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|-----------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON |) | CASE NO. 2023-CP-10-_____ |
| |) | |
| FOLLY EAST INDIAN CO., LLC, |) | |
| |) | |
| |) | |
| PLAINTIFF, |) | |
| |) | SUMMONS |
| vs. |) | |
| |) | |
| CITY OF FOLLY BEACH, |) | |
| |) | |
| |) | |
| DEFENDANT. |) | |

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Verified Complaint upon the subscribers, Saxton & Stump, LLC, at their offices at 151 Meeting Street, Suite 350, Charleston, South Carolina 29401, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Verified Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

SAXTON & STUMP, LLC

s/Alice F. Paylor _____
 Alice F. Paylor
 Bijan Ghom
 151 Meeting Street, Suite 350
 Charleston, SC 29401
 afp@saxtonstump.com
 bkg@saxtonstump.com
 (843) 414-5080
 ATTORNEYS FOR PLAINTIFF

| | | |
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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON |) | CASE NO. 2023-CP-10-_____ |
| |) | |
| FOLLY EAST INDIAN CO., LLC, |) | |
| |) | |
| PLAINTIFF, |) | VERIFIED COMPLAINT |
| |) | (NON-JURY) |
| vs. |) | |
| |) | |
| CITY OF FOLLY BEACH, |) | |
| |) | |
| DEFENDANT. |) | |
| |) | |
| |) | |
| |) | |
| _____ |) | |

The Plaintiff Folly East Indian Co., LLC, by and through its undersigned counsel, files this Complaint which alleges as follows:

1. Plaintiff is a limited liability company organized and existing under the laws of State of South Carolina, and owns real property located within the City of Folly Beach at 112 East Indian Ave. (units A & B), 114 East Indian Ave. (units A & B), 116 East Indian Ave., and 118 East Indian Ave. (units A & B), Folly Beach, South Carolina, 29439 (collectively referred to herein as the “Approved STR Property”).

2. Defendant City of Folly Beach (“Folly Beach” or “City”) is a municipality located within County of Charleston and organized under the laws of the State of South Carolina.

3. This Court has jurisdiction over the parties and subject matter hereto because the actions and omissions giving rise to this case took place in Charleston County, South Carolina.

FACTS

4. Plaintiff is a real estate development company wholly owned by Richard D. Brendel and Michael J. Riffert. Both Mr. Brendel and Mr. Riffert are full-time residents of Folly Beach and active members of the Folly Beach community.

5. The Plaintiff currently has five Short Term Rental (“STR”) licenses for the Approved STR Properties.

6. In 2020, the Plaintiff began building two new buildings at 112 East Indian Avenue with the intent of using them as STR properties. Due to supply chain shortages caused by COVID-19, the project took longer than expected and is still two months from completion. The development plans were fully approved and permitted by the Defendant.

7. The Folly Beach Code of Ordinances, in its Zoning section at §161.02, defines “Vacation Rental” as “a residential unit rented for 29 days or less that typically is utilized by tourists.”

8. The Folly Beach Code of Ordinances, at §117.02, defines Short Term Rentals as “[r]esidential dwellings rented for less than 30 days, used in a manner consistent with the residential character of the dwelling” and states that “[t]ourist accommodations, including hotels, motels, inns, and bed and breakfasts, are not considered Short Term Rentals.”

9. Thus, a Short Term Rental is a Vacation Rental under the Zoning ordinances and is referenced and included in the Table of Uses, §164.01, and is listed as a permitted use in every zoning district in that table.

10. In Zoning Ordinance, §164.03-01, which is entitled “Residential Uses,” Paragraph (C) states that “[s]hort term rentals shall have a maximum overnight occupancy of two persons per bedroom, plus two persons per rental dwelling” and “[t]he maximum occupancy may be increased by the Building Official upon demonstration by the owner of DHEC compliance with allowable septic capacity.”

11. On October 11, 2022, a petition was submitted to Defendant’s City Council to request that it pass an ordinance capping short term rental licenses issued to 800. Said petition is

a citizen's initiative pursuant to South Carolina Code of Laws, Title 5, Chapter 17, Section 10, *et seq.*

12. The Petition states there has been an "unrestricted growth of the number of investment short term rentals within the City of Folly Beach" and further states that the goals of the Petition relate to:

- i. quality of life for residents
- ii. stress on city infrastructure and environment
- iii. extraordinary burdens on public service
- iv. existential threat to the community.

