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**CITY OF BEAUFORT**  
1911 BOUNDARY STREET  
BEAUFORT MUNICIPAL COMPLEX  
BEAUFORT, SOUTH CAROLINA 29902  
(843) 525-7070

**CITY COUNCIL REGULAR MEETING AGENDA**

**September 28, 2021**

**STATEMENT OF MEDIA NOTIFICATION**

"In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media was duly notified of the time, date, place and agenda of this meeting."

**REGULAR MEETING - Council Chambers, 2nd Floor - 7:00 PM**

**Please note, this meeting will be broadcasted via zoom and live streamed on Facebook. You can view the meeting at the City's page; City Beaufort SC**

**I. CALL TO ORDER**

A. Stephen D. Murray III, Mayor

**II. INVOCATION AND PLEDGE OF ALLEGIANCE**

A. Mayor Pro Tem, Mike McFee

**III. PROCLAMATIONS/COMMENDATIONS/RECOGNITIONS**

- A. Character Education Proclamation - Catherine Bowman, Battery Creek High School
- B. Proclamation proclaiming October as Domestic Violence Awareness Month

**IV. PUBLIC COMMENT**

**V. MINUTES**

A. Worksession and Regular Meeting - September 14, 2021

**VI. OLD BUSINESS**

- A. Ordinance repealing Part 7, Chapter 1, Sections 7-1001 through 7-1027 of the City Code of Ordinances (Business Licenses) and replacing it with the 2022 Model Business License Ordinance - 2nd reading
- B. Ordinance amending Part 3, Chapter 1, Article A, Section 3-1004 of the City Code of Ordinances, to provide for civil penalties for failure to remove building materials and other obstructions to City Streets beyond time periods established by City Manager - 2nd Reading

**VII. NEW BUSINESS**

- A. Agreement for Sale & Purchase of Real Estate, 1100 Boundary Street - 1st Reading
- B. Agreement for Sale and Purchase of Real Estate, 591 Robert Smalls Parkway - 1st Reading

**VIII. REPORTS**

- City Manager's Report
- Mayor Report
- Reports by Council Members

**IX. ADJOURN**



## PROCLAMATION

**WHEREAS**, the character education movement reinforces the social, emotional, and ethical development of students; and

**WHEREAS**, schools, school districts and states are working to instill important core ethical and performance values including caring, honesty, diligence, fairness, fortitude, responsibility, and respect for self and others; and

**WHEREAS**, character education provides long-term solutions to moral, ethical, and academic issues that are of growing concern in our society and our schools; and

**WHEREAS**, character education teaches students how to be their best selves and how to do their best work; and

**WHEREAS**, the Eleven Principles of Effective Character Education include: Promoting core ethical and performance values; Teaching students to understand, care about and act upon these core ethical and performance values; Encompassing all aspects of the school culture; Fostering a caring school community; Providing opportunities for moral action; Supporting academic achievement; Developing intrinsic motivation; Including whole-staff involvement; Requiring positive leadership of staff and students; Involving parents and community members; and assess results and strives to improve; and

**WHEREAS**, the Beaufort County School District's Character Education program was formed to support parents' efforts in developing good character in their children; and

**WHEREAS**, the purpose of the Character Education program is to integrate good character traits into the total school environment, as well as into the community; and

**WHEREAS**, each school's counselor identified a list of character words and definitions deemed important regardless of a person's political leanings, race, gender, or religious convictions; and

**WHEREAS**, the words are friendship, kindness, acceptance, courage, tolerance, respect, gratitude, compassion, citizenship, perseverance, honesty, integrity, self-control, forgiveness responsibility and cooperation; and

**WHEREAS**, Catherine Bowman was selected as the winner by Battery Creek High School as the student of the month.

**NOW, THEREFORE**, the City Council of the City of Beaufort, South Carolina, hereby proclaims August 2021 as

**CATHERINE BOWMAN, BATTERY CREEK HIGH SCHOOL  
STUDENT OF THE MONTH**

The City of Beaufort thereby pronounces *friendship/kindness* as the word for the month of August and applauds Catherine Bowman, the Beaufort County School District, and Battery Creek High School for their work and specifically honors Catherine Bowman as Battery Creek High School student of the month.

**IN WITNESS THEREOF**, I hereunto set my hand and caused the Seal of the City of Beaufort to be affixed this 28th day of September 2021.

\_\_\_\_\_  
STEPHEN D. MURRAY III, MAYOR

ATTEST:

\_\_\_\_\_  
TRACI GULDNER, CITY CLERK



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**CITY OF BEAUFORT**  
DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 9/22/2021  
**FROM:** Traci Guldner, City Clerk  
**AGENDA ITEM**  
**TITLE:** Proclamation proclaiming October as Domestic Violence Awareness Month  
**MEETING**  
**DATE:** 9/28/2021  
**DEPARTMENT:** City Clerk

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*BACKGROUND INFORMATION:*

Rose Ewing, Community Educator, Hopeful Horizons sent in this request.

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*PLACED ON AGENDA FOR:* Action

**REMARKS:**

**ATTACHMENTS:**

Description	Type	Upload Date
Proclamation	Backup Material	9/22/2021



## PROCLAMATION

**Whereas**, Domestic Violence Awareness Month calls attention to the fact that domestic violence is a public health issue that impacts our entire community; and

**Whereas**, it is unacceptable that 1 in 4 women and 1 in 10 men will experience violence and/or abuse from an intimate partner during their lifetime; and

**Whereas**, domestic violence affects the entire family in which it occurs and leaves children with learned behaviors that are unhealthy and harmful to their development; and

**Whereas**, Hopeful Horizons, our local Children's Advocacy, Domestic Violence and Rape Crisis Center assisted approximately 681 victims of domestic violence in 2020; and

**Whereas**, Hopeful Horizons' staff, board of directors and volunteers encourage every person to speak out against harmful attitudes and actions that lead to domestic violence; and

**Whereas**, we recognize that preventing domestic violence is possible by working together to increase education about healthy and unhealthy relationships, build awareness of the signs and dynamics of domestic violence and cultivate a trauma-informed community supportive of survivors and intolerant of violence and abuse.

**NOW, THEREFORE**, the City Council of the City of Beaufort, South Carolina, hereby proclaims October 2021 as

### DOMESTIC VIOLENCE AWARENESS MONTH

The City of Beaufort urges all citizens to observe this month by becoming aware of the tragedy of domestic violence, supporting those who are working toward its end, and participating in community efforts aimed at changing the culture of violence.

**IN WITNESS THEREOF**, I hereunto set my hand and caused the Seal of the City of Beaufort to be affixed this 28<sup>th</sup> day of September 2021.

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STEPHEN D. MURRAY III, MAYOR

ATTEST:

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TRACI GULDNER, CITY CLERK



# City Council Worksession

## Meeting Minutes – Planning Conference Room – 1<sup>st</sup> Floor

September 14, 2021

### I. CALL TO ORDER

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5:02PM

Mayor, Stephen D. Murray III

All members of Council in attendance (Phil Cromer, Neil Lipsitz, Mike McFee, Mitch Mitchell, and Mayor Murray)

### II. DISCUSSION ITEMS

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#### A. Applicant interviews for the Tourism and Development Advisory Committee

Council held a question-and-answer session for all applicants.

Henry Brandt, Mickey Minick and Chetan Patel.

#### B. Comprehensive Plan update - Status of Stakeholder meetings and revised project

**Dan Frazier, Senior Planner, Community and Economic Development**, went over the timeline of public input opportunities that included the meetings that had been scheduled with various community businesses and organizations. He reported that public comment closed on Friday, September 10, 2021. He also updated Council on the revised project schedule, with the final Comprehensive Plan being sent to Council for first reading on December 14, 2021.

**Councilman Cromer** stated that he would like to see the recommendations that come from the Milner Report incorporated into the Comprehensive Plan.

**Mayor Pro Tem, McFee**, inquired about Civil Space and how those comments get incorporated.

**Mr. Frazier** stated that all the comments received are going to be broken down into their respective categories and then incorporated with the other comments.

A copy of the presentation is attached to these minutes.

### III. EXECUTIVE SESSION

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Councilman Cromer made a motion to go into Executive Session and seconded by Councilman Lipsitz.

A. Pursuant to Title 30, Chapter 4, Section (70) (a) (1) of the South Carolina Code of Law: Discussion of Personnel - Boards and Commissions.

B. Pursuant to Title 30, Chapter 4, Section (70) (a) (2) of the South Carolina Code of Law: Receipt of legal advice - regarding litigation

No actions from Executive Session.

Councilman Cromer made a motion to come out of Executive Session and seconded by Councilman Lipsitz.

#### **IV. ADJOURN**

**7:01 PM**

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Disclaimer: This document is a summary. All City Council Worksession and Regular Meetings are recorded. Live stream can be found on the City's website at [www.cityofbeaufort.org](http://www.cityofbeaufort.org) (Agenda section). Audio recordings are available upon request by contacting the City Clerk, Traci Guldner at 843-525-7024 or by email at [tguldner@cityofbeaufort.org](mailto:tguldner@cityofbeaufort.org).

DRAFT



City Council Regular Meeting  
Meeting Minutes – City Hall Council Chambers, 2<sup>nd</sup> Floor

September 14, 2021

**I. CALL TO ORDER**

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7:02PM

Mayor, Stephen D, Murray III

All of Council members in attendance - Phil Cromer, Neil Lipsitz, Mike McFee, Mitch Mitchell, and Mayor Murray.

**II. INVOCATION AND PLEDGE OF ALLEGIANCE**

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Mayor Pro Tem, Mike McFee

**III. PROCLAMATIONS/COMMENDATIONS/RECOGNITIONS**

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A. Resolution recognizing the Beaufort Lions Club on 75 years of service in the community.

Motion to approve was made by Councilman Cromer and seconded by Mayor Pro Tem, McFee.

Approval was unanimous.

B. Proclamation proclaiming September 17 - 23, 2021, as Constitution Week.

Motion to approve was made by Councilman Cromer and seconded by Mayor Pro Tem, McFee.

Approval was unanimous.

**IV. PUBLIC COMMENT**

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Emails from George and Graham Trask are attached to these minutes.

**V. PUBLIC HEARING**

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A. Calhoun Street Stormwater and Streetscape Improvement Project.

Barbara Johnson, Community and Economic Development Specialist with the Lowcountry Council of Governments gave an overview of the Community Development Block Grant that is being submitted to the Department of Commerce. The CDBG request amount is \$750,000 with a 10 percent local match of \$75,000. This will leave \$2,017,931.00 to be covered by the city.

**VI. MINUTES**

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B. Worksession and Regular Meeting - August 24, 2021.

Motion to approve was made by Councilman Cromer and seconded by Councilman Lipsitz.

Minutes approved as presented.

## **VII. NEW BUSINESS**

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- A. Request for Public Assembly and Noise Ordinance waiver from Historic Beaufort Foundation to host the 2021 Libations with Lafayette on Saturday, October 9, 2021.

Motion to approve was made by Councilman Cromer and seconded by Councilman Mitchell.

Approval was unanimous.

- B. Request for Public Assembly from Historic Beaufort Foundation to host the 2021 Fall Festival of Houses & Gardens for the weekend of October 22 - 24, 2021.

Motion to approve was made by Councilman Cromer and seconded by Councilman Lipsitz.

Approval was unanimous.

- C. Request for Public Assembly and Noise Ordinance waiver from Joe Simpson for a wedding on Saturday, September 25, 2021.

Motion to approve was made by Councilman Cromer and seconded by Councilman Lipsitz.

Approval was unanimous.

- D. Request for acceptance of FY2021 Federal Preservation Grant for Carnegie Library Building Assessment.

Motion to approve was made by Councilman Cromer and seconded by Councilman Lipsitz.

Linda Roper, Downtown Operations and Community Services Director gave an overview of the grant. This is a \$12,500 grant with a 50 percent match for a total of \$25,000. The purpose is to conduct a comprehensive conditions assessment to guide the City's future preservation efforts of the structure.

Approval was unanimous.

- E. Authorize City Manager to enter into Contract for Public Education Campaign.

Motion to approve was made by Mayor Pro Tem, McFee and seconded by Councilman Cromer.

Kathy Todd, Finance Director, stated this was an RFP for a Multi-Jurisdictional Public Education Campaign. The RFP 2022-104 was advertised on August 19, 2021, and August 26, 2021, in The Island News.

The committee recommends the MRB Group as they are local and have knowledge of South Carolina. Their bid was \$34,975 plus a recommendation of \$15,000 for campaign expenses.

Approval was unanimous.

- F. Ordinance repealing Part 7, Chapter 1, Sections 7-1001 through 7-1027 of the City Code of Ordinances (Business Licenses) and replacing it with the 2022 Model Business License Ordinance - 1<sup>st</sup> Reading.

Motion to approve was made by Mayor Pro Tem, McFee and seconded by Councilman Cromer.

Kathy Todd gave an overview of the changes being made by rate class. This was discussed in Worksession on August 24, 2021.

Vimal Desai, Business Owner, stated that this seems like terrible timing for businesses in the hotel industry for this increase.

Mayor Murray stated that this must be implemented now by State Law to which Ms. Todd agreed.

Terri Maude, Citizen, asked if a business could dispute a rate classification.

Ms. Todd reported that the class the business is in now, is the same that the business reports under to the Internal Revenue Service.

Approval was unanimous.

G. ATAX Grant Recommendations.

Motion to approve was made by Councilman Cromer and seconded by Councilman Lipsitz.

Ms. Todd went over the recommendations given by the Tourism and Development Commission for the ATAX Grant funds. There was a total of 7 applicants with a total budget of \$183,135.66.

Mayor Murray made a motion to table the discussions and was seconded by Councilman Lipsitz.

Approval was unanimous.

This discussion will continue in an upcoming worksession.

H. Authorize City Manager to enter into Contract for Construction - Whitehall Drive Boardwalk Project.

Motion to approve was made by Mayor Pro Tem, McFee and seconded by Councilman Cromer.

Ms. Todd gave an overview of the project as outlined in RFP 2021-119. This was advertised on June 17, 2021, and June 24, 2021, in The Island News. The committee picked O'Quinn Marine Construction with a bid of \$473,592.00. She reported that 100 percent of the costs are being paid for by Beaufort County. Bill Prokop, City Manager stated that we are only managing this project.

Approval was unanimous.

I. Authorize City Manager to enter into Contract for Renovations of Carnegie Building.

Motion to approve was made by Councilman Cromer and seconded by Councilman Lipsitz.

Ms. Todd stated this RFP 2021-116 was advertised in The Island News on June 3, 2021, and June 10, 2021. The contract is being awarded to Shenandoah Restorations with a bid of \$117,711.00.

Approval was unanimous.

J. Authorize approval of the 2020 Assistance to Firefighters Grant.

Motion to approve was made by Councilman Cromer and seconded by Mayor Pro Tem, McFee.

Ms. Todd reported that the Fire Department has received a grant for \$418,060.29 in Federal Funding for the continuing education of Emergency Medical Technician, Advanced Emergency Medical Technician and Paramedic training. There is a price match of \$41,806.03 for a total budget of \$459,866.32.

Approval was unanimous.

K. Resolution for the Calhoun Stormwater and Streetscape Improvements Project.

Motion to approve was made by Councilman Cromer and seconded by Councilman Lipsitz.

Approval was unanimous.

- L. Ordinance amending Part 3, Chapter 1, Article A, Section 3-1004 of the City Code of Ordinances, to provide for civil penalties for failure to remove building materials and other obstructions to City Streets beyond time periods established by City Manager - 1<sup>st</sup> Reading.

Motion to approve was made by Mayor Pro Tem, McFee and seconded by Councilman Mitchell.

Bill Prokop, City Manager gave an overview of the Ordinance which is being created to enforce the removal of building materials and other obstructions from City Streets in a timely manner. Currently there is no enforcement tool in place.

Approval was unanimous.

- M. Actions on Boards and Commissions.

Motion was made by Mayor Pro Tem, McFee to appoint Henry Brandt, Mickey Minick and Chetan Patel to the Tourism Development Advisory Commission for a term of 3 years to expire on June 30, 2024, and seconded by Councilman Lipsitz.

Approval was unanimous.

Motion was made by Councilman Lipsitz to remove Helen Spaulding from the Election Commission and seconded by Council Mitchell.

Bill Harvey, City Attorney, stated that under Title 7, Section 7-13-75 under the South Carolina Code "No member of a county or municipal board of voter registration and elections may participate in political management or in a political campaign over whose election the member has jurisdiction during the member's term of office. No member may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate over whose election the member has jurisdiction. Violation of this section subjects the member to removal by the Governor or appropriate appointive authority."

Mr. Harvey went on to share information about activities that Ms. Spaulding participated in and stated "The Beaufort Municipal Election Commission has jurisdiction over local, state and national elections in the city. It is my opinion that these advertised activities constitute political management, which is prohibited by state law. While you certainly may engage in these political activities, you cannot do so as a member of the City Election Commission."

Approval was unanimous.

## VIII. REPORTS

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### City Manager's Report

Mr. Prokop thanked everyone who attended the 9/11 remembrance event and gave a special thanks to all who helped make this event memorable.

The Live at 5 event is coming up this Thursday, September 16, 2021, downtown.

Please do not forget to attend the Shrimp Festival that is taking place October 1-2, 2021. There are many events that will be fun for everyone.

