



Real Property Committee
1:30 p.m., Monday, May 9, 2022
1207 Palm Boulevard
City Hall Council Chambers

Public Comment:

All citizens who wish to speak during the meeting must email their first and last name, address and topic to Nicole DeNeane, City Clerk, at nicoled@iop.net no later than **3:00 p.m. the day before the meeting**. Citizens may also provide written public comment here:

<https://www.iop.net/public-comment-form>

Agenda

1. **Call to order** and acknowledgment that the press and the public have been duly notified of the meeting in accordance with the Freedom of Information Act.
2. **Approval of previous meeting's minutes** – April 11, 2022
3. **Citizens' Comments** – All comments have a time limit of three (3) minutes.
4. **Marina Tenants Comments**
5. **Old Business**
 - a. Update on marina dock rehabilitation project
 - b. Update on marina restaurant renovation by Marker116, LLC
 - c. Update on proposed public dock and greenspace at the IOP Marina
 - d. Update on ADA beach access improvements
 - e. Consideration of noise control agreement with Marker 116, LLC
6. **New Business**
7. **Miscellaneous Business**

Next meeting date: 1:30 p.m., Monday, June 6, 2022
8. **Adjournment**



REAL PROPERTY COMMITTEE
1:30pm, Monday, April 11, 2022
1207 Palm Boulevard, Isle of Palms, SC 29451
and broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>

MINUTES

1. Call to order

Present: Council members Miars, Popson and Streetman

Staff Present: Administrator Fragoso

Also Present: Kirby Marshall, ATM

2. Approval of previous meeting's minutes – March 7, 2022

MOTION: Council Member Popson made a motion to approve the minutes of the March 7, 2022 meeting and Council Member Miars seconded the motion. The motion passed unanimously.

3. Citizens' Comments -- none

4. Marina Tenant Comments

5. Old business

A. Update on marina dock rehabilitation project

Administrator Fragoso said this project is very close to completion. Final inspection for the charter and fuel docks is scheduled for April 16. The pump out station is installed and expected to be connected today. She added, "Once the tests have been performed on both the potable water systems and the pump out, ATM and the contractor will submit all that paperwork to DHEC so they can grant the operational permit."

Salmon's is working on the as-builts.

Administrator Fragoso continued [We are] "real close on the fire suppression system. The water and sewer systems, all piping is in except for two standpipes that need to go into place and the rubber hose is still pending." That is scheduled to be completed by April 13. Pressure testing is scheduled for April 13 as well.

B. Update on marina restaurant renovation by Marker 116, LLC

Administrator Fragoso said this project is also close to being done. The restaurant has received its Certificate of Occupancy from the City. The primary outstanding issues are the fire suppression

system in the kitchen and kitchen hood and the location of the dumpster. Director Kerr and Asst. Director Asero are working with the tenants on that location.

Marker 116 is also waiting on final approval for their alcohol permits and anticipates opening in early May. Administrator Fragoso has encouraged the Building Department to do everything it can to help move the restaurant to opening.

She reported on a broken water meter over the weekend, and that has since been repaired.

Council Member Popson suggested a ribbon cutting ceremony for both the marina dock and the restaurant. Administrator Fragoso said she would suggest that item be added to the Ways & Means agenda for further discussion.

C. Update on the proposed public dock and greenspace at the IOP Marina

Administrator Fragoso said they have hired Davis & Floyd to do specs for this project. Davis & Floyd has suggested hiring a structural engineer to evaluate the bulkhead in this area. This will need to be done before any construction begins. Any agreed-upon changes would be done after the season.

Administrator Fragoso said that rules have been posted at the public dock and activities there are monitored by the Police Department. She shared that a free mediation class will begin on Thursday, April 21 at 8am on the public dock. Starting in May, Coastal Expeditions will offer twice-monthly, resident-only tours. A 3-month schedule of events and topics will be released at the end of April.

The City has received a lot of positive feedback about the dock and believes the new activities there will go a long way towards introducing the public to the amenity.

D. Update on ADA beach access improvements

Administrator Fragoso reported that OCRM has approved the City's request to extend the MobiMats closer to the water and dry sand in order to enhance access to the beach for those with physical challenges. Staff is currently in the process of extending the mat at 42nd avenue. After a period of evaluation to determine staffing requirements for maintaining the mat, the next mat to be extended will be at 9th Avenue.

Director Kerr gave a presentation to the Greenbelt Funding board last month about the project at 34A. The City is awaiting approval before going out for bidding. The City will be responsible for 20% of the project costs if approved. The City will also submit for an extended MobiMat at this location upon completion of the project.

