



The Town of Hilton Head Island
Town Council
Tuesday, May 7, 2019, 4:00 p.m.
Benjamin M. Racusin Council Chambers

AGENDA

As a courtesy to others please turn off / silence ALL mobile devices during the Town Council Meeting. Thank You.

1. Call to Order

2. FOIA Compliance - Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Pledge to the Flag

4. Invocation – Father Greg Kronz of St. Luke’s Church

5. Approval of Minutes

- a. Town Council Meeting, April 23, 2019
- b. Town Council Special Meeting, April 25, 2019

6. Report of the Town Manager

- a. U.S. 278 Gateway Corridor Committee Update, David Johnson, Chairman
- b. Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association
- c. Items of Interest

7. Reports from Members of Council

- a. General Reports from Council
- b. Report of the Intergovernmental Committee – Bill Harkins
- c. Report of the Community Services & Public Safety Committee – Marc Grant
- d. Report of the Public Planning Committee – David Ames
- e. Report of the Finance & Administrative Committee – Tom Lennox

8. Appearance by Citizens

[Town Code § 2-5-70: To sign-up, notify the Town Clerk prior to 12:00 p.m. the day of the meeting. All comments are limited to 3 minutes.]

9. Consent Agenda - NONE

10. Proclamations/Commendations - NONE

11. Unfinished Business

a. Revised First Reading of Proposed Ordinance 2019-05 – Animal Control Ordinance

Revised First Reading of Proposed Ordinance 2019-05 amending Chapter 1 of Title 17 of the Municipal Code of the Town of Hilton Head Island, South Carolina, adopted by reference of the Beaufort County Ordinance Chapter 14, Article II Animal Control; and providing for severability and an effective date.

12. New Business

a. First Reading of Proposed Ordinance 2019-09 – Shore Beach Services, Inc. Franchise & Services Agreement Renewal

First Reading of Proposed Ordinance 2019-09 granting a renewal term of five years to Shore Beach Services, Inc. for a Non-Exclusive Franchise for the purpose of conducting certain commercial activities within specified public beach areas on Hilton Head Island; and providing for severability and an effective date.

b. First Reading of Proposed Ordinance 2019-15 – Fiscal Year 2020 Budget

First Reading of Proposed Ordinance 2019-15 to raise revenue and adopt a budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2020; to establish a Property Tax Levy; to establish Funds; to establish a policy for Acquisition of Rights of Way and Easements; and providing for severability and an effective date.

c. Consideration of a Recommendation – Hilton Head Island-Bluffton Chamber of Commerce DMO Agreement with the Town

Consideration of a Recommendation from the Finance and Administrative Committee to the Town Council of Hilton Head Island, South Carolina, regarding the Chamber of Commerce Visitor and Convention Bureau (VCB) as the Town's Designated Marketing Organization for the State Accommodations Tax Purposes.

13. Executive Session

a. Land Acquisition

Discussion of negotiations incident to the proposed sale, lease, or purchase of property in the Beach City Road area.

b. Personnel Matters

Discussion of appointments of members related to Boards and Commissions.

14. Possible actions by Town Council concerning matters discussed in Executive Session

a. Possible actions regarding discussions of appointments of members related to Boards and Commissions.

15. Adjournment

**TOWN OF HILTON HEAD ISLAND
TOWN COUNCIL MEETING**

Date: Tuesday, April 23, 2019

Time: 4:00 p.m.

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; Marc Grant, Tom Lennox, David Ames, Tamara Becker, Glenn Stanford, *Council Members*

Present from Town Staff: Steve Riley, *Town Manager*; Joshua Gruber, *Assistant Town Manager*, Shawn Colin, *Director of Community Development*; Scott Liggett, *Director of Public Projects and Facilities*; Brian Hulbert, *Staff Attorney*; Brad Tadlock, *Fire Chief*; Krista Wiedmeyer, *Executive Assistant/Town Clerk*

Present from Media: Katherine Kokal, *Island Packet*

1. Call to Order

Mayor McCann called the meeting to order at 4:00 p.m.

2. FOIA Compliance – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Pledge of the Flag

4. Invocation – Reverend Brett Myers, First Baptist Church Hilton Head Island

Reverend Brett Myers of First Baptist Church Hilton Head Island delivered the invocation.

5. Proclamations/Commendations

a. Bike Month

Mayor McCann presented the 2019 Bike Month proclamation to Frank Babel and the Hilton Head Island Bike Advisory Committee. Mr. Babel made some brief statements to the members of Council.

6. Approval of the Minutes

a. Town Council Meeting, April 2, 2019

Mr. Harkins moved to approve the minutes from April 2, 2019. Mr. Grant seconded, the motion was approved by a vote of 7-0.

7. Report of the Town Manager

a. Beaufort County Economic Development Corporation – John O’Toole

John O’Toole, Executive Director of the Beaufort County Economic Development Corporation, made a presentation to the members of Council giving an update of the recent happenings taking place within the Beaufort County EDC. He discussed new leads and the target market within the County. Mr. O’Toole also discussed the return of organizations to the County and many new organizations to the County. He closed his update with what the EDC is working on for the future.

b. Items of Interest

Mr. Riley reviewed the Items of Interest, including Town news, upcoming Town meetings, and noteworthy events taking place throughout the Island over the coming weeks.

8. Reports From the Members of Council

a. General Reports from Council

Mayor McCann, Mr. Harkins, and Mr. Lennox all gave their gratitude to all those involved with the Heritage golf tournament. They all felt this was one of the best and most attended tournaments they have seen to date.