Reported that the city still continues the relationship with Beaufort Memorial Hospital about helping to fight the COVID virus spread. Please be reminded that anyone entering any city building must have a mask.

Stated that the Comprehensive Plan Draft will be ready for public comment on October 26, 2021. The first reading of the final draft will be on December 14, 2021.

Lastly, Mr. Prokop stated that there have been several lawsuits brought against the city from the Beaufort Historic Foundation and a local developer. These lawsuits and appeals could cost the taxpayers in excess of \$100,000 in legal fees to defend the city's established processes, and committee decisions for the benefit of two parties. A non-profit organization, and a for-profit developer. He stated that unfortunately, we may have to ask council to add a mil to everyone's tax bill in next year's budget or set up a Pride of Place Program called the "No Appeal Fund". He asked the citizens to please stay tuned and learn the facts.

#### **Mayor's Report**

Echoed the City Manager's statement and thanked everyone who had a hand in the 9/11 memorial event. He thanked all Emergency Services workers and Public Works personnel as well.

He reported that all the offices in the Beaufort Digital Corridor are occupied. There are many fun things happening at the Corridor, so please check them out.

Stated that Mira International Foods is establishing operations in Beaufort. They bought a building located on Eleanore Fine Road. This is a 2-million-dollar investment that will create 28 jobs.

Thanked Brian and other members of the Public Works Department for helping out with pumps to keep a drainage ditch from flooding a residence during the recent rainstorm.

Appreciates all the Stakeholders that have taken the time to comment on the Comprehensive Plan.

#### **Councilman Mitchell**

Likes the process that is being utilized for the Comprehensive Plan.

Thanked the recent members who were appointed for donating their time to serve on the Tourism and Development Commission.

#### **Mayor Pro Tem, McFee**

Thanked the Downtown Operations and Community Services Department for all their work putting the 9/11 memorial together. Also thanked were the military families, and Bridges Preparatory School who came down to help. There were 2,990 luminaries in the park. He also thanked all the restaurants downtown that provided food and supplies.

Is happy to see the renovations to the Carnegie Building moving forward. There will be a Historical Marker placed once construction has been completed.

#### **Councilman Lipsitz**

Thanked citizens who came out to the Fire Station to comment on the Comprehensive Plan.

Was sorry to have missed the 9/11 memorial but has received several phone calls on how great the event turned out.

Urged citizens to get vaccinated.

#### **Councilman Cromer**

Beaufort History Museum held a board meeting recently, and he wanted to remind everyone of a Santa Elena Traveling Exhibit that is on loan from the Discovery Museum on Hilton Head.

Reported that there will be a re-enactment event at the Arsenal on December 4, 2021. The 59<sup>th</sup> New York Highlanders and another group will be in attendance.

**IX. ADJOURN**

**8:23 PM**

Motion to adjourn was made by Councilman Cromer and seconded by Councilman Lipsitz.

All in favor.

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Disclaimer: This document is a summary. All City Council Worksession and Regular Meetings are recorded. Live stream can be found on the City's website at [www.cityofbeaufort.org](http://www.cityofbeaufort.org) (Agenda section). Audio recordings are available upon request by contacting the City Clerk, Traci Guldner at 843-525-7024 or by email at [tguldner@cityofbeaufort.org](mailto:tguldner@cityofbeaufort.org).

## Traci Guldner

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**From:** Graham Trask <grahamtrask@gmail.com>  
**Sent:** Thursday, September 2, 2021 5:14 PM  
**To:** William Prokop  
**Cc:** Kathleen Williams; Mike McFee; Mitch Mitchell; Neil Lipsitz; Phil Cromer; Stephen Murray; City Attorney Bill Harvey; Traci Guldner  
**Subject:** Re: HRB 9/8/21 Meeting

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thanks Bill - yes, I see now the Zoom meeting details in red at the top of the agenda for the HDRB and in the Neighborhood Association meeting email. That's great.

My comment on the Zoom details was prompted by the most recent ZBOA and HDRB meetings where it was not printed on the agenda and required me, for one, to fiddle around with Facebook to get the Zoom details only to then go back to Zoom to connect. I'm glad the City has made this improvement.

On the 7 day notice period, I appreciate that you may be under the impression it's working well, but you've received several items of feedback from constituents through time that clearly suggest a longer notice period would be helpful. Have you likewise received vocal feedback from constituents that "they do not want a longer notice period"?

One potentially constructive way for Stephen and you to have responded and address this question is as follows:

- a) thank your constituent for their feedback.
- b) confirm that you understand their feedback
- c) assure them it will be taken into consideration
- d) evaluate what the constraints are that might preclude a longer notice period
- d) evaluate whether any easy fixes exist to address those constraints and compress the internal preparation time to allow for a longer constituent notice period
- e) circle back with the constituent and provide them feedback.

This achieves the following results:

- f) provides you/the city an opportunity to look at your processes for improvement - you know as well as I do that no process is perfect and all can be improved
- g) your constituent goes away feeling validated.
- h) you build trust with the constituent

I'd encourage you to still consider lengthening the notice period by going through the above suggested process or something similar for important meetings and boards such as: City Council, HDRB, ZBOA, and Neighborhood meetings involving the comprehensive plan.

Thanks Bill!

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**Graham B. Trask**

USA: +1 845 337 5770 / Switzerland: +41 22 548 1959

email: [grahamtrask@gmail.com](mailto:grahamtrask@gmail.com)

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On Thu, Sep 2, 2021 at 4:29 PM William Prokop <[wprokop@cityofbeaufort.org](mailto:wprokop@cityofbeaufort.org)> wrote:

City of Beaufort buildings are open to the public but we encourage the continued use of the City's online services and scheduling of appointments. At this time, visitors are required to wear masks inside our facilities. Please call or visit us online at [cityofbeaufort.org](http://cityofbeaufort.org) to contact our departments for questions and appointments.

Graham: Our Zoom link is printed in red on the top of all council agendas and it has been that way for almost 2 years. We have been advised by the Municipal Assn. that we have one of the best methods of having virtual meeting contact with our citizens. Our virtual meetings will continue as they are and we have now extended the same to our committee meetings. Agenda documents 7 days before the meeting seems to work fine and we are using the drop box when the agenda is large like the 200 pages that you mentioned. The City Clerk will add your request to the next agenda.  
Regards, Bill

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**From:** Graham Trask <[grahamtrask@gmail.com](mailto:grahamtrask@gmail.com)>  
**Sent:** Thursday, September 2, 2021 11:53 AM  
**To:** William Prokop <[wprokop@cityofbeaufort.org](mailto:wprokop@cityofbeaufort.org)>  
**Cc:** Kathleen Williams <[kwilliams@cityofbeaufort.org](mailto:kwilliams@cityofbeaufort.org)>; Mike McFee <[mcfemike@gmail.com](mailto:mcfemike@gmail.com)>; Mitch Mitchell <[mmitchell@cityofbeaufort.org](mailto:mmitchell@cityofbeaufort.org)>; Neil Lipsitz <[nlipsitz@cityofbeaufort.org](mailto:nlipsitz@cityofbeaufort.org)>; Phil Cromer <[pecromer@bellsouth.net](mailto:pecromer@bellsouth.net)>; Stephen Murray <[smurray@cityofbeaufort.org](mailto:smurray@cityofbeaufort.org)>; City Attorney Bill Harvey <[bharvey@harveyandbattey.com](mailto:bharvey@harveyandbattey.com)>  
**Subject:** Fwd: HRB 9/8/21 Meeting

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Following on George's email.

Please see below the email for the HRB meeting which was sent 7 days in advance of the meeting.

A) Why hasn't the Zoom link and information been included in this email to make it explicit for citizens on how to join virtually should they be concerned for their health and not want to join in person; why do you make citizens search for the link in the agenda or on Facebook? Please change your process and include the Zoom link in all emailed meeting notices.

B) While the Zoom link was provided in the September 8, 2021 HDRB agenda, for the last ZBOA and for past HDRB meetings, no Zoom information was provided at all. You required citizens to go to Facebook to get the Zoom information and then go back to Zoom to connect. Why? Again, please make the Zoom link explicit in the meeting notice emails and on the agenda for all meetings!

C) Is it not possible to send out the HDRB agenda documents sooner than 7 days before the meeting? For some meetings, the document is over 200 pages long. It seems to me that our City needs to allow citizens more than 7 days to go through 200 pages of important documents.

I request that you add this email to the minutes of the next City Council meeting and bring my concerns and input up in the New Business section of the next City Council meeting.

Thanks,

Graham

----- Forwarded message -----

From: Julie Bachety <[jbachety@cityofbeaufort.org](mailto:jbachety@cityofbeaufort.org)>

Date: Wed, Sep 1, 2021 at 4:55 PM

Subject: Re: HRB 9/8/21 Meeting

To: Julie Bachety <[jbachety@cityofbeaufort.org](mailto:jbachety@cityofbeaufort.org)>

City of Beaufort buildings are open to the public but we encourage the continued use of the City's online services and scheduling of appointments. At this time, visitors are required to wear masks inside our facilities. Please call or visit us online at [cityofbeaufort.org](http://cityofbeaufort.org) to contact our departments for questions and appointments.

All,

Below is the link that will allow you to access the agenda meeting packet for the HRB 9/8/21 meeting.

<https://www.dropbox.com/s/qfjzug749ki3ij2/HRB%209-8-21%20Agenda%20Meering%20Packet.pdf?dl=0>

Let me know if you have any issues with the link or questions.

Julie

*Julie A. Bachety*

Administrative Assistant II

1911 Boundary Street

Beaufort, SC 29902

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(F) 843-986-5606

[www.cityofbeaufort.org](http://www.cityofbeaufort.org)

[jbachety@cityofbeaufort.org](mailto:jbachety@cityofbeaufort.org)

## Traci Guldner

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**From:** William Prokop  
**Sent:** Thursday, September 2, 2021 4:06 PM  
**To:** George Trask; City Attorney Bill Harvey  
**Cc:** Kathleen Williams; Mike McFee; Mitch Mitchell; Neil Lipsitz; Philip Cromer; Stephen Murray; Graham Trask; Stephen Murray; Catherine Ceips Scarborough; Wallace Scarborough; Cynthia Jenkins; Nina deCordova; Traci Guldner  
**Subject:** RE: HRB 9/8/21 Meeting

I will have the City Clerk do that when she returns from vacation, next Tuesday. Regards, Bill

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**From:** George Trask <ggtrask@fastmail.com>  
**Sent:** Thursday, September 2, 2021 2:11 PM  
**To:** City Attorney Bill Harvey <bharvey@harveyandbattey.com>  
**Cc:** William Prokop <wprokop@cityofbeaufort.org>; Kathleen Williams <kwilliams@cityofbeaufort.org>; Mike McFee <mcfeemike@gmail.com>; Mitch Mitchell <mmitchell@cityofbeaufort.org>; Neil Lipsitz <nlipsitz@cityofbeaufort.org>; Philip Cromer <pecromer@bellsouth.net>; Stephen Murray <smurray@cityofbeaufort.org>; Graham Trask <grahamtrask@gmail.com>; Stephen Murray <stephen@mayormurray.com>; Catherine Ceips Scarborough <1207ccs@gmail.com>; Wallace Scarborough <wbs224488@gmail.com>; Cynthia Jenkins <cjenkins@historicbeaufort.org>; Nina deCordova <nina.deCordova@gmail.com>  
**Subject:** Re: HRB 9/8/21 Meeting

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To: City Attorney Bill Harvey

Hello Bill,

I refer you to the following assertions by Mayor Stephen Murray, see below:

Seven days is adequate.

State law only requires 24 hours notice but we will exceed this notice requirement.

Bill, please send to me the relevant City and State ordinance and code provisions that allow our City to give only one-day's notice of upcoming regular City meetings.

Thank you.

George Graham Trask  
1211 Bay Street  
Beaufort SC 29902 USA  
+1.843.471.0075  
[ggtrask@yahoo.com](mailto:ggtrask@yahoo.com)

On Thu, Sep 2, 2021, at 1:17 PM, Graham Trask wrote:

Hi Stephen - thanks for your quick and direct response.

My email, however, was addressed to William "Bill" Prokop as the City Manager. You appear to have answered in his stead as if you were the City Manager and Bill Prokup. Is that what has happened?

I thought that the City of Beaufort had a separation of powers. It has been my and others' concern for some time that you're confusing your roles and you might believe that you're the mayor and the City manager. I'd request that you and the City Council re-read that section of the law about separation of powers.

As you've taken this opportunity to respond to me directly, I wanted to relate that the support and good will that existed to get you and the other City Council members elected has evaporated over the last 6 months. The City staff and the City Council have become an island divorced from its constituents and seemingly unilaterally focused on one special interest. Unless work is done to close that gap, Stephen, I'm afraid it'll be "one and done" as mayor and City Council with City Hall subsequently restructured.

Bill - I'd appreciate a response to my email.

Yours sincerely,  
Graham

On Thu, Sep 2, 2021 at 12:44 PM Stephen Murray <[stephen@mayormurray.com](mailto:stephen@mayormurray.com)> wrote:

Seven days is adequate.

State law only requires 24 hours notice but we well exceed this notice requirement.

The Zoom link should be posted on agendas and I'm told by staff this will occur moving forward.

Thanks,

Stephen

On Thu, Sep 2, 2021, 11:54 AM Graham Trask <[grahamtrask@gmail.com](mailto:grahamtrask@gmail.com)> wrote:

City of Beaufort buildings are open to the public but we encourage the continued use of the City's online services and scheduling of appointments. At this time, visitors are required to wear masks inside our facilities. Please call or visit online at [cityofbeaufort.org](http://cityofbeaufort.org) to contact our departments for questions and appointments.

**CAUTION:** This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Following on George's email.

Please see below the email for the HRB meeting which was sent 7 days in advance of the meeting.

A) Why hasn't the Zoom link and information been included in this email to make it explicit for citizens on how to join virtually should they be concerned for their health and not want to join in person; why

do you make citizens search for the link in the agenda or on Facebook? Please change your process and include the Zoom link in all emailed meeting notices.

B) While the Zoom link was provided in the September 8, 2021 HDRB agenda, for the last ZBOA and for past HDRB meetings, no Zoom information was provided at all. You required citizens to go to Facebook to get the Zoom information and then go back to Zoom to connect. Why? Again, please make the Zoom link explicit in the meeting notice emails and on the agenda for all meetings!

C) Is it not possible to send out the HDRB agenda documents sooner than 7 days before the meeting? For some meetings, the document is over 200 pages long. It seems to me that our City needs to allow citizens more than 7 days to go through 200 pages of important documents.

I request that you add this email to the minutes of the next City Council meeting and bring my concerns and input up in the New Business section of the next City Council meeting.

Thanks,  
Graham

----- Forwarded message -----

From: **Julie Bachety** <[jbachety@cityofbeaufort.org](mailto:jbachety@cityofbeaufort.org)>

Date: Wed, Sep 1, 2021 at 4:55 PM

Subject: Re: HRB 9/8/21 Meeting

To: Julie Bachety <[jbachety@cityofbeaufort.org](mailto:jbachety@cityofbeaufort.org)>

City of Beaufort buildings are open to the public but we encourage the continued use of the City's online services and scheduling of appointments. At this time, visitors are required to wear masks inside our facilities. Please call or visit online at [cityofbeaufort.org](http://cityofbeaufort.org) to contact our departments for questions and appointments.

All,

Below is the link that will allow you to access the agenda meeting packet for the HRB 9/8/21 meeting.

<https://www.dropbox.com/s/qfjzug749ki3ij2/HRB%209-8-21%20Agenda%20Meeting%20Packet.pdf?dl=0>

Let me know if you have any issues with the link or questions.

Julie

*Julie A. Bachety*

**Administrative Assistant II**

**1911 Boundary Street**

**Beaufort, SC 29902**

**(P) 843-525-7011**

**(F) 843-986-5606**

**[www.cityofbeaufort.org](http://www.cityofbeaufort.org)**

**[jbachety@cityofbeaufort.org](mailto:jbachety@cityofbeaufort.org)**

## Traci Guldner

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**From:** George Trask <ggtrask@fastmail.com>  
**Sent:** Thursday, September 2, 2021 1:52 PM  
**To:** William Prokop  
**Cc:** Kathleen Williams; Mike McFee; Mitch Mitchell; Neil Lipsitz; Philip Cromer; Stephen Murray; City Attorney Bill Harvey; Traci Guldner; Wallace Scarborough; Catherine Ceips Scarborough; Nina deCordova; Cynthia Jenkins  
**Subject:** Re: City of Beaufort Neighborhood Association Meeting Agenda notice

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Mr. William Prokop  
Beaufort City Manager

Dear Bill,

While you may "feel" that one week is sufficient for notices, it is NOT. In the case of the current notice of the Neighborhood Meeting, that notice was sent today, which is Thursday, five days before next Tuesday, not seven days. Furthermore, between now and then is exactly ONE BUSINESS DAY, that is, tomorrow, which is Friday, because Saturday and Sunday are the weekend and Monday is Labor Day, a holiday.

You also assume that because some people are on your mailing list and have received a list of meetings as long ago as 10 months, they as well as people not on the list are expected to remember and to be good little citizens and take what is dished out without complaint and even without knowledge. Furthermore, you sometimes have two different people sending out notices of the same meeting, namely Judy Bachety and Kathleen Williams, each containing different or no reference to Zoom/Facebook to be able to attend the meeting virtually.

