City of Folly Beach has not provided just compensation in violation of South Carolina Constitution, Art. 1, Sec. 13 and the Fifth and Fourteenth Amendments of the United States Constitution.
12. Chapter 117 violates Article X, Sec. 6 of the South Carolina Constitution, including because the Decision states licenses are “issued for specific structures,” making it invalid as a non-uniform tax or assessment on real property.
13. Chapter 117 is unconstitutional and in violation of the dormant Commerce Clause.
14. The Decision violates South Carolina law, which holds that a legal business is entitled to be licensed.

15. The Decision does not provide a legally sufficient reason for revoking Appellants' long-held business license.

Appellants' requested relief is the reversal of the Decision suspending/revoking their 2023 license, the reinstatement of the privileges associated with the business license, and the restoration of "all rights and interests in their real property." (*City Ex. 3.*)

JURISDICTION AND SCOPE

"Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" Gantt v. Selph, 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018) (quoting Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994)). Because a judgment rendered by an adjudicating body without subject matter jurisdiction is void and without legal effect, it is appropriate that I raised this issue *sua sponte* and that I make a determination on jurisdiction before proceeding further. See Travelscape, LLC v. S.C. Dep't of Revenue, 391 S.C. 89, 109, n. 10, 705 S.E.2d 28, 38, n. 10 (2011); Katzburg v. Katzburg, 410 S.C. 184, 187–88, 764 S.E.2d 3, 5 (Ct. App. 2014).

In general, "[t]he jurisdiction of a court is determined by the sovereign creating it,' so reference must be made to local law, such as the constitution and the laws of the state." Seels v. Smalls, 437 S.C. 167, 172, 877 S.E.2d 351, 353 (2022) (quoting Peterson v. Peterson, 333 S.C. 538, 547–48, 510 S.E.2d 426, 431 (Ct. App. 1998) (citation omitted). Where a forum is created by legislative action, its jurisdiction is limited to that "expressly or by necessary implication conferred by statute." Katzburg, 410 S.C. at 188, 764 S.E.2d at 5 (quoting State v. Graham, 340 S.C. 352, 354, 532 S.E.2d 262, 263 (2000)).

I.

In this business license appeal, my authority as Hearing Officer and designee of City Council comes from § 110.16 of the Code, which states in relevant part: "Except with respect to

appeals of assessments under § 110.11 hereof, which are governed by S.C. Code § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the License Official may appeal the decision to the Council or its designee [the Hearing Officer] by written request stating the reasons for appeal” § 110.16(B) (emphasis added.) (*City Ex. 2.*) The Code further provides that following the hearing, the Hearing Officer “shall render a written decision based on findings of fact and conclusions on application of the standards herein.” § 110.16(C)(2). This decision serves as “the final decision of the municipality.” *Id.*

In contrast with the City’s Municipal Court, which is established in Chapter 34 of the Code and provides a judicial forum that is part of the unified judicial system of the state pursuant to S.C. Code Ann. § 14-25-5 et. seq. and has no jurisdiction in civil matters,² the Business License Appeals process provides a means for administrative review of the License Official’s decisions as an executive function. As such, the role of City Council and its designee is limited.

“An administrative agency has only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers, nor has it any discretion as to the recognition of or obedience to a statute. The agency must obey a law found upon the statute books until in a proper proceeding its constitutionality is judicially passed upon.” 2 Am.Jur.2d, *Adm. Law*, § 188, p. 21. “The authority and powers of reviewing boards and officers must be strictly confined to the limits marked out by the statutory or constitutional provisions from which their existence is derived; and acts in excess of their jurisdiction are void.” 84 C.J.S. *Taxation*, § 519, p. 995.

² “Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.” S.C. Code Ann. § 14-25-45.

