

SPECIAL CITY COUNCIL MEETING

6:30 p.m., Tuesday, October 26, 2010

A Special Meeting of City Council was held at 6:30 p.m. on Tuesday, October 26, 2010 in Council Chambers of City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina for the purpose of considering the revocation of a business license. Attending the meeting were Councilmembers Bergwerf, Bettelli, Buckhannon, Duffy, Loftus, Piening, Stone and Thomas, Mayor Cronin, City Administrator Tucker, City Attorney Halversen, Building and Planning Director Kerr, Assistant to the Administrator Dziuban and City Clerk Copeland.

1. Mayor Cronin called the meeting to order and acknowledged that the press and public had been duly notified of the meeting in accordance with the Freedom of Information Act.
2. Mayor Cronin explained that the purpose of the Special Meeting was to consider the revocation of a business license issued to 2504 Hartnett Boulevard.

MOTION: Councilmember Duffy moved to adopt the Rules of Procedure of the Board of Zoning Appeals; Councilmember Loftus seconded and the motion PASSED UNANIMOUSLY.

Clerk Copeland then swore in the attendees who intended to provide testimony in the case; they were Director Kerr, Livability Sergeant Meekins and Alan Simonini, the property owner.

Director Kerr distributed to City Council a packet of information containing copies of the livability incident reports, of letters sent by the Building Department to the property owner, of the original notice to owner of the short-term rental regulations, of the completed rental application and disclosure form, as well as of this hearing notice and the City Code regulating license revocation. A packet is attached to the historical record of this meeting.

Director Kerr explained that the City Code specifies that, when, as the Director of Building, Planning and Licensing, he believes that a "licensee has demonstrated an inability or unwillingness to prevent the licensee's tenants from engaging in unlawful activities," he is required to arrange a hearing before City Council to consider the revocation of that license.

The incident reports for 2504 Hartnett were in chronological order on pages 2, 6, 9, 13, and 18 in the packet and represent the five (5) founded violations that occurred between May 1 and September 28, 2010. An additional five (5) incidents were reported when the Police Department responded to the address in response to complaints; these were unfounded. The founded incidents are as follows:

| <u>Date</u> | <u>Time</u> | <u>Violation Cited</u> |
|----------------|-------------|---------------------------------|
| May 1, 2010 | 12:35 a.m. | Noise violation; ticket issued |
| June 18, 2010 | 11:09 p.m. | Too many cars; no ticket issued |
| June 21, 2010 | 3:15 a.m. | Noise violation; ticket issued |
| July 27, 2010 | 10:28 p.m. | Noise violation; ticket issued |
| Sept. 17, 2010 | 11:16 p.m. | Noise violation; ticket issued |

Director Kerr described the details of each event from the Incident Reports and related that, after each event, a follow-up letter was sent to the property owner by the Livability Officer informing the owner of the incident and the resulting action of the Police Department. The Director read into the record the pertinent information contained in paragraph 2 of the correspondence as follows:

“ . . . if habitual violations occur at this property, you as the owner of the property will be held responsible. This could result in you being issued a Municipal Ordinance Summons and/or the revocation of your Rental License and your ability to rent the property.”

After the third incident, Director Kerr reported that he telephoned the owner Mr. Simonini and indicated that the City was not seeing a change in the pattern of behavior at the rental unit, that three (3) citations had been given, and that, if the pattern continued, actions would be taken by the City to establish a hearing to revoke the business license.

The remaining exhibits in the packet are copies of the original notice sent in May 2007 to holders of business licenses for rental property explaining the changes to the City's short-term rental ordinances, as well as the new application form and disclosure. The City's receipt of the completed application meant that the property owner had received the license and was aware of the changes; the initialed Disclosure Form represented proof that the property owner had read and understood the provisions of the ordinance. Director Kerr directed Council's attention to Section E.7. Revocation of License that the owner initialed and that reads as follows:

“The City may revoke a license when a licensee has engaged in or allowed an unlawful activity or nuisance relating to the business; or licensee has demonstrated an inability or unwillingness to prevent licensee's tenants from engaging in unlawful activities or creating nuisances related to the business.”

A copy of the letter informing the property owner of this revocation hearing was included as Exhibit 15; acting as License Inspector, Director Kerr stated the following:

“ . . . it is my determination that you, as the licensee, have demonstrated an inability or unwillingness to prevent the tenants of the property from engaging in unlawful activities, thereby creating a nuisance.”

The final pages of the packet include sections of the City Code pertinent to this hearing, specifically Section 7.1.15e stating that the License Inspector should forward cases when a licensee has demonstrated “an inability . . . to prevent” his/her “tenants from engaging in unlawful activities” to the City Council for a determination regarding revocation of the business license.

Director Kerr noted that Sergeant Meekins was present to provide additional information and to answer any questions Council might have. When asked, Sergeant Meekins stated that he had nothing to add as Director Kerr had covered the information concisely.

Councilmember Bergwerf asked Director Kerr about the property owner's response when he was telephoned after the third incident; according to the Director, the owner stated that he understood that three (3) violations had occurred and would wait to see if problems continued.

