



SPECIAL CITY COUNCIL MEETING
5:00pm, Tuesday, July 11, 2023
24 28th Avenue, Isle of Palms, SC and
broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>

MINUTES

1. Call to order

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

Staff Present: Administrator Fragoso, Director Kerr, City Attorney McQuillin

2. Citizens' Comments

Tony Santiago encouraged City Council to listen to the public and protect the public good by passing the ordinance to limit short-term rentals.

Terri Haack, representing Wild Dunes, said the majority of attendees at the short-term rental listening sessions did not want a cap. She would like to have exceptions carved out for condominium hotels and “purpose-built multi-family properties” in the proposed ordinance.

Bruce Councell said he would like City Council to pass Ordinance 2023-12 without substantial changes. He said a referendum is costly and divisive.

Elizabeth Campsen believes there is a significant disconnect between what the residents want and what City Council is doing. She said residents want and expect to be protected from an “unlimited number of short-term rentals.” She said that it was Council’s failure to adopt the recommendations of the Planning Commission and to craft their ordinance limiting short-term rentals that led to this petition. She said she expects Council to adopt this ordinance unanimously.

Rick Horton spoke about several negative experiences he has had with neighboring short-term rentals. He believes they have gone from an inconvenience to a safety concern.

Thomas Schmidt would like City Council to pass Ordinance 2023-12. He does not believe that any business or short-term rental owner will be harmed by doing so.

Laura Lovins said that while she has not lived here very long, she is passionate about protecting the island and preserving its way of life. She urged City Council to listen to the people who signed the petition and pass Ordinance 2023-12.

Brian Duffy said that by presenting this ordinance, the citizens are giving the Council an opportunity to fix their “mistake.”

Mark Mitchell spoke about trends that show livability issues are in decline. He is glad that property rights have been protected throughout multiple votes that he believes would limit them.

Christi Kunkle spoke to the importance of the income provided by short-term rentals to owners. She does not want City Council to pass Ordinance 2023-12.

3. Purpose

A. Discussion of petition received: “To limit investment short-term rentals business licenses to a maximum of 1600” and statutory requirements per section 5-17-30 of State law

City Attorney McQuillin said, “First, I want to walk you through the citizen-initiated process and statute as well as Council’s options as it relates to the citizen-initiated ordinance, and then I want to give you an overview of the actual ordinance as proposed. So right now, I am going to just talk about the statute that allows the citizens to do this and what your options are. Under the statute, which is Code Section 5-7-10, voters in a city may propose certain ordinances if at least 15% of the registered voters from the last City election sign a petition and the petition is certified by the local Election Commission. So the agenda item immediately following this this evening is for Council to consider sending the petition to the Election Commission for certification. We have talked with the Election Commission and believe this will be done in approximately 2-3 weeks. So we should know by the August meeting whether the petition is certified.

“The following section 5-7-30 of the statute governs Council’s options and the process of how the citizen-initiated ordinance will proceed. So I want to walk you all through each of those options. So the first option, City Council can adopt the ordinance. This will take two readings. The First Reading is the last agenda item on the agenda for Council to consider this evening. Assuming the Election Commission certifies the petition, this will come before Council again in August for consideration for First Reading. That also assumes passage of First Reading. If the ordinance is approved as submitted, after First Reading and Second Reading, it shall become law and there will not be a referendum and the issue will not go to voters at the November General Election.

“Again, if the ordinance is approved as written at Second Reading, it is like any other ordinance. It can be amended or it can be repealed at any time by the Council. If, after approval at Second Reading, so the ordinance gets approved, it can literally be amended or repealed even at the very next meeting or a Special Meeting. And again, the issue will not go to voters at the November General Election. A new petition would need to be initiated by the voters and the process would start over. And there is a South Carolina Attorney General Opinion in case on point on that.

“The second option is that Council can take no action on the ordinance or simply decide to let voters determine the outcome. No action by Council is what happened at Folly Beach. There was no motion or second to approve or deny the citizen-proposed ordinance. And if Council fails to take any action, the ordinance must be submitted to voters not sooner than 30 days and no more than one year from the date Council takes no action. The issue will be placed on the ballot during a regular election within the time frame. And if there is no regular election that takes place in that time frame, a Special Election may be called. The Election Commission has indicated that

they will need at least 60 days advanced notice for this to be placed on the ballot. Again, if the ordinance is approved by voters if Council takes no action, Council can amend or appeal it following the election just like any other ordinance.