Administrative officers cannot issue orders which “materially alter or add to the law.” Lee v. Michigan Millers Mut. Ins. Co., 250 S.C. 462, 467, 158 S.E.2d 744, 766 (1968).³ Rather an administrative agency must follow the law as written until its constitutionality is judicially determined and has no authority to pass on the constitutionality of a statute. Beaufort Cnty. Bd. of Educ. v. Lighthouse Charter Sch. Comm., 335 S.C. 230, 241, 516 S.E.2d 655, 660–61 (1999) (recognizing that neither the county nor the state boards of education may rule on the constitutionality of provisions of the Charter Schools Act); South Carolina Tax Comm'n v. South Carolina Tax Bd. of Review, 278 S.C. 556, 299 S.E.2d 489 (1983)(holding that neither the Commission nor the Tax Board of Review had authority to find that a portion of the tax code violated the South Carolina Constitution.). Accordingly, administrative officers cannot decide facial challenges to a statute or regulation, which “are legal questions that are properly raised for the first time on appeal or in a declaratory judgment action before the circuit court.” Travelscape, 391 S.C. at 109, 705 S.E.2d at 39.

Accordingly, consistent with the law regarding administrative bodies in general and based on the clear language in the ordinance, as the Hearing Officer, I have the authority to determine whether or not the License Official’s decision was proper based on the “standards herein,” which are the applicable Code provisions in Chapters 10, 110, and 117 and supporting legal authorities and doctrine. On the other hand, nothing in § 110.16 confers authority on the Hearing Officer to rule on facial challenges to the validity or constitutionality of Chapter 117 in its entirety or the process by which it was enacted. Such matters are not expressly or impliedly decisions of the

³ Thus, while Appellants are correct that under S.C. Code Ann. § 5-7-30 City Council may not enact ordinances that are inconsistent with the Constitution and the general laws of South Carolina, neither Council nor its designee are permitted to alter or amend an ordinance by the issuance of an order in an administrative proceeding. To amend or repeal an ordinance, Council must follow its legislative process.

License Official to deny or revoke a license. Therefore, they are beyond my jurisdiction and the scope of the authority granted to me in the Code and are more appropriately brought before the Charleston County Circuit Court in a declaratory judgment proceeding pursuant to S.C. Code § 15-53-30.

On the other hand, to the extent presented with a challenge asserting that the way in which the License Official applied the ordinance to a particular party violated state law or the party's constitutional rights, this tribunal would have jurisdiction. In general, administrative bodies may address as-applied challenges to statutes and regulations. Travelscape, 391 S.C. at 109, 705 S.E.2d at 39 (noting that a finding by an Administrative Law Court ("ALC") that a statute or regulation was applied to a specific party in an unconstitutional manner does not affect the facial validity of the provisions). I disagree with the City's argument that the holding in Travelscape is limited to the ALCs. While the Travelscape court was addressing the effect of a change in the appeal process for ALCs, it ultimately relied on Dorman and Ward, two decisions rendered prior to the change in the ALC appeal procedure. Travelscape, 391 S.C. at 109, 705 S.E.2d at 39; Dorman v. Dep't of Health & Envtl. Control, 350 S.C. 159, 565 S.E.2d 119, 126 (Ct. App. 2002); Ward v. State, 343 S.C. 14, 538 S.E.2d 245 (2000). Moreover, the federal district court applied this holding to a matter before the South Carolina Public Service Commission ("PSC"), finding, in reliance on both Travelscape and Dorman, that the PSC could rule on an as-applied challenge even though it was not able to rule on a facial challenge to the constitutionality of a statute. S.C. Elec. & Gas Co. v. Randall, 331 F. Supp. 3d 485, 495 (D.S.C. 2018) (explaining "the PSC can only rule on whether a law violates constitutional rights as applied, not whether a law is constitutional on its face.").

I further find unpersuasive Appellants' argument that the Hearing Officer must rule upon the legality of the ordinance as a matter of due process because Appellants' legal and constitutional

challenges are a defense to the City's actions. The only case cited by Appellants in support of this position was Bond v. United States, 564 U.S. 211, 214, 131 S. Ct. 2355, 2359, 180 L. Ed. 2d 269 (2011), in which the Supreme Court found that "a person indicted for violating a federal statute has standing to challenge its validity on grounds that, by enacting it, Congress exceeded its powers under the Constitution, thus intruding upon the sovereignty and authority of the States." This assessment of standing of a criminal defendant in the federal court has no applicability as to the authority or powers of an administrative body, however.

II.

Appellants reasonably have expressed concern that they must raise these facial challenges in this forum and have the Hearing Officer rule on them so that they may be preserved. However, a party is not required to raise an issue before this tribunal over which it has no jurisdiction. Courts do "not require parties to engage in futile actions in order to preserve issues for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 415, 529 S.E.2d 543, 547 (2000).