Councilmember Bettelli inquired whether the City had received any written correspondence from the Mr. Simonini, and the Director stated that the City had only received the mail receipt for the certified letter.

Councilmember Buckhannon asked whether violations had occurred prior to May 1, 2010. Sergeant Meekins responded that records on livability issues are kept on a calendar year basis and that the City had not received any complaints on 2504 Hartnett Boulevard for calendar year prior to May 1. Director Kerr added that they had not researched the 2009 records for problems at this address.

Councilmember Buckhannon continued his questions as he inquired about what changes had occurred to go from no complaints to ten (10) complaints over five (5) months; he asked whether the complainant was new to the area. Sergeant Meekins commented that he did not know what had changed and did not know about the complainant's history.

Councilmember Stone commented that the rental application was dated in 2007; Director Kerr explained that new applications were completed in 2007 when the changes to the code occurred; in subsequent years, the process is one of renewal.

Councilmember Loftus asked the Director whether property owners and rental agencies had received notifications of other changes to the short-term rental ordinances reminding them of the noise ordinances and the importance of keeping the neighborhoods quiet. Director Kerr recalled that notifications had been sent out when the placards that are mandated to be displayed in rental units were amended.

Councilmember Bergwerf commented to the fact that both the owner and Resort Quest are reported as agents for the property on the 2007 application; during the period of time in question, she asked whether Mr. Simonini was the sole agent.

Director Kerr remembered that both entities were renting the house, but that the owner had served as the agent for each incident discussed this evening; Sergeant Meekins concurred.

With no additional questions from Council, Mayor Cronin gave Mr. Simonini, the property owner, an opportunity to present his case to avoid revocation of the business license for 2504 Hartnett Boulevard. Mr. Simonini stated that he owned two (2) other rental properties on the island, 202 Palm and 13 Abalone in Wild Dunes, and has never had a problem at either of them. He stated that he wants to be a good neighbor and had built quality house at 2504 Hartnett; he stated that he has had eighty-five (85) tenants since he began renting this property in June 2007. Mr. Simonini said he would like to know who the complainant was so that he could talk with them about ways to buffer them from the house and noise at 2504 Hartnett. After the first complaint, he stated that he had disconnected the porch speakers as a possible source of the problem, and he offered not to rent again to the people who had received the noise citations.

As to the terms "inability and unwillingness" to solve the problem, Mr. Simonini said he was willing to solve the problem and thought himself able to solve the problem.

He explained that the neighbor's porch on the right of 2504 Hartnett lines up in close proximity to the porch of the rental unit and is open; he related that he had met with a contractor earlier in the day to have walls constructed on porches on the first and second floors and plant trees or bushes between the properties as buffers.

Mr. Simonini related a conversation he had with Resort Quest, who said they had not experienced this type of problem before. Resort Quest also stated that the complainant had never called them to register a complaint about the renters' activities.

Mr. Simonini reported that he had read the City's noise ordinance that references specific noises, such as blowing horns, pets, loudspeakers, hawking or peddling, radios, phonographs, televisions, etc., use of vehicles, exhaust discharge, noise in proximity to schools, courts, etc., musical instruments-daytime/nighttime play, pile drivers and other apparatus, public interest events. He noted that the ordinance does not refer to loud talking or yelling for which a ticket was issued on July 27th, and his attorney had commented that the ordinance was vague and too subjective and, possibly, unconstitutional based on the lack of specificity.

Mr. Simonini concluded that he did not know what he could do to eliminate the problem other than the vegetation and the construction of the walls and that he wanted to be a good neighbor.

Councilmember Duffy asked Mr. Simonini whether he was aware that he was constructing a rental unit in a single family residential neighborhood; Mr. Simonini said that he was attracted to the street because it was a single family neighborhood and its proximity to the park. He added that he had originally built the house to sell, but decided to rent when the real estate market changed; he indicated that 2504 Hartnett Boulevard is presently on the market for sale.

Mayor Cronin expressed concern that Mr. Simonini has taken no action having received four (4) citations and one (1) warning; Mr. Simonini stated again that he had disconnected the speakers on the porches and had tried to find out who the complainant was in order to discuss possible solutions with him/her. Mr. Simonini added that he lives out of state and is not in town very often.

When the Mayor remarked that he had taken no action upon receiving the notifications about the citations being issued, Mr. Simonini stated that he had thought it was a fluke when the one (1) tenant got two (2) tickets in one (1) week. He repeated that he has been renting on the island since 2007 without a problem.

Councilmember Buckhannon asked Mr. Simonini if he was aware of receiving any complaints for this residence prior to May 1, 2010; Mr. Simonini said he was not aware of ever receiving complaints in the past.

