



SPECIAL CITY COUNCIL MEETING
3:30pm, Tuesday, September 13, 2022
1207 Palm Boulevard, Isle of Palms, SC and
broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>

MINUTES

1. Call to order

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

Staff Present: Administrator Fragoso, Director Kerr, various department heads

2. Citizens' Comments

Randy Bell said, "It is increasingly apparent that a simple lease assignment has been badly botched. Joe Rice as Berrigan's attorney requested a simple reassignment as is of the Marina Outpost and Marina Joint Venture leases, yet Council allowed for an avalanche of amendments to continue into September. With no committee representation, the Mayor has labeled negotiations an administrative task. The Mayor claims no involvement in these negotiations. Our Administrator has no authority to negotiate. Our Municipal Attorney reports to full Council, not the Mayor. During my Council tenure, we hired Haynesworth Sinkler Boyd specifically to handle complex real estate transactions. Yet, Brian Kitz has been relegated to the backseat of negotiations. Why? Municipal Attorney Halversen has been granted free reign to negotiate in an unelected, unauthorized capacity on the community's behalf. What is not clear is which side is being represented. The larger issue is how and by what authority. The Mayor should be willing to answer this simple question. The premise that we are here to gain shared the parking lot already belonging to the City as well-documented nonsense. On April 19, IOP City Council addressed an item under New Business in Ways & Means. At 1:05 in that meeting, Council Member Hahn addressed Council's ability to make changes to current parking management stating, 'As I understand it, there is nothing stopping us from doing so.' We are now on our twelfth or thirteenth iteration of lease and ordinance changes. Council received the packet on Friday at the required deadline. Seventy-two pages with new commercial giveaways. Note that First Reading can only be amended at Second Reading, yet we have an attorney-negotiated document presented Friday with significant change followed by a hastily called meeting to drive the Mayor's endgame. A vote on Second Reading will no doubt be called. No worries. There is no intent to live up to the campaign of residents first. It is not what I want that matters. It is the public interest. In the matter of Council Member Miars' alleged Code of Conduct violation, it is obvious that Mayoral overreach will be weaponized unless checked by the public. Neither you or any individual Council member has the authority to impugn and indict fellow sitting Council members. The email that went to Council stated, 'Your disclosure of the contents of the attorney-

client privileged information disclosure of communications made during the Executive Session is a flagrant and intentional violation of Section 8.’ Really, there is no need for a hearing since without authority, Katie has already been convicted of a flagrant and intentional violation. What happened to issues of personnel being handled in Executive Session or was that confused with Executive Privilege, which does not exist. The distance between kindness and vindication is significant. With the thinnest of electoral margins, we now have residents asking what would Ryan do? This is a sad day for the City when we see this behavior directed at Council member.”

Suzi Wheeler also spoke against the marina lease. She said, “Now we have Marina-gate 2022, replete with 12 or 13 versions of amendments, numerous last minute special Council meetings, seemingly unending Executive Sessions, and threats of lawsuits. The results seem to be that some members of this Council are willing to give away more and more of the City’s interest in the marina including land and revenue. Let’s be clear. This was land that was purchased by the residents for the residents. Council Member Hahn stated in the July 26th meeting that the City cannot make additional demands during the transfer process. We can only ensure that the City is not harmed. I would like to ask all of Council how can you ensure the City is not harmed if you do not have full disclosure of who we are doing business with. If we take the Mayor’s approach of you don’t have to have full disclosure. Can they run a marina? Can they pay the bills? We set ourselves up to potentially do a business with the likes of Bernie Madoff. Aren’t we harmed by not receiving due diligence? Aren’t we harmed by removing a personal guarantee or security deposit? Aren’t we harmed by giving away land that was not previously listed as leased premises? I say we are not harmed by ensuring that we know exactly who we are doing business with and not just a representative. And by transferring the lease as is. We are definitely harmed by these ridiculous amendments and the perception of backdoor strong-arm negotiations. I would like to ask Council who exactly has participated in these negotiations. I made repeated requests to have a forum with full Council on the record to discuss the issues of this lease transfer. I have even asked at minimum that they suspend the rules of a regular meeting to allow for open citizen dialogue. These requests have been ignored and labeled as unnecessary. But miraculously, we are able to schedule three listening sessions regarding short-term rentals. Council has been able to schedule seven special Council meetings just this year, with four of them being about the marina lease transfer. I think that a multi-million-dollar asset with a transfer that requires more than a dozen versions of lease amendments would merit at least one meeting of record where Council would allow open dialogue with residents. Now we have Council Member Miars who is facing the threat of a disciplinary hearing for trying to be transparent to the residents she represents. I don’t see how her sharing that members of Council have been threatened with lawsuits in this process is any different than the Mayor telling me directly what legal counsel’s advice was during Executive Session pertaining to the parking lot.”