Mr. Stanford reported that he met with Mr. Rembold at the Hilton Head Island Airport, where he was taken on a tour. He said they discussed takeoff and landing patterns of the planes which has been put in place to abate more of the noise.

b. Intergovernmental & Public Safety Committee – Bill Harkins

Mr. Harkins stated he did not have a report.

c. Community Services Committee – Marc Grant

Mr. Grant stated that the Committee met on April 22nd where they reviewed applications and interviewed applicants for boards and commissions. He said that the Committee planned to continue this process on April 29th, and hoped to bring forward recommendations to the next Town Council meeting on May 7, 2019.

d. Public Planning Committee – David Ames

Mr. Ames stated that the Committee was to discuss the Town's code concerning the protection of the sea turtles at the April 25th meeting, however that meeting had been cancelled to allow for additional feedback from stakeholders. He indicated that the intent would be to review the ordinance at the next Committee meeting. Mr. Ames also reported that staff is working on scheduling a workshop to begin reviewing the results from the workforce housing consultant's report.

e. Public Facilities Committee – Marc Grant

Mr. Grant stated that he did not have a report.

f. Finance & Administrative Committee – Tom Lennox

Mr. Lennox stated that the Committee met earlier in the day, where they discussed two items related to the Chamber and DMO, where they recommended that action be taken at the May 7, 2019 Town Council meeting.

9. Appearance by Citizens

Skip Hoagland: Mr. Hoagland appeared before Council to discuss matters related to Town business and the Chamber.

Joanne Voulelis: Ms. Voulelis appeared before Council to discuss matters related to the Town's current code related to debris on the beach and protection of the sea turtles.

Linda Vambelli: Ms. Vambelli appeared before Council to discuss matters related to the Town's current code related to the lighting and holes on the beaches.

Risa Prince: Ms. Prince appeared before Council to discuss matters related to the Town and decisions made by the members of Town Council.

Chris Rush: Mr. Rush appeared before Council to discuss matters related to the Town's current code related to holes on the beach and the types of tools used for digging said holes.

9. Appearance by Citizens (cont.)

Deborah Yuratto: Ms. Yuratto appeared before Council to discuss matters related to the Town's branding and current code related to the protection of the sea turtles.

Barry Ginn: Mr. Ginn appeared before Council to discuss matters related to Town business.

10. Consent Agenda – NONE

11. Unfinished Business

a. Second Reading of Proposed Ordinance 2019-12 – Execution of Lease & Sale of Real Property with ArborNature, LLC

Second Reading of Proposed Ordinance 2019-12 of the Town of Hilton Head Island, South Carolina authorizing the execution of a lease with ArborNature, LLC of real property owned by the Town of Hilton Head Island, South Carolina, and for the sale of real property owned by the Town of Hilton Head Island, South Carolina, under the authority of S.C. Code Ann. § 5-7-40 (Supp. 2018), and § 2-7-20, Code of the Town of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

Mr. Harkins moved to approve. Mrs. Becker seconded. Mr. Stanford noted that he had not been part of Council or part of any discussions concerning this matter, as such he would be abstaining from the vote. Mrs. Becker stated that she wanted to note that she had not participated in all discussions, but would be participate in the vote. With no further discussion from the members of Council or the public at large, the motion passed by a vote of 5-1-1. Mayor McCann opposed, Mr. Stanford abstained.

b. Second Reading of Proposed Ordinance 2019-11 – Standing Committee of Town Council

Second Reading of Proposed Ordinance 2019-11 of the Town of Hilton Head Island, South Carolina, to amend Title 2 General Government and Administration of the Municipal Code of the Town of Hilton Head Island, South Carolina by amending Chapter 5 (Meetings of Council and Rules of Procedure) Section 2-5-60, Committees of Council; and providing for severability and an effective date.

Mr. Harkins moved to approve. Mrs. Becker seconded. With no discussion from Town Council or the public at large, the motion was approved by a vote of 7-0.

12. New Business

a. Consideration of a Recommendation – Approval of Marketing Plan

Consideration of a Recommendation from the Accommodations Tax Advisory Committee for the Chamber of Commerce Visitor and Convention Bureau's proposed 2019-20 Marketing Plan.

Mr. Harkins moved to approve. Mr. Grant seconded. With some discussion from both the members of Council and the public at large, the motion was approved by a vote of 7-0.

b. Consideration of a Recommendation – Trash & Recycle Enclosures on the Beach

Consideration of a Recommendation from the Public Facilities Committee to the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the placement of two can corral structures at Town Beach Park access points in order to enclose existing trash and recycling containers.

Mr. Harkins moved to approve. Mrs. Becker seconded. With some discussion from both the members of Council and the public at large, the motion was approved by a vote of 7-0.

13. Executive Session

Mr. Riley stated that an Executive Session was needed to review the following matters; (a) Land Acquisition, discussion of negotiations incident to the proposed contractual arrangements, sale or purchase of property in the (i) Beach City Road area, and (ii) Main Street area.

At 5:05 p.m. Mr. Harkins moved to go into Executive Session for the items mentioned by the Town Manager. Mrs. Becker seconded. The motion was approved by a vote of 7-0.

Town Council returned from Executive Session at 5:30 p.m.

14. Possible actions by Town Council concerning matters discussed in Executive Session

- a. Possible actions by Town Council related to Land Acquisition, discussion of negotiations incident of the proposed sale, lease, or purchase of property in the Main Street area.

Due to a possible conflict, Mr. Harkins recused himself from participating in discussions and actions related to this item.

Mr. Grant moved that the Town Council authorize the Mayor and Town Manager to execute and deliver the agreement by and between the Town of Hilton Head Island and Marilyn Faulkner, Personal Representative of the Estate of Gordon K. Faulkner, and to take such other and further actions as may be necessary to complete the transaction described in the agreement. Mr. Stanford seconded. With limited discussion from the public at large, the motion was approved by a vote of 6-0.

15. Adjournment

At 5:34 Mrs. Becker moved to adjourn. Mr. Grant seconded. The motion to adjourn was approved by a vote of 6-0.

Krista Wiedmeyer, Town Clerk

Approved: May 7, 2019

John J. McCann, Mayor

**TOWN OF HILTON HEAD ISLAND
TOWN COUNCIL SPECIAL MEETING**

Date: Thursday, April 25, 2019

Time: 10:30 a.m.

Present from Town Council: John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; Marc Grant, Tom Lennox, David Ames, Tamara Becker, Glenn Stanford, *Council Members*

Present from Town Staff: Steve Riley, *Town Manager*; Joshua Gruber, *Assistant Town Manager*, Shawn Colin, *Director of Community Development*; Brian Hulbert, *Staff Attorney*; John Troyer, *Director of Finance*; Teri Lewis, *Deputy Director of Community Development*; Steven Markiw, *Deputy Finance Director*; April Akins, *Revenue Services Supervisor*; Wendy Conant, *Code Enforcement Officer*; Nicole Dixon, *Department Review Administrator*; Jayme Lopko, *Senior Planner*; Teresa Haley, *Senior Admin Assistant*; Krista Wiedmeyer, *Executive Assistant/Town Clerk*

Present from Media: Katherine Kokal, *Island Packet*

1. Call to Order

Mayor McCann called the meeting to order at 10:33 a.m.

