STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

PARK LANE PARTNERS LLC and
ELIZABETH SPRATT COOPER,

Plaintiffs,

v.

THE CITY OF FOLLY BEACH,

Defendant.

CIVIL CASE NO.: 2024-CP-10-04208

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER CAME BEFORE THE COURT on January 6, 2026, and April 30, 2026, for in-person hearings on Plaintiff's Motion for Partial Summary Judgment and a cross-motion for Summary Judgment filed by Defendant City of Folly Beach (herein the "City").[1] Plaintiff also filed a motion to strike the affidavit of Mr. Pope filed by the City. Plaintiff's Motion to Strike the Affidavit is denied. Further, for the reasons set forth below, Plaintiff's Motion for Summary Judgment is granted, and the City's Motion for Summary Judgment is denied, and this Order ends the case.

INTRODUCTION

This matter concerns the City's Short Term Rental ("STR") Ordinance contained at §117 of the Folly Beach Code of Ordinances. Plaintiff brought this declaratory judgment action challenging the validity of the Ordinance on several fronts. As it pertains to the relevant motions before the Court, the portions of the STR Ordinance that Plaintiff claims to be improper were

[1] Pursuant to Rule 42(a), SCRCP, and with the consent of all parties, the Court held a joint hearing on the motions discussed herein as well as on Plaintiff's Motion for Partial Summary Judgement and the City's Cross Motion for Summary Judgment in the matter of Thomas Jermyn v. City of Folly Beach Case (No. 2024-CP-10-06378). The motions in these two cases raise the same questions of law, and this Order has been entered in both cases.

recently enacted by Referendum through South Carolina's Initiative and Referendum process after having been rejected by the City Council.

On May 15, 2025, Plaintiff filed a motion for partial summary judgment, on some (but not all) of its claims, asserting (1) the manner in which the Ordinance was enacted—through the Initiative and Referendum process violates S.C. Code §5-17-10 and § 6-1-315 because the ordinance is one authorizing a the levy of a tax; (2) the "permit fee" required by the Ordinance constitutes an illegal tax in violation of S.C. Code Ann. §6-1-310; and (3) the Ordinance violates S.C. Code Ann. § 6-1-400 which concerns Business License Tax Standardization. Subsequently, on September 3, 2025, Defendant City of Folly Beach ("City") filed a competing motion for summary judgment on all Plaintiff's causes of action including those raised in Plaintiff's motion. All sides have submitted extensive briefing and the Court heard arguments on these motions twice.

After careful consideration of the arguments, law, and materials submitted, Plaintiff's Motion for Partial Summary Judgment is GRANTED and the City's Motion for Summary Judgment is DENIED. Specifically, the Court finds (1) the ordinance is one authorizing the levy of a tax and therefore its enactment through Referendum violates S.C. Code §5-17-10 and § 6-1-315; and (2) The Short Term Rental "permit fee" imposed by the City is an improper tax in violation of S.C. Code Ann. §6-1-310. In finding the STR Ordinance invalid for these reasons, the Court does not need to address the remaining arguments raised by the parties.

FACTUAL BACKGROUND

The City of Folly Beach is a municipality incorporated under South Carolina law. Like many municipalities, the City has ordinances that require a business license, and the payment of the corresponding business license tax, to operate a business within its boundaries. This includes a business license to operate a short-term rental. In addition to paying the required business license tax, the City also requires the payment of a short-term rental "Registration Permit Fee" to operate a short-term rental in the City. The specific requirements of the City's ordinances and the history of their enactment is relevant to the issue presented here.

Short-Term Rental Business Licensing by the City

It has long been the case that the City has required owners of STRs to obtain a business license and pay the applicable business license tax in order operate a STR in the City. Like many things, the City's STR licensing scheme has evolved over time. Beginning in 2019, for business license taxation purposes, the City classified all short-term rental businesses as "Class 9.5, NAICS[2] 721199 – All Other Traveler Accommodations (short term rentals)." At the time, the City's Business Licensing Ordinance stated that "All short term residential rentals in the City shall be classified under this code," and it established taxation rates for the class based on gross income. (Pope at ¶ 9 and Ex. D). In 2022, the South Carolina Legislature enacted the Business License Tax Standardization Act (herein the "BLS Act"[3]) which required, among other things that each taxing jurisdiction adopt "the latest Standardized Business License Class Schedule" adopted by South Carolina's Director of Revenue and Fiscal Affairs, using the NAICS classification codes. *See* S.C. Code § 6-1-400(G)(1). Consistent with this legislation, in January of 2022, the City timely adopted the provisions of the BLS Act by repealing its then existing provisions and replacing them with "Standardized Business Licensing Provisions." (Pope at ¶10 and Ex. H). Although the BLS Act permits a city's governing body to provide for additional subclasses upon a positive majority vote, the City Council has never done so. *See* S.C. Code § 6-1-400(G)(2) (provision of the BLS Act

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[3] *See* S.C. Code § 6-1-400 et. seq.

permitting subclassification through majority vote of city council). Therefore, as of 2022, the City had a single classification of business license for a STR.