Glenda Nemes, also expressed concern about the resolution for discipline against Council Member Miars. She said, “If there is no confidentiality under FOIA then how can you have a Code of Conduct breach?” She also asked how there can be attorney-client privilege when not negotiating a contract. She said a reconfiguration of the parking lot is a separate issue from the lease negotiations. She would like the lease assignment to go back to its original form.

Jim Raih said the simple assignment of the lease has gone off track. He said the amendments change the value of the lease. He also spoke with concern about the number of seats in Islander 71.

Patsy Hindman believes the lease transfer vote is tainted due to issues of trust and transparency. She believes there are too many Executive Sessions. She thanked Council Member Miars for her op-ed piece. She asked how Council could be truthful in its vote on the lease assignment if they believe they might sue.

Brenda Rosenthal said she first became interested in City politics because of the bad marina lease. She asked City Council to hire expert counsel in this matter. She believes staff negotiating the lease is inappropriate as they are not experts. She feels ignored by the number of Executive Sessions. She supports Council Member Miars.

Mimi Wood would like City Council to move forward with the vote to transfer the leases.

Kathy Campbell said she was pleased to read Council Member Miars' op-ed piece. She said she is dismayed to learn that Council has been threatened with lawsuits with regards to the lease assignments. She believes some Council members have ulterior motives regarding the lease assignment vote. She also expressed concern that the City had not yet received all nine due diligence items as requested from Mr. Schuler. She said it is unfair to Islander 71 to allow the marina store to "turn into a bar." She also said she did not believe the workshop model was working.

MOTION: Council Member Bogosian made a motion to reorder the agenda to allow for the discussion of the disciplinary hearing regarding Council Member Miars to be heard first. Council Member Pierce seconded the motion. The motion passed unanimously.

3. Purpose

A. Consideration of resolution to hold a public disciplinary hearing regarding Council Member Miars' alleged violation of the City of Isle of Palms Code of Conduct

Mayor Pounds: It has been referenced here tonight, but on September 8, 2022, Council Member Miars wrote an op-ed article in the *Island Eye* newspaper titled "A Closer Look at the Isle of Palms Marian Leases." Although the article was titled to be about the leases, the beginning of the article stated the amendments are available to the public, so I will not go into them here. What I would like to share is some of what has gone on behind the scenes. The article then went on to directly quoted portion of private attorney-client communications that the City Attorney provided to the City Council in a memorandum dated June 9, 2022. The article also disclosed communications between Ms. Miars and the City Attorney that occurred in Executive Session. The memorandum dated June 9, 2022, which was emailed to Council the same day was explicitly labeled in all capitalized letters "CONFIDENTIAL ATTORNEY CLIENT PRIVILEGE MATERIAL" on each page. Cover letter email sent to Council explicitly stated in the subject line of the email and all caps ATTORNEY CLIENT PRIVILEGED. Our City Attorney reminded Council members in the transmittal email sending the memorandum please do not forward this email or disseminate or discuss the contents of anyone outside of Council as

it would be a waiver of the privilege. The City never voted to release this information, and it was instead disclosed for political purposes. Contents of the memorandum and communications had been confidential prior to the article being written by Council Member Miars. Our City Code of Conduct states in Section 8, Confidential Information, Members must maintain the confidentiality of all written materials and verbal information provided to members, which is confidential or privileged under South Carolina law including information provided during Executive Session, legal advice provided by the City's legal counsel, and any information otherwise protected by South Carolina law. Members shall not disclose confidential information without proper legal authorization or use information to advance their personal finance or other private interests. Again, this is from our Code of Conduct, a very well-defined process. We mostly copied the Code of Conduct from the City of Charleston. So with that, I would move for a resolution for a public disciplinary hearing of Council Member Miars for a violation of Section 8 of our Code of Conduct.