2. FOIA Compliance – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Business License Appeal Hearing

a. Taiwan Scott Appeal of Denial of Business Licenses for Year 2019

Prior to the opening of the hearing, Mr. Grant made a motion, offering the Appellant, Mr. Taiwan Scott the opportunity to move the structures out of the buffer area. Mr. Grant further moved that the Town pay for Mr. Scott's fees for the moving of the structures, and provide access to Town Engineering staff to reconfigure the structures. Mr. Scott stated that he would not accept the offer provided by Mr. Grant, asking to move forward with the appeal process. With that, the parties began their opening statements.

Brian Hulbert, Town Prosecutor, opened the hearing by confirming that the members of Town Council preferred to hear all four denials as one matter and not four separate matters. Upon confirmation from Council, he provided them with the full exhibits list, appended herein. Taiwan Scott, Appellant, representing himself, began his opening remarks.

The following witnesses were called and examined by Mr. Hulbert, Mr. Scott, and the members of Town Council:

Steven Markiw, Deputy Director of Finance, Teri Lewis, Deputy Director of Community Development, and Wendy Conant, Code Enforcement Officer.

Upon the conclusion of the review of witness, both the Town and Appellant made their closing remarks to the members of Council.

At 3:24 Mayor McCann asked each member of Council for their final remarks based on what they had heard.

After each member of Council including the Mayor made a brief statement concerning the day's hearing, the Mayor made a motion to uphold the staff's recommendation of the denial of Mr. Scott's Business Licenses for the year 2019. Mr. Harkins seconded. The motion was approved by a vote of 5-2, with Mrs. Becker and Mr. Stanford opposing.

4. Executive Session – NONE

5. Adjournment

Mayor McCann adjourned the meeting at 3:54 p.m.

Krista M. Wiedmeyer, Town Clerk

Approved, May 7, 2019

John J. McCann, Mayor

DRAFT

Exhibit List Taiwan Scott Business License Appeal March 2019

1. Taiwan Scott Appeal Letter dtd March 26, 2019
2. Notice of Appeal Hearing dtd April 5, 2019
3. Affidavit of Mailing Certified and Regular U.S. Postal Service dtd April 5, 2019
4. Relevant Business License Code Sections
5. Relevant LMO Code Sections
6. Business License Denial Letter for Business Registration # 21882 dtd March 11, 2019
7. Business License Application Registration # 21882 dtd July 24, 2018 (**Beautiful Island Food Sales fruits and vegetables**)
8. Business License Denial Letter for Business Registration # 22103 dtd March 11, 2019
9. Business License Application Registration # 22103 dtd October 1, 2018 (**Beautiful Island Cooking**)
10. Business License Denial Letter for Business Registration # 22104 dtd March 11, 2019
11. Business License Application Registration # 22104 dtd October 1, 2018 (**Commissary Kitchen**)
12. Circuit Court Order dtd December 27, 2016 (**Upheld BZA and LMO Official Determination**)
13. BZA Order dtd January 25, 2016 (**Upheld LMO Official Determination**)
14. Staff Memos to BZA with timeline dtd November 5, 2015 and December 22, 2015
15. Taiwan Scott Appeal to BZA dtd Nov 2, 2015
16. LMO Official Determination Ltr dtd October 21, 2015 (**Properties do not function together**)
17. February 23, 2015 Email Heather Colin to Tai Scott (**need to comply with Town Regulations**)
18. Building Permit # 2025-2014 for Residential Accessory Structure dtd Sept. 15, 2014 and Application for Residential Accessory Structure (**for storage and deck**) dtd Sept. 15, 2014
19. Pre-Application Agenda Package dtd October 14, 2013 (**concession trailer and drive aisles**)
20. Communications to Mr. Scott regarding the violations at 15 Marshland Road and steps necessary to come into compliance.
21. Ms. Lewis Letter dtd Nov 29, 2018 communicating to Mr. Scott the requirements necessary prior to staff approval of business license applications.
22. Relevant Photos of 15 Marshland Road
23. Taiwan Scott Appeal Letter dtd April 16, 2019
24. Notice of Appeal Hearing Business License #18269 dtd April 22, 2019
25. Affidavit of Mailing Certified and Regular U.S. Postal Service dtd April 22, 2019
26. Business License Denial Letter for Business Registration # 18269 dtd April 02, 2019
27. Business License Application Registration # 18269 dtd Aug 28, 2015 (**Beautiful Island LLC, Commercial Rental**)
28. Business License **Renewal Form 18269** for year 2018 (redacted income numbers)



TOWN OF HILTON HEAD ISLAND ITEMS OF INTEREST MAY 7, 2019

TOWN NEWS

- Not only did Hilton Head Island have the first sea turtle nest of the 2019 season in late April, but it was the rare and endangered Kemp's Ridley sea turtle. This is the first nest of its kind on Hilton Head Island and only the fourth ever recorded in South Carolina.

TOWN OF HILTON HEAD ISLAND MEETINGS

- Parks & Recreation Commission – Thursday, May 9, 2019 – 3:30 p.m.
- Town Council Budget Workshop – Tuesday, May 14, 2019 – 4:00 p.m.
- Planning Commission – Wednesday, May 15, 2019 – 3:00 p.m.
- Finance and Administrative – Tuesday, May 21, 2019 – 2:00 p.m.
- Town Council Meeting – Tuesday, May 21, 2019 – 4:00 p.m.
- Town Council Budget Workshop – Tuesday, May 21, 2019 – Immediately Following the scheduled meeting.

Meetings are subject to change and/or cancellation. Please visit the Town's website at www.hiltonheadislandsc.gov for meeting dates and times.