<u>The Origin of the "Cap" on Short Term Rental Business Licenses</u>

In June of 2022, the Mayor of the City of Folly Beach proposed amending the City's Code of Ordinances for the purpose of "limiting short-term rental business licenses for non-owner-occupied properties to 800." However, the City Council considered and rejected this proposal, voting against the proposed cap on June 28, 2022. (Pope at ¶ 14).

After City Council rejected the proposal, an interested group of citizens submitted a petition through the Initiative and Referendum process of S.C. Code Ann § 5-17-10 *et. seq.* to enact an ordinance that would cap the number of non-owner-occupied short term rentals in the City to 800. The Petition proposed to impose the cap by limiting the City's authority to issue business licenses and collect the corresponding business license taxes from certain newly created "classes" of STR business licenses.

The City received this petition on October of 2022, which was styled as follows:

STATE OF SOUTH CAROLINA	)	**Petition**
	)	**To Limit Investment Short Term Rental**
CITY OF FOLLY BEACH	)	**Business Licenses to a maximum of 800**

To the Mayor and City Council of Folly Beach:

We the undersigned voters of the City of Folly Beach request that the City adopt the following ordinance: TO LIMIT INVESTMENT SHORT TERM RENTAL BUSINESS LICENSES TO A MAXIMUM OF 800. This Petition is submitted pursuant to the South Carolina Code of Laws, section 5-17-10, *et seq*.

To facilitate the desired cap, the Petition introduced and defined "two classes of short term rental business licenses"—*i.e.*, "Investor Short Term Rental" and "Owner-Occupied Short Term Rental. At the time the City's ordinances did not contemplate "classes" of short term rental business licenses. The Petition then went on to define the scope of the City's authority to issue such business licenses for each of the newly proposed classes, providing:

SHORT TERM RENTAL BUSINESS LICENSES:

(A) The City is authorized to issue two classes of short term rental business licenses:
(1) Investment Short Term Rental business license, and
(2) Owner-Occupied Short Term Rental business license.

(B) Owner Occupied Short Term Rental Business License:
There will be no limit on the number of Owner Occupied Short Term Rental business licenses issued.

(C) Investment Short Term Rental CAP
(1) The maximum number of permitted Investment Short Term Rental business licenses, city wide, shall be no more than 800, henceforth referred to as the CAP.
(a) Upon enactment the CAP shall be set at 800.

After receiving the Petition, the City Council again voted <u>not</u> to adopt the proposed ordinance set out in the Petition. (Pope at ¶¶ 16-17). After the Petition was rejected by the City Council, on February 7, 2023, the Petition was submitted to the electorate as a Referendum as contemplated by S.C. Code § 5-17-30. The Referendum narrowly passed by a vote of 656 in favor to 579 against. (Pope at ¶ 18); S.C. Code § 7-5-610. The proposal was thereafter adopted as part of the City's "Short Term Rental Business Licenses Ordinance" in Sections 117.01, *et seq.* of the City's Code of Ordinances.

Specifically, to define the newly created "classes" of business licenses, the definitions of Investor Short Term Rental (herein "ISTR") and Owner-Occupied Short Term Rental (herein "OSTR") were incorporated into the definitions section of the City's Ordinances at §117.01. The remaining provisions of the Referendum regarding the "cap" on ISTRs and the parameters of the City's authority to issue business licenses were incorporated into §117.02 entitled "Short Term Rental Business Licenses," providing in relevant part:

§117.02 SHORT TERM RENTAL BUSINESS LICENSES.

(A) The city shall issue investment short term rental business licenses and owner-occupied short term rental business licenses.

(B) There will be no limit on the number of owner-occupied short term rental business licenses issued.

(C) The maximum number of investment short term rental business licenses issued shall be 800, henceforth referred to as the cap.

(1) No new investment short term rental business licenses shall be issued unless the total number of investment short term rental business licenses are below the cap.

(2) Any investment short term rental business license issued prior to February 7, 2023, which remains in good standing may continue to be renewed annually, even if the number of investment short term rental business licenses exceeds the cap.

(3) A wait list will be maintained by the city. New licenses shall be offered to applicants according to procedures adopted by City Council.[4]

Prior to the Referendum, the City had already issued more than 800 business licenses for properties that would fall in the class of ISTR. Therefore, the "grandfather" provision of Section (B)(2) authorized the City to issue an ISTR class business license each year in excess of the cap provided the owner had a license prior to the Referendum and perpetually renewed and maintained the license "in good standing."

Under this newly created ordinance, before the City is authorized to issue a business license or collect the corresponding tax, it must determine which class of business license is applicable—either ISTR or OSTR—and for ISTRs it must also determine if the cap and/or grandfather provision authorizes the issuance of a business license (and collection of the corresponding tax). It is not disputed that for the purposes of determining the amount of the applicable business license

[4] This ordinance has since been amended to address medical hardships and the potential for inheritance of ISTRs.

tax to be paid, both OSTRs and ISTRs (to the extent authorized by the cap and/or grandfather clause) are taxed at the same rate. The distinction between OSTR and ISTR was made only for the purposes of imposing the cap on ISTRs.