Here, Appellants' arguments are based in main part on two cases: City of Greenville v. Bryant, 257 S.C. 448, 453, 186 S.E.2d 236, 238 (1972) and Fred Holland Realty, Inc. v. City of Folly Beach, No. 2021-000105, 2024 WL 36068 (S.C. Ct. App. Jan. 3, 2024). Neither case is controlling, however.

In Bryant, the parties stipulated to a procedure that artificially created the need for issues to be raised before city council because they "agreed that the matter would be heard by the lower court as if 'on appeal and/or certiorari' from the ruling of City Council. The circuit judge therefore properly considered that the matter was before him on certiorari. Since the matter was before the court on certiorari, review was properly limited to the record of the proceedings and evidence upon which City Council acted in revoking the license." Id. That is simply not the case here.

In Fred Holland Realty, I was serving in the role of a special municipal court, rather than an administrative tribunal, in proceeding under Emergency Ordinance No. 06-20 to address civil fines for violations of measures enacted due to the pandemic. In that unreported matter, the Court of Appeals found that the appellants were required to raise an issue before the Hearing Officer in order to preserve their appeal because, in acting as a municipal court in that instance, I had authority to review the claim and grant a remedy. *See* S.C. Code Ann. § 14-25-45 (2017) (“Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which [they are] established.”); *see also* City of Pickens v. Schmitz, 297 S.C. 253, 255, 376 S.E.2d 271, 272 (1989) (“Municipal [c]ourts comply with the constitutional mandate that they be part of a unified judicial system.”). Here, I do not have authority to rule on facial challenges to the ordinances or to grant the remedy of finding the Code unconstitutional or improperly enacted.

III.

Looking then at the issues on appeal, Appellants are silent as to whether they contend any of their challenges are properly categorized as as-applied rather than facial or wholesale, instead opting to argue in favor of this tribunal having jurisdiction over all of their appeal grounds in general. The City contends that all of Appellants’ Issues are jurisdictionally barred, with the exception of Issues 1, 2, and 3.

Based both on their plain wording as framed and as argued, I find that Issues 5, 6, 7, 11, 12, and 13 are facial challenges to the validity or constitutionality of Chapter 117 in general under various constitutional or legal provisions. Similarly, I find that Appellants’ Issues 4, 8, 9, and 10 are facial challenges to the adoption of the ordinance via referendum and to the regulation of short term rentals as a business license function rather than as a zoning function. I disagree with the

City, however, as to Issues 14 and 15, which I interpret as being relevant to the License Official's Decision as applied to Appellants in the context of the terms of the applicable provisions of the Code.

IV.

In addition, I take notice of the March 7, 2024 rulings by the Honorable Judge Paul M. Burch in addressing cross motions for summary judgment in Folly East Indian Co., LLC v. City of Folly Beach, C.A. No. 2023-CP-10-0264, which I find are controlling on several of the arguments herein, even if Judge Burch's Order is currently on appeal. (*City Ex. 20.*) In that opinion, Judge Burch dismissed Folly East Indian's claims that are similar in many respects to those made by Appellants here concerning the adoption of the ordinance via referendum and zoning challenges. To the extent they fall within this forum's jurisdiction, I am not in a position to overrule or disagree with Judge Burch's legal analysis or rulings, as follows:

- Based on the plain language of § 5-17-10, the amendment to Chapter 117 of the City's Code creating the category of ISTRs and capping their number can be adopted by Petition and Referendum. (*Id.*, p.3.)
- The amendment is not an amendment to the City's Zoning Code contained in Title XV, but rather is only a change to the City's existing Business Regulations in Title XI of the Code. (*Id.*, p. 4.)
- "No state law requires that the City follow the South Carolina Comprehensive Planning Act to amend its Business Regulations." (*Id.*, p. 5.)
- Municipalities may regulate businesses through the Home Rule Act's general police powers in S.C. Code § 5-7-30. (*Id.*)
- Appellants have no vested rights in a business license. (*Id.*, p.7, n. 2.)
- A proceeding seeking declaratory or injunctive relief is not the appropriate forum for a takings challenge. (*Id.*)

Thus, to the extent I might otherwise have jurisdiction over Appellants' Issues 4, 8, 9, 10, and 11, they are precluded based on the findings in Judge Burch's Order and are, therefore, denied.⁴

IV.