HILTON HEAD ISLAND EVENTS

- Spring Music & Taste on the Harbour – Every Thursday through May 16th - 6:00 – 9:00 p.m. at Shelter Cove Harbour
- Walk for Dom Beach Walk – Saturday, May 18, 2019 – 7:00 – 12:00 p.m. at Coligny Beach
- La Isla Magazine Fiesta de Mayo – Sunday, May 19, 2019 – 12:00 – 9:00 p.m. at Shelter Cove Community Park



For more events taking place on the Island, please visit the Town's Office of Cultural Affairs Events page at www.culturehhi.org/events/.

MEMORANDUM

TO: Town Council
FROM: Staff Attorney

RE: **Revised First Reading** of Proposed Ordinance 2019-05, Request by Beaufort County for the Town to Amend the Beaufort County Animal Control Ordinance.

DATE: April 11, 2019

CC: Stephen G. Riley, ICMA-CM, Town Manager
Joshua Gruber, Assistant Town Manager

Recommendation: Staff recommends approval of the ordinance amendments. A copy of the County's proposed ordinance amendment is attached.

Summary: Beaufort County Council has now had a second reading of the proposed amendment to the Animal Control Ordinance. Because some changes were made to the proposed amendment between the first and second reading and after Hilton Head Island's Town Council's first reading, a revised first reading is required.

Changes which were made to the proposed ordinance amending the Animal Control Ordinance are as follows:

1. Add definition of "Provocation"

Provocation- an intentional action or statement made to incite anger, aggression, annoyance or a violent response.

2. Delete paragraph 14-32 (a) (6), add paragraph (b), and add additional wording to the new paragraph (c) in Section 14-32.

Sec. 14-32. – Dangerous animals.

(a) For the purposes of this section, a dangerous or vicious animal *shall* be defined to be any one of the following:

- (1) An animal which the owner knows or reasonably should know has a propensity, tendency, or disposition to attack unprovoked, cause injury, or to otherwise endanger the safety of human beings or domestic animals;
- (2) An animal which makes an unprovoked attack that causes bodily injury to a human being and the attack occurs in a place other than the place where the animal is confined;
- (3) An animal which commits unprovoked acts in a place other than the place where the animal is confined and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being;
- (4) An animal which is owned or harbored primarily or in part for the purpose of fighting or which is trained for fighting;

(5) An animal which is used as a weapon in the commission of a crime;
~~(6) An animal which causes serious injury to a human being, other than the owner, regardless of provocation or location.~~

(b) Notwithstanding paragraph (a) above, a Magistrate Judge may deem an animal a Dangerous Animal, after considering the totality of the circumstances, regardless of location of an attack or provocation, when an attack results in serious injury to a human.

(c) Declaration of a dangerous animal, confinement requirements, and final determination of danger animal declaration.

(2) When, in the discretion of an animal services officer or law enforcement officer, the animal initially determined to be dangerous has caused injury to another animal or human, the officer may take temporary possession of the animal during the pendency of the final dangerous dog determination hearing before a Magistrate Judge. **When an animal services officer or law enforcement officer takes temporary possession of an animal pursuant to this section, the requirements of paragraphs a through e below shall be held in abeyance during the pendency of a hearing.**

3. Add additional language to Section 14-33.

Sec. 14-33. - Running at large.

[Unlawful.] It shall be unlawful for any owner or custodian of any dog to permit, **or allow in any way whether intentionally or unintentionally,** the same to run at large except on property owned or rented by the owner or custodian. All dogs, must be kept under restraint or confinement and under the physical control of the owner or custodian by means of a leash or other physically attached similar restraining device.

Background:

The Town repealed its Animal Control Ordinance and adopted the County Animal Control Ordinance on January 19, 2016. Each municipality in the County also adopted the County ordinance at the same time period. The Town entered into an intergovernmental agreement with Beaufort County for animal services for enforcement of the ordinance.

The County is asking that each municipality adopt the proposed amendments the ordinance.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2019-

PROPOSED ORDINANCE NO. 2019- 05

AN ORDINANCE TO AMEND CHAPTER 1 OF TITLE 17 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA ADOPTED BY REFERENCE OF BEAUFORT COUNTY ORDINANCE CHAPTER 14, ARTICLE II ANIMAL CONTROL; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina previously adopted Ordinance 2016-01 on January 19, 2016, which adopted by reference the Beaufort County Animal Control Ordinance Chapter 14, Article II titled “Animal Control”; and

WHEREAS, the Beaufort County Council now desires to amend Beaufort County Ordinance Chapter 14, Article II titled “Animal Control” for the purpose of providing for the health, safety, and general welfare of the residents and visitors of the County; and

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina and Beaufort County desire to have a consistent animal control ordinance throughout Beaufort County in order to better ensure the health, safety, and general welfare of the residents and visitors of the Town and Beaufort County; and

WHEREAS, the Town Council now desires to amend Chapter 1 of Title 17 and adopt by reference the amendments to Beaufort County Ordinance Chapter 14, Article II titled “Animal Control” for the purpose of providing for the health, safety, and general welfare of the residents and visitors of the Town.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDERED ORDAINED BY AND UNDER THE AUTHORITY OF THE SAID TOWN COUNCIL, AS FOLLOWS:

NOTE: Underlined and bold-face typed portions indicate additions to the Municipal Code. ~~Stricken~~ portions indicate deletions to the Municipal Code.

Section 1. Amendment.

- A. Chapter 1 of Title 17, Beaufort County Ordinance Chapter 14, Article II (Animal Control) of the Municipal Code of the Town of Hilton Head Island, South Carolina, is hereby amended as set forth in Attachment A and is hereby incorporated by reference. A copy of the code is hereby made a part of this chapter as fully and completely as if the same were set out herein verbatim. A

copy of the code is on file in the office of the municipal clerk. See Attachment "A" for language of the ordinance as amended.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective immediately upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS ____ DAY OF _____, 2019.

John J. McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

First Reading: _____

Revised First Reading: _____

Second Reading: _____

Approved as to form: _____

Curtis L. Coltrane, Town Attorney

Introduced by Council Member: _____

Attachment "A"

Chapter 14 - ANIMALS^[1]

Style Definition
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Footnotes:

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Cross reference— Environment, ch. 38; health and sanitation, ch. 46; agricultural use regulations, § 106-1156 et seq.