Administrator Fragoso said she has received positive feedback about the beach wheelchair program. Seven people used them in March. The FY23 budget includes the cost of another wheelchair if it is determined to be needed.

6. New Business

A. Discussion and consideration of proposed options for redevelopment of the new public dock and “T” dock at the marina [Strategic Plan Priority 5, Goal a]

Administrator Fragoso reported that Option C for improvements to the public (\$700,000) and “T” docks (\$1.4M) is included in the second draft of the FY23 budget.

Council Member Popson said he agrees with Option C for the public dock but believes there is enough life in the “T” dock to warrant only minor adjustments rather than spending a large amount of money on it at this time. Administrator Fragoso pointed out that the City did spend \$20,000 on that dock last year as part of its contractual agreement which is why it looks better.

Council Member Miars said that the largest improvement expense at the “T” dock is the ADA gangway and believes Option C for this dock is the better option. Council Member Streetman also believes Option C is the best for both docks at this time so they will all look similar.

MOTION: Council Member Streetman made a motion to recommend to the Ways & Means Committee Option C for the Public Dock. Council Member Miars seconded the motion. The motion passed unanimously.

MOTION: Council Member Streetman made a motion to recommend to the Ways & Means Committee Option C for the “T” Dock. Council Member Miars seconded the motion. A vote was taken as follows:

Ayes: Miars, Streetman

Nays: Popson

The motion passed.

8. Miscellaneous Business

The next meeting of the Real Property Committee will be held on Monday, May 2, 2022 at 1:30pm.

9. Adjournment

Council Member Miars made a motion to adjourn and Council Member Streetman seconded the motion. The meeting was adjourned at 2:02pm.

Respectfully submitted,

Nicole DeNeane
City Clerk

Sec. 9-2-5. Noise.

- a. *Declaration; specific noises.* It shall be unlawful for any person to create, assist in creating, permit, continue, or permit the continuance of any noise in the City that is unreasonably loud or disturbing in the circumstances to a reasonable person of ordinary sensibilities except as expressly allowed pursuant to subsections e. and f. of this section. The following are declared to be unreasonably loud or disturbing noises in violation of this section, but such acts shall not be deemed to be exclusive:
- (1) *Blowing horns.* Except as required by law, no person shall blow or cause to be blown within the City any steam whistle, electric horn, or other signaling or warning device, except as alarm signals in case of fire or collision or other imminent danger.
 - (2) *Pets.* It shall be unlawful to keep, stable, harbor or maintain any animal or bird which disturbs the comfort or repose of any reasonable person of ordinary sensibilities in the vicinity by making continually or frequently loud noise.
 - (3) *Loudspeakers, etc.* It shall be unlawful to use, maintain or operate loudspeakers, sound trucks, amplifiers or other mechanical or electrical devices for increasing the volume of sound, upon the street, sidewalks, parks or other outdoor public places owned or under the control of the City, except as permitted under subsection e. and f. of this section; provided, however, that any City-owned property subject to a commercial lease and a noise control agreement or permit is exempt from the requirements of this paragraph.
 - (4) *Hawking or peddling.* It shall be unlawful for any person to make any noise on a public street or in such proximity thereto as to be distinctly and loudly audible on such street by any kind of crying, calling, or shouting or by means of any whistle, rattle, bell, gong, clapper, horn, hammer, drum, musical instrument, or other device for the purpose of attracting attention or of inviting patronage of any persons to any business whatsoever. It is the express intention of this paragraph to prohibit hawking, peddling, soliciting or using other loud noises to attract attention to a business and not to prohibit the spill-over noise emanating from a lawfully operating business.
 - (5) *Radios, phonographs, televisions, etc.* The use, operation or playing of or permitting the use, operation or playing of any radio, hi-fi, stereo system, phonograph, piccolo, television or any musical instrument in such manner or with such unreasonably loud volume in the circumstances as to disturb any reasonable person of ordinary sensibilities, or the playing of such instrument in such manner as to disturb the quiet, comfort or repose of any reasonable person of ordinary sensibilities in any dwelling or other residence.
 - (6) *Use of vehicle.* The use of any automobile, motorcycle, motor boat, personal watercraft, water jet pack or other type of vehicle in such a state of disrepair, or so loaded, or used or repaired in such a manner as to create unreasonably loud or disturbing noises in the circumstances, particularly grating, grinding, rattling, riveting, revving or other disturbing noises.
 - (7) *Exhaust discharge.* To discharge into the open air the exhaust from any steam engine, stationary internal combustion engine, motor boat engine, motorcycle or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
 - (8) *Noise in proximity to schools, courts, etc.* The creation of any excessive noise on any street adjacent to any school, institution of learning, library, or court, while the same is in session, or adjacent to any church during church services, which interferes with the work or worship at any such place or institution.
- b. *Amplified Music—Nighttime play.* It shall be unlawful for any person, entity or establishment to play, operate or cause to be played or operated, any radio, amplified musical instrument (including but not limited to brass