Council members Ward and Hahn seconded the motion.

Council Member Miars: First of all, thank you to all of you who came to support not just me but this wonderful city and transparent government. The Mayor has called this vote to use his words and I quote your disclosure of the contents of attorney-client privileged information and disclosure of communications made during Executive Session is a flagrant and intentional violation of Section 8 end quote. The fact that the Mayor has already made up his mind on this issue brings me to the Code of Conduct itself. That is the document that is referencing Section 8 and is the purpose of this discussion that we are having right now. I'd like to discuss two additional sections of the Code of Conduct. Section 5, discussions, decisions based on merit. When making decisions, members shall maintain an open mind until the conclusion of the hearing on the matter. Section 6, conflict of interest. Members shall avoid any conflicts of interest or the appearance thereof. The conflict of interest is really what brings us here today. Merriam-Webster defines a conflict of interest as quote a conflict between the private interests and the official or professional responsibilities of a person in a position of trust. The statements made by Mr. Halverson conveying the threats of allegations that were made by Joe Rice and Mike Schuler against this body, I'm sorry, the individuals on this body not the body as a whole, have created a situation where there could be the existence or appearance of a conflict of interest is the potential conflict of interest that made me decide that it was in my fiduciary duty to share the information with the constituents whom I swore to represent. Only by addressing these issues in public can we possibly hope to remove the taint caused by the possible conflict of interest. Therefore, I fully support a public hearing on these issues. While the Code of Conduct was voluntary, I am aware of the guidelines and standards, and I fully support the opportunity to discuss Section 8 in the public hearing. However, there are significant problems with the Code of Conduct, which I have to admit I did vote for earlier in the year. And now that I have gotten intimately acquainted with the document, I realized that it is significantly lacking. It provides the procedure of notice itself. Therefore, before we can set a hearing and move forward on a hearing, in order for there to be proper due process, we have to answer the following questions: will I be provided with representation? I fully intend to be and believe that the City should provide it for me. I intend to call witnesses. Does the City have subpoena power? If not, how will the City

obtain witnesses? I demand the right to confront all witnesses. Will witnesses be sworn in? What is the process for presenting evidence? Who will preside over this hearing? Is it one of the ones that has accused me of this wrongdoing? Who will rule on conflicts? What will be the burden of proof? Who carries the burden of proof? Who will represent the City in this case? Until these questions at a minimum, and I am sure there are more because quite honestly, I've only been able to start thinking about this since Friday, until they are answered, we cannot ensure that this will be a fair and unbiased hearing."

Council Member Streetman: The item that is on the agenda is consideration of a resolution to hold a public disciplinary hearing for Council Member Miars' alleged violation of the City of Isle of Palms Code of Conduct. That was item number eight. That is what we are dealing with today is a simple vote as to whether or not we approve that hearing. We all as a body were presented with the Code of Conduct. We had much discussion about it, and we voted unanimously to adopt that Code of Conduct. I have no idea who signed off on the Code of Conduct. It was purely voluntary. I know I did, turned mine in and said I am going to abide by that. So I am assuming everyone else did. But whether or not they did, it is a voluntary situation. I think Council Member Miars raises some good questions as to who we go if we do vote in favor of a hearing, and she, in her words, is supportive of a hearing. I'm just speaking up to say what we are voting on here today is the consideration of a resolution to hold a public hearing in regards to the alleged violation of item number eight, which was clearly publicized in a written manner in the media.

Council Member Bogosian: I find it extremely ironic that some members of this Council so abruptly attack Council Member Miars in a public forum circumventing any code of conduct process that we may have and perhaps even overlooking some of their own actions that may be considered violations of the Code of Conduct. I believe that this could have been handled in a better way to avoid this significant distraction to Council when we have so many important strategic issues facing the City right now. Having said that, I know that some on this Council believe that information Council Member Miars released was an egregious act, but there are many extenuating circumstances in this case. I personally spoke with Council Member Miars as I wish my fellow Council members would have done prior to enacting this act. I believe that Council Member Miars released the comments she did because she felt that the threats levied against the Council by the parties involved in the marina release transfer were so significant and wrong that by not making this information public was in direct opposition to her fiduciary responsibility to the City. I can tell you that when I received those letters from our City Attorney I felt that the parties were making threats against public officials to act in a certain way. I was mad. The time to attack in a public forum was at the time these threats were made and not at Council Member Miars. I wish this was handled differently. I wish this Council was cohesive enough to have open conversation and debates but respect our different thoughts, and I hope that we can move on from this without creating a public circus when we have so many important issues to address. I am not in favor of the hearing, but I agree that if it does go forward that we have to define the process in the hearing as defined by Council Member Miars.