In this case Plaintiff's property is subject to classification as an ISTR. Although the Plaintiff had a valid STR business license prior to the Referendum, when Plaintiff attempted to renew the business license, the City decided that Plaintiff was not entitled to the benefit of the "grandfather" provision because the City determined the license had not remained "in good standing." Therefore, the City refused to issue Plaintiff an ISTR business license because the cap on ISTRs had been exceeded.

<u>The Additional Requirement of a Short-Term Rental Registration Permit Fee</u>

In addition to paying a business license tax, the operator of a STR (regardless of whether an ISTR or OSTR) must also pay what the City calls a "rental registration permit fee." (Herein the "Permit Fee"). The City's Code of Ordinance contemplates both the Permit Fee and the business license tax in the same section—*i.e.*, §117.03—which provides:

> **§ 117.03 LICENSE, REGISTRATION, AND TAX REQUIREMENTS.**
> Any owner advertising or operating a dwelling unit as a short term rental must maintain a current business license, comply with rental registration permit requirements, and make proper payment of local, county, and state taxes.
>
> (A) *Business license.* A business license must be obtained and renewed annually thereafter by the timely submittal of a form and fee as established by the city, for each dwelling unit or portion thereof advertised or offered as a short term rental.
> . . .
>
> (B) *Rental registration permit.* A rental registration permit must be obtained and renewed annually thereafter by the submittal of a form and fee as established by the city, for each dwelling unit or portion thereof offered as a short term rental.
>
> (1) *Annual registration.* The rental registration permit application shall be completed prior to June 1 of each year.
>
> (a) No new business license to operate a short-term rental shall be issued prior to the

approval of a rental registration permit.[5]

. . .

Just like the business license tax, the Permit Fee is charged as a percentage of gross revenue. However, this has not always been the case. The history and evolution of the ordinances concerning permit fees on STRs are relevant to this matter.

The concept of a permit was born in 2010 when the City enacted an ordinance that imposed "an additional rental registration permit fee" as a condition of obtaining a business license to rent property on a short-term basis. (Pope at ¶ 6). While this "permit fee" was levied in addition to the required business license tax, it was a flat fee—initially set at $50/year then subsequently raised to $100/year in 2017. (*Id*. at 6, 8).

In 2019, the City eliminated the permit fee requirement in conjunction with its decision to re-classify short term rental business licenses under the NAICS code, to distinguish them from the long-term rental business license classification. (Pope at ¶ 9 and Ex. G). In eliminating the permit fee, the City noted that "Currently, short term license owners pay for a business license and then make a separate transaction to pay for the rental registration. . . . Two separate payments make it harder for people to comply." (*Id*., Ex. G). Therefore, beginning in 2019, there was no permit fee. Instead, the City levied only a single business license tax on short-term rental businesses, with rates based on the business's gross income and NAICS classification as "Class 9.5 – All Other Traveler Accommodations."

This changed again in September of 2022, when the City adopted (or re-adopted) a new "Rental Registration Form and Permit Fee" requirement. (Pope at ¶ 21). However, unlike the flat fee that had previously been charged, the City's 2022 Ordinance imposed a permit fee that was

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[5] This ordinance has since been amended but the requirement of a permit fee prior to the issuance of business license remains.

calculated as a percentage of gross income[6]—the same means of measuring the amount of business license tax to levy. (*Id*. at ¶ 22).

The City puts revenue from the Permit Fees into its General Fund, along with the revenue from hospitality taxes, accommodations taxes, property taxes, telecommunications taxes, vehicle taxes, alcohol taxes, and business license taxes. (Cooper Ex. 2B; City's Fiscal Year 2025 Budget at pp. 5, 9[7]). The Permit Fee is "not . . . paid in return for a particular government service or program." (Pope at ¶ 24). Instead, the City uses its General Fund for general municipal functions and administration, including public safety, public works, public buildings, and facilities. (Cooper Ex. 2B at p. 1) (*see also* Pope at ¶ 22).

LEGAL STANDARD

The parties have filed cross-motions for summary judgment as to each of the issues addressed in this Order. The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP.

Likewise, "the reasonableness of an ordinance is a question of law for the court to decide unless there is a controversy about the facts of the case, which must be decided by a jury." *City of Beaufort v. Holcombe*, 369 S.C. 643, 649, 632 S.E.2d 894, 897 (Ct. App. 2006).

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[6] At present the City's STR Ordinance dictates that the Permit Fee "rate is calculated at $17.50 per thousand dollars of gross income" of the rental business.

[7] The City's annual budgets are published at: https://cityoffollybeach.com/departments/finance/budget_financial_statement_salaries_and_check_registers.php.