“The third option is Council can amend the ordinance. So really under this third option, there are two parts, subpart A and B. It deals with two types of amendments. So first there are stylistic amendments and substantive amendments. If the ordinance is changed to correct a typo or merely stylistic changes that do not alter the substance of the ordinance, the ordinance is treated as if it was approved because it is not ‘substantially different’ from what was proposed. If the ordinance is approved because the changes are merely stylistic and did not change the substance of the ordinance, the ordinance does not get placed on the ballot and it is treated as if it was approved by Council.

“Substantially different is the word used in the statute. Any substantive amendments that change the substance of the ordinance will likely cause the issue to be placed on the ballot in the same manner as if Council took no action. I will give you an example from one of the public comments tonight. So if Council amended the ordinance at Second Reading and adopted the ordinance to exempt multi-family from the short-term rental cap or some other substantive change, that would likely make the ordinance substantially different. The ordinance must be then submitted to voters not sooner than 30 days and no more than one year from the date Council approved the amendment. So the amended ordinance adopted by Council would become law until the issue is submitted to voters. If the vote passes, the original citizen-proposed ordinance would take effect following the election and the amended ordinance would essentially be amended by the voters back to what they originally proposed. If, at the election, voters fail to get enough votes to pass the original ordinance submitted, the amended ordinance that Council adopted would remain the law.”

Council Member Pierce asked about the timeline of getting the ordinance on the ballot should that be necessary. Administrator Fragoso explained that it is possible to get this ordinance to a referendum vote on the November ballot.

City Attorney McQuillin said, “The statute on citizen-initiated ordinances does require that it be certified.”

He continued, “Now I am going to discuss the substance of the ordinance proposed and give you a general overview of what the citizens are proposing. Under the proposed ordinance, there are two categories of short-term rentals. One is legal resident short-term renters and the other investment short-term renters. I am going to refer to these as 4% primary residence short-term renters and 6% non-primary residence short-term renters. So under the ordinance, an owner is required to have a short-term rental license if they allow rentals for 3 months or less on their property. That is how the ordinance defines short-term rentals. Rentals of 3 months or less. The proposed ordinance provides no cap on short-term rental licenses for 4% primary residence short-term renters. The ordinance proposes a cap of 1600, one thousand six hundred, for licenses for 6% non-primary residence and short-term renters. For example, the cap would apply to any sort of investment properties. This would include multi-families, 6% condos that are rented three

months or less. Under the ordinance after its adoption, the 6% non-primary residence short-term renters have a 60-day grace period before the cap takes effect to apply for a short-term rental license. The licenses issued during the 60-day period following enactment counts towards the cap. However, the ordinance allows the City to issue licenses to 6% non-primary residence short-term rentals above the 1600 caps during the 60-day period. They essentially get grandfathered in.

“So for example, if the Council takes no action or rejects the ordinance, it will be voted on in November and 6% non-primary residence short-term renters will essentially have between now and through January 2024 because of the 60-day grace period to apply in excess of the 1600 cap. So under these scenarios, short-term rental licenses for 6% non-primary residence will almost certainly exceed the cap of 1600. And the reason I say that is based on the current number of licenses issued this year. So I am going to get in to the current data quickly to explain, then I will continue discussing the substance of the ordinance.

“So as Council is aware, the annual short-term rental license period for the City is April 30-May 1 of the following year. So last year, the license period was April 30, 2022 to May 1st of this year. Everyone that had a license this year that wanted to continue short-term rentals on May 1 of this year, needed to reapply before April 30. Owners not currently renting but that plan to do short-term rentals later in the year can apply at any time during the year before they start engaging in short-term rentals.

“The most up to date data we have for this year is from May 1, 2023 to July 7, 2023. That data is current just within a couple of days. And before I get into the data, it is important to note that we are only slightly over two months into the license year, so we do expect more owners to apply throughout the year. As of July 7, a couple days ago, there were 155 4% owners with licenses. Under the proposed ordinance, these would not be capped. As of July 7, a couple days ago, there 1,549 6% properties with a short-term rental license. These would be capped under the ordinance once they got beyond 1600. As of July 7, 51 properties are renting that don’t have a license, and they have been contacted by the City notifying them that this is illegal. They have 30 days to stop or apply for a license. If they continue to rent and do not apply for a license, they will get a ticket, a \$500 fine and court costs totaling \$1097 and up to 30 days in jail. Some have started the application process. As of July 7, there were 18 license pending approval, which likely includes some of the 51 that were renting without a license.

“I give you this information just to show that between now and January of next year, the City will most certainly exceed its 1600 cap especially in light of the 60-day grace period for the 6% non-primary residents to apply for a license in excess of the proposed cap.”