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ARTICLE I. - IN GENERAL

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Secs. 14-1—14-25. - Reserved.

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ARTICLE II. - ANIMAL CONTROL^[2]

Footnotes:

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Editor's note— [Ord. No. 2015/27](#), adopted Oct. 12, 2015, amended art. II in its entirety to read as herein set out. Former art. II pertained to the same subject matter, consisted of §§ 14-26—14-37, and derived from [Ord. No. 2010/7, adopted Apr. 26, 2010](#); [Ord. No. 2010/27, adopted Nov. 8, 2012](#); [Ord. No. 2015/18, adopted Jun. 23, 2015](#); [Ord. No. 2015/23, adopted Aug. 10, 2015](#); and [Ord. No. 2015/26, adopted Sept. 28, 2015](#).

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Sec. 14-26. - Authority for and enactment of chapter.

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Sec. 14-26. - Authority for and enactment of chapter.

This article is hereby authorized by S.C. Code 1976, § 47-3-20, as amended.

(Ord. No. 2015-27, 10-12-2015)

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Sec. 14-27. - Definitions.

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Whenever used in this chapter, unless a contrary intention is clearly evidenced, the following terms shall be interpreted as herein defined.

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Abandonment shall mean to desert, forsake, or intend to give up absolutely a pet or livestock without securing another owner or without providing for adequate food, water, shelter, and care. An animal is considered abandoned when it has been left unattended for 24 hours.

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Animal shall mean a live vertebrate creature except a human being.

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Animal services director means any person so appointed by the county administrator.

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Animal services facility shall mean any facility so designated by the county council.

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Animal services officer shall mean any person employed by the county as an enforcement officer of the provisions of this chapter.

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BCAS shall mean Beaufort County Animal Services, any place or premises designated by Beaufort County Council for the purpose of impounding, care, adoption, or euthanasia of dogs and cats held under the authority of this chapter.

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Breeder shall mean any person owning unaltered pets with the intent of selling pets' offspring.

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Domestic shall mean any animal which shares the genetic makeup and/or physical appearance of its ancestors, which were historically domesticated for human companionship and service.

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Dub shall mean to trim or remove.

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Feral shall mean any animal that was domesticated at one time, but now lives in the wild or a controlled colony, or that have been born in the wild and have not been domesticated.

Infraction shall mean a breach, violation, or infringement of this chapter for which the only sentence authorized is a fine and which violation is expressly designated as an infraction. Infractions are intended to carry a civil penalty without the possibility of jail and thus are non-criminal in nature.

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Kennel shall mean a small shelter for a dog, cat or other animal.

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Livestock shall mean all classes and breed of animals, domesticated or feral, raised for use, sale or display.

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Muzzle shall mean a guard, typically made of straps or wire, fitted over part of an animal's face to stop it from biting or feeding.

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Non-domestic shall mean any animal which shares the genetic makeup and/or physical appearance of its ancestors, which were not historically domesticated for human companionship and service.

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Nuisance shall mean a pet or livestock that disturbs the rights of, threatens the safety of, or damages a member of the general public, or interferes with the ordinary use and enjoyment of their property.

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Owner shall mean any person who:

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1. —Has a property right in an animal;

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2. —Keeps or harbors an animal or who has it in his or her care or acts as its custodian; or

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3. —Permits an animal to remain on or about any premises occupied by him or her for three or more days.

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Pet shall mean any animal which may be legally held as a pet by a private citizen without special permit or permission; i.e., dog (*canis familiaris*) and/or a domestic cat (*felis catus domesticus*).

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~~Pitbull~~ **Pit Bull** shall mean any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, ~~Stafford~~ **Staffordshire Bull Terrier, American Bulldog, American Bully, Cane Corso**, or any dog that exhibits physical characteristics which predominantly conform to the standards established by the American Kennel Club (AKC), United Kennel Club (UKC), or American Dog Breeders Association (ADBA) for any of the above breeds.

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Provocation shall mean an intentional action or statement made to incite anger, aggression, annoyance or a violent response.

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Serious injury shall mean death or any physical injury that results in severe bruising, muscle tears, or skin lacerations requiring sutures or other professional medical treatment or requires corrective or cosmetic surgery.

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Shelter shall mean a structure that made of durable material with 4 walls, a roof and floor, that allows retention of body heat and is of suitable size to accommodate the animal and will reasonably ~~may~~ be expected to protect the animal from physical suffering or impairment of health due to exposure to the elements or adverse weather.

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Tethering shall mean a chain, rope, leash, cable, or other device that attaches the pet via a collar or harness to a single stationary point.

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Strict voice control shall mean demonstrable control or governance of the behavior of any animal as if such animal were controlled by a leash. However, when an animal destroys or damages any property, attacks, threatens to attack, or interferes with any person in any manner, becomes a nuisance, or strays onto the private property of another, there shall be a presumption of law that the animal was not under strict voice control.

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Unaltered shall mean a pet which has not been spayed or neutered.

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Under restraint shall mean when any pet that is off the property of the owner is controlled by a leash; is within the property limits of its owner and is confined by fence, chain, or other appropriate measure ~~or attended by its owner and responds to strict voice control~~; or confined by fence, chain, or other appropriate measure within the property of another with permission of the person in control of the property.

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Cross reference— Definitions generally, § 1-2.

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Sec. 14-28. - County pet license; rabies vaccination tags.

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It shall be unlawful for the owner of any pet to fail to provide any pet over four months of age with a current county annual or lifetime license. The owner of any pet over ~~four (4) four months~~ of age must also have a current rabies vaccination tag securely attached to a collar or harness and be visible as proof the pet has been vaccinated by a licensed veterinarian. No county license will be issued unless proof of

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rabies inoculation is shown. Any pet owner who moves into the county for the purpose of establishing residency shall have 30 days in which to obtain the license.

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(Ord. No. 2015/27, 10-12-2015)

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Sec. 14-29. - Lifetime/annual pet license issuance, fees and exemptions.

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(a) —Eligibility. The owner of a pet four months of age or older that is after being spayed/neutered and permanently identified, may apply to BCAS for a lifetime license; the lifetime pet license is only for Beaufort County, South Carolina.