Where, as here, "the parties file cross-motions for summary judgment, the issue becomes a question of law for the Court . . ." *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021) *citing Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). "Where cross motions for summary judgment are filed, the parties concede the issue before [the court] should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). Further, "[t]he question of statutory interpretation is one of law for the court to decide." *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 131, 796 S.E.2d 165, 168 (Ct. App. 2016) (citation omitted).

ANALYSIS AND CONCLUSIONS OF LAW

Determining whether a local ordinance is valid is a two-step process. *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 384, 563 S.E.2d 651, 654 (2002). First, the Court must determine whether a municipality had the power to adopt the ordinance. *Id.* If no power exists, the ordinance is invalid, and the analysis may stop. *Id.* Second, the Court must determine whether the ordinance is consistent with the general laws of the state. *Id.* This two-prong analysis is referred to in this Order as the "*Riverwoods* Test."

I. The Use of the Initiative and Referendum Process in this Case Violated South Carolina law, Therefore, the Resulting Short Term Rental Ordinance Imposing a Cap on Investor Short Term Rentals is Invalid.

By statute, all powers of a municipality, including the City of Folly Beach, "are vested in the council, except as otherwise provided by law, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the municipality by law." S.C. Code § 5-7-160. As it concerns business licenses, an ordinance imposing or increasing a business license tax must be passed by a majority vote of City Counsel. *See* S.C. Code § 6-1-315(A) (providing that "By ordinance adopted by a positive majority vote, **a local governing body** may impose a business license tax or increase the rate of a business license tax . . .") (emphasis added); *see also* S.C. Code § 6-1-300(5) (" 'Positive majority' means a vote for adoption by the majority of the members of the entire governing body, whether present or not.") and S.C. Code § 6-1-300(3) ('Local governing body' means the governing body of a county, municipality, or special purpose district.").

A. <u>The STR-Ordinance Proposed by the Referendum "Authorizes the Levy of Taxes" in Violation of S.C. Code § 5-17-10 *et. seq*</u>.

Although the law allows the citizens of a municipality to enact certain ordinances through an Initiative and Referendum process, because certain areas of law-making remain the exclusive province of a municipality's governing body, our statutes explicitly exclude certain types of ordinances from the Initiative and Referendum process. Specifically, S.C. Code Ann. § 5-17-10 provides that through a petition to city council, "The electors of a municipality may **propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes**." S.C. Code § 5-17-10 (emphasis added). If the City council declines to adopt the ordinance proposed by the petition, S.C. Code Ann. § 15-17-30 provides the proposed ordinance shall be put to a vote by the electorate by referendum.

Together the relevant statutes are designed to protect and maintain City Council's authority over its taxes and revenues. The legislative scheme is "intended to preserve [City] Council's general authority over the [City's] treasury, and to preclude special interest groups from attempting to usurp [Council's] authority through the use of initiatives." *Focus on Beaufort County on Behalf of Certain Registered Voters of Beaufort County v. Beaufort County Through County Council of Beaufort County*, 318 S.C. 227, 456 S.E.2d 910, 912 (1994) (holding unlawful an initiative limiting spending).

Here, the question of whether it was proper to enact the City's STR Ordinance through the Initiative and Referendum process turns on whether the STR Ordinance is one "authorizing the levy of taxes." *See* S.C. Code § 5-17-10 (prohibiting the use of a Referendum to propose an ordinance "authorizing the levy of a tax"). In this case, the Referendum functions in relevant part by defining the parameters of when the City may or may not levy a business license tax. Prior to the Referendum the City was authorized to levy a business license tax on all short-term rentals without distinction between ISTR and OSTR. However, the Referendum changed this by creating "classes" of business licenses and redefining the scope of the City's authority to levy the corresponding tax on these newly created classes. Because the Referendum redefined the scope of the City's authority to levy business license taxes, Plaintiff asserts the proposed ordinance was one "authorizing the levy of taxes." On the other hand, the City's argument purports to cast the proposed ordinance as one limiting the authorization to levy business license taxes. In the City's view because it had the authorization to levy business license taxes prior to the Referendum, the Referendum merely limited that authority. In other words, the City suggests the Referendum effectively **un**-authorizes the levy of a tax and therefore does not run afoul of the statutory prohibition against proposing an ordinance authorizing the levy of tax.

Here, the Court finds the Referendum proposed an ordinance authorizing the levy of a tax in violation of S.C. Code § 5-17-10. And as explained below, the City's assertion otherwise is not compelling because the City's position is inconsistent with the plain language of the applicable statutes, the plain language of the Referendum, and the general intent of the law.

The plain language of § 5-17-10 places certain prohibitions on the type of ordinances the electorate "may propose" through the Initiative and Referendum process. Therefore, the Court's analysis must begin with the plain language of the Petition and subsequent Referendum, which unambiguously contemplates the City's authority to issue business licenses and levy of the accompanying tax. Under the heading "SHORT TERM RENTAL BUSINESS LICENSES" the language of the Referendum plainly states: "The City is **authorized** to issue two classes of short term rental business licenses" for ISTRs and OSTRs. (P.'s Memo, Ex. 2. Emphasis Added). It then goes on to explain that authority by providing there will be no limit on the number of OSTR business licenses that the City is authorized to issue, but the number of ISTR business licenses the City is authorized to issue shall be capped at 800, unless the City determines the "grandfather" provision applies.