Further, the City should not be using Facebook at all for public notices. How demeaning and ridiculous that a social network should be viewed by our local government as its primary method of giving public notice. What's wrong with your website? Why doesn't it contain full public notices with Zoom links, etc.? That's where one would logically go to find out, not to some proprietary social chat group that has absolutely nothing to do with our City.

This type of insensitive, uncaring, dogmatic, in-your-face, drop-dead attitude appears to have become the norm in the few months since the new city council was elected. This attitude has been building for some time, expressed not only by council members but by appointed committee members and staff members.

This attitude is incompatible with representative government and will not be tolerated for long by the citizenry, as has been illustrated time and again by South Carolinians and especially Beaufort citizens from the time of the Revolutionary and Civil Wars, both of which were provoked and fought by what was perceived by citizens to be the over-reach of government.

Notice is hereby given that Beaufort's city government is now perceived by the governed as being arbitrary and capricious. Reaction cannot be far behind, the most effective of which is to vote the scoundrels out of office and clean house of the hired help.

I ask that this letter be placed in the Minutes of the next meeting of City Council.

Yours very truly,

George Graham Trask  
a Beaufort citizen for 81 years  
1211 Bay Street  
Beaufort, SC 29902

On Thu, Sep 2, 2021, at 1:21 PM, William Prokop wrote:

City of Beaufort buildings are open to the public but we encourage the continued use of the City's online services and scheduling of appointments. At this time, visitors are required to wear masks inside our facilities. Please call or visit us online at [cityofbeaufort.org](http://cityofbeaufort.org) to contact our departments for questions and appointments.

Mr. Trask: Thank you for your email. Our neighborhood meeting has been scheduled for the first Tuesday of the month, except for July and August and that has been published for the last 10 months and all neighborhood groups and citizens on our mailing list are all aware of it. I believe your name is now on the mailing list and you will be receiving regular updates. We feel that a one week notice confirming the time and date of a regularly scheduled meeting is adequate. I will have the City Clerk add your email to the councils packet. Regards, Bill Prokop

---

**From:** George Trask <ggtrask@fastmail.com>  
**Sent:** Thursday, September 2, 2021 11:20 AM  
**To:** William Prokop <wprokop@cityofbeaufort.org>  
**Cc:** Kathleen Williams <kwilliams@cityofbeaufort.org>; Mike McFee <mcfeemike@gmail.com>; Mitch Mitchell <mmitchell@cityofbeaufort.org>; Neil Lipsitz <nlipsitz@cityofbeaufort.org>; Phil Cromer <pecromer@bellsouth.net>; Stephen Murray <smurray@cityofbeaufort.org>; City Attorney Bill Harvey <bharvey@harveyandbattey.com>  
**Subject:** Fwd: City of Beaufort Neighborhood Association Meeting Agenda notice

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Bill,

I have been concerned for some time about the way the City gives public notice of various meetings. The following notice of a Neighborhood Association Meeting is a good example. Why has only five days' notice been given? It ought to be at least 10 days' notice. People have lives other than waiting to jump when the City announces a meeting.

I have other issues with the way the City has been giving public notices, which I discussed a few weeks ago on the phone with Beaufort Communications/Marketing Manager Kathleen Williams. I am glad to see that Kathleen has made reference to the ability to attend this meeting by Zoom, and I hope she is now making similar reference to Council and Committee meetings by Zoom link instead of making people go to Facebook, which is a commercial site that collects personal information and is therefore not used by many people including me.

I will address any further concerns I have about the City's methods of public notice with you later, but for now I register this complaint about this notice of a Neighborhood Meeting. I ask that this email be placed in the Minutes of the next meeting of City Council.

Thank you.

Yours sincerely,

George Graham Trask  
1211 Bay Street'  
Beaufort, SC 29902

----- Original message -----

From: Kathleen Williams <[kwilliams@cityofbeaufort.org](mailto:kwilliams@cityofbeaufort.org)>

To: Kathleen Williams <[kwilliams@cityofbeaufort.org](mailto:kwilliams@cityofbeaufort.org)>

Subject: City of Beaufort Neighborhood Association Meeting Agenda notice

Date: Thursday, September 02, 2021 9:13 AM

City of Beaufort buildings are open to the public but we encourage the continued use of the City's online services and scheduling of appointments. At this time, visitors are required to wear masks inside our facilities. Please call or visit us online at [cityofbeaufort.org](http://cityofbeaufort.org) to contact our departments for questions and appointments.



**CITY OF BEAUFORT  
NEIGHBORHOOD MEETING  
10:30 a.m. Tuesday, Sept.7, 2021**

**The meeting will be held in person at City Hall. Please come to the Planning Conference Room on the first floor.**

**This meeting will also be livestreamed on the City's Facebook page.**

**If you wish to join by Zoom, here is the Information:**

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83598240591?pwd=K2xSVFZ0bE5peFNnZmRWWUdYc1hMdz09>

Passcode: 730630

Or One tap mobile :

US: +13017158592,,83598240591# or +13126266799,,83598240591#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 301 715 8592

Webinar ID: 835 9824 0591

## **AGENDA**

- I. Welcome – Kathleen Williams
- II. Introductions from Neighborhood members

- III. David Prichard, director, Community & Economic Development, on 2021 Comprehensive Plan draft
- IV. Rebecca Bowyer, director of engineering, BJWSA, update on Main Transmission project
- V. Capital Waste Services representative
- VI. Updates from City departments
- VII. Updates from Neighborhood members
- VIII. General questions/comments
- IX. Next meeting: 10 a.m. Tuesday, Oct. 5

*Kathleen Williams, APR*

City of Beaufort  
Communications/Marketing Manager  
Cell: 513-490-6520  
Office: 843-470-3508  
[kwilliams@cityofbeaufort.org](mailto:kwilliams@cityofbeaufort.org)

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[cityofbeaufort.org](http://cityofbeaufort.org)



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**CITY OF BEAUFORT**  
DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 9/15/2021  
**FROM:** Kathy Todd, Finance Director  
**AGENDA ITEM TITLE:** Ordinance repealing Part 7, Chapter 1, Sections 7-1001 through 7-1027 of the City Code of Ordinances (Business Licenses) and replacing it with the 2022 Model Business License Ordinance - 2nd reading  
**MEETING DATE:** 9/28/2021  
**DEPARTMENT:** Finance

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**BACKGROUND INFORMATION:**

First reading was on 9-14-2021.

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**PLACED ON AGENDA FOR:** Action

**REMARKS:**

**ATTACHMENTS:**

Description	Type	Upload Date
Ordinance	Backup Material	9/15/2021

## ORDINANCE

### **Ordinance repealing Part 7 Chapter 1 Sections 7-1001 through 7-1027 of the City Code of Ordinances (Business Licenses) and replacing it with the 2022 Model Business License Ordinance**

WHEREAS, in 2020, the South Carolina Legislature enacted the Business License Standardization Act, 2020 Act No. 176 (H. 4431), (the Act) designed to standardize and bring uniformity to business licenses by governmental bodies across the state; and,

WHEREAS, the effective date of the Act is January 1, 2022; and,

WHEREAS, in order to comply with the mandates and requirements of the Act, it is necessary that the City repeal its Business License ordinances and adopt a new business license ordinance; and,

WHEREAS, the South Carolina Municipal Association drafted the 2022 Model Business License Ordinance (the Model Ordinance), to enable municipalities across South Carolina to comply with the requirements of the Act; and,

WHEREAS, the Model Ordinance has been further amended to incorporate certain issues specific to the City of Beaufort and its enforcement of business license; and,

WHEREAS, the business license tax incentives set forth in Section 7-1004 herein have been previously found by vote of City Council to be economic development incentives, and Council reaffirms that finding here; and,

WHEREAS, Beaufort City Council finds that the repeal of the current City Business License Ordinance (Sections 7-1001 through 7-1027), and replacement with the Model Act, as amended, is in the best interest of the City of Beaufort and its citizens;

THEREFORE, be it Ordained by the Beaufort City Council, in Council duly assembled, and by the authority of the same, that Part 7 Chapter 1 Section 7-1001 through 7-1027 of the City Code of Ordinances be and is hereby repealed, to be replaced with Section 7-1001 through 7-1028 below, as follows:

#### **Section 7-1001. License Required.**

- (a) Every person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits of the City of Beaufort, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.
- (b) Any licensed business allowing the operation of vending or entertainment machines required to be licensed shall be responsible for ensuring that all machines are properly licensed with the required Type I coin-operated device, gaming machine, and machine

permit sticker which shall be posted in a conspicuous place on the machine before the machine can be operated.

- (c) Any licensed business contracting live entertainment shall ensure that their business is properly licensed with the city for such entertainment before allowing the entertainer to perform.
- (d) In addition to the above-described activities constituting doing business, an individual shall be deemed to be in business if that individual owns and rents two (2) or more residential rental units (or partial interest therein) within the limits of the city. This applies to long-term rentals greater than thirty (30) days. All short-term rentals require a business license.
- (e) The provisions of this article shall not extend to those businesses which are contained within NAICS Major Business Group 11 Agriculture, Forestry, Fishing and Hunting to include the following: agriculture production, crops, livestock and animal specialties, forestry, and fish production; nor shall it apply to the manufacture or production of sea island grass products; but this article shall apply to vendors of every other class and kind of goods.

**Section 7-1002**        **Definitions.** The following words, terms, and phrases, when used in this ordinance, shall have the meaning ascribed herein. Defined terms are not capitalized when used in this ordinance unless the context otherwise requires.

*“Business”* means any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly.

*“Charitable Organization”* means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. Section 501(c)(3), (4), (6), (7), (8), (10) or (19).

*“Charitable Purpose”* means a benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization.

*“Classification”* means that division of businesses by NAICS codes subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by the Council.

*“Classification rate schedule(s)”* or *“rate classification schedules”* means the classification rate schedule or schedules set forth in this chapter.

*“Contractor”* means a person who agrees to furnish materials or perform services at a specified price in business activity falling within the two-digit NAICS Code 23.

*“Council”* means the City Council of the City of Beaufort.

*“Domicile”* means a principal place from which the trade or business of a licensee is conducted, directed, or managed. For purposes of this ordinance, a licensee may be deemed to have more than one domicile.

***“Gross Income”*** means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the Municipality. If the licensee has a domicile within the Municipality, business done within the Municipality shall include all gross receipts or revenue received or accrued by such licensee. If the licensee does not have a domicile within the Municipality, business done within the Municipality shall include only gross receipts or revenue received or accrued within the Municipality. In all cases, if the licensee pays a business license tax to another county or municipality, then the licensee’s gross income for the purpose of computing the tax within the Municipality must be reduced by the amount of revenues or receipts taxed in the other county or municipality and fully reported to the Municipality. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies. In calculating gross income for certain businesses, the following rules shall apply:

- A. Gross income for agents shall be calculated on gross commissions received or retained, unless otherwise specified. If commissions are divided with other brokers or agents, then only the amount retained by the broker or agent is considered gross income.
- B. Except as specifically required by S.C. Code § 38-7-20, gross income for insurance companies shall be calculated on gross premiums written.
- C. Gross income for manufacturers of goods or materials with a location in the Municipality shall be calculated on the lesser of (i) gross revenues or receipts received or accrued from business done at the location, (ii) the amount of income allocated and apportioned to that location by the business for purposes of the business’s state income tax return, or (iii) the amount of expenses attributable to the location as a cost center of the business. Licensees reporting gross income under this provision shall have the burden to establish the amount and method of calculation by satisfactory records and proof. Manufacturers include those taxpayers reporting a manufacturing principal business activity code on their federal income tax returns.

***“License Official”*** means a person designated to administer this ordinance. Notwithstanding the designation of a primary license official, the Municipality may designate one or more alternate license officials to administer particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code.

***“Licensee”*** means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

***“Municipality”*** means the City of Beaufort, South Carolina.

**"NAICS"** means the North American Industry Classification System for the United States published under the auspices of the Federal Office of Management and Budget.

**"New resident business"** means a business that has not operated within the city limits for a period of at least two (2) consecutive years prior to its application for a business license under the existing or a previous owner, or a business that has been annexed into the city immediately prior to its application for a business license.

**"Person"** means any individual, firm, partnership, limited liability partnership, limited liability company, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

**"Price gouging"** means increasing prices for essential goods and services during or after an impending or actual emergency such as a hurricane, earthquake, or other natural or manmade disaster.

**"Itinerant business"** means a business with no established and fixed place of business within the city on which city real property taxes are paid.

**"Construction"** includes new work, additions, alterations, reconstruction, installations and repairs of structures.

**"General contractor"** means builders engaged in construction of structures, working under contract directly for the property owner for a specified price.

**"Operative builder"** means builders engaged in construction of structures for sale on their own account rather than as contractors.

**"Specialty trade contractor"** means contractors, also known as subcontractors, who undertake activities of a type that are specialized to building construction, working directly for the property owner, general contractor, or operative builder, under contract for a specified price.

**"Real estate developer"** means an individual or company which buys property to develop for resale. As used herein, "develop" includes, but is not limited to, subdividing real property into lots for resale, and/or purchasing property for the purpose of making improvements, additions and/or construction of buildings thereon.

**"Temporary license (pay-per-job)"** can only be issued to an itinerant business and is valid only for the job or event specified on the license. The base tax and the established rate is charged on each and every job. This license must be issued prior to beginning any work on the specified job. No permits will be issued to any business without the license for that job having been issued.

**"Annual license"** may be issued to a resident or itinerant business and is valid for the year (beginning in 2022, that one-year period shall commence on May 1, 2022). A base tax and established rate is charged based on the previous year's accrued gross revenue with itinerant businesses using only their in-city gross revenue. The license must be renewed on or before April 15 of each year.

**Section 7-1003. Purpose and Duration.** The business license required by this ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. The license year ending on April 30, 2022 shall commence on January 1, 2021, and shall be an extension of the 2021 license year. Thereafter, the license period shall be established as follows. Except as set forth below for business licenses issued to contractors with respect to specific construction projects, each yearly license shall be issued for the twelve-month period of May 1 to April 30. A business license issued for a construction contract may, at the request of the licensee, be stated to expire at the completion of the construction project; *provided*, any such business license may require that the licensee file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

**Section 7-1004. Business License Tax, Refund.**

- A. The required business license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified. Late payments shall be subject to penalties as set forth in Section 12 hereof, except that admitted insurance companies may pay before June 1 without penalty.
- B. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the business license tax shall be computed on the combined gross income for the classification requiring the highest rate. The business license tax must be computed based on the licensee’s gross income for the calendar year preceding the due date, for the licensee’s twelve-month fiscal year preceding the due date, or on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The business license tax for a new business must be computed on the estimated probable gross income for the balance of the license year. A business license related to construction contract projects may be issued on a per-project basis, at the option of the taxpayer. No refund shall be made for a business that is discontinued.

The tax for a new resident business during the first year of operation or portion thereof shall be the base tax for the classification for that business as determined by the business license administrator using the classification rate schedules, and thereafter, the tax for a new resident business shall be as follows:

<u>Year of Operation</u>	<u>License Tax</u>
1st renewal of license	40% of applicable tax
2nd renewal of license	60% of applicable tax
3rd and subsequent renewal of license	100% of applicable tax

- C. Unless otherwise specifically provided for in this chapter, itinerant subject to this chapter shall be assessed a business license tax at a rate twice that set forth in the applicable rate classification in the classification rate schedules.
- D. Itinerant general contractors and itinerant specialty trade contractors shall pay their business license tax on each job during a calendar year based on the construction cost reported on each building/miscellaneous permit or on an annual basis.
- E. Any individual, except farmers who sell their own produce in its natural state, operating out of the Farmers/Crafts Market is required to have a city business license.
- F. Itinerant peddlers will pay their business license tax based on estimated gross sales of each visit.
- G. An itinerant operative builder shall purchase a business license based upon the construction cost reported on the building permit. Within thirty (30) days of the parcel having been sold, an add-on license tax must be paid based upon the difference in the reported construction cost and the actual selling price.
- H. An itinerant real estate developer shall purchase a business license at the base tax rate upon issuance of the permit for land work, such as site clearing. Within thirty (30) days of the sale of each lot or lot and building an add-on license tax must be paid based on the actual selling price.
- I. No refund shall be made for a business that is discontinued.
- J. A one and one-half (1.5) percent discount on the business license tax currently due (not including penalties or late payments) shall apply to any business that pays its business license tax in full by March 15.
- K. A one and one-half (1.5) percent discount on the business license tax currently due (not including penalties or late payments) shall apply to a resident business that has been in operation in the city under the same name and ownership for five (5) or more years.
- L. A licensee that submits a payment greater than the amount owed may request a refund. To be considered, a refund request must be submitted in writing to the Municipality before the June 1 immediately following the April 30 on which the payment was due and must be supported by adequate documentation supporting the refund request. The Municipality shall approve or deny the refund request, and if approved shall issue the refund to the business, within thirty days after receipt of the request.

**Section 7-1005.      Registration Required.**

- A. The owner, agent, or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; *provided*, a new business shall be required to have a business license prior to operation within the Municipality, and an annexed business shall be required to have a business license within thirty (30) days of the annexation. A license for a bar (NAICS 722410) must be issued in

the name of the individual who has been issued the corresponding state alcohol, beer, or wine permit or license and will have actual control and management of the business.