Accordingly, I find the following Issues remain properly before this tribunal and are addressed below:

1. The 2023 license was properly issued and improperly suspended in compliance with South Carolina law, including the Standardization Act and § 110 of the Code.
2. The 2023 license is not contrary to any valid or enforceable law in place at the time of application.
3. No material fact was evaded or suppressed in the application process.
14. The Decision violates South Carolina law, which holds that a legal business is entitled to be licensed.
15. The Decision does not provide a legally sufficient reason for revoking Appellants' long-held business license

STANDARD

I have applied the following legal standards in evaluating the evidence and arguments. 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 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)).

⁴ Given these determinations, there is no need to address the City's alternate grounds supporting its arguments against consideration of these matters.

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.)

On the other hand, 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 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 Com’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). “In the absence of positive evidence to the contrary, acts or ordinances licensing or taxing an occupation or privilege are presumed to be reasonable, and the courts will not interfere unless their unreasonableness and oppressiveness is clearly apparent, the burden of proving their unreasonableness or invalidity being on the one who asserts it, usually the licensee.” U.S. Fid. & Guar. Co. v. City of Newberry, 253 S.C. 197, 204, 169 S.E.2d 599, 603 (1969) (quoting 53 C.J.S. Licenses § 16, p. 511 (1948)).

In regard to the interpretation 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 County Parks and Rec. Com'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 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 County 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. 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.” (*City Ex. 10.*) 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. Pursuant to § 117.03(A)(1), “No business license shall be issued for the rental of a residential unit which is planned or under construction until a certificate of occupancy is issued for the unit.” (*City Ex. 10.*)
3. Under § 110.15(A), the License Official may suspend or revoke a business license under several circumstances, including where a “license has been mistakenly or improperly issued or issued contrary to law” and if the “licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application.” (*City Ex. 2.*)
4. Appellants have owned the Property since 2017. (*App. Ex. 1.*)
5. Appellants had been renting the dwelling unit on the Property that was originally constructed in 1980 as a short term rental for many years and were not delinquent in paying any taxes or fees.
6. The Property is not Appellants’ legal or primary residence.
7. 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 dates uniform for all counties and municipalities. S.C. Code Ann. § 6-1-400.

8. 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.” S.C. Code Ann. § 6-1-400(B)(1).
9. On May 30, 2022, the City issued business license LIC004136 to Appellants, who paid a business license tax in the amount of \$544.75 in conjunction with the license. (*App. Ex. 9*)
10. The 2022 business license had an expiration date of April 30, 2023. (*App. Ex. 9*)
11. On August 21, 2022, the City issued a 2022 short term rental registration permit for the Property with an expiration date of April 30, 2023. (*App. Ex. 9*) The confirmation form states that “This property has completed an annual Rental Registration for 2022.” (*Id.*)
12. In an unrelated matter adjudicated in July of 2022, following an appeal by another property owner concerning the City’s policy of rejecting short term rental business license applications for properties without a CO, I ruled that based on the wording of the applicable Code provisions at the time, the City could not properly deny a business license application for a short term rental property due to the lack of a CO on the dwelling unit, but could properly require that a building have a CO in place prior to issuing a short term rental permit. (HSI LLC and 0 Sandbar Lane v. The City of Folly Beach, Final Order, p.12 (July 12, 2022); *City Ex. 5*.) I further ruled that both a short term rental business license and short term rental permit were required before a property could be legally operated as a short term rental. (*Id.*)

13. As a result of the HSI ruling, between July 12, 2022 and September 13, 2022, there was a window of time in which the City accepted short term rental business license applications for properties that had dwellings still under construction, but the properties could not obtain a short term rental permit until after the CO on the dwelling to be used as the rental unit was in place.

