



SPECIAL CITY COUNCIL MEETING

5:00pm, Tuesday, August 2, 2022

1207 Palm Boulevard, Isle of Palms, SC

broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>

MINUTES

1. Call to order

Present: Council members Miars, Popson, Streetman, Hahn, Bogosian, Pierce, Anderson, Ward and Mayor Pounds

Staff Present: Administrator Fragoso, City Attorney Brent Halversen, Attorney Bryan Kitz

2. Citizen's Comments - none

3. New Business

Administrator Fragoso said she is awaiting feedback from Islander 71 regarding the proposed plan for the management of the shared parking lot. She would like to hear from them before discussing it with City Council.

4. Second Reading Ordinances

- a. **First Reading of Ordinance 2022-04 – an ordinance authorizing the amendment and assignment of Marina Outpost, LLC to Morgan Creek Marina, LLC**
- b. **First Reading of Ordinance 2022-05 – an ordinance authorizing the amendment and assignment of Marina Joint Ventures, Inc. to Morgan Creek Marina, LLC**

MOTION: Council Member Ward made a motion to move into Executive Session in accordance with §30-4-70(a)(2) to receive legal advice and discuss proposed contractual arrangements. Council Member Anderson seconded the motion.

MOTION: Mayor Pounds made a motion to suspend the rules of order to allow for Council Member Miars to make a new, unrelated motion prior to Executive Session. Council Member Pierce seconded the motion. The motion passed unanimously.

MOTION: Council Member Miars made a motion to postpone the second reading of the ordinances in order to request an opinion letter from Haynesworth Sinkler Boyd advising whether the City should move forward on the assignment of the marina leases without

receipt of the due diligence deliverables beyond what has been received to date. Council Member Pierce seconded the motion.

Council Member Miars explained, “A couple of things in order to support my motion, last time when we voted on the First Reading, there were some due diligence deliverables that we were still waiting for. I don’t know if some people voted contingent on getting that or not getting not that. We have received some things but we have not received everything. Then there is some language in these amendments that specifically speaks to the makeup of the new tenant and relies on that makeup. So I do not know how we can go forward with that language without actually knowing what the makeup is as we sit here today. Because the language talks about changes, so if we don’t know where we are, I don’t know how we can change. And one final thing is that it has been discussed that we cannot get more out of this than we have in it already, as it what we had from MJV. I would like to note that back in the original lease negotiations, back in 2007/2008 time period, the three members of MJV did attend Council meetings, did introduce themselves, stated that they were the members of the LLC, and even agreed to all have background checks. So that is just one of the things that I wanted to point out from where we were in the past and now where we are today. I do not feel comfortable going forward, but if we were to get an opinion letter from our attorneys that we have hired to give us opinions on this, then that would be something that I would be able to at least take into consideration in voting on this assignment.”

Council Member Pierce, “I think that we are in the same place on the due diligence items that we have been (Inaudible). And we still cannot answer the four basic questions of who are we doing business with, are they financially sound, what is the revenue split going to look like on behalf of the residents, IOP and the revenue share with the commits to services, and what is the plan for the marina? So those four questions are completely not answered in my mind. If we are not going to pursue due diligence, then I think we can figure out (Inaudible).”

Council Member Pierce added, “For the record and a reminder to everybody, the Haynesworth representative was the one who suggested the nine due diligence items.”

Mayor Pounds said the answer Council Member Miars is seeking can be discussed in Executive Session.

MOTION: Council Member Ward made a motion to postpone consideration of Council Member Miars’ motion until after Executive Session. Mayor Pounds seconded the motion. The motion passed unanimously.

5. Executive Session

VOTE: The motion to move into Executive Session passed unanimously.

City Council moved into Executive Session at 5:08pm.

City Council returned from Executive Session at 8:45pm. Mayor Pounds said no decisions were made.

Council Member Miars withdrew her earlier motion asking for an opinion letter as she was advised that is not an available option. Council Member Pierce withdrew the second.

The following amendments are from the Marina Outpost amendment.