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(b) —Permanent identification requirement. A person applying for a an annual license or lifetime license shall choose either a tattoo, a BCAS approved tag, or ~~the~~ implantation of a microchip as the means of permanent identification for the pet. Lifetime licenses are transferable to new owners, upon the new owner completing a new BCAS pet license application, permanent identification form, and when applicable, a new registration with the micro-chipping company. For permanent identification of restricted breeds, see Section 14-30.

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(c) —Pets previously microchipped. If a person has previously had a microchip implanted for his/her pet and seeks to obtain a lifetime license for the pet, the applicant shall:

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(1) —Obtain and complete both a lifetime license application and a verification of permanent identification form as prescribed by BCAS.

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(2) —Have a licensed veterinarian or shelter employee scan the pet to assure the microchip has been properly implanted and to obtain the identifying number of the microchip.

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(3) —The pet owner and the licensed veterinarian shall complete, date, and sign the verification of a permanent identification form for the pet in which the microchip was scanned. The verification of permanent identification form must set forth the identifying number of the microchip scanned, identify the pet by breed and delineate the age, sex, color, and markings and whether it has been spayed or neutered. In addition, it must contain the name, address, and phone number of the pet's owner and the name, business address, and phone number of the person scanning the microchip number. If a veterinarian is involved, the veterinarian shall set forth his/her veterinary practice license number on the verification of permanent identification form.

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(d) —County license and fees.

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The county license Director of BCAS shall establish a fee schedule of fees are as follows: subject to the approval of County Council.

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(1) — Pets previously sterilized and with permanent identification shall All pet owners of dogs and cats in Beaufort County shall obtain either a lifetime or annual pet license.

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~~Lifetime pet license. To be eligible for a lifetime pet license a pet shall:~~

~~(1) Be spayed or neutered~~

~~(2) Microchipped~~

~~(3) Pay the appropriate one-time fee of \$5.00, per the published fee schedule.~~

~~(2) — Pets previously sterilized and provided with permanent identification by BCAS shall be charged a one-time microchip fee and \$5.00 license fee.~~

~~(3) — Fertile Annual Pet license. All other pets with a permanent identification shall be \$20.00 annually. Fertile pet licenses will expire on June 30 of each year and are non-transferable.~~

~~(4) — Fertile pets with no permanent identification shall be \$50.00 annually and will be issued a metal tag to be worn at all times fertile pet licenses will expire on June 30 of each year and are non-transferable.~~

~~(e) — Exemptions. Exempt owners shall be required to pay a one-time microchip subject to an annual pet license and annual fee and will not be required to have the pet spayed/neutered. The, except that the following are exempt owners: exemptions may be eligible for a lifetime license.~~

~~(1) — Any owner of a pet who can furnish a statement from a licensed veterinarian that the pet, due to health reasons, could not withstand spay/neuter surgery may receive a lifetime license.~~

~~(2) — Any owner of one or more purebred pets who can furnish proof of participation in nationally recognized conformation or performance events within the past 12 months.~~

~~(3) — (2) Any owner of a dog that is currently being used for hunting purposes. Owner must provide a copy of a valid South Carolina hunting license by the proper state agency and proof that the dog is properly registered with the South Carolina Department of Natural Resources. Under this exemption, the dog owner may receive a lifetime license without spaying or neutering the dog.~~

~~(4) — Any owner of a dog which is trained to be an assistance dog for its owner shall be required to obtain a lifetime license but shall not be required to pay any license fee.~~

~~(Ord. No. 2015/27, 10-12-2015)~~

~~(Ord. No. 2015/27, 02-01-2018)~~

Sec. 14-30. - Declaration of restricted dog, appeal of breed determination.

(a) — For the purposes of this section, a restricted dog shall be defined as a ~~pit bull~~ **pit bull.**

(b) — No person may own, keep, or harbor a restricted dog in violation of this section.

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(c) —An owner or custodian of restricted dogs must have the dog spayed or neutered unless the owner of the restricted dog provides BCAS written proof one of the following exemptions applies:

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(1) —The restricted dog is less than four months of age;

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(2) —A licensed veterinarian has examined the animal and signed a written certificate stating that at such time spaying or neutering would endanger the animal's health because its age, infirmity, disability or other medical consideration. The certificate shall state the period of exemption from this requirement and shall not be valid for more than 12 months from the date of issuance.

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(3) —The determination of the dog's breed is under appeal pursuant to ~~section 14-30~~ section 14-30(d)(2);

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(4) —The owner or custodian has owned or had custody of the dog less than 30 days.

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~~(d)~~ —(d) An owner or custodian of a restricted dog must provide for the dog's permanent identification by implantation of a BCAS approved microchip.

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(e) Determination of breed and appeal of determination.

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(1) —Determination. The director of BCAS or his or her designee, in his or her discretion, may ~~make an initial breed determination upon contact with~~, or impoundment of a dog. The determination shall be made by the director or designee in accordance with BCAS's breed determination checklist. Technical deficiency in the dog's conformance to the standards defined in ~~section 14-27 for pit bulls~~ section 14-27 for pit bulls shall not be construed to indicate the dog is not a pit bull dog under this section.

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(2) —Notice. Upon determination of the breed, the animal services officer shall deliver written notice of determination to the owner or any adult residing at the premises where the animal is located or by posting on the premises if no adult is present. The notice shall include the determination of breed, mandatory spay and neuter requirements, an administrative penalty and notice of appeal process.

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(3) —~~[Compliance.]~~ The owner or custodian of an unaltered restricted dog shall comply with this article within 30 ~~10~~ days after receipt of notice of ~~breed~~ restricted dog determination. Upon compliance, the owner or custodian shall submit written documentation to BCAS confirming compliance. If ownership of the dog is transferred within the time for compliance the original owner or custodian must provide BCAS with the new owner's name and address.

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~~(e)~~ —(f) Appeal. Notice of a declaration of breed determination constitutes a final determination that the dog is a restricted dog, unless the owner or custodian requests a hearing in writing to the Beaufort County Magistrate Court within ten days of service of the notice.

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(Ord. No. 2015/27, 10-12-2015)

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Sec. 14-31. - Pet breeder license, inspection and fees.