Councilmember Loftus asked for confirmation from Mr. Simonini that he, not Resort Quest, had been the rental agent for the tenants when all of the complaints had been made. Mr. Simonini re-stated that both he and Resort Quest are agents for the property, but he added that he had not been acquainted with the tenants who received the tickets. Councilmember Loftus asked if violations had occurred when the unit was rented by Resort Quest; Mr. Simonini answered that he was not aware of any and added that he saw no difference based on who was the rental

agent. Councilmember Loftus explained that the City had seen improvements in the number of noise violations from properties under rental agencies which he attributes to the time spent informing renters of the consequences for violating the City's ordinances, particularly the noise ordinance. Councilmember Loftus suggested that the reason Mr. Simonini has had the problems is that he does not screen his tenants well enough. Mr. Simonini countered that he has not had any problems with the other two (2) rental properties on the island; therefore, he tends to believe the problem is that he is being targeted by a neighbor on Hartnett.

Councilmember Duffy asked what percentage of rentals on this property could be attributed to him versus Resort Quest; Mr. Simonini estimated that Resort Quest rents his unit seventy-five percent (75%) of the time.

Mr. Simonini had no more information to share and City Council had no more questions.

3. Executive Session to receive legal advice

MOTION: Councilmember Duffy moved to go into Executive Session at 7 p.m. to receive legal advice on the business license revocation; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.

City Council returned to regular session at 7:13 p.m.; Mayor Cronin announced that Council had not taken a vote or any action while in Executive Session.

Mayor Cronin explained that the Findings of Facts on the case for revocation of the business license for 2504 Hartnett Boulevard were as follows:

- 1) The business license was issued by the City of Isle of Palms on August 27, 2007 authorizing the licensee to operate the property at 2504 Hartnett Boulevard as a short-term rental property; and
- 2) There have been five (5) violations of the City's ordinances in the past year by the licensee's tenants at 2504 Hartnett Boulevard; the violations occurred on May 1, June 18, June 21, July 27 and September 17, 2010.

Mayor Cronin explained that City Council would discuss conclusions of law as to whether the property owner has demonstrated an unwillingness or an inability to prevent his tenants from engaging in activities that create a nuisance.

Councilmember Duffy expressed the opinion that Mr. Simonini's lack of response to five (5) violations was demonstrative of either an inability or an unwillingness to prevent nuisance in a single family residential district where this property is located. He added that, from his perspective, the City should move forward with revoking the business license.

MOTION: Mayor Cronin moved that, under conclusions of law, the licensee has demonstrated an inability or unwillingness to prevent the licensee's tenants from engaging in unlawful activities or creating nuisances related to that business; Councilmember Duffy seconded and the motion PASSED UNANIMOUSLY.

Mayor Cronin stated that the Council has decided that the licensee has demonstrated an inability or unwillingness to prevent unlawful activities by his tenants, and they must now decide what they will do about. The Mayor explained the choices as follows:

- Not to revoke the license;
- To revoke the license for the remaining term; or
- To revoke it for a period of time within the remaining term with stipulations, if the Council chooses to do so.

Motion: Mayor Cronin moved to revoke the license for a period of six (6) months with the conditional provision for the remaining term that, if there is an additional founded violation in that time, the license will again be revoked without a hearing; Councilmember Bettelli seconded.

Councilmember Buckhannon pointed out that, in looking at all of the complaints, founded and unfounded, all were place by one (1) complainant. He added that he was puzzled by what circumstances could have changed since the house was first rented in 2007 to create the problem before Council. Based on the information in the incident reports, Councilmember Buckhannon said that his home could probably qualify for a complaint when his sons are playing too loudly in the backyard pool, but he conceded that nothing excused a call at 3:10 a.m. The Councilmember agreed that action needed to be taken, but thought that Mr. Simonini was now aware of the seriousness of the problem and that, possibly, he could be allowed to keep his license with the condition that one (1) more violation would mean the loss of his business license.

Councilmember Bergwerf commented that Mr. Simonini faces a huge challenge in that he has a rental house that accepts sixteen (16) people who are "here to have a good time and their neighbor is going to work at seven (7) in the morning." She added that this is the crux of the short-term rental issue – is the Isle of Palms a residential with some businesses or is the Isle of Palms a resort island.

Mayor Cronin recalled that, over the years, the Police and Building Departments have brought in property owners/rental agents whose properties have multiple violations, two maybe three (2-3), and problems with those properties ended.

In Councilmember Piening's opinion, the fact that one person had filed the complaints is not pertinent to the case; the City has a well-trained Police Department that went to the address and reported five (5) founded violations – who made the initial report is unimportant.

Councilmember Thomas stated that he did not think disconnecting the speakers was enough to solve the problem and that action was insufficient to convince him that Mr. Simonini was trying to solve the problem.

Administrator Tucker asked for a clarification of the time frame involved in the revocation's ending on March 27, 2011 or April 1, 2011; Mayor Cronin stated that the revocation would run from November 1, 2010 through April 30, 2011. The conditional period would cover May and June 2011.

VOTE: The motion PASSED UNANIMOUSLY.

4. Adjournment

Mayor Cronin closed the Special Meeting of City Council at 7:27 p.m.

Respectfully submitted:

Marie Copeland
City Clerk