- B. Application shall be the City's business license application form or on the then-current standard business license application as established and provided by the Director of the South Carolina Revenue and Fiscal Affairs Office and shall be accompanied by all information about the applicant, the licensee, and the business deemed appropriate to carry out the purpose of this ordinance by the license official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures
- C. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported (or estimated for a new business) without any unauthorized deductions, and that all assessments, personal property taxes on business property, and other monies due and payable to the Municipality have been paid.
- D. Insurance agents and brokers, banks, loan companies, finance companies, automobile dealers, or any other person, firm or company selling any type of insurance shall provide a list of all insurance companies represented, including name, address, telephone number, and total amount of premiums due or collected for each company, including renewals, annual and new business written during the preceding year, if such information is available.
- E. Any person, firm, company, agent, broker, representative or independent agent selling or writing or placing insurance plans or policies shall not place, write, sell or order any kind or type of insurance from any insurance company, society or association until that company has duly paid the city business license tax for the current year, as well as for all prior years, with all penalties and interest due. Upon violation of this provision each person, firm, company, agent, broker, representative or independent agent shall pay a fine of two hundred dollars (\$200.00) or be confined for thirty (30) days in jail. Each policy or contract of insurance sold or issued shall constitute a separate offense. Insurance agents employed by more than one company shall be licensed as brokers, and the business license tax shall be based on the total gross commissions.

The Municipality shall allow application, reporting, calculation, and payment of business license taxes through the City of Beaufort Business License payment portal or the business license tax portal hosted and managed by the South Carolina Revenue and Fiscal Affairs Office, subject to the availability and capability thereof. Any limitations in portal availability or capability do not relieve the applicant or Licensee from existing business license or business license tax obligations.

**Section 7-1006. Deductions, Exemptions, and Charitable Organizations.**

- A. No deductions from gross income shall be made except income earned outside of the Municipality on which a license tax is paid by the business to some other municipality or county and fully reported to the Municipality, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. Properly apportioned income from business in interstate commerce shall be

included in the calculation of gross income and is not exempted. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.

- B. No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the Municipality, unless exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of NAICS. No person shall be exempt from this ordinance by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this ordinance.
- C. Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the Municipality. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer.
- D. A charitable organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A charitable organization, or any for-profit affiliate of a charitable organization, that (1) reports income from for-profit activities, or unrelated business income, for federal income tax purposes to the Internal Revenue Service, (2) has a fixed physical location in the city and receives income from the sale within the city of merchandise or services, or (3) receives income from the sale or rental of property within the city, shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income, from its income from the sale within the city of merchandise or services, or from its income from the sale or rental of property within the city. A sale of merchandise or services as described in this section shall not include:
  - a. Donations without return consideration;
  - b. Member or sponsor dues or attendance fees for members at meetings or conventions of the organization;
  - c. The wholesale sale of blood or blood products;
  - d. The sale of religious books or the proceeds from day care services or catering services provided by a religious organization to its members; or
  - e. The occasional sale of merchandise by the organization as a special fundraising event of limited short-term duration.
- E. A charitable organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself exempt under 26 U.S.C. section 501(c), or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a charitable purpose as defined in this article. Payment of necessary costs of operation and wages to non-management employees will not disqualify a charitable organization from exemption. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer,

director, trustee or person with ultimate control of the organization shall not be deemed a necessary cost or expense of operation.

- F. A charitable organization must provide a copy of their tax exemption letter from the Internal Revenue Service in order to be designated as a charitable organization.

**Section 7-1007. False Application Unlawful.** It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this ordinance.

**Section 7-1008. Display and Transfer.**

- A. All persons shall display the license issued to them on the original form provided by the license official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.
- B. A change of address must be reported to the license official within ten (10) days after removal of the business to a new location and the license will be valid at the new address upon written notification by the license official and compliance with zoning and building codes. Failure to obtain the approval of the license official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable, and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

**Section 7-1009. Administration of Ordinance.** The license official shall administer the provisions of this ordinance, collect business license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or suspension and revocation procedures, report violations to the municipal attorney, assist in prosecution of violators, produce forms, undertake reasonable procedures relating to the administration of this ordinance, and perform such other duties as may be duly assigned.

**Section 7-1010. Solicitation**

- (1) Door-to-door solicitation within the city, when authorized by this ordinance, will be conducted between the hours of 9:00 a.m. to 5:00 p.m. Monday through Saturday. No solicitation shall be allowed on Sundays and holidays.
- (2) Salespersons for magazines, periodicals, and encyclopedias with national distribution and not warehoused within the city, are considered itinerant businesses and require a city business license, prior to door-to-door sales. Prior to issue of the business license, the applicant must be registered with the police department and not have been convicted of a crime of moral turpitude.
- (3) Businesses located within the city limits will be allowed door-to-door solicitation when it is determined by the business license inspector that the success of the business is predominantly determined by the degree of such solicitation.

(4) Salespersons for itinerant businesses must maintain a valid city business license on person, when soliciting sales within the city limits.

(5) In accordance with section 5-27-910, Code of Laws, State of South Carolina, the City of Beaufort requires a permit for solicitation from motorists. All rescue squads, volunteer fire departments, charitable or eleemosynary organizations will be required to apply for a permit through the police department. Failure to obtain a permit or abide by the permit stipulations, upon conviction, will subject the offender to a fine of not more than five hundred dollars (\$500.00) plus assessments, or imprisoned not more than thirty (30) days as prescribed in section 1-3048.

**Section 7-1011. Inspection and Audits.**

- A. For the purpose of enforcing the provisions of this ordinance, the license official or other authorized agent of the Municipality is empowered to enter upon the premises of any person subject to this ordinance to make inspections and to examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct business license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of business license tax shall constitute a separate offense.
- B. The license official shall have the authority to make inspections and conduct audits of businesses to ensure compliance with the ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the license official shall not release the amount of business license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this ordinance, state or federal law, or proper judicial order. Statistics compiled by classifications are public records.

**Section 7-1012. Assessments, Payment under Protest, Appeal.**

- A. Assessments, payments under protest, and appeals of assessment shall be allowed and conducted by the Municipality pursuant to the provisions of S.C. Code § 6-1-410, as amended. In preparing an assessment, the license official may examine such records of the business or any other available records as may be appropriate and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a business license tax and penalties as provided herein.
- B. The license official shall establish a uniform local procedure consistent with S.C. Code § 6-1-410 for hearing an application for adjustment of assessment and issuing a notice of final assessment; provided that for particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality, by separate ordinance, may establish a different procedure and may delegate one or more rights, duties, and functions hereunder to the Municipal Association of South Carolina.

**Section 7-1013. Delinquent License Taxes, Partial Payment.**

- A. For non-payment of all or any part of the correct business license tax, the license official shall impose and collect a late penalty of five (5%) percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any business license tax remains unpaid for sixty (60) days after its due date, the license official shall report it to the municipal attorney for appropriate legal action.
- B. Partial payment may be accepted by the license official to toll imposition of penalties on the portion paid; *provided*, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

**Section 7-1014. Notices.** The license official may, but shall not be required to, mail written notices that business license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the Municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

**Section 7-1015. Denial of License.** The license official may deny a license to an applicant when the license official determines:

- A. The application is incomplete or contains a misrepresentation, false or misleading statement, or evasion or suppression of a material fact;
- B. The activity for which a license is sought is unlawful or constitutes a public nuisance *per se* or *per accidens*;
- C. The applicant, licensee, prior licensee, or the person in control of the business has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;
- D. The applicant, licensee, prior licensee, or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the Municipality or in another jurisdiction;
- E. The applicant, licensee, prior licensee, or the person in control of the business is delinquent in the payment to the Municipality of any tax or fee;
- F. A licensee has actual knowledge or notice, or based on the circumstances reasonably should have knowledge or notice, that any person or employee of the licensee has committed a crime of moral turpitude on the business premises, or has permitted any person or employee of the licensee to engage in the unlawful sale of merchandise or prohibited goods on the business premises and has not taken remedial measures necessary to correct such activity; or
- G. The license for the business or for a similar business of the licensee in the Municipality or another jurisdiction has been denied, suspended, or revoked in the previous license year.

A decision of the license official shall be subject to appeal as herein provided. Denial shall be written with reasons stated.

**Section 7-1016. Suspension or Revocation of License.** When the license official determines:

- A. A license has been mistakenly or improperly issued or issued contrary to law;
- B. A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance;
- C. A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application;
- D. A licensee has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;
- E. A licensee has engaged in an unlawful activity or nuisance related to the business; or
- F. A licensee is delinquent in the payment to the Municipality of any tax or fee,

the license official may give written notice to the licensee or the person in control of the business within the Municipality by personal service or mail that the license is suspended pending a single hearing before Council or its designee for the purpose of determining whether the suspension should be upheld and the license should be revoked.

The written notice of suspension and proposed revocation shall state the time and place at which the hearing is to be held, and shall contain a brief statement of the reasons for the suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

**Section 7-1017. Appeals to Council or its Designee.**

- A. Except with respect to appeals of assessments under Section 11 hereof, which are governed by S.C. Code § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the license official may appeal the decision to the Council or its designee by written request stating the reasons for appeal, filed with the license official within ten (10) days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation.
- B. A hearing on an appeal from a license denial or other determination of the license official and a hearing on a suspension and proposed revocation shall be held by the Council or its designee within ten (10) business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a regular or special meeting of the Council, or, if by designee of the Council, at a hearing to be scheduled by the designee. The hearing may be continued to another date by agreement of all parties. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its

members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the Municipality.

- C. Timely appeal of a decision of Council or its designee does not effectuate a stay of that decision. The decision of the Council or its designee shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.
- D. For business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality may establish a different procedure by ordinance.

**Section 7-1018. Consent, franchise, or license required for use of streets.**

- A. It shall be unlawful for any person to construct, install, maintain, or operate in, on, above, or under any street or public place under control of the Municipality any line, pipe, cable, pole, structure, or facility for utilities, communications, cablevision, or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees, and conditions for use.
- B. The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

**Section 7-1019. Confidentiality.** Except in accordance with proper judicial order or as otherwise provided by law, no official or employee of the Municipality may divulge or make known in any manner the amount of income or any financial particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this ordinance.

**Section 7-1020. Violations.** Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this ordinance.

**Section 7-1021. Severability.** A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions. To the extent of any conflict between the provisions of this ordinance and the provisions of the South Carolina Business License Tax Standardization Act, as codified at S.C. Code §§ 6-1-400 *et seq.*, the standardization act shall control.

**Section 7-1022. Classification and Rates.**

- A. The business license tax for each class of businesses subject to this ordinance shall be computed in accordance with the current business license rate schedule, designated as Appendix A to this ordinance, which may be amended from time to time by the Council.
- B. The current business license class schedule is attached hereto as Appendix B. Hereafter, no later than December 31 of each odd year, the Municipality shall adopt, by ordinance, the latest standardized business license class schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the South Carolina Revenue and Fiscal Affairs Office. Upon adoption by the Municipality, the revised business license class schedule shall then be appended to this ordinance as a replacement Appendix B.
- C. The classifications included in each rate class are listed with NAICS codes, by sector, sub-sector, group, or industry. The business license class schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a business license tax. The classification in the most recent version of the business license class schedule adopted by the Council that most specifically identifies the subject business shall be applied to the business. The license official shall have the authority to make the determination of the classification most specifically applicable to a subject business.
- D. A copy of the class schedule and rate schedule shall be filed in the office of the municipal clerk.

**Sec. 7-1023. Price restriction during emergencies.**

Certain goods and services become scarce due to the disruption of the city's economy during emergency situations and certain merchants, vendors and contractors may take advantage of the emergency by price gouging.

The city council hereby prohibits any merchant, vendor or contractor selling goods and/or offering services within the city from raising prices during the following time frames:

- (1) Pre-hurricane. From the period beginning with the notification of a hurricane watch for the City of Beaufort, issued by the National Weather Service, until either the hurricane is no longer a threat to the City of Beaufort or a declared state of emergency for the city is terminated.
- (2) Earthquake or other disaster. From the actual time of the emergency until the declared state of emergency is terminated.

Sale of goods and costs of services at prices above pre-emergency levels during the time frames herein provided shall only be allowed if merchants, vendors or contractors can document purchase of these goods or providing services at increased costs to them. Price level increases after a state of emergency is terminated shall be consistent with cost increases to the merchant, vendor or contractor.

- (3) Penalties. Any person violating any provision of this section shall be deemed guilty of a misdemeanor and shall be subject to punishment under the general penalty provision of this Code (section 1-3048) and upon conviction, shall be fined up to five hundred dollars (\$500.00) per incident or thirty (30) days in jail or both and immediate revocation of a City of Beaufort

Business License (if issued) for a period of one year. Each sale or contract determined to be price gouging shall constitute a separate offense.

(Ord. No. O-11-13, 4-9-13)

**Sec. 7-1024. Permission to use streets required.**

It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the city any line, pipe, cable, pole, structure or facility for utilities, communications, cable vision, or other purposes without a consent agreement or franchise agreement authorized by the city council which prescribes the terms, fees and conditions for use.

(Ord. No. O-11-13, 4-9-13)

**Sec. 7-1025. Consent, franchise or business license tax required.**

The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the city council and shall be based on gross revenues derived from activities in the municipality, the length of lines installed in streets and public places, or other formula deemed appropriate by council. No consent fee or franchise fee shall be construed to be in lieu of a business license tax based on gross revenue unless specifically approved by city council. Credits for business license taxes paid may be applied to fees when specifically authorized by city council.

(Ord. No. O-11-13, 4-9-13)

**Sec. 7-1026. Retail telecommunications services.**

**(1) *Tax imposed.***

a) Notwithstanding any other provisions of the business license ordinance, the business license tax for "retail telecommunications services", as defined in S.C. Code section 58-9-2200, shall be at the maximum rate authorized by S.C. Code section 58-9-2220, as it now provides or as provided by its amendment. The business license tax year shall begin on January 1 of each year. The rate for the 2005 business license tax year shall be the maximum rate allowed by state law as in effect on February 1, 2005. Declining rates shall not apply.

b) In conformity with S.C. Code section 58-9-2220, the business license tax for retail telecommunications services shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a twelve-month projected income.

**(2) *When tax due; penalty for delinquent tax.***

a) For the year 2005, the business license tax for retail telecommunications services shall be due on February 1, 2005 and payable by February 28, 2005, without penalty. For years after 2005, the business license tax for retail telecommunications services shall be due on January 1 of each year and payable by January 31 of that year, without penalty.

b) The delinquent penalty shall be five (5) percent of the tax due for each month, or portion thereof, after the due date until paid.

(3) *Exemptions.* Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

(4) *Franchise or contractual agreements.*

a) Nothing in this section shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

b) All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this section.

(5) *Authority; collection.* As authorized by S.C. Code section 5-7-300, the agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S.C. Code section 58-9-2200 shall continue in effect. Notwithstanding the provisions of the agreement, for the year 2005, the Municipal Association of South Carolina is authorized to collect current and delinquent license taxes, in conformity with the due date and delinquent date for 2005 as set out in this section and is further authorized, for the year 2005, to disburse business license taxes collected, less the service charge agreed to, to this municipality on or before April 1, 2005, and thereafter as remaining collections permit.

**Sec. 7-1027. Group event license for festivals, shows and entertainment events.**

The promoter or sponsor of a group event, held on private or public property, shall complete a group event application for a group event business license. A group event business license application by the promoter or sponsor of the event is required for all transient merchants (exhibitors) participating in a group event, including, but not limited to, food trucks, booth sales and flea markets. The group event business license is in lieu of an individual transient merchant license, and is obtained from the city's business license division by filing an application specifying the sponsoring organization or person, the dates and location where the event is to be held, the purpose of the event and the names of the participating vendors or merchants. Taxes for a group event business license shall be as set forth in Appendix D of this chapter.

(1) *Festivals.* For purposes of this section, the term 'festival' means a group event celebrating and/or offering food, crafts, drinks, music and other forms of entertainment activities, including performances by an individual actor, performer, cast or group of performers for purposes of raising money for profit or non-profit entities. This section shall not apply to the Beaufort Water

Festival, the Gullah Festival, the Shrimp Festival, or the Taste of Beaufort (under their existing management structures) which are provided for in the city's special events policy.

a. The producer, promoter or sponsor of a festival shall acquire a city business license at least ten (10) days prior to the opening of the festival. The license shall be for a period not to exceed ten (10) consecutive days. The fee for the license shall be fixed from time to time by the city council as set forth in the fee schedule in Appendix D to this chapter.

b. To obtain a business license for a festival, the producer, promoter or sponsor shall make application to the business license division at least ten (10) days prior to the scheduled event, naming the producer, promoter or sponsor, specifying the dates and location of the event, specifying the purpose of the event, and listing the exhibitors or participants. The producer, promoter or sponsor shall pay the required fee, to include the number of exhibitors, vendors or participants expected to participate in the event. Not later than five (5) days after the close of the festival, the producer, promoter or sponsor shall adjust the payment based the actual number of exhibitors, vendors or participants that participated.

c. The individual vendor or exhibitor in any such festival shall not be required to acquire a city business license if the producer, promoter or sponsor has obtained a license for the festival in accordance with 1(b) above. In case the producer, promoter or sponsor fails to acquire a city business license for the festival before the opening of the event, each exhibitor or vendor in the festival must acquire a transient merchant's city business license for the festival. If neither the promoter nor the vendors acquire the necessary city business license, the festival will be terminated.

d. In the event the festival is terminated as set forth above, the city shall not be responsible to any promoter, sponsor, vendor or exhibitor for any costs or expenses incurred or revenue lost.