Council Member Bogosian asked for an explanation of the grace period and grandfathering in 6% licenses, to which City Attorney McQuillin replied, “It’s for folks that have not currently applied that had one prior to April 30. So folks that had licenses last year that have not yet applied this year have a 60-day grace period.”

City Attorney McQuillin continued, “So every 6%-er that had a license last year has the right to apply 60 days after this ordinance is enacted. So that anyone that previously had one has the 60-day grace period and is grandfathered in. It is not everybody.”

City Attorney McQuillin said, “So going back to the substance of the proposed ordinance. If the 6% non-primary residence licenses issued exceed the cap, then any new 6% non-primary residences that apply after the 60-day period once the cap has been met will be placed on a waitlist based on a chronological, first-come, first-served basis. These are currently and will be handled exclusively online so that the waitlist will be supported by the submission and timestamped for determination of a position on the waitlist.

“So let’s talk now about the transferability of licenses upon a transfer of the lot or dwelling and also how that affects any 6%-ers on the waitlist. So in the event of a transfer of the lot or dwelling to an eligible family member, licenses generally may be transferred. The ordinance defines eligible family member as a parent, spouse, stepparent, sibling, stepsibling, sibling-in-law, child, stepchild, grandparent, or step-grandparent. No other transfers are permitted.” He then explained several scenarios regarding the transferability of a short-term rental license.

Regarding waitlist transfers, City Attorney McQuillin explained, “The waitlist only applies obviously to the 6% applicants and that would be after the 60-day grace period for the folks that had a license last year. If they transfer to an eligible 6% family member, they hold their spot on the waitlist. If the transfer is not to an eligible family member, they need to reapply and go to the bottom of the waitlist when they apply.

“The next section of the ordinance says that the obligation is on the seller to notify the City of any change in ownership that terminates the license. This will likely present enforcement issues as some owners may not report. In discussions with staff, one simple method to enforce the proposed ordinance and check the ownership status is when the license year expires and owners reapply, they will check to see if the ownership for the property address has changed on the application and to determine at that time if the license transfers or not. We also plan to reach out to the County Assessor’s Office to see how/when they check for changes in ownership for purposes of assessable transfers of interest and property taxes. I suspect they work closely with the Register of Deeds Office. We could also look at MLS, but that will not show all transfers, so we will need to explore these issues further.

“Finally, just as similar to the current situation now, but under the proposed ordinance, if an owner operates without a license, they are subject to a \$500 fine and then when you add court costs, the total fine will be \$1097 and up to 30 days in jail.”

Council Member Bogosian asked about the legality of the petition, to which City Attorney McQuillin replied, “Staff and I have reviewed the proposed ordinance. I do believe that it is legally valid. This is based on my reading of South Carolina case law, the opinions of the other municipal and zoning orders that I consulted with about the ordinance, and frankly, the extensive briefing and the Folly Beach short-term rental ordinance litigation. I do want to be clear that this is my legal opinion, and this is an area of developing law, and there is not a South Carolina case directly on point. I wish there was. My job would be easy. But a court could potentially disagree. But I will say based on the current case law, my belief is that the ordinance is valid, but all of that said, this is ultimately a policy decision that Council must decide. So I think from a legal

risk standpoint, my opinion is that it is valid if somebody sought to challenge it. Based on the current law, I don't think that they would prevail."

Mayor Pounds asked about the "flip side," and City Attorney McQuillin said, "What he is getting at is at the beginning of my presentation I said that citizens can pass a citizen-proposed, generally proposed ordinance on certain topics. So one statute mentions that it cannot be an ordinance that levies taxes, which this does not. And then two, there is a Supreme Court case, the I'On case where there was a citizen-initiated ordinance that sought to change zoning, and I don't remember the exact zoning classifications, but the citizens were trying to change something from R1 to R2 or something along those lines, and the courts said you cannot have a citizen-initiated ordinance that deals with zoning. So that is one of the central issues in the Folly Beach litigation is whether their short-term rental ordinance is a zoning ordinance or whether it deals with business licenses. Based on the cases cited by both parties, I think that Folly Beach has a much stronger argument there that it is not zoning, and it is simply an exercise of the government's police powers."

He continued, "This one (the Isle of Palms' citizen-initiated ordinance) deals specifically with licenses, and that is one of the reasons why I believe it would be valid because it is an exercise of the police powers. And frankly, I think this ordinance whoever prepared it, I suspect a lawyer was involved, but it is a lot cleaner than Folly's as well."

Council Member Streetman asked where the State legislature is regarding blocking short-term rental limitations and whether or not City Council could draft legislation that would survive what is currently being considered in Columbia.