As a threshold matter, the law is clear, and the parties do not dispute that the fee paid in exchange for the City issuing a business license is a tax. *See Carter v. Linder*, 303 S.C. 119, 123, 399 S.E.2d 423, 425 (1990) ("A business license fee is an excise tax on the owner for the privilege of doing business[.]"). As such, the act of issuing a business license is not some ministerial function. Instead, the act of issuing a business license is, by definition, the levying of a tax. Accordingly, the authority to issue a business license is synonymous with the authority to levy the corresponding tax. This is significant because the plain language of the Referendum defines the City's "authority to issue" the new classes of business licenses. *See* (P.'s Memo, Ex. 2.) ("The City is **authorized** to issue two classes of short term rental business licenses") (emphasis added). Because a business license is indisputably a tax, it cannot be said that the Referendum does not propose an ordinance that authorizes the City to levy a tax. Therefore, the Referendum was improper because it violated S.C. Code §5-17-10, and the resulting STR Ordinance is invalid under either, or both prongs of the "*Riverwoods* Test," and Plaintiff's motion for summary judgment on this point must be granted.

While the analysis could end here, for the sake of completeness, the Court also addresses the arguments raised by the City that the Referendum process here did not run afoul of § 5-17-10. For this, the City focuses on the word "levy" to argue that the Referendum "limit[ing] the total amount of taxes the City can collect . . . does not mean the [Referndum] has levied a tax." (City Mem., Jan. 13, 2026, p. 12). The City also contends that because it already had the "authority" to levy a tax, and Referendum did not "authorize" a "levy."

The City's suggestion that the Referendum does not "levy" a tax because it may result in a decrease of the total amount of business license taxes collected is not compelling. This takes too narrow a view of the term "levy." Our Courts have previously found the term "levy" in relation to taxes to have several meanings depending on context, to include both the ability to impose or demand a tax, as well as the ability to collect and enforce a tax. *Gaud v. Walker*, 53 S.E.2d 316, 214 S.C. 451 (1949) ("the word 'levy' is frequently used in more than one sense and its meaning in a particular instance must be determined by the context."). Likewise, the prohibition contained in S.C. Code § 5-17-10, speaks only to the authorization to levy taxes without distinction between an authorization to levy *more* taxes as compared to an authorization to levy *less* taxes. As such, an ordinance authorizing the City to collect less taxes, is just as much an ordinance "authorizing the levy of a tax" as an ordinance authorizing the City to collect more taxes. *Accord, Focus on Beaufort County*, 318 S.C. 227, 456 S.E.2d 910, 912 (finding an ordinance limiting the appropriation of money fell withing the meaning of an ordinance appropriating money and therefore could not be enacted by referendum). Had the legislature intended the prohibition of S.C. Code § 5-17-10 to apply differently between referendums proposing to authorize the levy of more taxes than to referendums proposing to authorize the levy of less taxes it could have stated as much. But it did not. *See e.g., Duke Energy Carolinas, LLC v. S.C. Off. of Regul. Staff*, 434 S.C. 392, 435, 864 S.E.2d 873, 896 (2021); *citing Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 134, 492 S.E.2d

103, 106 (1997) (explaining that if the "Legislature had intended [a] certain result in [a] statute, it would have said so") (citation omitted).

Under the City's reasoning, so long as the Referendum does not result in an increase in the amount of tax collected, then the Referendum does not "authorize" the "levy" of a tax. In application this would mean the determination of whether an ordinance proposed through the Initiative and Referendum process authorized the levy of a tax would first require a factual analysis and comparison of the City's tax revenue before and after the proposed ordinance was enacted. However, such an analysis could only be conducted retrospectively, which is inconsistent with S.C. Code Ann. § 5-17-10 which provides: "The electors . . . may **propose** any ordinance, except an ordinance . . . authorizing the levy of taxes." S.C. Code § 5-17-10 (emphasis added). Because the statute plainly prohibits **proposing** an ordinance authorizing the levy of taxes, this prohibition would be meaningless if the question of whether the ordinance does in fact authorize the levy of taxes could not be decided at the time of proposal. Such an interpretation therefore cannot stand. *Accord, State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.") *citing Unisun Ins. Co. v. Schmidt,* 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Finally, the City also contends that because it already had the "authority" to levy business license taxes the Referendum did not "authorize" a "levy." In other words, the City's position suggests there is no prohibition on using the Initiative and Referendum process to "un-authorize" the levy of a tax. However, this is also an unsuitably narrow reading of the statute that would lead to absurd results. It would threaten to leave a city's governing body powerless to control its tax revenue by allowing the electorate to repeal or re-write all taxing ordinances through the Initiative and Referendum process.