In section 6, Management and Alterations to Parking Spaces, “Council discussed changes to the last sentence so that it would require prior written consent of the landlord and then remove ‘which consent shall not be unreasonably withheld or conditions or delayed.’ Remove that with ‘upon the sole and absolute discretion of the City.’”

MOTION: Council Member Bogosian made a motion to approve, and Council Member Anderson seconded the motion. A vote was taken as follows:

Ayes: Pierce, Miars, Anderson, Bogosian

Nays: Popson, Streetman, Ward, Hahn, Pounds

The motion failed 4-5.

In Section C, Permitted Use, subsection B, 2 and 3, Sales and Consumption to not be permitted after sunset.

MOTION: Council Member Pierce made a motion to approve, and Council Member Bogosian seconded the motion. A vote was taken as follows:

Ayes: Bogosian, Anderson, Ward, Miars, Pierce, Pounds

Nays: Hahn, Streetman, Popson

The motion passed 6-3.

In subsection 4, “to add back in the prohibition on amplified music” on the premises.

MOTION: Council Member Bogosian made a motion to approve, and Council Member Ward seconded the motion. A vote was taken as follows:

Ayes: Bogosian, Pierce, Miars

Nays: Ward, Anderson, Hahn, Popson, Streetman, Pounds

The motion failed 3-6.

Also in subsection 4, the removal of “outdoor patio.”

MOTION: Council Member Bogosian made a motion to approve, and Council Member Ward seconded the motion.

Administrator Fragoso clarified the sentence if the motion passed: No music other than ambient background music shall be permitted to be played or broadcast within those portions of the premises used for on-site sales and consumption of food and beverages, and no live music shall be permitted under any circumstances.

Attorney Kitts said that the statement could be drafted to “prohibit all live music everywhere pursuant to this lease. Nowhere. Otherwise, live music is permitted pursuant to the other terms and conditions of this lease but may not be allowed on the back deck.”

Council Member Ward asked if this prohibition excluded City-sponsored events. Administrator Fragoso said that the tenant would have to come before City Council to request City-sponsored status.

VOTE: A vote was taken as follows:

Ayes: Pierce, Bogosian

Nays: Miars, Popson, Streetman, Ward, Anderson, Hahn, Pounds

The motion failed 2-7.

In Item 5, Section 7(B)(5), Alcohol sales for on-site consumption shall be made exclusively as packaged, self-serve, and retail transaction.

MOTION: Council Member Bogosian made a motion to approve, and Council Member Anderson seconded the motion.

Council Member Miars said this is to preclude tap beer and wine sales.

VOTE: A vote was taken as follows:

Ayes: Streetman, Popson, Miars, Pierce, Anderson, Bogosian, Pounds

Nays: Ward, Hahn

The motion passed 7-2.

Also in section 7(B)(5), removing the last sentence of the section: “So long as tenant complies with tis obligation under this section 7(B)(5), landlord acknowledges and agrees that onsite consumption of alcohol by third parties that occurs beyond the permitted area set forth in the lease shall be considered incidental in nature and shall not be a default by tenant under the terms of the lease.”

MOTION: Council Member Bogosian made a motion to approve, and Council Member Miars seconded the motion. A vote was taken as follows:

Ayes: Pierce, Miars, Bogosian, Anderson

Nays: Popson, Streetman, Hahn, Ward, Pounds.

The motion failed 4-5.

MOTION: Council Member Pierce made a motion to accept a corporate guarantee. Council Member Hahn seconded the motion. The motion passed unanimously.

Regarding changes to the MJV lease, Section 3, updating the exhibit to show the lease premises to depict that the private parking lot is under an agreement between the restaurant and the marina tenant and changing the coloring of said lot.

MOTION: Council Member Miars made a motion to approve, and Council Member Anderson seconded the motion.

Ayes: Pierce, Miars, Anderson, Bogosian

Nays: Popson, Streetman, Hahn, Ward, Pounds.

The motion failed 4-5.