Council Member Hahn: This is not an evidentiary hearing. All this is is as Council Member Streetman said. It is whether or not we are going to have a hearing. The issue here is trust. It is whether or not Council members can speak openly amongst themselves in Executive Session with our attorney without it being leaked. That is what the whole issue is, and we need to set boundaries and guidelines for people to do that. If you can run to the newspaper and release confidential information, then all is lost. We cannot operate as a Council because we cannot have trust within each other. I'm not saying one way or another whether or not at the end of the day Council Member Miars has done anything inappropriate. I'm saying that there is an appearance, and it has to be looked at, and that is all. And so I support us moving forward with the resolution.

Council Member Anderson: My problem with this process is that we learned about that item on our agenda at the same time you all did, and I believe that it is such a serious matter to accuse one of our members of acting inappropriately that there should have been some discussion among the Council beforehand as to whether we could, we considered this important enough to bring to the public. So that is my concern with this is the way it has been handled. If Council Member Miars wants a public hearing, I won't stand in her way, but I am sorry that it is being handled in this way.

Council Member Pierce: I would just like to say that I agree wholeheartedly with Council Member Anderson. I think that the notification process and the immediacy to which we go to this level is inappropriate, and it's going to distract us from the business of the City. I will also support Katie in her hearing if that is what she would like. However, I have no idea how we can vote on something that is undefined. It is absolutely ridiculous in my opinion.

Council Member Miars: I would like to follow up on that and say that I truly don't believe that a hearing is in the best interest of the City, but because it has been stated that my actions are flagrant and intentional violation of Section 8, I don't see that we have any option.

VOTE: A vote was taken as follows:

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

Nays: Bogosian

The motion passed 8-1.

Mayor Pounds: As defined in our Code of Conduct, it states a member charged with conducting a violation of the Code of Conduct shall be entitled to a public disciplinary hearing. Notice of such hearings shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing, and Council Member Miars, to your question, we will absolutely answer and put the format in. It has not been done at this point because we just put the Code of Conduct in April or March.

Council Member Bogosian asked who would put the process together, and Mayor Pounds suggested it would be done by the City Attorney.

Administrator Fragoso said, "I would just recommend, as Ms. Miars stated, there is no process. I would recommend City Council discussing this item at your next meeting. All agreeing who is

going to represent the City. This is not going to be an issue that staff is going to be involved in. This is a Council issue, and I think you all need to discuss and agree and vote on whatever process you all want to move forward on it.

Council Member Miars said, "It specifically states that it will be a public hearing. This will be public, and I will have representation."

B. Second Reading

i. Ordinance 2202-05 – an ordinance authorizing the amendment and assignment of Marina Outpost, LLC, Inc. to Morgan Creek Marina, LLC

ii. Ordinance 2202-04 – an ordinance authorizing the amendment and assignment of Marina Joint Ventures, Inc. to Morgan Creek Marina, LLC

Mayor Pounds said, "Just by way of reminder, with all the amendments going back and forth, it is very easy to get lost how with these amendments the City's position is improved, and I would like to highlight a couple of those here. So we have more lease security with the existing personal guarantee in place and now have an additional corporate guarantee in place with many more operational assets at their disposal. We have clarity on consumption. The amendments provide a regulated and supervised consumption area to the existing footprint where such consumption has been present for decades. We will have a new option for residents and then the general public with the boat club. We have a clearly defined mix of businesses. We have controls and threshold limits of expansion of all commercial activity including boat club, ensuring a balance of mix of businesses at the marina. The shared and private lots will be coming back to the City, removing tenant control of managerial authority, which has been a source of conflict for a number of years and allows the City the opportunity to redesign with the restaurant team to benefit the restaurant, the residents, visitors, and allows for a larger greenspace. Improved controls on future assignments and subletting that do not exist with current lease. Allowances for operational improvements to improve dry storage capability that do not entail dry stack. And finally, controls on related party transactions that do not presently exist. The controls ensure the City receives 120% of fair market value for any such transactions through verifiable procedures."