City Attorney McQuillin answered, "So that legislation is supposed to be brought up next legislative session. So I am assuming what that legislation would say is it repeals all the existing rules that municipalities have adopted, but I really don't know."

Mayor Pounds suggested that would be a question for the City's lobbyist to consider.

B. Consideration of sending petition to the Charleston County Board of Voter Registration and Elections for certification of signatures

MOTION: Council Member Pierce made a motion to send the petition to the Board of Elections for certification. Council Member Anderson seconded the motion. The motion passed unanimously.

C. Consideration of First Reading of ordinance by petition 2023-12 "To limit Investment Short-Term Rental Business Licenses to a maximum of 1600"

MOTION: Council Member Bogosian made a motion to approve Ordinance 2023-12 pending signature verification and to have discussion. Council Member Anderson seconded the motion.

Council Member Hahn said, "In preparing for this vote, I researched the reason groups across the state have stated for why caps on short-term rentals is needed. Every single person said the same thing: Caps are needed to protect residential neighborhoods. That is the reason, protect

residential neighborhoods. Caps are simply an insurance policy to protect and maintain residential areas. I had coffee with the lady that presented the petition and ordinance to City Council. This is just about protecting our residential neighborhoods. It's an insurance policy in case things get out of hand. I told her that while I don't agree caps are needed on the Isle of Palms given the 12-year sustained decline in short-term rentals, I understand the position and will support a cap on short-term rentals in residential neighborhoods. However, I cannot support this ordinance.

"This ordinance goes far beyond the stated goal of protecting the residential neighborhoods. This ordinance is a first step to ban short-term rentals island-wide. This ordinance will limit the ability of not only the condos in our commercial district and Wild Dunes to generate revenue, this ordinance will limit the ability of our two front beach hotels from operating or being sold. Human beings have invested in our island for over 100 years to provide a place for vacationers to stay and enjoy the beach. The condos and hotels in the commercial district as well as Wild Dunes were built and intended as places for people to vacation. I cannot support an ordinance that takes away the rights of those individuals without due process. Without the right to be heard. That is what this ordinance does. It is attempting to take away the rights of non-resident property owners that invested in vacation property rental because they believed in this island and its residents.

"I tried to reach a compromise with those that have promoted an island-wide cap. I was told no. All or nothing. There can be no compromise. If those individuals had agreed to limit the cap to single-family residences, the stated goal, we would not be here. We would already have an ordinance in place. The residential neighborhoods would be protected.

"Perhaps when all the posturing and name calling is over, we can come together as good neighbors do ad cap short-term rentals in our neighborhoods. After all, that's what everyone says they want, to protect the neighborhoods. But for now, I cannot support this ordinance.

Council Member Streetman reiterated his support for a cap in residential neighborhoods. He supports the petition going forward as a referendum on the November ballot, but he is not in favor of the referendum. He believes Council has "bigger issues" to deal with.

Council Member Bogosian said Council needs to address a petition that 30% of the electorate have brought before them. He said there has been an increase in short-term rental licenses issues since Council failed to take action earlier. He does not feel the information gleaned from the short-term rental listening sessions was conclusive. He would like to see the ordinance passed and not go to referendum.

Council Member Anderson said she would like to pass a cap to preserve the community. She referenced a *New York Times* article touting Charleston as a place for real estate investment. She also read from a speech she gave to the State legislative committee considering the removal of all short-term rental ordinances in the state. She would like to pass the ordinance and amend it moving forward.

Council Member Popson said residents would not be happy if City Council mandated they must rent out their homes, “so how can we mandate that you can’t rent your house?” He said he supports a referendum in November.

Mayor Pounds said the trend shows the number of single-family homes with short-term rental licenses is down year-over-year, and the 4% primary resident number is up over the last 12 years. He said, “This is too big of an item to let 30% of our population decide what is best for the entire island. I do not (crowd noise). I can tell you, if this thing was reversed, you would up in our grill to send this to referendum and to not take action. So I think let’s not be too hypocritical in saying we need to get 100% of our residents to vote on this. We have had a number of comments, I have had a number of emails around non-resident owners wanting to be able to vote. That is not in our purview. That is a bigger issue than this paygrade for sure on who gets to vote as a primary resident. So the rules are what they are. Primary residents are the ones that vote here on IOP.” He supports having a referendum in November.

VOTE: A vote was taken as follows:

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

The motion failed 4-5.

4. Adjournment

Council Member Streetman made a motion to adjourn, and Council Member Ward seconded the motion. The meeting was adjourned at 6:32pm.

Respectfully submitted,

Nicole DeNeane
City Clerk