13. In addition to limiting the cap on STR licenses to 800, the Petition seeks to eliminate the transferability of current STR licenses. *See* Petition attached hereto as Exhibit A.

14. Defendant has set a special election on February 7, 2023, for electors residing in Folly Beach to vote on requiring City Council to adopt an ordinance putting into place the restrictions of STR licenses sought in the petition.

15. At the October 11, 2022, City Council meeting, the Council failed to pass an Ordinance capping short term rental licenses to 800 and, instead, adopted an Ordinance creating a moratorium on the issuance of new STR licenses for a three (3) month period.

16. On December 13, 2022, the City Council of Folly Beach failed to adopt a new zoning ordinance that would set a cap of 800 Short Term Rentals and, instead, gave first reading to Ordinance 34-22 which would extend the previously imposed moratorium for another three (3) month period after it expired on January 11, 2023

17. On January 10, 2023, City Council gave second reading to the moratorium ordinance. *See* Ordinance 34-22, attached hereto as Exhibit B.

18. Contrary to the claims in the petition, STRs provide a significant benefit to the local economy. The Accommodations Taxes from STRs contribute over \$1,500,000.00 to the Folly Beach re-nourishment program and another \$1,500,000.00 to the City's General Fund.

19. Due to the importance of STRs to the local community and economy, state legislators have introduced a pending Bill, H. 4547¹, which would prohibit any municipality from enacting an ordinance that prohibits STRs. *See* Exhibit C.

FOR A FIRST CAUSE OF ACTION
**(Declaratory Judgment as to the Moratorium and Request for
Temporary Injunctive Relief)**

20. The paragraphs above are re-alleged as if set forth herein verbatim.

21. This is a proceeding for declaratory relief under the South Carolina Uniform Declaratory Judgment Act, South Carolina Code of Laws Section 15-53-10 et seq. (1976, as amended).

22. South Carolina Code § 15-53-30 allows any party whose rights, status, or other legal relations are affected by an ordinance to have determined any questions of construction or validity of the ordinance.

23. Plaintiff is a landowner in the City of Folly Beach whose rights, status, or other legal relations are adversely affected by the Moratorium and Petition.

24. Plaintiff seeks a declaration that the Moratorium is illegal, unconstitutional, and without force of law in the following respects, among others:

- i. Plaintiff has established property rights prior to the Moratorium.
- ii. Defendant permitted and approved the construction of the Property without any of the restrictions regarding STRs established in Ordinance 32-22.

¹ Publicly available at https://www.scstatehouse.gov/scss124_2021-2022/bills/4547.htm.

- iii. The Moratorium deprives Plaintiff of the economically viable use of its property, infringed upon its vested rights, and interfered with Plaintiff's reasonable, investment-backed expectations.
- iv. The Moratorium, which was adopted for the purpose of suspending STR licenses until the referendum, is inextricably intertwined with the unconstitutional and unlawful Petition.
- v. Defendant's actions amount to a regulatory taking for which it has not provided just compensation in violation of the South Carolina Constitution Article 1, Section 13 and the Fifth and Fourteenth Amendments of the United States Constitution.

25. Based on the foregoing, Plaintiff seeks a declaratory judgment from this Court declaring the Moratorium unconstitutional; that Defendant's application of the Moratorium constitutes a taking of property without just compensation; and that the Moratorium is ineffective and of no force of law.

26. Plaintiff seeks a Court Order in the form of a temporary injunction restraining and enjoining the City from enforcing the Moratorium until such time as a full hearing on the merits of this case may be held.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment as to the Petition and Request for Temporary and Permanent Injunctive Relief)

27. The paragraphs above are realleged as if set forth herein verbatim.

28. Pursuant to the authority conferred by the South Carolina Code of Laws, Title 6, Chapter 29, Section 710, the Defendant has enacted a zoning code which contains a comprehensive scheme for planning, approving, and rezoning real estate parcels to ensure efficient, equitable, and reasoned land use decisions in the City.

29. The Defendant's Zoning Code was enacted in accordance with Title 6.

30. Under Title 6, "[z]oning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." S.C. Code Ann. § 6-29-710(A). Goals include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents. *Id.*

31. Zoning consists of the municipal laws or regulations that govern how real property can and cannot be used in certain geographic areas.

32. Zoning is subject to specific treatment found in Title 6 of the South Carolina Code (i.e., specific laws), while citizen petitions for initiatives or referenda are treated generally under S.C. Code Section 5-17-30 (i.e., general laws).