(2) *Shows.* For the purposes of this section, the terms show or exhibition mean a group participation event in which exhibitors display in individual booths, stalls or any other specific division of an exhibition area, for the purpose of presenting to an audience goods, wares, merchandise or services offered for sale, rent or promotional purposes or for the general good will of the exhibitors. Shows generally are of two (2) types: trade shows and public shows.

a. Trade shows. For purposes of this section, the term "trade show" means an exhibition or show:

1. To which the public generally is not invited;
2. Where those participating as exhibitors or observers generally have a common business or other interest;
3. Where registration of exhibitors and observers is structured and admission is restricted; and,
4. Where on-floor sales are not the primary purpose.

Neither the producer, promoter or sponsor of nor an exhibitor or participant in a trade show is required to acquire any city business license.

b. *Public shows.* For purposes of this section, the term "public show" means any type of consumer-oriented show or exhibition to which the public is invited and admitted, with or without charge, and at which exhibitors present goods, wares, merchandise or services for sale, rent or promotional purposes.

1. The producer, promoter or sponsor of a public show shall acquire a city business license prior to the opening of the show. The license shall be for a period not to exceed seven (7) consecutive days. The fee for the license shall be fixed from time to time by the city council and is set forth in the fee schedule in Appendix D to this chapter.

2. To obtain such a license for such a public show, the producer, promoter or sponsor shall make application to the business license division at least ten (10) days prior to the scheduled event, naming the producer, promoter or sponsor, specifying the dates and location of the event, specifying the purpose of the event, and listing the exhibitors or participants. The producer, promoter or sponsor shall pay the required fee. Not later than five (5) days after the close of the show, the producer, promoter or sponsor shall adjust the payment based on the actual number of exhibitors who participated.

3. The exhibitors or vendors in any such public show shall not be required to acquire a city business license if the producer, promoter or sponsor has obtained a license for the show or exhibition. In case the producer, promoter or sponsor does not acquire a city business license for the show before the opening of the show, each exhibitor in the show must acquire a transient merchant's city business license for the show. If neither the promoter nor the exhibitors acquire the necessary city business license, the public show will be terminated.

4. In the event the public show is terminated as set forth above, the city shall not be responsible to any promoter, sponsor, vendor or exhibitor for any costs or expenses incurred or revenue lost.

**Sec. 7-1028. Public market short-term vendors exempted.**

For the purposes of this section, the following definitions shall apply:

The term "public market" means any commercial center of operation, owned by a federal, state, county or municipal government, in which a significant portion of the premises, whether inside a building or outside, is regularly and continually set aside for the sale of farm and orchard produce, processed foods, crafts and like miscellaneous personal, family and household products.

The term "short-term vendors" means those persons who lease, sublease, or otherwise lawfully occupy a portion of the premises at a public market with the consent of the owner, and who customarily sell farm and orchard produce, processed food products and/or crafts as their predominant products.

Public market short-term vendors shall be exempt from the city's business license tax.

This Ordinance shall become effective immediately upon adoption.

\_\_\_\_\_  
Stephen D. Murray III, Mayor

Attest

\_\_\_\_\_  
Traci Guldner, City Clerk

First Reading 9-14-21

Second Reading and adoption \_\_\_\_\_

Approved in Form \_\_\_\_\_

William B. Harvey, III, City Attorney

**APPENDIX A: BUSINESS LICENSE RATE SCHEDULE**

<b>RATE CLASS</b>	<b>INCOME: \$0 - \$2,000</b>	<b>INCOME OVER \$2,000</b>
	<b>BASE RATE</b>	<b>RATE PER \$1,000 OR FRACTION THEREOF</b>
1	\$25.00	\$1.00
2	\$35.00	\$1.30
3	\$45.00	\$1.60
4	\$55.00	\$1.90
5	\$65.00	\$2.20
6	\$75.00	\$2.50
7	\$85.00	\$2.80

**NON-RESIDENT RATES**

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the Municipality.

**CLASS 8 & 9 RATES**

Each NAICS number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of state law, regulatory requirements, service burdens, tax equalization considerations, and other factors that are deemed sufficient to require individually determined rates. In accordance with state law, the Municipality also may provide for reasonable subclassifications for rates, described by an NAICS sector, subsector, or industry, that are based on particularized considerations as needed for economic stimulus or for the enhanced or disproportionate demands on municipal services or infrastructure.

Non-resident rates do not apply except where indicated.

**8.1 NAICS 230000 – Contractors, Construction, All Types [Non-resident rates apply].**

Resident rates, for contractors having a permanent place of business within the Municipality:

Minimum on first \$2,000.....	\$ 60.00 PLUS
Each additional 1,000 .....	\$ 1.75

Non-resident rates apply to contractors that do not have a permanent place of business within the Municipality. A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official a list of sub-contractors furnishing labor or materials for each project.

For licenses issued on a per-job basis, the total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle the contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year. Licensees holding a per-job license shall file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount.

**8.2 NAICS 482 – Railroad Companies** (See S.C. Code § 12-23-210).

**8.3 NAICS 517311, 517312 – Telephone Companies.**

With respect to “retail telecommunications services” as defined in S. C. Code § 58-9-2200, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program by separate ordinance (the “Telecommunications Collections Ordinance”). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to retail telecommunications services are set forth in the Telecommunications Collections Ordinance.

**8.4 NAICS 5241 – Insurance Companies:**

Independent agents, brokers, their employees are subject to a business license tax based on their natural class. With respect to insurers subject to license fees and taxes under Chapter 7 of Title 38 and to brokers under Chapter 45 of Title 38, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program by separate ordinance (the “Insurers and Brokers Collections Ordinance”). The rates, terms, conditions, dates, penalties, appeals process,

and other details of the business license applicable to insurers and brokers are set forth in the Insurers and Brokers Collections Ordinance.

**8.51 NAICS 713120 – Amusement Machines, coin operated (except gambling).** Music machines, juke boxes, kiddy rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) [Type I and Type II].

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2746:

Per Machine ..... \$12.50 PLUS  
Each additional \$1,000, over base of \$2,000..... \$1.75

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.51.

**8.52 NAICS 713290 – Amusement Machines, coin operated, non-payout.** Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(3) [Type III].

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2720(B):

Per Machine ..... \$180.00 PLUS  
Each additional \$1,000, over base of \$2,000..... \$1.75

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.52.

**8.6 NAICS 713990 – Billiard or Pool Rooms, all types.** (A) Pursuant to SC Code § 12-21-2746, license tax of \$5.00 per table measuring less than 3½ feet wide and 7 feet long, and \$12.50 per table longer than that; PLUS, (B) with respect to gross income from the entire business in addition to the tax authorized by state law for each table:

Minimum on first \$2,000..... \$32.00 PLUS  
Each additional \$1,000, over base of \$2,000..... \$1.26

- 9.1 NAICS 423930 – Junk or Scrap Dealers [Non-resident rates apply].**  
 Minimum on first \$2,000..... \$41.00 PLUS  
 Each additional \$1,000, over base of \$2,000..... \$1.66

- 9.2 NAICS 522298 – Pawn Brokers [All Types].**  
 Minimum on first \$2,000..... \$161.00 PLUS  
 Each additional \$1,000, over base of \$2,000..... \$2.88

- 9.3 NAICS 4411, 4412 – Automotive, Motor Vehicles, Boats, Farm Machinery or Retail.**  
 (except auto supply stores - see 4413)  
 Minimum on first \$2,000..... \$20.00 PLUS  
 Each additional \$1,000, over base of \$2,000..... \$0.65

One sales lot not more than 400 feet from the main showroom may be operated under this license provided that proceeds from sales at the lot are included in gross receipts at the main office when both are operated under the same name and ownership.

Gross receipts for this classification shall include value of trade-ins. Dealer transfers or internal repairs on resale items shall not be included in gross income.

**NAICS 454390 – Peddlers, Solicitors, Canvassers, Door-To-Door Sales.**

Direct retail sales of merchandise. [Non-resident rates apply]

- 9.41** Regular activities [more than two sale periods of more than three days each per year]

Minimum on first \$2,000..... \$200.00 PLUS  
 Each additional \$1,000, over base of \$2,000..... \$1.00

- 9.42** Seasonal activities [not more than two sale periods of not more than three days each year, separate license required for each sale period]

Minimum on first \$2,000..... \$200.00PLUS  
 Each additional \$1,000, over base of \$2,000..... \$1.00

Applicants for a license to sell on private property must provide written authorization from the property owner to use the intended location.

- 9.5 NAICS 713290 – Bingo halls, parlors.**  
 Minimum on first \$2,000..... \$32.50 PLUS  
 Each additional \$1,000, over base of \$2,000..... \$1.26

**9.6 NAICS 711190 – Carnivals and Circuses.**

Minimum on first \$2,000..... \$64.00 PLUS

Each additional \$1,000, over base of \$2,000..... \$2.52

**9.7 NAICS 722410 – Drinking Places, bars, lounges, cabarets (Alcoholic beverages consumed on premises).**

Minimum on first \$2,000..... \$272.00 PLUS

Each additional \$1,000, over base of \$2,000..... \$4.31

License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

**9.71 NAICS 722511-Restuarants serving Alcohol**

Minimum on first \$2,000..... \$115.00 PLUS

Each additional \$1,000, over base of \$2,000..... \$2.90

License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

## **Business License Class Schedule by NAICS Code**

### **Appendix B**

This appendix will be updated every odd year based on the latest available IRS statistics.  
The 2021 Business License Class Schedule may be accessed at:

**APPENDIX B**  
**2021 BUSINESS LICENSE CLASS SCHEDULE BY NAICS CODE**

<b>NAICS Sector/Subsector</b>	<b>Industry Sector</b>	<b>Class</b>
11	Agriculture, forestry, hunting and fishing	2.00
21	Mining	4.00
31	Manufacturing	2.00
32	Manufacturing	2.00
33	Manufacturing	2.00
42	Wholesale trade	1.00
44	Retail trade	1.00
45	Retail trade	1.00
48	Transportation and warehousing	2.00
49	Transportation and warehousing	2.00
51	Information	4.00
52	Finance and insurance	7.00
53	Real estate and rental and leasing	7.00
54	Professional, scientific, and technical services	5.00
55	Management of companies	7.00
56	Administrative and support and waste management and remediation se	4.00
61	Educational services	4.00
62	Health care and social assistance	4.00
71	Arts, entertainment, and recreation	3.00
721	Accommodation	3.00
722	Food services and drinking places	1.00
81	Other services	5.00
<b>Class 8</b>	<b>Mandatory or Recommended Subclasses</b>	
23	Construction	8.10
482	Rail Transportation	8.20
517311	Wired Telecommunications Carriers	8.30
517312	Wireless Telecommunications Carriers (except Satellite)	8.30
5241	Insurance Carriers	8.40
5242	Insurance Brokers for non-admitted Insurance Carriers	8.40
713120	Amusement Parks and Arcades	8.51
713290	Nonpayout Amusement Machines	8.52
713990	All Other Amusement and Recreational Industries ( pool tables)	8.60
<b>Class 9</b>	<b>Optional Subclasses</b>	
423930	Recyclable Material Merchant Wholesalers (Junk)	9.10
522298	Pawnshops	9.20
4411	Automobile Dealers	9.30
4412	Other Motor Vehicle Dealers	9.30
454390	Other Direct Selling Establishments ( Regular Peddlers)	9.41
454390	Other Direct Selling Establishments (Seasonal Peddlers)	9.42
713290	Bingo Halls	9.50
711190	Other Performing Arts Companies (Carnivals and Circuses)	9.60
722410	Drinking Places (Alcoholic Beverages)	9.70
31	Manufacturing	9.80
32	Manufacturing	9.80
33	Manufacturing	9.80

*Note: Class Schedule is based on 2017 IRS data.*



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**CITY OF BEAUFORT**  
DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 9/15/2021  
**FROM:** Bill Prokop, City Manager  
**AGENDA ITEM TITLE:** Ordinance amending Part 3, Chapter 1, Article A, Section 3-1004 of the City Code of Ordinances, to provide for civil penalties for failure to remove building materials and other obstructions to City Streets beyond time periods established by City Manager - 2nd Reading  
**MEETING DATE:** 9/28/2021  
**DEPARTMENT:** City Managers Office

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*BACKGROUND INFORMATION:*

First reading was 9-14-2021.

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*PLACED ON AGENDA FOR:* Action

**REMARKS:**

**ATTACHMENTS:**

Description	Type	Upload Date
Ordinance	Backup Material	9/15/2021

## ORDINANCE

Amending Part 3 Chapter 1 Article A, Section 3-1004 of the City Code of Ordinances, to provide for civil penalties for failure to remove building materials and other obstructions to City Streets beyond time periods established by City Manager

WHEREAS, Section 3-1004 of the City Code of Ordinances prohibits building and related materials to be placed in, or to obstruct any sidewalk, street or public place in the City until and unless permission is first obtained from the City Manager; and,

WHEREAS, Section 3-1004 further provides that the permission given by the City Manager shall contain such reasonable conditions as the Manager may consider necessary or proper for the protection of the public, the public property, and businesses affected by the obstruction, including time restrictions; and,

WHEREAS, Section 3-1004 does not contain any provision for enforcement of such conditions, or penalties to be imposed for willful violation of such conditions; and,

WHEREAS, City Council finds it necessary and appropriate to establish time guidelines for such obstruction of public rights of way, and civil penalties for the willful violation of such guidelines;

NOW THEREFORE, be it ordained by the City Council of Beaufort, SC, in council duly assembled, and by the authority of the same, that Section 3-1004 of the City Code of Ordinances shall be amended as follows:

The current paragraph shall be designated as paragraph (a).

Add the following:

(b) Unless otherwise agreed or permitted in writing from the City Manager, if a roadway, sidewalk, or right-of-way is blocked, and must be closed off to public access due to the fault of a private party, and not caused by an event of nature such as a hurricane, flood, or windstorm, the obstructed area shall be reopened for public access and use within seven (7) days from the date of initial closure. Unless otherwise agreed in writing from the City Manager, on the 8<sup>th</sup> day a fine of \$180.00 per day thereafter will be assessed to the party responsible for the obstruction and closure. If the obstruction is not removed, on the 22<sup>nd</sup> day after the initial closure and, and for each day thereafter, the fine shall be \$500.00 per day until the obstruction is removed and the road, sidewalk or right-of-way is open to public access and use.

(c) The party responsible for the obstruction shall pay for all costs of block or obstruction aid, signage, and any personnel cost to the City for employee services

required to safely block off the area, including extra personnel that may be required to patrol the area. Enforcement of these requirements, and the assessment of any fines, shall be the responsibility of City Code Enforcement Department, the Beaufort Police Department, or other personnel designated by the City Manager.

This Ordinance shall become effective upon adoption.

\_\_\_\_\_  
STEPHEN D. MURRAY, III, MAYOR

ATTEST:

\_\_\_\_\_  
TRACI GULDNER, CITY CLERK

1<sup>ST</sup> Reading \_\_\_\_\_

2<sup>nd</sup> Reading and Adoption \_\_\_\_\_

Reviewed by: \_\_\_\_\_

WILLIAM B. HARVEY, III, CITY ATTORNEY



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**CITY OF BEAUFORT**  
DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 9/23/2021  
**FROM:** Kathy Todd  
**AGENDA ITEM TITLE:** Agreement for Sale & Purchase of Real Estate, 1100 Boundary Street - 1st Reading  
**MEETING DATE:** 9/28/2021  
**DEPARTMENT:** Finance

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**BACKGROUND INFORMATION:**

The Agreement represents the purchase of the Bridges Preparatory School, located at 1100 Boundary Street, containing approximately 1.75 acres and a building estimated at 23,267 square feet; parcel R 120 004 000 0068 0000, following successful due diligence, for a total of \$2,300,000; pending future financing arrangement.

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**PLACED ON AGENDA FOR:** *Action*

**REMARKS:**

**ATTACHMENTS:**

Description	Type	Upload Date
Contract for Purchase	Cover Memo	9/23/2021

## AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

**THIS AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE** (the “*Agreement*”) is made and entered into by and between **The City of Beaufort, South Carolina, and South Carolina Municipal Corporation** (hereinafter referred to as “*Purchaser*”) and **Bridges Preparatory School** (hereinafter referred to as “*Seller*”). The “*Effective Date*” of this Agreement shall be the date on which the last party signs this Agreement.

### WITNESSETH:

**THAT FOR** and in consideration of the mutual covenants, agreements and undertakings herein set forth, and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller the property described in Paragraph 1 below on the terms and conditions hereinafter set forth:

1. **Description of Property.**

(a) ALL that certain piece, parcel or tract of land, with improvements, located at 1100 Boundary Street, Beaufort, SC, containing 1.75 acres, more or less, and a building of approximately 23,267 square feet, and having Beaufort County Tax parcel R120 004 000 0068 0000 as shown in the Beaufort County RMC in Plat Book 43 at Page 198, together with all rights, title and interest of Seller in and to all easements, rights of way, reservations, privileges, appurtenances, and other estates pertaining to the Land, all of the foregoing items listed above are hereinafter collectively referred to from time to time as the “*Property*”.