The Mayor then reviewed the site plan, the parking plan, and the conceptual proposed parking plan for the Marina Outpost.

In response to a question from Council Member Ward, Administrator Fragoso clarified, "As part of the existing restaurant lease that the City entered into in 2020, there is an arrangement for the private parking lot where the restaurant is paying for the exclusive use of all with the exception of the paid parking spaces. And as part of the restaurant lease negotiations, the City agreed to reimburse the restaurant for 50% of those expenses not exceeding \$13,000 a year...for the length of the lease...If these changes go through and Council approves them, that arrangement would go away. The restaurant would not need to pay for the exclusive use of any of those spaces." These monies would be realized as a rent deduction for up to \$13,000 per year.

Council Member Bogosian further clarified, "That yellow section of parking cannot be utilized for residents unless there is an agreement with the marina restaurant in order to change their

parking. That right now is for employee parking for the restaurant.” The lot is also used for valet parking.

Administrator Fragoso said that Mr. Schuler is requesting approval of this site plan. She said, “The road between 41st between the end of Waterway all the way to essentially where it ends is City property. The 25 parking spaces that are shown next to the red line, that is conceptual. That is something that the City would be able to do in about a year or two when we move forward with the 41st Avenue outfall project. We’ve received a grant amendment of about \$800,760 to pipe that ditch. So those spaces would be able to be done until that project is completed even though they are listed there conceptually. It could be parking. It could be greenspace. It could be parallel trailer parking. That is going to be up to the City. This is just conceptual of what that space once piped could accommodate.”

Council Member Anderson said that while the City is giving up some things, this lot configuration will enable Mr. Schuler to operate more efficiently to everyone’s benefit.

Discussion ensued about the number of spaces available for residents to park boat trailers.

Administrator Fragoso pointed to Section 7 of the 6th Amendment in response to Council Member Pierce’s earlier comment about the City’s loss of ingress and egress to the parking lot. “Subsection A says under no circumstance shall such reconfiguration referring to the exclusive parking lot, alteration, addition, or improvement of the exclusive parking lot impede or preclude pedestrian and vehicular access, ingress and egress to and from the marina and 41st Avenue.”

Council Member Pierce expressed concern about the lease allowing changes to the lot at the sole discretion of the tenant. He said this is one of the reasons he would like to transfer the lease as is.

Council Member Streetman said, “When this was presented back in April, we definitely were talking about it as is, and we were offered by Schuler that he would just say okay, I am going to give the resident parking capabilities back to the City. I thought that was a win right there. We immediately had access to free citizen parking, and we were willing to go ahead and do this deal as is, and he was just offering the parking. Since then, we decided to get cute with it, and we decided to make all these amendments, and we are now on the 11th, 12th or 13th iteration because we decided that we want to do all these changes. And now we are in a situation here where we are getting bogged down on all of this, in the weeds, in my opinion. I think at some point you have got to say in good faith, and I understand that we have got to feel like we have t’s crossed, I’s dotted, but at some point... you have got to say we have got to trust that this potential new tenant is going to do the right thing by the residents and have some accountability... To me it just seems to me that we have a strategy here to just keep delaying this, delay, delay, delay, delay, to what end. I mean, I, for one, I’m ready to call the question on this at any point and say let’s have a vote on it and go and move ahead.”

Council Member Pierce: All I would like to say, Councilman Streetman, is I was initially for dotting some I’s and crossing some t’s and doing some modifications to the exhibits. I was one of the ones that said this is going to be probably an opportunity for us to clean up a few things before we did it. That was in April, April 26, when we got notified. We went through one cycle,

and it was, I don't think any of us in our wildest dreams thought that a bad lease could get worse. It's gotten, every iteration, probably on iteration four my advice was stop sending it over because every time it came back we lost ground in my opinion. So I agree with you, Councilman Streetman, but I still think that it's not about dotting I's and crossing t's. The valuation of this asset now under this new operating model is increased by millions and millions of dollars, and we have conveyed that value over to the new tenant. And in my opinion, my sole opinion, the consideration we have received for that is zero. So I would like you to know I still think it's one of those things, and I don't fault Mr. Schuler. He's done a fantastic job for his side of the table, and I said that to him. I just think we should protect our asset as best we can, and I would try to revert back to where we started from.