33. Use of the Petition to change the zoning of a particular tract of land without regard to the zoning laws, zoning code, procedure, or impact assessment is impermissible zoning.

34. As the South Carolina Supreme Court has held, "zoning provisions may not be enacted by the initiative and referendum process contained in Sections 5-17-10 and -30." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 725 (2000).

35. Plaintiff seeks a declaration that the Petition is illegal, unconstitutional, and without force of law in the following respects, among others:

- i. The Petition seeks to change the zoning of particular tract of land in which the Plaintiff owns real property.
- ii. As held in *I'On, L.L.C. v. Town of Mt. Pleasant*, zoning cannot be accomplished by referendum, and instead, the City must follow the zoning procedure.

- iii. Defendant permitted and approved the construction of Plaintiff's property intended for use as a STR without any restriction on obtaining STR licenses and the Zoning Code specifically states that STRs are allowed in every zoning district of the Defendant.
 - iv. The Petition deprives Plaintiff of the economically viable use of its property, infringes upon its vested rights, and will interfere with Plaintiff's reasonable, investment-backed expectations.
 - v. The Petition, if successful, would prevent property owners from complying with § 27-50-250, which requires property owners to honor vacation rentals after the sale and/or transfer of real property.
 - vi. The inability to comply with § 27-50-250 if the Petition is successful would subject property owners to unfair legal action and penalties.
 - vii. Because the Petition seeks to impose a restriction on property that conflicts with § 27-50-250, the Petition must be struck down as the proposed ordinance is preempted by a South Carolina statute.
36. Should the City act on the Petition, Plaintiff will suffer irreparable harm as set forth above.
37. The harm which the Plaintiff will incur cannot be rectified solely upon an award of monetary damages.
38. Plaintiff is likely to prevail on the legal merits as set forth in this Complaint based on the applicable state law and the terms of the Ordinance and the Petition.

39. Plaintiff prays that this court will declare that the legislative process initiated by the citizens under the general authority of S.C. Code § 5-17-30 may not be invoked to limit the amount of STRs or otherwise restrict STRs as indicated in the Petition.

40. Plaintiff seeks a Court Order in the form of a temporary and permanent injunction restraining and enjoining the Defendant from taking any action in enforcing or implementing the Petition, or any future Petition which attempts to invoke § 5-17-30 to rezone property, to limit the amount of STRs or to otherwise restrict STRs.

WHEREFORE, the Plaintiff prays for the following relief:

- a) That this court declare that the Moratorium and Petition are substantively defective for failure to comply with local, state, and constitutional law, and as such, are null and void;
- b) That this court issue a Temporary Restraining Order and/or Temporary Injunction, preventing the Defendant from further enforcing the Moratorium and from acting upon the Petition pending the outcome of this action on its merits;
- c) That this court permanently enjoin the Defendant from acting on the pending Petition or any future Petition which attempts to invoke § 5-17-30 to rezone property or to limit the amount of STRs or otherwise restrict STRs;
- d) For the costs of this action; and
- e) For such other and further relief as the Court may determine.

SAXTON & STUMP, LLC

s/Alice F. Paylor
Alice F. Paylor
Bijan K. Ghom
151 Meeting Street, Suite 350
Charleston, SC 29401
afp@saxtonstump.com
bkg@saxtonstump.com
(843) 414-5080

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
January 17, 2023

VERIFICATION

PERSONALLY APPEARED before me, Michael J. Riffert, who being duly sworn, deposes and says: that he is an owner and authorized representative of Plaintiff in the foregoing action, that he has read the facts within Complaint, and that the facts are true of his own knowledge, except those matters and things therein alleged upon information and belief, and as to those, he believes them to be true.



Michael J. Riffert

Sworn to me this 17 day of January, 2023.



Notary Public for South Carolina

My commission expires: 9-21-32



EXHIBIT A

(Resized from Legal to Letter)

STATE OF SOUTH CAROLINA) **Petition**
) **To Limit Investment Short Term Rental**
CITY OF FOLLY BEACH) **Business Licenses to a maximum of 800**

To the Mayor and City Council of Folly Beach:

We the undersigned voters of the City of Folly Beach request that the City adopt the following ordinance: TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800. This Petition is submitted pursuant to the South Carolina Code of Laws, section 5-17-10, *et seq.*

Whereas the unrestricted growth of the number of *investment short term rentals* within the City of Folly Beach:

- lowers the quality of life for its residents
- stresses the city's infrastructure & environment
- places extra ordinary burdens on the city's public services sector and
- poses an existential threat to the community.