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It shall be unlawful for a pet breeder to fail to obtain a county pet breeder license. The requirements for such a license are as follows:

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(a) —Individuals engaged or intending to engage in breeding, must obtain a non-transferable, pet breeder license from BCAS.

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(b) —Applicants must have a valid county annual pet license and microchip for all pets that have reached the age of four months before applying for the pet breeder license.

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(c) —BCAS shall conduct an inspection of the identified property for the pet breeders license requested by the applicant to determine whether the applicant qualifies to hold a pet breeder license pursuant to this section.

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(d) —To qualify for a pet breeder license the applicant must demonstrate the following:

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(1) —The enclosure where the pets are being kept shall be constructed in such a manner that any pets housed there will be adequately and comfortably kept in any season of the year.

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(2) —All pet enclosures must be constructed in such a manner they can be easily cleaned and sanitized. Any kennels or yards that are connected or are used to confine the pets must be kept clean and free from accumulations of feces, filth, mud, and debris.

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(3) —Every pet on the premises must have access to sufficient good and wholesome food, and water at all times.

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(4) —The premises must be set up in such a manner as to not allow pets to stray beyond its enclosed confines. The setup must also prevent the public and stray animals from obtaining entrance into or gaining contact with any pets on the premises.

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(e) —A license will not be issued to an applicant that has pled no contest, or has been found to have violated any federal, state, or local laws or regulations pertaining to animal cruelty within five years of the date of application.

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(f) —The pet breeder license fee shall be \$100.00 annually, published in the fee schedule approved by County Council. The license shall expire on June 30 of each year, 365 days after the date it is issued.

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(g) —Any violations found under the provisions of this chapter shall be grounds for the suspension of the pet breeder license if deemed necessary by the Beaufort County Animal Services.

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([Ord. No. 2015/27, 10-12-2015](#))

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Sec. 14-32. - Dangerous animals.

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(a) —For the purposes of this section, a dangerous or vicious animal shall be defined to be any one of the following:

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(1) —An animal which the owner knows or reasonably should know has a propensity, tendency, or disposition to attack unprovoked, cause injury, or to otherwise endanger the safety of human beings or domestic animals;

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(2) —An animal which makes an unprovoked attack that causes bodily injury to a human being and the attack occurs in a place other than the place where the animal is confined;

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(3) —An animal which commits unprovoked acts in a place other than the place where the animal is confined and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being;

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(4) —An animal which is owned or harbored primarily or in part for the purpose of fighting or which is trained for fighting;

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(5) —An animal which is used as a weapon in the commission of a crime;

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~~(6) —An animal which causes serious injury to a human being, other than the owner, regardless of provocation or location.~~

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~~(b) Notwithstanding paragraph (a) above, a Magistrate Judge may (or may not) deem an animal a Dangerous Animal, after considering the totality of the circumstances, regardless of location of an attack or provocation, when an attack results in serious injury to a human.~~

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(b) —Declaration of a dangerous animal, confinement requirements, and final determination of dangerous animal declaration.

(1) —Declaration. An animal services officer or law enforcement officer, in his or her discretion, may declare make an initial determination that an animal is dangerous. Upon the initial determination, the officer shall deliver written notice to the owner or any adult residing at the premises where the animal is located or by posting on the premises if no adult is present. The notice shall include a description of the animal, a hearing date, confinement requirements and registration requirements.

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~~(2) —(2) When, in the discretion of an animal services officer or law enforcement officer, the animal initially determined to be dangerous has caused injury to another animal or human, the officer may take temporary possession of the animal during the pendency of the final dangerous dog determination hearing before a Magistrate Judge. When an animal services officer or law enforcement officer take temporary possession of an animal pursuant to the section, the requirements of paragraph "a" through "e" below shall be held in abeyance during the pendency of a hearing.~~

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(3) Confinement requirements and registration. Every dangerous animal, as determined under this section, shall be confined by the owner within 72 hours of the notice of dangerous dog determination and until the final determination of the dangerous dog declaration:

a. —All dangerous animals shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this section. Such pen, kennel or structure must have secure sides and a secure top attached to the sides.

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b. —The pen or kennel must be clearly marked as containing a dangerous animal.

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c. —No person shall permit a dangerous animal to go outside its kennel or pen unless such animal is securely leashed and muzzled with a leash no longer than six feet in length.

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d. —The owner of a dangerous animal must provide BCAS with proof of liability insurance or surety bond of at least \$50,000.00.

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e. —The owner must obtain a dangerous animal registration/license from BCAS and pay a \$5.00 registration fee. fee on the BCAS fee schedule subject to County Council approval.

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(3) —Final determination of dangerous animal declaration. Notice of a declaration of a dangerous animal constitutes an initial determination that the animal is dangerous or potentially dangerous. A final

determination shall be made by the Beaufort County Magistrate Court within 30 days or as soon as practicable.

~~(e)~~ Exemptions. A dog working in a law enforcement capacity with a governmental agency and in the performance of the dog's official duties.

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Sec. 14-33. - Running at large.

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(a) [Unlawful.] It shall be unlawful for any owner or custodian of any pet dog to permit or allow in any way whether intentionally or unintentionally the same to run at large except on property owned or rented by the owner or custodian. All pets dogs must be kept under restraint or confinement and under the physical control of the owner or custodian by means of a leash or other physically attached similar restraining device.

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(b) Exemption. Except as provided herein, no person shall bring or allow any dog, or any other animal on the beach that is not at all times on a leash between the hours of 10:00 a.m. and 5:00 p.m. from April 1 through the Thursday before Memorial Day weekend and from the Tuesday after Labor Day weekend through September 30. No person shall bring or allow any dog, or any other animal, on the beach between the hours of 10:00 a.m. and 5:00 p.m. from the Friday before Memorial Day weekend through the Monday of Labor Day weekend. No person shall bring or allow any dog or any other animal on the beach that is not on a leash or under positive voice control of the responsible person between 5:00 p.m. and 10:00 a.m. from April 1 through September 30. No person shall bring or allow any dog or any other animal on the beach that is not on a leash or under positive voice control at any hour from October 1 through March 31.

No person shall permit any excrement from any animal under that person's control to remain on the beach, but shall dispose of same in a sanitary manner.