14. On September 13, 2022, the City held its third reading adopting Ordinance 027-22, which significantly revised the Short Term Rental section of the Code and included at then-§ 117.02(A)(1):⁵ “No business license shall be issued for the rental of a residential unit which is planned or under construction until a certificate of occupancy is issued for the unit.”
(*City Ex. 4.*)

15. Also on September 13, 2022, Appellants applied for a permit to demolish the dwelling at the Property. (*App. Ex. 2.*)

16. The City issued the requested demolition permit to Appellants on September 16, 2022.
(*City Ex. 7.*)

17. On October 11, 2022, the City received a citizen’s petition (“Petition”), submitted pursuant to S.C. Code § 5-17-10, initiating an ordinance to significantly alter Chapter 117 of the City Code of Ordinances concerning business licenses for short term rentals. (*City Ex. 9.*)
The Petition included new definitions to be added, differentiating between an Investment Short Term Rental (“ISTR”) and an Owner-Occupied Short Term Rental (“OSTR”) and also imposed a cap limiting the number of ISTR business licenses to a maximum of 800.
(*Id.*)

⁵ This section was later codified as § 117.03(A)(1). (*City Ex. 10.*) The provision has since been modified in Ordinance 001-24, which was adopted on February 20, 2024, but was not addressed by either party in their briefs or at the hearing.

18. The Petition stated the purpose in seeking the referendum was that “the unrestricted growth of the number of *investment short terms rentals* within the City of Folly Beach: lowers the quality of life for its residents; stresses the city’s infrastructure & environment; places extra ordinary [sic] burdens on the city’s public sector; and poses an existential threat to the community.” (*City Ex. 9, emphasis in original.*)
19. In the Fall of 2022, Appellants demolished the existing dwelling on the Property.
20. After demolishing the dwelling, Appellants received a construction permit to build a new structure at the Property on November 5, 2022. (*City Ex. 8.*)
21. Appellants demolished the existing structure and built a new dwelling on the Property to have a nicer place to spend time with family. Their ability to generate income from the use of the new dwelling as a short term rental business was the deciding factor on feasibility of the project.
22. While the new dwelling at the Property was still under construction, a majority of the voters voting in the referendum on February 7, 2023, cast their ballots in favor of the changes to Chapter 117 that imposed a cap of 800 on ISTR business licenses in the City.
23. Spratt-Cooper and Cooper, as non-residents, could not vote in the referendum election.
24. Accordingly, as the result of the passage of the referendum, Chapter 117 of the Code was amended to set a cap of ISTRs at 800. (*City Ex. 10.*)
25. The amendment made no changes to the City’s Zoning Code, contained in Title XV.
26. Prior to the referendum and subsequent amendment of Chapter 117 and at the time Appellants received their 2022 business license and short term rental registration permit, the term “Investment Short Term Rental” business license was not part of the Code.

27. On April 11, 2023, the City amended the exception in § 117.02(C)(2), to read “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.” (*City Ex. 10.*)
28. Following the adoption of the ISTR cap, the City issued Guidelines on short term rental business license renewals, which set forth the City’s policies based on its interpretation of its ordinances stating that “Licenses are issued for specific structures” and if an owner “tear[s] down the home, [the owner] will need to apply for a new [ISTR business] license under the cap. (*City Ex. 11, p. 3.*)
29. The City staff also presented this policy at a City Council Work Session meeting on March 6, 2023. (*City Ex. 12.*)
30. On March 2, 2023, following review of the Guidelines, Cooper sent an email to City Administrator Aaron Pope (“Pope”) explaining that the rental unit on the Property had been torn down prior to the passage of the referendum and asking whether their 2022 existing short term rental license would be “grandfathered.” (*City Ex. 13.*)
31. Pope responded to Cooper by providing a copy of § 117.03(A)(1), which states that a business license will not be issued until a CO is issued for the rental unit. (*Id.*)
32. On March 8, 2023, Melissa Carr (“Carr”) of The Best Rentals, Appellants’ property management company, submitted to City employee Terri Garmon an ISTR business license renewal application for the Property that did not disclose that the previously-licensed dwelling had been demolished or that there was no longer an existing dwelling with a CO on the property. (*App. Ex. 13; City Ex. 15.*)