Whereas the requisite number of voters have affixed their names to this PETITION TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800, pursuant to South Carolina Code of Laws, section 5-17-10 et seq;

NOW THEREFORE:

We the undersigned request that the following additions be inserted into Chapter 117 of the Folly Beach Code of Ordinances:

DEFINITIONS:

1. ***Investment Short Term Rental (ISTR)*** - A dwelling unit licensed for short term rentals, whose owner does not claim the licensed property to be their primary residence.
2. ***Owner-Occupied Short Term Rental (OSTR)*** – A property and/or dwelling unit, in whole or part, licensed for short term rentals whose owner claims the licensed property to be the owner’s primary residence as evidenced by: (a) current S.C. drivers license or S.C. identification card, (b) the address where they are, or may be, enrolled and registered to vote in local, state and federal elections and (c) the physical address used for the purpose of filing local, state and federal income taxes.

SHORT TERM RENTAL BUSINESS LICENSES:

- (A) The City is authorized to issue two classes of short term rental business licenses:
- (1) Investment Short Term Rental business license, and
 - (2) Owner-Occupied Short Term Rental business license.
- (B) Owner Occupied Short Term Rental Business License:
There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.
- (C) Investment Short Term Rental CAP
- (1) The maximum number of permitted Investment Short Term Rental business licenses, city wide, shall be no more than 800, henceforth referred to as the CAP.
 - (a) Upon enactment the CAP shall be set at 800.
 - (2) No New Investment Short Term Rentals shall be permitted unless the total number of Investment Short Term Rentals is below the CAP.
 - (a) Exception : After enactment, all existing Investment Short Term Rental business License holders in good standing may continue to renew annually, even if the initial number of Investment Short Term Rentals exceeds the CAP.
 - (3) Investment Short Term Rental Wait List: If demand for Investment Short Term Rental business licenses exceeds the CAP a wait list will be established and maintained by the City of Folly Beach.
 - (a) When the number of allowable Investment Short Term Rental business licenses falls below the CAP, a license shall be offered by US Mail to the next qualified applicant on the wait list.
 - (b) If the applicant fails or neglects to complete an application for an Investment Short Term Rental business license within 45 days after notice is given, the city shall deem the offer to have been rejected and thereupon offer the available business license to the next listed applicant.
- (D) Non- transferable
- (1) Investment Short Term Rental wait list status terminates upon transfer of property and is non-transferable.
 - (2) Investment Short Term Rental business licenses terminate upon transfer of property and are non-transferable.
 - (3) Owner Occupied Short Term Rental business licenses terminate upon transfer of property and are non- transferable.



CITY OF FOLLY BEACH

1st Reading: December 13th, 2022
2nd Reading:

Introduced by: Mayor Goodwin
Date: December 13th, 2022

ORDINANCE 034-22

AN ORDINANCE TO EXTEND A MORATORIUM ON THE ISSUANCE OF NEW BUSINESS LICENSES FOR SHORT TERM RENTALS WITHIN THE CITY OF FOLLY BEACH DUE TO VERIFICATION OF A CITIZEN INITIATIVE PETITION TO ESTABLISH A CAP ON SHORT TERM RENTALS.

WHEREAS, The City has received a citizen petition to limit the number of short-term rental licenses for the rental non primary residences to 800; and

WHEREAS, The Charleston County Board of Elections has verified that the petition contains the required number of signatures to trigger Council action; and

WHEREAS, The City has issued approximately 1,210 short term rental licenses for the 2022/2023 business license year as of December 9, 2022 with approximately 1,058 of those licenses issued for the rental of non primary residences; and

WHEREAS, The City desires to limit further increase in the number of short term rental licenses issued for the rental of non primary residences until the question posed by the petition is settled by vote of Council or general referendum; and

WHEREAS, The City approved a moratorium on the issuance of new rental licenses for non primary residences on 10/18/22 that expires on January 11, 2023.

NOW BE IT THEREFORE ORDAINED:

1. The City of Folly Beach imposes a moratorium, to be effective immediately upon ratification of this Ordinance, on the issuance of new business licenses for short term rentals of non primary residences within the City:
 - a. Subject to Section (b) hereof, no application shall be approved for a business license to for any residential dwelling taxed at a 6% property tax rate.
 - b. Subject to the limitations set forth in Section (c) excepted from the provisions of Section 1 (a) are each of the following:
 - i. Renewals of short term rental licenses for properties that were legally licensed as of October 18th, 2022.
 - ii. New licenses resulting from the transfer of ownership of properties that were legally licensed as short term rentals as of October 18th, 2022.
 - iii. New licenses for a short term rental for which an application, deemed sufficient

for approval, has been filed with the City of Folly Beach prior to October 18th, 2022.