Our South Carolina Supreme Court has rejected the City's implication that a "limitation" or "cap" is not an affirmative fiscal act. In the context of the Initiative and Referendum process, the Court scrutinized "a petition to initiate a 'Spending Limitation Ordinance' which would limit the rate of growth of Beaufort County spending to the rate of growth of county personal income." *Focus on Beaufort County*, 456 S.E.2d at 912. Using the same overly narrow reading of the Initiative and Referendum language urged by the City, here, the *Focus on Beaufort County* petitioners argued that a "limitation" on spending "does not specifically appropriate money or authorize the levy of a tax." *Id*. The Court disagreed, holding that such a strict construction of the statute would lead to "an absurd result":

> Legislative enactments which exclude appropriation measures from the initiative procedure are intended to preserve County Council's general authority over the County's treasury and to preclude special interest groups from attempting to usurp that authority through the use of initiatives. In limiting all county appropriations, the proposed ordinance clearly restricts County Council's authority over the treasury and, thus, defeats the plain legislative intent of section 4-9-1210. Accordingly, we find the proposed ordinance violates section 4-9-1210[8].

Id. at 912 (cleaned up).

Under the City's reasoning, the prohibitions of S.C. Code § 5-17-10 prohibit the electorate from utilizing the Initiative and Referendum process to *increase* taxes on themselves, but there is no prohibition on using the same process to *decrease* the taxes on themselves. Taken to its logical conclusion, this reasoning would mean the electorate could petition its way out of all tax liability and effectively have control over the municipality's collection of tax revenue.

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[8] S.C. Code §4-9-1210 concerns the Initiative and Referendum process relevant to county governments and is, in all other respects, identical to S.C. Code § 5-17-10 concerning the Initiative and Referendum process applicable to municipal government that the Court discussed herein.

Ultimately, the Court does not agree with the City's reasoning. The statutory limitation on the use of the Initiative and Referendum process is clear and deliberate and aligns with the general statutory scheme which confers taxation power only on the governing body of a municipality. As such the analysis should look to the ordinance proposed in the context of the larger legislative scheme protecting the governing body's control over its revenue and spending. Doing otherwise would effectively allow for creatively drafted referendums to circumvent the intent of the Legislature.

In this case, the purpose of the STR Ordinance proposed by the Referendum was to impose a cap on certain classes of business licenses by controlling the authority levy business license taxes on those classes, this violates S.C. Code § 5-17-10. Accordingly, the electorate did not have the power to enact the proposed ordinance through the Initiative and Referendum process, and the resulting ordinance is therefore invalid. *See Riverwoods, LLC*, 349 S.C. at 384, 563 S.E.2d at 654 (providing that if no power existed to enact the ordinance, "the ordinance is invalid").

B. <u>To the Extent the City Argues Issue Preclusion/Estoppel, that Argument Fails</u>.

In various briefings the City periodically suggests the issue of whether the Referendum authorized the levy of a tax was resolved in a separate case captioned *Folly East Indian Co., LLC v. City of Folly Beach*.[9] Although the Circuit Judge's order in that case made a passing comment (in *dicta*) that the ordinance adopting the cap did not concern the levy of taxes, this Court is not bound by another Circuit Court judge. Moreover, even if it were bound by another Circuit Judge, the question of whether the Referendum concerned the levy of a tax was not an issue in that case and was never argued. Similarly, on appeal, the Circuit Courts' *dicta* was not addressed by the

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[9] Charleston County Civil Case No. 2023-CP-10-00264, *Folly East Indian Co., LLC v. City of Folly Beach*.

Court of Appeals, nor was the *dicta* the basis for the Court of Appeals decision to affirm, which was based on an entirely separate issue.

The question at issue in *Folly East Indian* was whether the cap imposed by the STR Ordinance constituted unlawful zoning under the South Carolina Supreme Court's decision in *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) ("[Z]oning by initiative and referendum is not allowed in South Carolina pursuant to [s]ections 5-17-10 and [5-17]-30."). The Circuit Court's passing *dicta* on a wholly unrelated issue that was never argued has no collateral or preclusionary effect on this Court's ability to address and rule on this issue here.

II. **The Rental Registration Permit Fee Enacted by the City in 2022 is an Illegal Tax in Violation of S.C. Code § 6-1-310.**

In addition to the City's business license tax, Section 117.03(B) of the STR Ordinance also imposes a separate "fee" for obtaining a "rental registration permit." This "Rental Registration Permit Fee" (or "Permit Fee") is imposed in addition to the City's business license tax. The amount of this fee is calculated based on gross revenue of the short-term rental operation. (*Id*. at ¶ 22).

Beginning in 1997 the Legislature prohibited local governments from imposing addition taxes by enacting S.C. Code Ann. § 6-1-310, which provides: "A local governing body may not impose a new tax after December 31, 1996, unless specifically authorized by the General Assembly." Here, Plaintiff argues the "Permit Fee" is not a fee, but a tax, because it was enacted after 1997, it violates § 6-1-310. As explained below, because the City concedes the Permit Fee is not a "uniform service fee" or a "service or user fee" (which are contemplated by statute) the Court is constrained to find the Permit Fee is an improper tax disguised as a fee.