or drum instruments), or other amplification device or apparatus making or reproducing musical or other sounds between the hours of 10:00 p.m. and 10:00 a.m., Sunday through Thursday, or between the hours of 11:00 p.m. and 10:00 a.m., Friday and Saturday, in such a manner as to be plainly audible in any adjacent street or right-of-way, adjacent place of public accommodation, or adjacent dwelling or other residence. For the purpose of this section, plainly audible shall mean any sound that can be detected by a reasonable person of ordinary sensibilities using his or her unaided hearing faculties.

- c. *Amplified Music—Daytime Play.* It shall be unlawful for any person, entity or establishment to play, operate or cause to be played or operated, any radio, amplified musical instrument (including but not limited to brass or drum instruments), or other amplification device or apparatus making or reproducing musical or other sounds between the hours of 10:00 a.m. and 10:00 p.m., Sunday through Thursday, or between the hours of 10:00 a.m. and 11:00 p.m. Friday and Saturday, in such a manner or with such unreasonably loud volume in the circumstances as to disturb the quiet, comfort or repose of any reasonable person of ordinary sensibilities in any dwelling or other residence.
- d. *Piledrivers and other apparatus, tools or equipment.* It shall be unlawful for any contractor, subcontractor, landscaper, supplier or vendor to operate or use any piledrivers, steam shovels, pneumatic hammers, derricks, steam or electric hoists, or other apparatus, tools or equipment, the use of which is attended with loud or disturbing noises, at any time other than between the hours of 7:30 a.m. and 6:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 4:00 p.m. on Saturday. No such use shall be permitted on Sundays or on the following legal holidays: New Year's Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving Day; and Christmas Day. Approval for such use may be granted by the City for performing emergency repairs outside of the hours specified. Nothing in this paragraph shall be construed to prohibit an owner or member of an owner's immediate family from performing maintenance, repairs, or other work on their own property at any time, provided that such work is otherwise in compliance with City ordinances.
- e. *Public interest events.* Notwithstanding any other provision of this section, on application to, and approval by, the Chief of Police, written permits may be granted to broadcast programs of music, speeches, general entertainment, or announcements as a part of and incident to community celebrations of national, State, or City occasions, public festivals, or other public interest events, provided that traffic on the streets is controlled. In determining whether or not to issue such a permit, the Chief of Police shall weigh the public interests in the event against the noise and disturbance anticipated to be created by the event and must consider the intensity and duration of the noise and the area that will likely be affected. The language or content emanating from the event shall not be considered.
- f. *Exceptions.* None of the foregoing prohibitions shall apply to or be enforced against:
 - (1) Any City vehicle engaged in City business;
 - (2) Any City-hosted, City-sponsored or City-sanctioned special events;
 - (3) Excavations or repairs of bridges, streets or highways, by or on behalf of the City, county or state during the night, when the public welfare and convenience renders it impossible to perform the work during the day; nor shall the same apply to work performed by public utility companies under like conditions and circumstances, or when there is urgent necessity therefor;
 - (4) Construction activities performed by or on behalf of a governmental agency, including, but not limited to, construction, repair or maintenance of public buildings and drainage facilities, dredging activities, beach renourishment activities, and other public projects.
- g. *Enforcement factors.* Factors to be considered in determining whether a noise is unreasonably loud, disturbing, or excessive for the purposes of this section shall include, but are not limited to, any or all of the following:
 - (1) The intensity and volume of the noise;

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- (2) The intensity of the background noise, if any;
 - (3) Whether the nature of the noise is usual or unusual;
 - (4) Whether the origin of the noise IS associated with nature or human-made activity;
 - (5) The proximity of the noise to sleeping facilities;
 - (6) The land use, nature, and zoning of the area from which the noise emanates and the area where it is received;
 - (7) The time of day or night, along with the day of the week and time of year, when the noise occurs;
 - (8) The time duration of the noise;
 - (9) Whether the sound source is temporary;
 - (10) Whether the noise is recurrent, intermittent or constant;
 - (11) Whether or not noise abatement measures are possible and whether or not they are used to reduce the noise level;
 - (12) The number of people and their activities that are affected by the noise;
 - (13) The existence of complaints concerning the noise from persons or premises affected by the noise;
 - (14) Whether the noise in the circumstances would disturb a reasonable person of ordinary sensibilities; and
 - (15) The nature of any communicative content of the noise shall not be considered for the purpose of this section.
- h. *Violations and penalties.* A violation of this section is a misdemeanor punishable pursuant to section 1-3-66. Each day that a violation continues shall constitute a separate offense.
- i. *Nuisance.*
- (1) Violation of this section is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
 - (2) In addition to the penalties set forth in subsection (h) of this section, repeated violations of this section by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of any business license issued to the premises on which the violations occurred in accordance with section 7-1-15.