2. **Purchase Price.** The purchase price for the Property shall be Two Million Three Hundred Thousand Dollars (\$2,300,000) (the “*Purchase Price*”) and shall be paid by the Purchaser as follows:

- (a) The sum of \$10,000.00 (the “*Earnest Money*”) shall be deposited with Harvey & Battey, P.A. (“*Agent*”) upon the execution hereof, which Earnest Money shall be held on deposit by Agent subject to the conditions set forth on Exhibit “B” until the earlier of (i) Closing of the Property or (ii) termination of this Agreement, and shall be disbursed upon such occurrence in accordance with the provisions of this Agreement.
- (b) The sum of \$300,000 shall be deposited with the Agent on or before October 31, 2021, which amount shall also be held, and be subject to the terms and conditions set forth in (a) above;
- (c) The balance of the Purchase Price shall be delivered in immediately available funds at Closing (as defined below).

3. **Closing.** The “*Closing*” of the transaction herein provided shall be held not later than December 31, 2021, at the offices of Purchaser’s counsel.

4. **Due Diligence Documents.** Seller shall deliver to Purchaser, within 15 days of the effective date of this Agreement and documents including, without limitation, the following: the existing boundary survey, existing title policy, title exceptions, vesting deed, engineering reports, soils reports, environmental reports, any lease(s) and all exhibits, any and all easements, including reciprocal cross parking or access easements, information related to store sales, any tenant's standard estoppel certificate, all plans and specifications with respect to the Property (the "***Plans and Specs***"), zoning letter, and building permit (collectively "Due Diligence Documents"). Seller authorizes (a) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Purchaser and both Purchaser's and Seller's agents and attorneys; and (b) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Purchaser and both Purchaser's and Seller's agents and attorneys.

5. **Purchaser's Rights Prior to Closing - Inspection Period.**

(a) For a period not to exceed Thirty (30) business days after the Effective Date (such period being herein referred to as the "***Inspection Period***"), the Purchaser, its authorized agents and employees, as well as others authorized by the Purchaser, shall have full and complete access to the Property and shall be entitled to enter upon the Property and make such surveying, architectural, engineering, topographical, geological, soil, subsurface, environmental, water drainage, and other investigations, inspections, evaluations, studies, tests and measurements (collectively, the "***Investigations***") as the Purchaser deems reasonably necessary or advisable in order to determine if the Property is acceptable to Purchaser, so long as same do not result in any material adverse change to the physical characteristics of the Property. Purchaser agrees to indemnify and hold Seller harmless from and against any and all claims, costs, expenses and liabilities including reasonable attorneys' fees arising out of or by reason of the Investigations. Purchaser shall restore any disturbance of the Property caused by the Investigations into the same condition that existed prior to the Effective Date in the event Purchaser fails to close, or terminates this Agreement. In the event that Purchaser shall require additional time in order to complete the Inspections and Purchaser's assessment of the Property, Purchaser and Seller may agree to extend the Inspection Period.

(b) At any time prior to the expiration of the Inspection Period, as the same may be extended, the Purchaser shall have the right to terminate this Agreement if the Purchaser, in Purchaser's sole discretion, determines that the Property is not suitable for Purchaser's intended purposes. If the Purchaser elects to terminate pursuant to this paragraph, it shall give written notice of such termination to the Seller and to the Agent prior to the expiration of the Inspection Period. Upon such termination, the Agent shall return the Earnest Money to the Purchaser, neither party shall have any further rights or obligations hereunder except for any obligations of the Purchaser as described above, and Purchaser shall remain in possession of the Property pursuant to the terms and conditions of the Lease.

(c) Purchaser and its designated representatives shall have the right at any time during the Inspection Period to engage in discussions with Seller, its officers, employees and representatives who are knowledgeable about the Property, Seller, and any other matters addressed in this Section.

6. **Title.** Subject to the terms and conditions of this Agreement, the Purchaser's obligations hereunder shall be conditioned upon the Seller's delivery of a good marketable and insurable fee simple

title to the Property (at standard rates), by general warranty deed (the “*Deed*”), free and clear of all liens, encumbrances and conditions which in the opinion of the Purchaser would adversely affect the use and marketability of the Property. The Property shall be described in the Deed in accordance with the historic description of the Property that is of record and described in Exhibit “A”.

7. **Title Examination.** Prior to the end of the Inspection Period Purchaser shall deliver to Seller a written statement of objections, if any, to Seller’s title to the Property and Seller shall have (10) days prior to Closing in which to cure or remove the same, time being of the essence. Seller hereby covenants and agrees to use Seller’s best efforts to cure or remove said objections within said period. In the event Seller fails or refuses to cure or remove said objections prior to Closing, then, (a) if such defects can be cured by payment of stated sums of money, the Seller may elect to reduce the Purchase Price for the Property by the cost of curing all such title defects (such as mortgages, deeds of trust, security agreements, past due ad valorem taxes and assessments constituting a lien against the Property, mechanics’ and materialmen’s liens, and judgments which have attached to and become liens against the Property), or (b) if such defects cannot be cured by payment of stated sums of money or if the Seller elects not to reduce the Purchase Price as stated in (a), then this Agreement, at the sole option of Purchaser delivered to Seller at or before Closing, shall terminate and be of no further force and effect. In such event, the Earnest Money shall immediately then be returned to Purchaser (notwithstanding the fact that the Inspection Period may have then expired) and no party hereto shall have any further rights, liabilities or obligations hereunder, except for those obligations that specifically survive closing. Notwithstanding anything contained in this Agreement to the contrary, Seller agrees to cure (either by paying, bonding off or otherwise causing the title insurance company to insure title to the Property without exception therefor) any (I) mortgages, deeds of trust, deeds to secure debt and similar security interests, (II) mechanic’s or materialman’s liens filed against the Property prior to Closing, (I and II hereinafter “*Monetary Liens*”), and (III) any exception or encumbrance to title created by act or omission of Seller, not reflected on the Title Commitment.

8. **Seller’s Representations and Warranties.** Seller makes the following representations and warranties to Purchaser:

(a) To the best of Seller’s knowledge and belief, there are no adverse or other parties in possession of the Property, and no party has been granted any license, lease, or other right relating to the use or possession of the Property.

(b) There are no condemnation or eminent domain proceedings pending or, to the best of Seller’s actual knowledge, threatened against or involving the Property or any portion thereof.

(c) No payments for work, materials or improvements furnished to the Property will be due or owing at Closing, and no mechanics’ liens, materialmen’s liens or other similar liens shall be of record against the Property at Closing.

(d) No other options, rights-of-first refusal, or contracts have been granted or entered into by Seller which are still outstanding and which give any other party a right to purchase any interest in the Property or any part thereof.

(e) Seller, through and in accordance with the authority of its Board of Directors given in a duly authorized Resolution, has the full right, power, and authority to sell and convey the Property as provided in this Agreement and to carry out Seller's obligations hereunder, and that all requisite action necessary to authorize Seller to enter into this Agreement and to carry out its obligations under this Agreement has been or on the Closing Date will have been taken. Seller has not entered into any currently-effective agreement concerning the Property which would survive Closing.

(f) Reserved.

(g) Seller has not received notice of, and has no other knowledge, actual or constructive, or information of, any pending or contemplated change in any governmental requirements applicable to the Property, of any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons, any of which would result in any material change in the physical condition of the Property, or any part thereof.

(h) To the best of Seller's actual knowledge, there is no condition existing with respect to the Property or the operation of any part of the Property that violates any governmental requirements. Seller has not received notice, written or otherwise, from any governmental or quasi-governmental agency requiring it to correct any condition with respect to the Property, or any part thereof, by reason of a violation of any governmental requirement or otherwise that has not been corrected, Seller has not received notice of, and has no other knowledge or information of, any pending or contemplated condemnation action with respect to the Property, or any part thereof.

(i) To the best of Seller's actual knowledge, there are no special or other assessments for public improvements or otherwise currently affecting the Property nor does Seller know of (i) any pending or threatened special assessments affecting the Property or (ii) any contemplated improvements affecting the Property which may result in special assessments affecting the Property.

(j) Seller has not received notice that the Property is in violation of any federal, state, and local environmental laws and regulations, and to Seller's knowledge there are no underground or above-ground storage tanks or Hazardous Substances (as defined below) located at the Property. Seller has not caused, and Seller has no knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of "**Hazardous Substances**", which are defined as those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials, and wastes, which are or become regulated under any applicable local, state, or federal law, including without limitation, any material, waste, or substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. Sec. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1317); (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq. (42 U.S.C. Sec. 6903); or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et. seq. (42 U.S.C. Sec. 9601). Seller has no

actual knowledge of any contamination of the Property from Hazardous Substances as may have been disposed of or stored on neighboring tracts.

(k) The representations and warranties set forth in this Section 8 are true and correct as of the Effective Date, shall be true and correct on the Closing, and together with the covenants and indemnities made by Seller herein, shall survive the Closing until the applicable statutes of limitation and/or repose, as measured from the Closing Date, with respect thereto shall have expired.

(l) Seller will not cause or, to the best of its ability, permit any action to be taken which would cause any of the foregoing representations and warranties to be incomplete or untrue in any material respect as of the date of Closing. Seller agrees to notify Purchaser immediately in writing of any event or condition which occurs prior to Closing which causes a material change in the facts or conditions set forth in any of Seller's foregoing representations and warranties, or which materially affects the truth or completeness of any such representations and warranties.

9. **Survey.** Prior to the end of the Inspection Period, Purchaser at its expense may cause a current survey of the Property to be made by a registered surveyor (the "**Survey**").

10. **Default and Remedies.**

(a) In the event that the terms and conditions of this Agreement have been satisfied and Purchaser does not purchase the Property in accordance with the requirements of this Agreement within the time limits herein set forth, Seller, as Seller's sole and exclusive remedy, may declare this Agreement cancelled in which event the Earnest Money shall be paid to the Seller as full liquidated damages and not as a penalty, it being agreed that the Seller's damages would be difficult or impossible to ascertain.

(b) In the event of Seller's breach of any of its obligations hereunder, Purchaser shall have the following rights and options as Purchaser's sole and exclusive remedies: (i) immediately terminate this Agreement upon written notice to the Seller and receive back the full amount of the Earnest Money and any other funds deposited with the Agent and upon return of same the parties hereto shall have no further rights and obligations or liabilities to each other hereunder or (ii) demand and compel by an action for specific performance or similar legal proceedings, if necessary, for the immediate conveyance of the Property by Seller in compliance with the terms and conditions of this Agreement, and to recover all costs and expenses including reasonable attorneys' fees incurred by Purchaser in such action.

(c) In the event legal action is instituted by any of the parties to enforce any of the terms of this Agreement or arising out of the execution of this Agreement, the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees, and court costs actually incurred.

11. **Closing Costs.** Seller shall pay fees, costs, and such other customary Seller closing costs in Beaufort County, South Carolina including, but not limited to, the deed stamps, the expense of preparation of the Deed, the costs required to satisfy and remove any Monetary Liens, as may have been agreed to pursuant to Section 7, and the fees of Seller's attorney. The Purchaser shall pay fees, costs, and such other customary Purchaser's closing costs in Beaufort County, South Carolina including, but not limited to, the premium for the owner's title insurance policy to be issued to the Purchaser, the grantee's cost of

recording of the deed, the costs incurred by the Purchaser in connection with its Investigations of the Property and the fees of Purchaser's attorneys.

12. **Prorations and Adjustments.** Real estate taxes, utility charges, and all other items of income or expense shall be adjusted and prorated as of the Closing Date. If actual taxes, charges, or other items of income and expense are unknown at the Closing Date, estimates shall be made at and subsequent proration adjustments shall be made based upon the actual taxes which are paid or received. Purchaser shall be solely responsible for any roll back taxes and special assessments applicable to the Property, whether payable in installments or not.

13. **[intentionally deleted]**

14. **Closing Documents, Delivery of Deed & Application of Earnest Money.**

(a) Seller shall deliver at the Closing such documents customarily delivered and/or executed by a seller in similar transactions, including without limitation the following documents (which shall be duly executed and witnessed by Seller as appropriate) and which, collectively, are the "***Seller's Documents***":

(i) the Deed, in form acceptable to Seller, Purchaser and Purchaser's title insurance company as the party insuring Purchaser's title to the Property;

(ii) a Non-Foreign Certificate, in form acceptable to Seller, Purchaser and Purchaser's title insurance company as the party insuring Purchaser's title to the Property;

(iii) an Owner's Affidavit of Title and Indemnity, in form acceptable to Seller, Purchaser and Purchaser's title insurance company as the party insuring Purchaser's title to the Property;

(iv) such evidence as the Purchaser and Purchaser's title insurance company as the party insuring Purchaser's title to the Property shall reasonably require as to the authority of the parties acting on behalf of Seller to enter into this Agreement and to discharge the obligations of Seller pursuant hereto;

(v) any easements (or assignments thereof) and other documents to be executed by Seller pursuant to this Agreement;

(vi) [intentionally deleted]

(vii) a closing statement which sets forth the distribution of the Purchase Price and other funds;

(viii) [intentionally deleted]

(ix) [intentionally deleted]

(x) a Certificate of Tax Compliance issued by the SC Department of Revenue;

(xi) a South Carolina Withholding Tax affidavit pursuant to S.C. Code Section 12-9-510 et. seq.

(xii) the recorded By-Laws of the Seller authorizing the Seller's Board of Directors to enact a Resolution to sell the Property;

(xiii) a Resolution of the Seller's Board of Directors authorizing the Sale of the Property per the terms and conditions herein.

(b) Purchaser shall deliver at the Closing the following documents (all of which shall be duly executed and witnessed by Purchaser as appropriate) which, collectively, are the "**Buyer's Documents**":

(i) such evidence as the Seller and the party insuring Purchaser's title to the Property shall reasonably require as to the authority of the parties acting on behalf of Purchaser to enter into this Agreement and to discharge the obligations of Purchaser pursuant hereto;

(ii) a closing statement which sets forth the distribution of the Purchase Price and other funds; and

(iii) such evidence as may be required by Seller, Purchaser and Purchaser's title insurance company as the party insuring Purchaser's title to the Property.

(a) Upon receipt of the Purchase Price, the Seller's Documents, the Buyer's Documents at the time of Closing, and at such time as the attorney who shall conduct the closing pursuant to applicable law (the "**Closing Attorney**") is in a position to disburse the same in accordance with the signed closing statement, the Closing Attorney shall be authorized to cause the final title update to be conducted and the Deed and any mortgage to be recorded, after which all disbursements provided for on the closing statement, including the net proceeds payable to the Seller, shall be made immediately. The Earnest Money shall be delivered to the Seller and applied against the Purchase Price.

15. **Brokerage.** Both parties hereby acknowledge that they have not hired or engaged any real estate professional to aid in the acquisition, purchase or sale of the property and no commission is owed for any such services. To the extent any commissions are claimed, the party through which the commissions are claimed shall indemnify and hold harmless the other party and the Property against any and all such claims.

16. **Notices.** Any notice, approval or other communication which may be required or permitted to be given or delivered hereunder shall be in writing and shall be deemed to have been given, delivered and received: (i) as of the date when the notice is personally delivered and for which a signed receipt has been obtained, (ii) if mailed, in the United States Mail, certified, return receipt requested, as of the date which is the date of the post mark on such notice, and (iii) if delivered by overnight courier or express mail service for next business day delivery where the sender provides or retains evidence of the date of delivery, as of the date of such delivery. ;

To Purchaser:

The City of Beaufort  
1911 Boundary Street  
Beaufort, SC 29902  
Attn: William Prokop, City Manager  
Email: [wprokop@cityofbeaufort.org](mailto:wprokop@cityofbeaufort.org)

With a copy to:

Harvey & Battey, PA  
c/o William B. Harvey, III  
1001 Craven Street  
Beaufort, SC 29902  
Phone: 843-524-3109  
Email: [bharvey@harveyandbattey.com](mailto:bharvey@harveyandbattey.com)

To Seller:

Bridges Preparatory School  
555 Robert Smalls Parkway  
Beaufort, SC 29906  
Attn : Headmaster

With a copy to:

Jim Wegmann, Esquire  
6 Professional Circle  
Beaufort, SC 29907  
Email: [wegmannj@beaufortlaw.com](mailto:wegmannj@beaufortlaw.com)  
843-521-0004

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17. **Governing Law.** This Agreement shall be governed, interpreted and construed under the laws of the State of South Carolina.

18. **Jurisdiction & Venue.** In any dispute arising out of this Agreement, Purchaser and Seller Lessee submit to the jurisdiction of the local state or federal court that encompasses Jasper County, South Carolina. Additionally, Purchaser and Seller agree that venue lies in said local state or federal courts.

19. **Assignment.** Purchaser may assign its rights and obligations in part or in whole hereunder to any affiliated entity or any other entity formed or to be formed of which Purchaser or the principals of Purchaser shall own and/or control the same.

20. **Time of the Essence.** Time is of the essence in the performance of each of the terms and conditions of this Agreement.

21. **Conditions and Contingency:** Building and land are sold as is, and without any warranties or representations by the Seller. Sale is contingent upon Purchaser obtaining financing by a General Obligations (GO) Bond, and the approval of this sale by Ordinance of City Council.

22. **Risk of Loss.** Seller shall bear all risk of loss until the Closing. In the event that prior to the Closing, the Property is damaged by fire or other casualty of any nature whatsoever, Seller shall promptly give Purchaser written notice thereof.