Council Member Miars: Councilman Streetman, I'd like to know when you say we have been making all these changes, I'd like to know who the we is that you are talking about because it seems to me that every time there have been amendments to this document, it has been Mr. Schuler who has been adding things, and we as the City have been giving them up. So we as a City haven't been messing around and wasting our time. We have been listening to and sadly accepting all of his, Mr. Schuler's changes. So your use of the word we is a little bit confusing there.

Council Member Streetman: Well, Mr. Mayor, as a result of that, that's not true. That's not accurate at all. It's not been one-sided. It's been back and forth between the two parties on and on and on, and it's been through attorneys and iterations of different things that have been going on. We have all had a hand in this since we refused initially to do it as is and also accept that he was willing to give over free resident parking. This is, in my opinion, a win for the residents.

Council Member Bogosian: I just think we need to stop the madness. Someone once told me that when you are in a hole, stop digging. I think we are in a hole. I have heard that on this Council from many of you, including Councilman Streetman who just reiterated, what Council Member Hahn said, that we are only obligated, we should have only considered transferring the leases as is. I think we all thought that we could get an amendment quickly, but this has gone downhill pretty fast since we started this thing. I think we should consider the transfer as is, do what Councilman Ward suggested and post transfer hire a consultant that specializes in marinas and commercial property to help guide us through the process of these amendments. We are way too backed up with this right now. We should do as one of our residents suggested and form a marina advisory board that can help guide what the residents want the marina to look like and work with the new tenant to do it.

MOTION: Council Member Bogosian made a motion to approve the assignment of the Marina Outpost lease as is to Morgan Creek Marina and approve the assignment of the marina lease to Morgan Creek Marina. Council Member Pierce seconded the motion.

Council Member Anderson reminded Council members they act as a body, and "even though I may not agree with everything that some of the people say as a member of Council, we act as a body."

Council Member Popson asked, “So if we vote as is free resident parking goes away, free boat launch goes away, free trailer parking for residents goes away, and the restaurant folks are going to have to continue to deal with the new tenant for the shared parking lot?”

Council Member Bogosian said that post-transfer the items in the amendments that have already been agreed upon would be worked on. Council Member Popson expressed concern that Mr. Schuler would return to the negotiating table.

MOTION: Council Member Miars made a motion to suspend the rules of order to allow the “restaurant tell us what they think instead of trying to put words in their mouths.” There being no second the motion failed.

Mayor Pounds said, “Let’s just be really clear on who has been negotiating and the back and forth. It hasn’t been 12 versions back from Schuler and team. Our staff and City attorney have been acting on what this body has told them to do, and we have thrown back as many edits as they’ve thrown back our way. So there is not Mr. Halversen. There is not Ms. Fragoso, not Mr. Mayor doing anything that is not agreed upon by this body that had been backed from amendments to Schuler’s team. That has not happened. Nobody is negotiating on or behalf. Our Staff and our City Attorney are acting out our wishes.”

Administrator Fragoso added, “At the last Special Meeting that Council had on the 8th, I believe when the group, Council voted on certain amendments, those were sent back to Mr. Schuler and his attorney to being approved based on the votes that Council took at that meeting. Because of the new conversations regarding the changes to the parking plan, we were expecting some changes from Mr. Schuler that would reflect that, but the changes that were received by us on Friday were the ones that were sent to the Council via the packet the same day. There was nothing that the City added after that. The only additions came and were reflected by the votes of Council at that special meeting. Everything else that’s shown as a redline or additions are from Mr. Schuler, not the City.”

Council Member Bogosian expressed concern about moving forward with the amendments since they have come back marked up in a way that does not resemble what Council voted on at the Special Meeting.

Council Member Miars offered a friendly amendment to the approval of the leases as is that they be contingent upon receipt of the letter of ownership. Council members Bogosian and Pierce accepted the friendly amendment.