(Code 1994, § 9-2-5; Ord. No. 1999-15, 6-22-1999; Ord. No. 2001-4, § 1, 3-27-2001; Ord. No. 2003-15, § 1, 11-25-2003; Ord. No. 2016-02, § 1, 2-23-2016; Ord. No. 2018-04, § 1, 4-24-2018)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) NOISE CONTROL AGREEMENT

This Noise Control Agreement (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between The City of Isle of Palms, S.C., a South Carolina municipal corporation (“City”), and Marker116, LLC, a South Carolina limited liability company (“Tenant”).

WHEREAS, on February 23, 2016, the City amended Section 9-2-5(a)(3) of the City’s Code of Ordinances to exempt City-owned property subject to a commercial lease and a noise control agreement or permit from the prohibition on amplifiers and loudspeakers being operated at outdoor public places owned or under the control of the City; and

WHEREAS, Tenant is currently operating under a commercial lease with the City dated November 12, 2020; and

WHEREAS, Tenant desires to provide live entertainment to its restaurant patrons on the outdoor public grounds immediately surrounding the Tenant’s Restaurant, including musicians who use amplifiers; and

WHEREAS, Tenant will install improvements to the property to significantly reduce the sound emanating from the amplifiers into the adjacent residential neighborhoods; and

WHEREAS, the City wishes to allow the use of amplified music at the Tenant’s Restaurant subject to certain conditions which will protect the residents in adjacent neighborhoods from unreasonably loud or disturbing noise.

THEREFORE, in consideration of the premises and the mutual covenants and conditions set forth in this Agreement, the parties hereto agree as follows:

1. The City hereby agrees and grants permission for Tenant to use, maintain or operate

loudspeakers, amplifiers or other mechanical or electrical devices for increasing the volume of sound upon the outdoor public grounds immediately surrounding the Tenant's restaurant, subject to the following conditions:

A. Tenant agrees to at all times comply with the provisions of the City's noise ordinance, as may be amended from time to time; and pursuant to Section 9-2-5 of the City's noise ordinance, the ability for Tenant to play amplified music coming from the Tenant's Restaurant which is leased to the Tenant by the City shall be subject to the exemption provide for in the ordinance and subject to the terms of this Agreement;

B. Tenant agrees to employ sufficient noise abatement measures to ensure that the amplified sound is not in violation of the City's noise ordinance and cannot be heard inside residences in the adjacent neighborhoods;

C. Tenant agrees to immediately lower amplified sound levels when it determines or is informed that sounds levels are too high. Tenant will be on notice that sound levels are too high if any of the following situations occur:

- i. Amplified music can be heard inside residences in adjacent neighborhoods; and
- ii. At lease three (3) different r~~Residents~~ living in three (3) separate residences adjacent to the Tenant's Restaurant have made complaints to the Tenant or the City Police Department; and
- iii. City Police Officers have notified Tenant of the complaints.

D. Tenant will provide the City with the name and phone number of the manager who is responsible for noise compliance. If the minimum of three (3) residents in three (3) separate and distinct residences contact this person, he/she will immediately determine whether

sound levels are too high, and if so, immediately lower sound levels as needed to comply with this Agreement and the City's noise ordinance. As used in this paragraph, "immediately" shall mean within thirty (30) minutes of the receipt of a noise complaint or being advised by the City of a noise complaint. If Tenant receives more than three (3) notices from the City or policy in a month, tThe Tenant, after complying with the above requirements, shall, in addition, have thirty (30) days to provide the City with a written plan which will cure sound level problems by establishing and assuring lower levels, adding additional sound abating materials, and/or developing policies to ensure ongoing compliance with this Agreement.

2. In the event that Tenant continuously and repeatedly violates any one of the conditions set forth herein, the City may, in its reasonable discretion, determines that Tenant is not taking action to cure, the City may within its reasonable discretion immediately terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto, by and through their undersigned agents, have executed this Agreement as of the date stated above.

WITNESS:

The City of Isle of Palms, S.C.

By: _____

Title: _____

Marker116, LLC

By: _____

Title: _____