33. In completing the business license application, the applicant must certify that they “ARE AWARE THAT ALL ORDINANCES RELATING TO THE BUILDING . . . MUST BE COMPLIED WITH BEFORE THIS LICENSE CAN BE ISSUED.” (*City Ex. 15.*)
34. On March 9, 2023, Pope sent an email to Cooper, stating “Thanks for your call this morning. As of Tuesday the official administrative policy regarding demolitions considers any voluntary demolition of a structure that equates to more than 50% of the value of the structure as a trigger to close the license. The exact language is: “if purposeful demolition, [sic] or occurs to an extent greater that [sic] 50% of the building’s value, a replacement unit must be licensed under the cap.” (*City Ex. 14.*) Pope further encouraged Cooper to communicate his situation to Council to urge the adoption of an exemption for properties under construction when the ordinance was passed or to allow a one-to-one replacement license. (*Id.*) Pope noted that “[t]he option for applying for the license and appealing any subsequent denial remains and we can provide information about that process if needed.” (*Id.*) License Official Stacey Ritchie was copied on this email. (*Id.*) Carr was also copied on this email. (*App. Ex. 13 at Ex. B.*)
35. On March 28, 2023, the City issued business license No. LIC004136 for the operation of short term rentals at the Property. (*App. Ex. 6.*)
36. The 2023 license had an expiration date of April 30, 2024. (*Id.*)
37. On March 28, 2023, Carr submitted a Rental Registration Form (“Form”) for the Property for the 2023 short term rental permit on behalf of Appellants. (*App. Ex. 13; City Ex. 17.*)
38. The City’s Form did not include a question specifically asking whether there had been any significant changes to the structure since the prior year’s permit was issued. (*City Ex. 17.*)

39. With the Form, applicants are asked to submit “Required Documents,” including a copy of the Charleston County Property Record showing proof of ownership along with the dwelling information. (*App. Ex. 4, p.1.*) Pages 14-16 of the City’s packet that provides examples of how to properly complete the Form include instructions on how to print the Charleston County Property Record. (*App. Ex. 4.*)
40. Appellants submitted as part of their Required Documents, the Charleston County Property Record depicting the footprint drawing of the house that had been demolished, with a year built date of 1980, despite the fact that that building was no longer in existence. (*City Ex. 17, pp. 6-7* (emphasis in original).)
41. The City’s Form also contains a required certification by the applicant that the information given in the application is true and the applicant is aware “THAT ALL ORDINANCES REELATING [sic] TO THE RENTAL, BUILDING, ELECTRICAL, PLUMBING, FIRE AND ZONING CODES MUST BE COMPLIED WITH BEFORE THIS REGISTRATION CAN BE ISSUED.” (*City Ex.17, p. 4* (emphasis in original).)
42. Appellants’ copy of the permit application includes a completed Form and a photograph of the Property depicting the dwelling units under construction. (*App. Ex. 11 & 12.*) The copy of the application in the City’s files does not contain this photograph. (*City Ex. 17.*) Neither copy includes a parking site plan that identifies the septic tank location, which is a required part of the application. (*App. Ex. 4, pp. 1 & 17-19.*)
43. Pursuant to §117.02(C)(2), “Any existing short term rental business license issued prior to February 7, 2023, which remains in good standing may continue to be renewed annually, even if the number of investment short term rental business licenses exceeds the cap.” (*City Ex. 10.*)

44. Based on the plain and ordinary meaning of the words in §117.02(C)(2), since the cap had been exceeded, in order for an ISTR business license to be issued or renewed in 2023, the short term rental business license must have been in place prior to and have remained in good standing since February 7, 2023. (*City Ex. 10.*)
45. It is uncontested that there was no existing CO on any dwelling unit on the Property in March of 2023, when Carr submitted Appellants' 2023 business license renewal application and Form. Accordingly, the 2022 license was not in good standing and had not been since the building was demolished.
46. Carr testified via affidavit that it was her belief the Form for the Property was filled out correctly and the license was issued in accordance with the required process. (*App. Ex. 13.*)
47. On August 31, 2023, the City issued a Temporary Certificate of Occupancy for Owner Occupation Only for the new house on the Property. (*City. Ex. 18.*)
48. On October 10, 2023, the City issued an unrestricted CO for the new house on the Property. (*City Ex. 19.*)
49. On October 24, 2023, the Business License Official issued notice to Appellants that the ISTR business license for rental of the dwelling on the Property was suspended because it "was issued mistakenly, contrary to the laws in place at the time of application and that the license was obtained through the evasion or suppression of a material fact in the application process." (*City. Ex. 1.*)
50. The Business License Official further stated that: "This determination is based on the fact that short-term rental business licenses are issued for specific structures, and the structure licensed for rental in 2022 was demolished in its entirety in September or October of 2022, thus extinguishing the 2022 license. No replacement structure was licensed prior to the

city's adoption, on September 13, 2022, of a regulation that prohibited short-term rental licenses to be issued to structures with no certificate of occupancy." (*City Ex. 1.*)