In the same exhibit, removal of the last sentence: “For the avoidance of doubt, the portions of the property shown and designated as private parking lot and exclusive parking lot, Marina Joint Ventures on Exhibit 1 of the lease, are and shall remain part of the lease premises leased from landlord to tenant pursuant to the lease.”

Council Member Miars said, “This has always been a contentious and very unclear issue, and by leaving that sentence in we are giving away yet another piece of this parking lot, in my opinion, and again.”

Mayor Pounds said, “Just for clarity, there is no legal, practical, or operational difference between today and tomorrow if we assign this lease with this particular lot. To Council Member Miars’s comment, it is very unclear in the original lease how this works, and if you leave the sentence in, you are removing the ambiguity around what is known as the private parking lot, the employee parking lot, the shared lot under a separate agreement.”

Council Member Anderson said, “My problem with this is the fact that we are letting that ambiguity become part of the marina lease.”

Council Member Miars added, “It is a change because it is a clarification benefitting the new tenant, and fixing the ambiguity has value, and we are giving that for nothing.”

MOTION: Council Member Bogosian made a motion to approve, and Council Member Anderson seconded the motion. A vote was taken as follows:

Ayes: Miars, Pierce, Bogosian, Anderson

Nays: Streetman, Popson, Hahn, Ward, Pounds

The motion failed 4-5.

In section 9(D)(2), limiting the boat club to 10 boats, and anything over 10 boats would require approval of City Council.

MOTION: Council Member Bogosian made a motion to approve, and Council Member Miars seconded the motion. A vote was taken as follows:

Ayes: Miars, Pierce, Bogosian

Nays: Streetman, Popson, Ward, Anderson, Hahn, Pounds

The motion failed 3-6.

In subsection 7, Alterations to the Exclusive Parking Lot, subsection (B), alter the sentence to read “Any reconfiguration, alteration, addition, or improvement to the exclusive parking lot with

a cumulative cost in excess of \$100,000 shall be subject to the prior written consent of the landlord.”

MOTION: Council Member Miars made a motion to approve, and Council Member Bogosian seconded the motion.

Council Member Pierce said, “I just want to clarify that the purpose of deleting that would give us sole discretion, and as it is written now, there really doesn’t appear to be any construction or changes that we would necessarily be able to unreasonably withhold. So although there is a dollar cap in there, I think there is probably going to be quite a bit of freedom (INAUDIBLE).

Council Member Miars said, “And as the landlord, we should get to make that decision without having to worry about them making an argument that it’s not reasonable.”

VOTE: A vote was taken as follows:

Ayes: Pierce, Miars, Anderson, Bogosian

Nays: Popson, Streetman, Ward, Hahn, Pounds

The motion failed 4-5.

It was noted that the language in Section 9 of this lease should be consistent with the language in the Marina Outpost lease.

Regarding changes to Exhibit 4, a waitlist should be developed and shared and used as the basis for distribution and allocation of boat slips.

MOTION: Council Member Bogosian made a motion to approve, and Council Member Anderson seconded the motion. A vote was taken as follows:

Ayes: Bogosian, Anderson, Miars, Pierce

Nays: Hahn, Ward, Streetman, Popson, Pounds

The motion failed 4-5.

Also in Exhibit 4, adding “Trailer parking for residents is not prohibited in the exclusive lot.”

MOTION: Council Member Ward made a motion to approve, and Council Member Bogosian seconded the motion. A vote was taken as follows:

Ayes: Pierce, Miars, Popson, Streetman, Ward, Anderson, Bogosian, Pounds

Nays: Hahn

The motion passed 8-1.

Also in Exhibit 4, requiring the sale of live bait.

MOTION: Council Member Bogosian made a motion to approve, and Council Member Miars seconded the motion. A vote was taken as follows:

Ayes: Streetman, Popson, Bogosian, Pierce, Miars, Pounds
Nays: Ward, Anderson, Hahn

The motion passed 6-3.

4. Adjournment

Council Member Ward made a motion to adjourn and Council Member Streetman seconded the motion. The meeting was adjourned at 9:17pm.

Respectfully submitted,

Nicole DeNeane
City Clerk