Administrator Fragoso pointed out that should this vote pass it would be received as direction to staff to draft a new ordinance that would need to be brought before City Council for First and Second readings. Mr. Halversen confirmed that the vote to assign the leases as is cannot take place because that is not what is on the agenda. Discussion ensued as to how to vote on Council Member Bogosian’s motion.

Council Member Bogosian then altered his motion.

MOTION: Council Member Bogosian made a motion to direct staff to draft an ordinance that would assign both leases as is to Morgan Creek Marina, LLC contingent upon the receipt of the letter of beneficial ownership. Council Member Pierce 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.

MOTION: Council Member Ward made a motion to postpone Ordinance 2022-04 and Ordinance 2022-05 until the next regular City Council meeting. Council Member Pierce seconded the motion.

Council Member Ward said this is a procedural vote and “I want it to be very clear that we exercise with the Council having had a voice in every option, what we could legally do. Either vote yes, or postpone, and I want it to be said that everything was out in the open and we all knew what we were voting on.”

Discussion ensued about the value of postponing the vote.

VOTE: A vote was taken as follows:

Ayes: Anderson, Bogosian, Miars, Pierce

Nays: Ward, Hahn, Streetman, Popson, Pounds

The motion failed 4-5.

MOTION: Council Member Hahn made a motion to approve 2022-04 and 2202-05. Council Member Streetman seconded the motion.

Administrator Fragoso noted that the next item on the agenda is the proposed amendment from Marker 116. Some of their requests would alter the marina store lease if passed.

MOTION: Mayor Pounds made a motion to reorder the agenda to allow for the discussion of the proposed parking lot layout option from Marker 116 before moving forward with discussion of Ordinances 2022-04 and 2022-05. Council Member Streetman seconded the motion. The motion passed unanimously.

C. Discussion of parking layout options for the Intracoastal side of the marina to eliminate shared parking area and establish City parking and greenspace area and consolidate/expander Islander 71’s exclusive parking lot.

Mr. Jon Bushnell of Marker 116 presented a plan for the parking lot he believes will be less confusing and allow for better traffic flow. Mr. Bushnell and Council Member Anderson discussed pros and cons of this plan versus the previous parking plan.

Administrator Fragoso clarified, “When the restaurant came up with this idea and discussed it with Mike Schuler about swapping the area of the private parking lot to the shared lot so that they can have their contiguous area both where they keep their employees and their patrons,

gives them the ability to reconfigure it in a way that enhances the amount of parking spaces. The swap would mean that the private, what's now referred to as a private parking lot where the restaurant employees are parking would become the City's for us to decide how it is used, how it is accommodated. We have been working with the same civil engineer who has been working with Mr. Schuler and Mr. Bushnell. The reason, the challenge with us taking possession and having the City parking lot in that corner is accommodating trailer parking because it is in the corner, and the area is just very tight in order to allow for the appropriate turning radius for trailers and trucks to maneuver. That is why you see the trailer parking spaces outside essentially outside of that lot parallel to the road that takes you to the boat ramp. But in terms of square footage of what that is, we think it is essentially the same. It's just that it is configured differently in order for us to accommodate trailer parking. The only difference between the original plan that we shared with you all, the restaurant has since reviewed it and disagree with some of the concepts on it because it does not allow them to have stacking, which is important for their employees is the number of trailer parking spaces goes from 10 to 5. The number of vehicles goes from 28 to 26, so kind of similar. What we need is direction from Council about what the appropriate number of trailer parking spaces is for the resident, for the City parking lot that would be for residents. Is five a good number? Is 10 what you are looking for? That is what we need direction from you all because now you have seen two plans that show different counts essentially, and this is the plan that the restaurant has agreed to because of their ability to stack employee parking within their exclusive lot. There is a big change in that the entrance to the restaurant does bifurcate essentially the private lot. That is a change from the original, one of the iterations that we shared with you all. So we want direction, guidance, reactions from Council about the parking counts. The concepts, as John said, this would allow the City to essentially separate the property. The marina would have its own property. The restaurant would have an expanded property for his customers, employees, and then the City would have that corner lot for resident public parking with some trailer parking, and would all be connected to what would be the greenspace, along the bulkhead at the top of the intercoastal and access to the new and improve public dock.