The City's STR Ordinance provides for both its business license tax and this Permit Fee in the same section—*i.e.,* §117.03. The Permit Fee is similar to the business license tax in many respects. Like the business license tax, the Permit Fee is necessary to conduct business in the City.

Like the business license tax, the Permit Fee is calculated based on a percentage of gross revenues derived from the operation of that business. Like the business licenses tax, the proceeds from the Permit Fee are deposited into the City's general fund. In fact, the only observable distinction between a business license tax and the Permit Fee is that the City's refers to the latter as a "fee" rather than a tax. However, this alone cannot carry day.

The South Carolina Supreme Court has recently made clear that a tax by any other name is still a tax. Simply labeling a tax as a "charge" or a "fee" is inconsequential; and such "fees" should be closely scrutinized, including under S.C. Code § 6-1-300, *et seq*. *Burns v. Greenville Cnty. Council*, 433 S.C. 583, 861 S.E.2d 31 (2021).

The Court finds the Supreme Court's decision in *Burns* is relevant and controlling here. In *Burns,* the Supreme Court made clear that the Legislature has provided only two ways a local government can demand payment from the people. Either through a validly enacted tax or through a validly enacted "uniform service fee" or a "service or user fee." Because the enactment of local taxes should be closely scrutinized, unless it can be demonstrated that a charge is a valid "uniform service fee" or a "service or user fee" it will be deemed a tax. *See id.*

In 1997, through S.C. Code § 6-1-310, the Legislature unequivocally prohibited local governments from imposing any new taxes not explicitly authorized by the Legislature. This prohibition forms the cornerstone of the holding in *Burns* where the Supreme Court explained: "After 1997, therefore, when a local government imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown* [concerning 'uniform service charges' under §4-9-30] but certainly must meet the requirements the General Assembly set forth in subsection 6-1-300(6) [for 'service and user fees'–including 'uniform service charges']." *Burns*, at 587, 861 S.E.2d at 33.

Accordingly, when evaluating the validity of a purported fee that was implemented after 1997, like the Permit Fee at issue here, *Burns* established a simple rule: "Therefore, **unless the charges in the ordinances are 'uniform service charges' under subsection 4-9-30(5)(a) or a 'service or user fee' under subsection 6-1-330(A), the charges imposed pursuant to the ordinances are invalid under State law**." *Id.* at 586, 861 S.E.2d at 32 (emphasis added).

Under this test the validity of the Permit Fee would ordinarily turn on whether it was a valid uniform service charge or a service or user fee. However, in this case the City concedes the Permit Fee is not a uniform service charge or a service or user fee. Accordingly, this ends the inquiry. Under the simple reasoning set forth in *Burns,* since the Permit Fee is not a valid uniform service charge or a service or user fee it is unavoidable that the Permit Fee is therefore, "invalid under State law." *Id.* (concluding a fee to be an invalid tax where it was not shown to be a valid uniform service charge or a service or user fee).

The Court believes the analysis should properly stop here. However, the City asserts that *Burns* does not apply to this case. Instead, the City relies on *Hospitality Assoc. of South Carolina, Inc. v. County of Charleston*. 320 S.C. 219 ,464 S.E.2d 113 (1995), which it claims deals with permit fees, and supports the proposition that the City can raise revenue through the Permit Fee under its general authorization to enact ordinances promoting the general health, safety, and welfare of its residents and visitors. (City Mem., Jan. 13, 2026, p. 2). However, the City's reasoning is flawed. *Hospitality Assoc.* (even assuming it remains good law) has no import here.

In *Hospitality Assoc.,* the Court addressed the ability of a municipality to impose a "fee" on the amounts paid in exchange for accommodations within their boundaries. The party collecting the payment in exchange for the accommodation would be required to remit a percentage of that amount as the "fee." In finding this fee was permitted under the law in place at the time, the

Supreme Court recognized that "S.C. Code Ann. § 5–7–30 grants every municipality in the State the power to enact regulations, resolutions, and ordinances ... respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it." *Id.* 320 S.C. 219, 226–27, 464 S.E.2d 113, 118. In deciding to give this provision a broad and liberal meaning, the *Hospitality Ass.,* Court concluded the "only limitation on the broad grant of power to municipalities in § 5–7–30 is that the regulation, resolution, or ordinance may not be inconsistent with the Constitution and general law of this State." *Id.*[10]

The City relies on *Hospitality Assoc.* for the alleged proposition that it can enact the Permit Fee under its general police powers which it claims include the broad ability to exact ordinances "respecting any subjects which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government." However, *Hospitality Assoc.* was decided in 1995, and in 1997 the Legislature made two significant changes to South Carolina's statutory law in response to the Court's decision in *Hospitality Assoc*. First, the Legislature passed S.C. Code § 6-1-310, which (as explained above) prohibits any new taxes unless "specifically authorized by the General Assembly." S.C. Code § 6-1-310; *see also* § 6-1-300.