23. **Waiver.** Failure of either Purchaser or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Purchaser's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

24. **Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

25. **Captions; Construction.** All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement. The parties hereto hereby acknowledge and agree that (i) each party hereto is of equal bargaining strength, (ii) each such party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with its own independent counsel, and such other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement, (iv) each such party and its counsel and advisors have reviewed this Agreement, (v) each such party has agreed to enter into this Agreement following such review and the rendering of such advice and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

26. **Severability.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

27. **Entire Agreement.** Time is of the essence of this Agreement. This Agreement constitutes the sole and entire agreement of the parties and is binding upon Seller and Purchaser, their heirs, successors, legal representatives and assigns.

28. **Date for Performance.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

29. **Condemnation and Casualty.** In the event that prior to Closing any action or proceeding is filed, or notice thereof is given to Seller under which any portion of the Property may be taken pursuant to any governmental law, ordinance or regulation, or by condemnation or the right of eminent domain, causes the Property to become out of compliance with any applicable zoning or other land use regulations, any permits or licenses pertaining to the Property, or any private recorded restrictive covenants or easements that affect the Property, then in any such event Purchaser, at Purchaser's sole option, exercisable by written notice to Seller and Agent within twenty (20) days after Purchaser is made aware of such occurrence, shall have the right to either: (i) reaffirm this Agreement and direct Seller to transfer and assign to Purchaser at Closing all of Seller's rights, title and interest in and to any condemnation or insurance proceeds which may be received by reason of such taking or casualty (including payment by Seller to Purchaser of any applicable insurance deductibles), or (ii) terminate this Agreement and receive a prompt refund of the Earnest Money, in which case this Agreement shall thereupon become null, void and of no further force or effect and Seller shall retain the condemnation or casualty proceeds and all rights thereto (as the case may be).

30. **Section 1031 Exchange.** In the event that Seller or Purchaser elects to effectuate a Section 1031 exchange ("***Exchange***") in connection with the purchase and sale of the Property contemplated in this Agreement, the other party agrees to cooperate with the exchanging party to enable the exchanging party to accomplish such exchange. Notwithstanding anything to the contrary contained herein, Seller or Purchaser shall have the right to assign its interest under this Agreement without the other party's consent for the sole purpose of enabling the assigning party to effectuate the Exchange, including execution of any necessary acknowledgment documents; provided, however, that notwithstanding any such assignment, the assigning party shall not be released from any of its liabilities, obligations or indemnities under this Agreement. The other party shall cooperate in all reasonable respects with the assigning party to effectuate such Exchange; provided, however, that: (a) the Closing shall not be extended or delayed by reason of such Exchange unless agreed to in writing by the parties; (b) the non-assigning party shall not be required to incur any additional cost or expense as a result of such Exchange, and the assigning party shall forthwith, on demand, reimburse the non-assigning party for any additional cost or expense excepting for attorney's fees incurred by the non-assigning party as a result of the Exchange in reviewing documents; and (c) the assigning party's ability to consummate the Exchange shall not be a condition to the obligations of assigning party under this Agreement, and the non-assigning party does not warrant and shall not be responsible for any of the tax consequences to assigning party with respect to the transactions contemplated hereunder.

31. **Date of Agreement.** The submission of this Agreement to Seller for examination or consideration does not constitute an offer to purchase the Property, and this Agreement shall become effective, if at all, only upon the full execution and delivery thereof by Purchaser and Seller.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates set forth below.

**IN THE PRESENCE OF:**

**PURCHASER**

The City of Beaufort

By: \_\_\_\_\_  
William Prokop, City Manager

\_\_\_\_\_  
\_\_\_\_\_

Date signed by Purchaser: \_\_\_\_\_, 2021

**SELLER**

**Bridges Preparatory School**

By: \_\_\_\_\_  
Its: Chairperson, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Its: Secretary, Board of Directors

\_\_\_\_\_  
\_\_\_\_\_

Date signed by Seller: \_\_\_\_\_, 20\_\_

Seller's Federal Tax ID Number: \_\_\_\_\_

**EXHIBIT "A"**

**SURVEY**

## **EXHIBIT “B”**

### **Escrow Exhibit**

(1) In performing any of its duties hereunder, Agent shall not incur any liability to anyone for any damages, losses, or expenses, unless such action or omission is negligent, willful or inconsistent with the provisions of this Agreement. Agent may rely upon any instrument as being duly executed, valid, and effective, and as containing accurate information and genuine signatures.

(2) Seller is aware that Agent serves as counsel to Purchaser in this and other transactions. Seller agrees that the duties of Agent hereunder are ministerial in nature and shall not disqualify Agent from representation of Purchaser in connection with this Agreement or any dispute that may arise hereunder. Notwithstanding anything in this agreement to the contrary, in the event of a dispute between Seller and Purchaser arising prior to or at the time of the delivery or other disposition of the Earnest Money by Agent pursuant hereto, which dispute shall be sufficient, in the sole discretion of Agent, to justify its doing so, Agent shall be entitled to tender the Earnest Money into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon Agent shall be discharged from all further duties and liabilities under this agreement. Any such legal action may be brought in such court as Agent shall determine to have jurisdiction thereof. Agent’s determination of whether a dispute exists between Seller and Purchaser shall be binding and conclusive upon all parties hereto, notwithstanding any contention that no dispute exists. All costs and expenses incurred by Agent in taking any action pursuant to this paragraph shall be covered by and paid pursuant to the indemnification of Agent contained in the following paragraph. If any dispute should arise concerning the disbursement of any funds held by Agent and Agent deposits the funds so held as detailed above, then Agent may continue its representation of [Purchaser/Seller] in connection with such action.

(3) Purchaser and Seller shall, and do hereby, jointly and severally indemnify, defend, and hold Agent harmless from, against, and in respect of: (i) any and all demands, judgments, expenses, costs, losses, injuries, or claims of any kind whatsoever whether existing on the date hereof or hereafter arising, incurred by Agent by reason of, from, or in connection with this agreement or any action taken or not taken by Agent under or in connection with this agreement; and (ii) any and all counsel fees, expenses, disbursements of counsel, amounts of judgments, demands, assessments, costs, fines, or penalties, and amounts paid in compromise or settlement, incurred or sustained by Agent by reason of, in connection with, or as a result of any claim, demand, action, suit, investigation, or proceeding (or any appeal thereof or relating thereto or other review thereof) incident to the matters covered by the immediately preceding clause (i).

(4) If Agent shall notify Seller and Purchaser of its desire to be relieved of any further duties and liabilities hereunder, then Agent shall deliver the Earnest Money to a successor escrow agent designated by Seller and Purchaser. If Seller and Purchaser shall fail to agree upon and designate a successor escrow agent within ten (10) days after having been requested by Agent to do so, then Agent shall in its discretion designate the successor escrow agent. The successor escrow agent designated by Seller and Purchaser or by Agent, as the case may be, shall be a bank or trust company having trust

powers in good standing and located in Columbia, South Carolina, and shall agree to be bound by all the terms and conditions of this agreement. Immediately upon agreement by the successor escrow agent to be bound by all the terms and conditions of this agreement, the original Agent shall be relieved of any and all duties and liabilities under or in connection with this agreement; provided, however, that no successor escrow agent shall assume any liability for the acts or omissions of its predecessor escrow agent(s) hereunder.

(5) The agency created in Agent hereby is coupled with an interest of Seller and Purchaser and shall be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser. This escrow shall not be revoked or terminated by reason of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, but shall continue to be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser in the manner provided herein. In the event of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, Agent may rely and act upon any notices permitted or required to be given hereunder from any person, firm, partnership, or corporation believed by Agent in good faith to be the heir, successor, legal representative or assign of such dissolved or liquidated party.

(6) The address for the receipt of notices and other communications by Agent hereunder is as follows:

Harvey & Battey, PA  
Attn: Kevin E. Dukes, Esq.  
1001 Craven Street  
Beaufort, SC 29902  
Telephone: 843-524-3109  
kdukes@harveyandbattey.com



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**CITY OF BEAUFORT**  
DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 9/23/2021  
**FROM:** Kathy Todd  
**AGENDA ITEM TITLE:** Agreement for Sale and Purchase of Real Estate, 591 Robert Smalls Parkway - 1st Reading  
**MEETING DATE:** 9/28/2021  
**DEPARTMENT:** Finance

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***BACKGROUND INFORMATION:***

An Agreement for the purchase of Fire Station located at 591 Robert Smalls Parkway, currently under a long term capital lease with Fire Station #30, LLC. Purchase price for the property is \$3,000,000 and is contingent on successful completion of due diligence and securing financing.

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***PLACED ON AGENDA FOR:*** Action

***REMARKS:***

**ATTACHMENTS:**

Description	Type	Upload Date
Agreement for Purchase of Fire Station on Hwy 170	Cover Memo	9/23/2021

## AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

**THIS AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE** (the “*Agreement*”) is made and entered into by and between **The City of Beaufort, South Carolina, a South Carolina Municipal Corporation** (hereinafter referred to as “*Purchaser*”) and **Fire Station #30, LLC** (hereinafter referred to as “*Seller*”). The “*Effective Date*” of this Agreement shall be the date on which the last party signs this Agreement.

### WITNESSETH:

**THAT FOR** and in consideration of the mutual covenants, agreements and undertakings herein set forth, and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller the property described in Paragraph 1 below on the terms and conditions hereinafter set forth:

1. **Description of Property.**

(a) ALL that certain piece, parcel or tract of land, with improvements, situate, lying, and being in the Town of Port Royal, County of Beaufort, State of South Carolina, as shown and described as Parcel “A” consisting of .93 acres on a plat prepared for Spray Holdings, LLC, last revised on March 30, 2017, as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 147 at page 12, and all improvements and buildings thereon, together with all rights, title and interest of Seller in and to all easements, rights of way, reservations, privileges, appurtenances, and other estates pertaining to the Land, Buildings and Improvements, all of the foregoing items listed above are hereinafter collectively referred to from time to time as the “*Property*”.

2. **Purchase Price.** The purchase price for the Property shall be Three Million Dollars (\$3,000,000) (the “*Purchase Price*”) and shall be paid by the Purchaser as follows:

- (a) The sum of \$25,000.00 (the “*Earnest Money*”) shall be deposited with Harvey & Battey, P.A. (“*Agent*”) upon the execution hereof, which Earnest Money shall be held on deposit by Agent subject to the conditions set forth on Exhibit “B” until the earlier of (i) Closing of the Property or (ii) termination of this Agreement, and shall be disbursed upon such occurrence in accordance with the provisions of this Agreement.
- (b) The balance of the Purchase Price shall be delivered in immediately available funds at Closing (as defined below).

3. **Closing.** The “*Closing*” of the transaction herein provided shall be held not later than January 1, 2022, at the offices of Purchaser’s counsel.

4. **Due Diligence Documents.** Seller shall deliver to Purchaser, within 15 days of the effective date of this Agreement and documents including, without limitation, the following: the existing boundary survey, existing title policy, title exceptions, vesting deed, engineering reports, soils reports, environmental reports, any lease(s) and all exhibits, any and all easements, including reciprocal cross

parking or access easements, information related to store sales, any tenant's standard estoppel certificate, all plans and specifications with respect to the Property and the building and improvements thereon (the "**Plans and Specs**"), zoning letter, and building permit (collectively "Due Diligence Documents"). Seller authorizes (a) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Purchaser and both Purchaser's and Seller's agents and attorneys; and (b) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Purchaser and both Purchaser's and Seller's agents and attorneys.

5. **Purchaser's Rights Prior to Closing - Inspection Period.**

(a) For a period not to exceed Thirty (30) business days after the Effective Date (such period being herein referred to as the "**Inspection Period**"), the Purchaser, its authorized agents and employees, as well as others authorized by the Purchaser, shall have full and complete access to the Property and shall be entitled to enter upon the Property and make such surveying, architectural, engineering, topographical, geological, soil, subsurface, environmental, water drainage, and other investigations, inspections, evaluations, studies, tests and measurements (collectively, the "**Investigations**") as the Purchaser deems reasonably necessary or advisable in order to determine if the Property is acceptable to Purchaser, so long as same do not result in any material adverse change to the physical characteristics of the Property. Purchaser agrees to indemnify and hold Seller harmless from and against any and all claims, costs, expenses and liabilities including reasonable attorneys' fees arising out of or by reason of the Investigations. Purchaser shall restore any disturbance of the Property caused by the Investigations into the same condition that existed prior to the Effective Date in the event Purchaser fails to close, or terminates this Agreement. In the event that Purchaser shall require additional time in order to complete the Inspections and Purchaser's assessment of the Property, Purchaser and Seller may agree to extend the Inspection Period.

(b) At any time prior to the expiration of the Inspection Period, as the same may be extended, the Purchaser shall have the right to terminate this Agreement if the Purchaser, in Purchaser's sole discretion, determines that the Property is not suitable for Purchaser's intended purposes. If the Purchaser elects to terminate pursuant to this paragraph, it shall give written notice of such termination to the Seller and to the Agent prior to the expiration of the Inspection Period. Upon such termination, the Agent shall return the Earnest Money to the Purchaser, neither party shall have any further rights or obligations hereunder except for any obligations of the Purchaser as described above, and Purchaser shall remain in possession of the Property pursuant to the terms and conditions of the Lease.

(c) Purchaser and its designated representatives shall have the right at any time during the Inspection Period to engage in discussions with Seller, its officers, employees and representatives who are knowledgeable about the Property, Seller, and any other matters addressed in this Section.

6. **Title.** Subject to the terms and conditions of this Agreement, the Purchaser's obligations hereunder shall be conditioned upon the Seller's delivery of a good marketable and insurable fee simple title to the Property (at standard rates), by general warranty deed (the "**Deed**"), free and clear of all liens, encumbrances and conditions which in the opinion of the Purchaser would adversely affect the use and

marketability of the Property. The Property shall be described in the Deed in accordance with the historic description of the Property that is of record and described in Exhibit "A".

7. **Title Examination.** Prior to the end of the Inspection Period Purchaser shall deliver to Seller a written statement of objections, if any, to Seller's title to the Property and Seller shall have (10) days prior to Closing in which to cure or remove the same, time being of the essence. Seller hereby covenants and agrees to use Seller's best efforts to cure or remove said objections within said period. In the event Seller fails or refuses to cure or remove said objections prior to Closing, then, (a) if such defects can be cured by payment of stated sums of money, the Seller may elect to reduce the Purchase Price for the Property by the cost of curing all such title defects (such as mortgages, deeds of trust, security agreements, past due ad valorem taxes and assessments constituting a lien against the Property, mechanics' and materialmen's liens, and judgments which have attached to and become liens against the Property), or (b) if such defects cannot be cured by payment of stated sums of money or if the Seller elects not to reduce the Purchase Price as stated in (a), then this Agreement, at the sole option of Purchaser delivered to Seller at or before Closing, shall terminate and be of no further force and effect. In such event, the Earnest Money shall immediately then be returned to Purchaser (notwithstanding the fact that the Inspection Period may have then expired) and no party hereto shall have any further rights, liabilities or obligations hereunder, except for those obligations that specifically survive closing. Notwithstanding anything contained in this Agreement to the contrary, Seller agrees to cure (either by paying, bonding off or otherwise causing the title insurance company to insure title to the Property without exception therefor) any (I) mortgages, deeds of trust, deeds to secure debt and similar security interests, (II) mechanic's or materialman's liens filed against the Property prior to Closing, (I and II hereinafter "**Monetary Liens**"), and (III) any exception or encumbrance to title created by act or omission of Seller, not reflected on the Title Commitment.

8. **Seller's Representations and Warranties.** Seller makes the following representations and warranties to Purchaser:

(a) To the best of Seller's knowledge and belief, there are no adverse or other parties in possession of the Property, and no party has been granted any license, lease, or other right relating to the use or possession of the Property.

(b) There are no condemnation or eminent domain proceedings pending or, to the best of Seller's actual knowledge, threatened against or involving the Property or any portion thereof.

(c) No payments for work, materials or improvements furnished to the Property will be due or owing at Closing, and no mechanics' liens, materialmen's liens or other similar liens shall be of record against the Property at Closing.

(d) No other options, rights-of-first refusal, or contracts have been granted or entered into by Seller which are still outstanding and which give any other party a right to purchase any interest in the Property or any part thereof.

(e) Seller, through and in accordance with the authority of its Board of Directors given in a duly authorized Resolution, has the full right, power, and authority to sell and convey the Property as

provided in this Agreement and to carry out Seller's obligations hereunder, and that all requisite action necessary to authorize Seller to enter into this Agreement and to carry out its obligations under this Agreement has been or on the Closing Date will have been taken. Seller has not entered into any currently-effective agreement concerning the Property which would survive Closing.

(f) Reserved.

(g) Seller has not received notice of, and has no other knowledge, actual or constructive, or information of, any pending or contemplated change in any governmental requirements applicable to the Property, of any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons, any of which would result in any material change in the physical condition of the Property, or any part thereof.

(h) To the best of Seller's actual knowledge, there is no condition existing with respect to the Property or the operation of any part of the Property that violates any governmental requirements. Seller has not received notice, written or otherwise, from any governmental or quasi-governmental agency requiring it to correct any condition with respect to the Property, or any part thereof, by reason of a violation of any governmental requirement or otherwise that has not been corrected, Seller has not received notice of, and has no other knowledge or information of, any pending or contemplated condemnation action with respect to the Property, or any part thereof.