51. I find that the Property was not eligible for an ISTR business license in April of 2023 under the clear language of § 117.03(A)(1) and, therefore, the City's issuance of the license and rental permit in April of 2023 was contrary to law, issued improperly, and by mistake.
52. Accordingly, the License Office properly and appropriately revoked the ISTR license under § 110.15(A)(1).
53. In addition, Appellants and their agent Carr were aware that a CO on the unit to be rented was required in order for the Property to be eligible for a short term rental business license and permit in March of 2023 when they submitted the Form and they were aware that the dwelling unit on the Property was under construction and did not have a CO.
54. By supplying the County Property Record depicting the footprint of the demolished building without making a correction or appropriate notation of the changes, Appellants (via their agent) evaded or suppressed a material fact relevant to the License Official's evaluation of the application; it is immaterial whether the evasion or suppression was unintentional or done with intention to deceive and I make no finding in this regard.
55. Because the 2023 license was obtained as a result of evasion or suppression of a material fact in the application, even if it was done without intention, the License Official also properly revoked it under § 110.15(A)(3).

DISCUSSION

As discussed above, the following Issues remain properly before this tribunal:

1. The 2023 license was properly issued and improperly suspended in compliance with South Carolina law, including the Standardization Act and § 110 of the Code.

2. The 2023 license is not contrary to any valid or enforceable law in place at the time of application.
3. No material fact was evaded or suppressed in the application process.
14. The Decision violates South Carolina law, which holds that a legal business is entitled to be licensed.
15. The Decision does not provide a legally sufficient reason for revoking Appellants' long-held business license.

Many of Appellants' arguments concerning Issues 1, 2, 3, 14, and 15 are based (at least in part -- and for Issue 14, in its entirety) on the false premise that a legal business is **entitled** to be licensed "as a matter of right." To the contrary, business licenses are not and do not confer property rights on the licensee. Army Navy Bingo, 281 S.C. at 229, 314 S.E.2d at 340. Rather licenses are permits issued by a governmental entity to allow certain business operations within its jurisdiction subject to conditions and requirements. See Feldman v. South Carolina Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943); 51 Am.Jur.2d, *Licenses and Permits*, § 18 (1970). If an otherwise legal business fails to meet all of the applicable conditions or requirements for a license, the license is properly denied. Moreover, business licenses can only last for 12 months before they expire and must be renewed. S.C. Code § 6-1-400(B)(1). If during the license period, the business no longer meets the conditions required for licensure, the license may be revoked.

To the extent Appellants argue that the City must accept the payment of their fees and, thereby, issue a business license merely because Appellants seek to pay them, 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 or revoke 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).

I further find unpersuasive the authority Appellants cite in support of their entitlement argument. Appellants quote *Carter v. Linder*, but that case properly characterizes doing business as a “privilege” not a right or entitlement. 303 S.C. 119, 122, 399 S.E.2d 423, 424 (1990)(“A license tax upon persons and businesses is an excise tax on the privilege of doing business . . .”). Their citation to *Bryant*, in which the court upheld the city council's revocation of a license to operate a bookstore selling obscene materials, is factually contrary to their argument. 257 S.C. 448, 186 S.E.2d 236 (1972). Similarly, Appellants’ reference to the statement in the Municipal Association of South Carolina’s *Business License Handbook* that the issuance of a business license is a ministerial act that requires the issuance of a license to anyone who pays the proper tax, fails to acknowledge that the issuance is also dependent upon the applicants’ compliance with the applicable ordinances and the lawfulness of the business. (*App. Ex. 7, p. 64.*) Moreover, the *Handbook* goes on to state, a “license issued by mistake or upon material misrepresentation may be revoked. An administrative error cannot bind the public. A licensee obtains no superior rights in a license to which he is not entitled, even if the licensee has expended funds in reliance thereon.” (*App. Brief Ex. 7, p. 65.*) Accordingly, I find that businesses are not “entitled” to be licensed simply because they pay the taxes due or can be legally operated and, therefore, deny Issue 14.