Second, the legislature passed § 6-1-500 *et seq*. (the Local Accommodations Tax Act) which authorized the precise type of ordinance and "fee" that was issue in *Hospitality Assoc.* This

[10] This opinion drew strong dissent on the basis that the fee, was in reality a tax, and the majority opinion resulted in local governments having unlimiting taxing authority. "**I strongly believe these ordinances levy what is in reality a tax**." *Id., at* 235, 464 S.E.2d at 123 (Moore, J., dissenting). *See also, id., at* 231, 464 S.E.2d at 120 (Finney, J. dissenting) (asserting the opinion gave "wholesale" taxing authority to the local government).

is extremely relevant because although the *Hospitality Assoc.* majority was careful to call the ordinance at issue a "fee," the passage of the Local Accommodations Tax Act makes very plain that the Legislature did not consider this a fee but instead considered it a "tax." *Accord id., at* 235, 464 S.E.2d at 123 ("I strongly believe these ordinances levy what is in reality a tax.") (Moore, J., dissenting). When taken together these two subsequent acts of the Legislature indicate a clear intent to limit (if not completely abrogate) the holding of *Hospitality Assoc.* Plainly, if *Hospitality Assoc.,* were decided today, although the outcome would be the same it would not be for the reasons relied on the City, but because the Legislature has since specifically authorized the precise tax at issue through the Local Accommodations Tax Act.

At bottom, the *Hospitality Assoc.*, Court found that fee was permissible because at the time it was not "inconsistent with the Constitution and general law of this State." *Id.* However, after the Legislature changed the law in 1997, it became that *any* fee is inconsistent with the law of this State unless it is a uniform service charge or a service or user fee. *See Burns*, 433 S.C. at 586, 861 S.E.2d at 32 (holding that after 1997, unless the charge in the ordinances are 'uniform service charges' under subsection 4-9-30(5)(a) or a 'service or user fee' under subsection 6-1-330(A), the charges imposed pursuant to the ordinances are invalid under State law."). Therefore, *Hospitality Assoc,* has no application here, and the City's reliance on it is misplaced. [11]

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[11] In further support of its authority to enact the Permit Fee, the City repeatedly emphasized that it imposes all types of valid permit fees. Without citation, the City claims it "imposes permit fees for many different permits including building permits, golf carts, dog tags, moving houses, filing for candidacy or filing for a review under zoning code." (City Memo Dec. 28, 2025 at p. 25); *and* (Pope Affdvt. Para. 23). However, City's reference to these other "fees" is puzzling because a review of the City's Code of Ordinances shows that many of these are not fees at all. For example, there is no fee for a golf cart permit or a dog tag. *See* §73.05(A)(1) (providing "there shall be **no fee** for golf cart permits") and *see* §95.09 (providing a dog "tag shall be provided **at no charge**"). Similarly, the Court is unable to find any fee for a review under the zoning code. Meanwhile the fee for moving a house or filing for candidacy are simple flat fees, unlike the Permit Fee at issue here which is a percentage of revenue. *See* §150.007(D)(5) (providing a flat fee of $100 for moving

Accordingly, because the City concedes the Permit Fee is not a uniform service charge or a service or user fee, the Court must find the fee to be an improper tax, and therefore grants Plaintiff's Motion for Summary Judgment on this issue.

III. <u>The Court Does not Address the Remaining Issues</u>

Having found STR Ordinance imposed by the Referendum to be invalid and having found the Permit Fee to constitute an illegal tax, the Court does not need to address the remaining issues.

CONCLUSION

For the reasons stated above, the STR Ordinance's enacted by the Referendum, including the classifications of ISTR and OSTR for the purpose of imposing the "Cap" are invalid and void ab initio. Further, the Permit Fee is an improper and illegal tax. Therefore, Plaintiff's Motion for Partial Summary Judgment is granted on these issues. For the same reasons the City's Motion for Summary Judgment on these issues is denied. The Court need not address the remaining issues. This Order ends the case.

END OF ORDER.

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a building); and § 31.43 (providing a flat fee of $50 to file as a candidate for mayor and $25 to file as a candidate for council). The only fee referenced by the City that bears any similarity to the Permit Fee is a building permit fee which is based on a percentage of the cost of construction. However, the Court notes there is no simultaneously required "building license" tax. Further it seems counterintuitive that the City would concede the building permit fee is not a valid uniform service charge or a service or user fee, and that it instead charges building permit fee under its general police duties. Therefore, the Court does not assume that by making this reference that the City concedes the building permit fee is not as a valid uniform service charge or a service or user fee.

Charleston Common Pleas

Case Caption: Park Lane Partners Llc , plaintiff, et al VS Folly Beach City Of

Case Number: 2024CP1004208

Type: Order/Summary Judgment

So Ordered

s/ T.J. Rode (#2792)

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