(i) To the best of Seller's actual knowledge, there are no special or other assessments for public improvements or otherwise currently affecting the Property nor does Seller know of (i) any pending or threatened special assessments affecting the Property or (ii) any contemplated improvements affecting the Property which may result in special assessments affecting the Property.

(j) Seller has not received notice that the Property is in violation of any federal, state, and local environmental laws and regulations, and to Seller's knowledge there are no underground or above-ground storage tanks or Hazardous Substances (as defined below) located at the Property. Seller has not caused, and Seller has no knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of "**Hazardous Substances**", which are defined as those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials, and wastes, which are or become regulated under any applicable local, state, or federal law, including without limitation, any material, waste, or substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. Sec. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1317); (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq. (42 U.S.C. Sec. 6903); or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et. seq. (42 U.S.C. Sec. 9601). Seller has no actual knowledge of any contamination of the Property from Hazardous Substances as may have been disposed of or stored on neighboring tracts.

(k) The representations and warranties set forth in this Section 8 are true and correct as of the Effective Date, shall be true and correct on the Closing, and together with the covenants and indemnities made by Seller herein, shall survive the Closing until the applicable statutes of limitation and/or repose, as measured from the Closing Date, with respect thereto shall have expired.

(l) Seller will not cause or, to the best of its ability, permit any action to be taken which would cause any of the foregoing representations and warranties to be incomplete or untrue in any material respect as of the date of Closing. Seller agrees to notify Purchaser immediately in writing of any event or condition which occurs prior to Closing which causes a material change in the facts or conditions set forth in any of Seller's foregoing representations and warranties, or which materially affects the truth or completeness of any such representations and warranties.

9. **Survey.** Prior to the end of the Inspection Period, Purchaser at its expense may cause a current survey of the Property to be made by a registered surveyor (the "***Survey***").

10. **Default and Remedies.**

(a) In the event that the terms and conditions of this Agreement have been satisfied and Purchaser does not purchase the Property in accordance with the requirements of this Agreement within the time limits herein set forth, Seller, as Seller's sole and exclusive remedy, may declare this Agreement cancelled in which event the Earnest Money shall be paid to the Seller as full liquidated damages and not as a penalty, it being agreed that the Seller's damages would be difficult or impossible to ascertain.

(b) In the event of Seller's breach of any of its obligations hereunder, Purchaser shall have the following rights and options as Purchaser's sole and exclusive remedies: (i) immediately terminate this Agreement upon written notice to the Seller and receive back the full amount of the Earnest Money and any other funds deposited with the Agent and upon return of same the parties hereto shall have no further rights and obligations or liabilities to each other hereunder or (ii) demand and compel by an action for specific performance or similar legal proceedings, if necessary, for the immediate conveyance of the Property by Seller in compliance with the terms and conditions of this Agreement, and to recover all costs and expenses including reasonable attorneys' fees incurred by Purchaser in such action.

(c) In the event legal action is instituted by any of the parties to enforce any of the terms of this Agreement or arising out of the execution of this Agreement, the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees, and court costs actually incurred.

11. **Closing Costs.** Seller shall pay the costs required to satisfy and remove any Monetary Liens, as may have been agreed to pursuant to Section 7. Unless the Purchaser's attorney advises otherwise, Seller agrees to utilize the services of Harvey & Battey, PA as it's counsel in this transaction. The Purchaser shall pay all other fees and costs of closing, including, but not limited to, the premium for the owner's title insurance policy to be issued to the Purchaser, the grantee's cost of recordation of the deed, the costs incurred by the Purchaser in connection with its Investigations of the Property, the preparation of the Deed, and all attorney's fees involved in the closing.

12. **Prorations and Adjustments.** Real estate taxes, utility charges, and all other items of income or expense shall be adjusted and prorated as of the Closing Date. If actual taxes, charges, or other items of income and expense are unknown at the Closing Date, estimates shall be made at and subsequent proration adjustments shall be made based upon the actual taxes which are paid or received. Purchaser shall be solely responsible for any roll back taxes and special assessments applicable to the Property, whether payable in installments or not.

13. **[intentionally deleted]**

14. **Closing Documents, Delivery of Deed & Application of Earnest Money.**

(a) Seller shall deliver at the Closing such documents customarily delivered and/or executed by a seller in similar transactions, including without limitation the following documents (which shall be duly executed and witnessed by Seller as appropriate) and which, collectively, are the “*Seller’s Documents*”:

(i) the Deed, in form acceptable to Seller, Purchaser and Purchaser’s title insurance company as the party insuring Purchaser’s title to the Property;

(ii) a Non-Foreign Certificate, in form acceptable to Seller, Purchaser and Purchaser’s title insurance company as the party insuring Purchaser’s title to the Property;

(iii) an Owner’s Affidavit of Title and Indemnity, in form acceptable to Seller, Purchaser and Purchaser’s title insurance company as the party insuring Purchaser’s title to the Property;

(iv) such evidence as the Purchaser and Purchaser’s title insurance company as the party insuring Purchaser’s title to the Property shall reasonably require as to the authority of the parties acting on behalf of Seller to enter into this Agreement and to discharge the obligations of Seller pursuant hereto;

(v) any easements (or assignments thereof) and other documents to be executed by Seller pursuant to this Agreement;

(vi) [intentionally deleted]

(vii) a closing statement which sets forth the distribution of the Purchase Price and other funds;

(viii) [intentionally deleted]

(ix) [intentionally deleted]

(x) a Certificate of Tax Compliance issued by the SC Department of Revenue;

(xi) a South Carolina Withholding Tax affidavit pursuant to S.C. Code Section 12-9-510 et. seq.

(xii) the recorded By-Laws of the Seller authorizing the Seller's representative to execute the documents necessary to sell the Property per the terms and conditions stated herein;

(b) Purchaser shall deliver at the Closing the following documents (all of which shall be duly executed and witnessed by Purchaser as appropriate) which, collectively, are the "**Buyer's Documents**":

(i) such evidence as the Seller and the party insuring Purchaser's title to the Property shall reasonably require as to the authority of the parties acting on behalf of Purchaser to enter into this Agreement and to discharge the obligations of Purchaser pursuant hereto;

(ii) a closing statement which sets forth the distribution of the Purchase Price and other funds; and

(iii) such evidence as may be required by Seller, Purchaser and Purchaser's title insurance company as the party insuring Purchaser's title to the Property.

(a) Upon receipt of the Purchase Price, the Seller's Documents, the Buyer's Documents at the time of Closing, and at such time as the attorney who shall conduct the closing pursuant to applicable law (the "**Closing Attorney**") is in a position to disburse the same in accordance with the signed closing statement, the Closing Attorney shall be authorized to cause the final title update to be conducted and the Deed and any mortgage to be recorded, after which all disbursements provided for on the closing statement, including the net proceeds payable to the Seller, shall be made immediately. The Earnest Money shall be delivered to the Seller and applied against the Purchase Price.

15. **Brokerage.** Both parties hereby acknowledge that they have not hired or engaged any real estate professional to aid in the acquisition, purchase or sale of the property and no commission is owed for any such services. To the extent any commissions are claimed, the party through which the commissions are claimed shall indemnify and hold harmless the other party and the Property against any and all such claims.

16. **Notices.** Any notice, approval or other communication which may be required or permitted to be given or delivered hereunder shall be in writing and shall be deemed to have been given, delivered and received: (i) as of the date when the notice is personally delivered and for which a signed receipt has been obtained, (ii) if mailed, in the United States Mail, certified, return receipt requested, as of the date which is the date of the post mark on such notice, and (iii) if delivered by overnight courier or express mail service for next business day delivery where the sender provides or retains evidence of the date of delivery, as of the date of such delivery. ;

To Purchaser:

The City of Beaufort

1911 Boundary Street  
Beaufort, SC 29902  
Attn: William Prokop, City Manager  
Email: wprokop@cityofbeaufort.org

With a copy to:

Harvey & Battey, PA  
c/o William B. Harvey, III  
1001 Craven Street  
Beaufort, SC 29902  
Phone: 843-524-3109  
Email: bharvey@harveyandbattey.com

To Seller:

Fire Station #30 LLC  
c/o Warren S. Chapman  
316 Sugar House Retreat  
Mt. Pleasant, SC 29464

With a copy to:

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17. **Governing Law.** This Agreement shall be governed, interpreted and construed under the laws of the State of South Carolina.

18. **Jurisdiction & Venue.** In any dispute arising out of this Agreement, Purchaser and Seller Lessee submit to the jurisdiction of the local state or federal court that encompasses Jasper County, South Carolina. Additionally, Purchaser and Seller agree that venue lies in said local state or federal courts.

19. **Assignment.** Purchaser may assign its rights and obligations in part or in whole hereunder to any affiliated entity or any other entity formed or to be formed of which Purchaser or the principals of Purchaser shall own and/or control the same.

20. **Time of the Essence.** Time is of the essence in the performance of each of the terms and conditions of this Agreement.

21. **Conditions and Contingency:** Building and land are sold as is, and without any warranties or representations by the Seller. Sale is contingent upon (1) passage of an Ordinance by Beaufort City County authorizing the purchase of the Property, and approving the authority of the City Manager to

execute this and all other documents necessary for the transaction and, (2) Purchaser obtaining financing of the transaction by a General Obligations (GO) Bond, and (3) Purchaser obtaining a permanent access, ingress and egress easement at least 24 ft. in width, over and across the roadway from Robert Smalls Parkway to the rear of the Property, as shown in the Site Layout Plan dated 7/7/17 attached hereto and incorporated herein.

22. **Risk of Loss.** Seller shall bear all risk of loss until the Closing. In the event that prior to the Closing, the Property is damaged by fire or other casualty of any nature whatsoever, Seller shall promptly give Purchaser written notice thereof.

23. **Waiver.** Failure of either Purchaser or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Purchaser's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

24. **Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

25. **Captions; Construction.** All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement. The parties hereto hereby acknowledge and agree that (i) each party hereto is of equal bargaining strength, (ii) each such party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with its own independent counsel, and such other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement, (iv) each such party and its counsel and advisors have reviewed this Agreement, (v) each such party has agreed to enter into this Agreement following such review and the rendering of such advice and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

26. **Severability.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

27. **Entire Agreement.** Time is of the essence of this Agreement. This Agreement constitutes the sole and entire agreement of the parties and is binding upon Seller and Purchaser, their heirs, successors, legal representatives and assigns.

28. **Date for Performance.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

29. **Condemnation and Casualty.** In the event that prior to Closing any action or proceeding is filed, or notice thereof is given to Seller under which any portion of the Property may be taken pursuant to any governmental law, ordinance or regulation, or by condemnation or the right of eminent domain, causes the Property to become out of compliance with any applicable zoning or other land use regulations, any permits or licenses pertaining to the Property, or any private recorded restrictive covenants or easements that affect the Property, then in any such event Purchaser, at Purchaser's sole option, exercisable by written notice to Seller and Agent within twenty (20) days after Purchaser is made aware of such occurrence, shall have the right to either: (i) reaffirm this Agreement and direct Seller to transfer and assign to Purchaser at Closing all of Seller's rights, title and interest in and to any condemnation or insurance proceeds which may be received by reason of such taking or casualty (including payment by Seller to Purchaser of any applicable insurance deductibles), or (ii) terminate this Agreement and receive a prompt refund of the Earnest Money, in which case this Agreement shall thereupon become null, void and of no further force or effect and Seller shall retain the condemnation or casualty proceeds and all rights thereto (as the case may be).

30. **Section 1031 Exchange.** In the event that Seller or Purchaser elects to effectuate a Section 1031 exchange ("***Exchange***") in connection with the purchase and sale of the Property contemplated in this Agreement, the other party agrees to cooperate with the exchanging party to enable the exchanging party to accomplish such exchange. Notwithstanding anything to the contrary contained herein, Seller or Purchaser shall have the right to assign its interest under this Agreement without the other party's consent for the sole purpose of enabling the assigning party to effectuate the Exchange, including execution of any necessary acknowledgment documents; provided, however, that notwithstanding any such assignment, the assigning party shall not be released from any of its liabilities, obligations or indemnities under this Agreement. The other party shall cooperate in all reasonable respects with the assigning party to effectuate such Exchange; provided, however, that: (a) the Closing shall not be extended or delayed by reason of such Exchange unless agreed to in writing by the parties; (b) the non-assigning party shall not be required to incur any additional cost or expense as a result of such Exchange, and the assigning party shall forthwith, on demand, reimburse the non-assigning party for any additional cost or expense excepting for attorney's fees incurred by the non-assigning party as a result of the Exchange in reviewing documents; and (c) the assigning party's ability to consummate the Exchange shall not be a condition to the obligations of assigning party under this Agreement, and the non-assigning party does not warrant and shall not be responsible for any of the tax consequences to assigning party with respect to the transactions contemplated hereunder.

31. **Date of Agreement.** The submission of this Agreement to Seller for examination or consideration does not constitute an offer to purchase the Property, and this Agreement shall become effective, if at all, only upon the full execution and delivery thereof by Purchaser and Seller.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates set forth below.

**IN THE PRESENCE OF:**

**PURCHASER**

\_\_\_\_\_  
\_\_\_\_\_

The City of Beaufort  
By: \_\_\_\_\_  
William Prokop, City Manager

Date signed by Purchaser: \_\_\_\_\_, 2021

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SELLER**  
**Fire Station #30, LLC**

By: \_\_\_\_\_  
Warren S. Chapman  
Its: \_\_\_\_\_

Date signed by Seller: \_\_\_\_\_, 2021

Seller's Federal Tax ID Number: \_\_\_\_\_

**EXHIBIT "A"**

**SURVEY**

## **EXHIBIT “B”**

### **Escrow Exhibit**

(1) In performing any of its duties hereunder, Agent shall not incur any liability to anyone for any damages, losses, or expenses, unless such action or omission is negligent, willful or inconsistent with the provisions of this Agreement. Agent may rely upon any instrument as being duly executed, valid, and effective, and as containing accurate information and genuine signatures.

(2) Seller is aware that Agent serves as counsel to Purchaser in this and other transactions. Seller agrees that the duties of Agent hereunder are ministerial in nature and shall not disqualify Agent from representation of Purchaser in connection with this Agreement or any dispute that may arise hereunder. Notwithstanding anything in this agreement to the contrary, in the event of a dispute between Seller and Purchaser arising prior to or at the time of the delivery or other disposition of the Earnest Money by Agent pursuant hereto, which dispute shall be sufficient, in the sole discretion of Agent, to justify its doing so, Agent shall be entitled to tender the Earnest Money into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon Agent shall be discharged from all further duties and liabilities under this agreement. Any such legal action may be brought in such court as Agent shall determine to have jurisdiction thereof. Agent's determination of whether a dispute exists between Seller and Purchaser shall be binding and conclusive upon all parties hereto, notwithstanding any contention that no dispute exists. All costs and expenses incurred by Agent in taking any action pursuant to this paragraph shall be covered by and paid pursuant to the indemnification of Agent contained in the following paragraph. If any dispute should arise concerning the disbursement of any funds held by Agent and Agent deposits the funds so held as detailed above, then Agent may continue its representation of [Purchaser/Seller] in connection with such action.

(3) Purchaser and Seller shall, and do hereby, jointly and severally indemnify, defend, and hold Agent harmless from, against, and in respect of: (i) any and all demands, judgments, expenses, costs, losses, injuries, or claims of any kind whatsoever whether existing on the date hereof or hereafter arising, incurred by Agent by reason of, from, or in connection with this agreement or any action taken or not taken by Agent under or in connection with this agreement; and (ii) any and all counsel fees, expenses, disbursements of counsel, amounts of judgments, demands, assessments, costs, fines, or penalties, and amounts paid in compromise or settlement, incurred or sustained by Agent by reason of, in connection with, or as a result of any claim, demand, action, suit, investigation, or proceeding (or any appeal thereof or relating thereto or other review thereof) incident to the matters covered by the immediately preceding clause (i).

(4) If Agent shall notify Seller and Purchaser of its desire to be relieved of any further duties and liabilities hereunder, then Agent shall deliver the Earnest Money to a successor escrow agent designated by Seller and Purchaser. If Seller and Purchaser shall fail to agree upon and designate a successor escrow agent within ten (10) days after having been requested by Agent to do so, then Agent shall in its discretion designate the successor escrow agent. The successor escrow agent designated by Seller and Purchaser or by Agent, as the case may be, shall be a bank or trust company having trust

powers in good standing and located in Columbia, South Carolina, and shall agree to be bound by all the terms and conditions of this agreement. Immediately upon agreement by the successor escrow agent to be bound by all the terms and conditions of this agreement, the original Agent shall be relieved of any and all duties and liabilities under or in connection with this agreement; provided, however, that no successor escrow agent shall assume any liability for the acts or omissions of its predecessor escrow agent(s) hereunder.

(5) The agency created in Agent hereby is coupled with an interest of Seller and Purchaser and shall be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser. This escrow shall not be revoked or terminated by reason of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, but shall continue to be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser in the manner provided herein. In the event of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, Agent may rely and act upon any notices permitted or required to be given hereunder from any person, firm, partnership, or corporation believed by Agent in good faith to be the heir, successor, legal representative or assign of such dissolved or liquidated party.

(6) The address for the receipt of notices and other communications by Agent hereunder is as follows:

Harvey & Battey, PA  
Attn: Kevin E. Dukes, Esq.  
1001 Craven Street  
Beaufort, SC 29902  
Telephone: 843-524-3109  
kdukes@harveyandbattey.com