Mr. Bushnell said these changes need to happen in tandem with the marina lease agreements.

Administrator Fragoso added, "In both amendments that you have in front of you to act on, Mr. Schuler has added his portion which would be his portion...If you all approve the amendments, approval of that specific site plan is included, and unless there are any substantial changes that would need to come back to Council for approval according to how it is written now."

Director Kerr added, "I think what John is saying is you cannot deal with the marina lot independently, and that is pretty much exactly what we did do. We told Mike if that, assume that curve in the road is going to stay there, that road, the dividing line is going to stay there, you work within the parameters of that road on your side of the road, the restaurant and the City will work on the other side of the road. So we did very much kind of segregate it at the road as the dividing line." He reported that another iteration of the parking plan has been given to staff and they have not had time to review it yet.

MOTION: Council Member Bogosian made a motion to refer the matter of the parking lot configuration to the Real Property Committee. Council Member Ward seconded the motion.

Mayor Pounds noted that none of these changes are possible without the City regaining control of the two lots. Council Member Anderson suggested not designing the parking lots for the worst day of the year.

VOTE: A vote was taken with all in favor.

MOTION: Council Member Pierce made a motion to defer the discussion of the proposed amendments to Islander 71's lease to the Real Property Committee. Council Member Hahn seconded the motion.

Administrator Fragoso pointed out, "The amendments that have been presented to you include some requests being made by the restaurant that would impact the marina store lease, If you are taking action on that, I want you all to know that, and that is why I'm highlighting it to see if you wanted to discuss it because if you pass the marina store lease anything in addition to that lease would need to be done in an amendment that is being requested by the restaurant folks. There are some exclusivity clauses that are being requested. That the City include some restricted foods to not be sold in the store. There is just a series of other things."

Council members Bogosian and Ward suggested postponing the votes on the marina lease amendments until the parking lot and proposed lease amendments from Islander 71 have been worked out. Council Member Hahn said the marina lease amendments should be in place and then the City can discuss any changes to the restaurant lease.

Council Member Hahn said to Mr. Bushnell, "I am talking about your amendments to this Committee for your lease. You have asked for your lease to be sweetened, and you have done so without asking, without wanting to pay any additional rent or anything else. You're just coming to us saying I want better terms on my lease. That's fine. You are welcome to do that, but you cannot hold up business of this Council because you want a better lease, and that is what you are doing."

VOTE: The motion passed unanimously.

MOTION: Council Member Streetman made a motion to approve Ordinance 2022-04 and 2022-05. Council Member Popson seconded the motion.

Administrator Fragoso and City Council then reviewed in detail the latest changes to both lease amendments. Administrator Fragoso pointed out that approval of the language in the amendments also approves the proposed site plan.

Council members briefly discussed which items needed to be discussed in Executive Session.

Council Member Pierce made a motion to go into Executive Session but later retracted the motion.

City Attorney Halversen said, “I am not making any representations about that provision [pre-existing conditions], there are things I can discuss in Executive Session if you would like me to, I’m not saying anything right now one way or the other. Honestly, there are things I can discuss. I’m not going to discuss them right here. If you all vote to go into Executive Session, we can discuss them then.”

4. Executive Session

MOTION: Council Member Ward made a motion to move into Executive Session in accordance with §30-4-70(a)(2) to receive legal advice regarding proposed contractual agreements and potential claims concerning alterations to Isle of Palms zoning districts. Council Member Anderson seconded the motion. A vote was taken as follows:

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

The motion passed 8-1.

City Council moved into Executive Session at 6:49pm.

City Council returned from Executive Session at 8:13pm. Mayor Pounds said no decisions were made.

MOTION: Mayor Pounds made a motion to amend the motion to approve “to edit the pre-existing condition language in both of the leases to contain the one known existing condition that we are aware of and make it contingent upon receiving the letter or representation as promised by Schuler and team.” Council Member Streetman seconded the motion. A vote was taken as follows:

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

The motion passed.

VOTE: A vote was taken on the motion as amended as follows:

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

The motion passed 5-4.

5. Adjournment

Council Member Ward made a motion to adjourn, and Council Member Streetman seconded the motion. The meeting was adjourned at 8:16pm

Respectfully submitted,

Nicole DeNeane
City Clerk