The general premise underlying Appellants’ Issues 1, 2, 3, and 15 is their argument that Appellants’ 2023 ISTR license was properly issued and improperly suspended. In support of their position that the license and permit were properly issued, Appellants assert they complied with the applicable laws in applying for their license, including paying the requisite taxes based on gross

income for the previous year. As discussed above, the payment of taxes is not the only prerequisite for the issuance of an ISTR business license or rental permit, however.

Appellants had a valid 2022 short-term rental business license and permit for the dwelling that was constructed in 1980. Although not set to expire until April 30, 2023, the license and permit became invalid upon Appellant's demolishing that building in the fall of 2022. Because a license is a special privilege, it "is to be enjoyed only so long as the licensee complies with the restrictions and conditions governing its continuance." Feldman, at 49, 26 S.E.2d at 25. When Appellants applied for their 2023 license, the new dwelling on the Property was still under construction and did not have a CO.

I find that Section § 117.03(A)(1) as amended since the HSI decision, clearly and unambiguously requires that the specific dwelling unit to be used as a rental business must have a CO in place before a business license can be issued for that unit. Moreover, under §117.02(C)(2), since the cap has been exceeded, in order for an ISTR business license to be issued or renewed in 2023, the short term business license on the unit to be rented must have been in place prior to and have remained in good standing since February 7, 2023. The Property's license was no longer in good standing once the building was demolished in the fall of 2022. This is the Licensing Official's interpretation as set forth in the Guidelines. (*City Ex. 11.*) I find no compelling reason to disregard this interpretation and Appellants have not provided one. *See Brown*, at 515, 560 S.E.2d at 414. Accordingly, the Property was not eligible for a business license or rental permit in March or April of 2023, and the issuance of a rental business license at that time was contrary to law.

In support of their argument that the City has no legitime grounds for revoking their license, Appellants again note that all applicable fees and taxes were paid and they have conducted their "lawful business lawfully" at all relevant times. Regardless of the status of tax payments or the


legality of the type of business, the Licensing Official may revoke a license if she determines it “has been mistakenly or improperly issued or issued contrary to law” or where “a licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application.” § 110.15(A)(1) and (3). The issuance of a renewal license for a dwelling unit without a CO was contrary to the applicable law in 2023 and therefore issued by mistake. Similarly, the Property was not eligible for an exception to the cap. Accordingly, the License Official properly revoked the license upon realization of the error. Accordingly, I deny Issues 1, 2, and 15.

In addition, the evidence further supports a finding that Appellants and their agent Carr were aware that a CO on the rental unit was required in order for the Property to be eligible for a short term rental business license and permit in March of 2023 and that they either intentionally or unintentionally evaded or suppressed this fact in the permit application by, among other things, supplying the County Property Record depicting the footprint of the demolished building without making a correction or appropriate notation of the changes. In completing the business license application, the applicant must certify they are aware that all ordinances relating to the building must be complied with before the license can be issued. (*City Ex. 15.*) The rental permit application contains a similar certification requirement. (*City Ex. 17, p.4.*) Applying for the license and permit with the knowledge that the property was in abrogation of the Code’s CO requirement is not consistent with such honest acknowledgements. In either event, the license was obtained due to evasion or suppression of a material fact in the application, even if it was done without intention, and was revocable under § 110.15(A)(3), as well as under § 110.15(A)(1). Therefore, I deny Issue 3.

CONCLUSION

As discussed above, this Hearing Officer lacks jurisdiction to address Appellants' Issues 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, all of which constitute facial challenges to the constitutionality or statutory compliance or enactment of Chapter 117. In regard to Issues 1, 2, 3, 14, and 15, I find that the License Official acted in compliance with applicable state law and the Code in suspending/revoking Appellants 2023 license. Accordingly, the appeal is denied.

It is so ordered.


Christie Companion Varnado
Hearing Officer
City of Folly Beach

June 19, 2024

Charleston, South Carolina

NOTE: Appeal of this decision may be made to the Charleston County Circuit Court pursuant to S.C. Code Ann. § 18-7-10 et. seq., within 30 days after notice of the judgment. The appealing party must serve notice of the appeal on the Hearing Officer so the Hearing Officer can timely file the Return per S.C. Code Ann. § 18-7-60.