- iv. New licenses for properties in Downtown Commercial district for which Final Approval has been granted by the Design Review Board prior to the ratification of this ordinance.
- c. In order to be excepted from this moratorium under Section 1.(b)(iv), all applications must comply with the following requirements:
 - i. Applications must be deemed sufficient for approval by City staff; and
 - ii. Applications must be for a license to rent:
 - 1. An existing residential unit that is currently available to rent or will be within thirty days of ratification of this Ordinance; or
 - 2. A planned residential unit for which an application for a building permit, sufficient for approval by City staff, has been submitted within thirty days of ratification of this Ordinance and which shall be available to rent within twelve months of the ratification of this Ordinance.
 - 3. A residential unit for which a building permit has been issued within thirty days of ratification of this Ordinance and for which a certificate of occupancy shall be issued and the unit made available to rent within twelve months of the ratification of this Ordinance.

- 2. This ordinance shall take effect immediately upon adoption and shall expire automatically on April 15th, 2023, or five business days after any special election called to adopt the ordinance proposed by petition, unless earlier repealed.

ADOPTED this 13^h day of December 2022, at Folly Beach, South Carolina.

Ayes: _____

Nays: _____

Abstains: _____

Municipal Clerk

Tim Goodwin, Mayor

South Carolina General Assembly
124th Session, 2021-2022

EXHIBIT C

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

H. 4547**STATUS INFORMATION**

General Bill

Sponsors: Reps. Hewitt, Oremus and Bennett

Document Path: I:\council\bills\cc\16086zw22.docx

Introduced in the House on January 11, 2022

Currently residing in the House Committee on **Judiciary**

Summary: Local Gov'ts regulating vacation homes/short-term residential rentals

HISTORY OF LEGISLATIVE ACTIONS

| Date | Body | Action Description with journal page number |
|------------|-------|--|
| 11/10/2021 | House | Prefiled |
| 11/10/2021 | House | Referred to Committee on Judiciary |
| 1/11/2022 | House | Introduced and read first time (House Journal-page 50) |
| 1/11/2022 | House | Referred to Committee on Judiciary (House Journal-page 50) |

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

11/10/2021

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6-1-190 SO AS TO PROVIDE THAT A GOVERNING BODY OF A MUNICIPALITY, COUNTY, OR OTHER POLITICAL SUBDIVISION OF THE STATE MAY NOT ENACT OR ENFORCE AN ORDINANCE, RESOLUTION, OR REGULATION THAT PROHIBITS THE RENTAL OF A RESIDENTIAL DWELLING TO A SHORT-TERM GUEST; TO PROVIDE PENALTIES; AND TO DEFINE RELEVANT TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 1, Title 6 of the 1976 Code is amended by adding:

"Section 6-1-190. (A) Notwithstanding another provision of law, a governing body of a municipality, county, or other political subdivision of the State may not enact or enforce an ordinance, resolution, or regulation that prohibits the rental of a residential dwelling to a short-term guest.

(B) A municipality, county, or other political subdivision of the State that enacts or enforces an ordinance, resolution, or regulation that violates the provisions of subsection (A) may not:

(1) assess or collect the six percent property assessment ratio for qualifying real property pursuant to Section 12-43-220(e); and

(2)(a) receive any distributions from the Local Government Fund pursuant to Chapter 27, Title 6; and

(b) the Office of the State Treasurer shall withhold the municipality's, county's, or political subdivision's State Aid to Subdivisions Act distribution until the ordinance, resolution, or regulation in violation of subsection (A) is repealed.

(C) This section supersedes and preempts any ordinance, resolution, or regulation enacted by a municipality, county, or other political subdivision of the State that purports to prohibit the rental of a residential dwelling to a short-term guest.

(D) For purposes of this section:

(1) 'Residential dwelling' means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one or more persons to the exclusion of all others.

(2) 'Short-term rental' means a residential dwelling that is offered for rent for a fee and for fewer than twenty-nine consecutive days.

(3) 'Short-term guest' means a person who rents a short-term rental."

SECTION 3. This act takes effect upon approval by the Governor.

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This web page was last updated on January 12, 2022 at 4:05 PM