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From April 1 through the Thursday before Memorial Day weekend and from the Tuesday after Labor Day weekend through September 30 of each year, dogs or any other animal, other than seeing-eye dogs, shall not be allowed in any designated swimming area unless on a leash and walking through the area between 10:00 a.m. and 5:00 p.m.

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(c) —Exempt dogs. Dogs that are participating in hunting events, obedience trials, conformation shows, tracking tests, herding trials, lure courses and other events similar in nature shall not be considered "at large."

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Sec. 14-34. - Nuisance pets or livestock.

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(a) —The actions of a pet or livestock constitute a nuisance when a pet or livestock disturbs the rights of, threatens the safety of or injures a member of the general public, or interferes with the ordinary use and enjoyment of their property.

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(b) —It shall be unlawful for any person to own, keep, possess, or maintain a pet or livestock in such a manner so as to constitute a public nuisance. By way of example, and not of limitation, the following acts or actions by an owner or possessor of any pet or livestock are hereby declared to be a public nuisance and are, therefore, unlawful:

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(1) —Failure to exercise sufficient restraint necessary to control a pet or livestock as required by section 14-33.

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(2) —Allowing or permitting a pet or livestock to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers or damaging gardens, flowers, or vegetables.

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(3) —Failure to maintain a dangerous animal in a manner other than that which is described in section 14-32.

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(4) —Maintaining pets or livestock in an environment of unsanitary conditions which results in offensive odors or is dangerous to the pet or livestock or to the public health, welfare, or safety.

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(5) —Maintaining his or her property in a manner that is offensive, annoying, or dangerous to the public health, safety, or welfare of the community because of the number, type, variety, density, or location of the pets or livestock on the property.

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(6) —Allowing or permitting a pet or livestock to bark, whine, or howl in an excessive, unwarranted, and continuous or untimely fashion, or make other noise in such a manner so as to result in a serious annoyance or interference with the reasonable use and enjoyment of neighboring premises.

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(7) —Maintaining a pet or livestock that is diseased and dangerous to the public health.

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(8) —Maintaining a pet or livestock that habitually or repeatedly chases, snaps at, attacks, or barks at pedestrians, bicycles, or vehicles.

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(9) —Every female pet or livestock in heat shall be confined in a building or secure enclosure in such a manner as will not create a nuisance by attracting other pets or livestock.

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(c) —A pet or livestock that has been determined to be a habitual nuisance by BCAS may be impounded and may not be returned to the owner until said owner can produce evidence to demonstrate that the situation creating the nuisance has been abated.

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(d) It shall be unlawful for any owner of any animal to allow the animal to disturb any person by excessive, unrelenting, or habitual barking, howling, yelping, or other audible sound. In addition to being a violation of this Section, the same is hereby declared to be a public nuisance that may be abated pursuant to the provisions specified in Chapter 14 of this Code.

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(1) No person shall be charged with violating this Section unless a written warning was given to the owner or person in custody of the animal by an Animal Services Officer or police officer within 12 months preceding the first date alleged as a date of violation in the complaint. A warning is given under this subsection if it is personally given to the owner or person in custody of the animal, or it is posted upon the property of the owner or person in custody or mailed first-class to such person. Such records are prima facie evidence that such warnings were given.

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(2) No administrative penalty or summons shall be issued and no person shall be convicted at trial for violating this Section unless two or more witnesses from different households testify to the loud and persistent or loud and habitual nature of the noise, or unless there is other evidence corroborating the testimony of a single witness.

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Sec. 14-35. - Animal cruelty.

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(a) —Animal care generally. It shall be unlawful for an owner to fail to provide his animals with sufficient good and wholesome food, water at all times, proper shelter and protection from weather, and humane care and treatment.

(b) —Mistreatment. It shall be unlawful for a person to beat, cruelly treat, torment, overload, overwork, or otherwise abuse an animal or cause, instigate, or permit any dogfight or other combat between animals or between animals and humans.

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(c) —Physical alteration. It shall be unlawful for a person to dye or color artificially any animal or fowl, including, but not limited to, rabbits, baby chickens, and ducklings, or to bring any dyed or colored animal or fowl into the county. No person shall crop or dub a pet or livestock's ears or tail or wattle or comb, except a licensed veterinarian.

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(d) —Abandonment. It shall be unlawful for any owner to abandon an animal.

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(e) —Unlawful tethering. No person owning or keeping a dog shall chain or tether a dog to a stationary object, including, but not limited to, a structure, dog house, pole, stake, or tree for longer than 24 consecutive hours in any manner or by any method that allows the dog to become entangled or injured. A tethering device employed shall not allow the dog to leave the owner's, guardian's or keeper's property. The tether shall be designed for dogs and devices not designed for tethering dogs shall not be used. Only a properly fitted harness, collar or other tethering device specifically designed for the dog may be used. No chain or tether shall weigh more than one-eighths of the dog's body weight. When tethered to a stationary object, the tethering device shall be attached to the dog's harness or collar and not directly to the dog's neck. Nothing in this section shall be construed to prohibit a person from walking a dog on a hand-held leash. No dog under the age of six months shall be tethered outside for any length of time, unless under direct supervision of an adult over the age of 18 years old.

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(f) No animal shall be tethered during any named Tropical Storm or named Hurricane expected to impact Beaufort County or whenever flooding could occur. For the purpose of this section, a Tropical

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Storm or named Hurricane is expected to impact Beaufort County when a Tropical Storm Watch, Warning or evacuation or a Hurricane Watch, Warning or evacuation is in effect for Beaufort County.

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(1) —A person owning or keeping a dog may confine such dog outside, subject to the restrictions in this section, through the use of any of the following methods:

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a. —Inside a pen or secure enclosure; or

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b. —A fully fenced, electronically fenced or otherwise securely enclosed yard, wherein a dog has the ability to run but is unable to leave the enclosed yard; or

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c. —The length of the tether from the cable run to the dog's collar or harness shall allow continuous access to clean water and appropriate shelter at all times.

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(2) —Exceptions to the above restrictions on outdoor confinement shall be made for dogs actively engaged in conduct directly related to the business of shepherding or herding cattle or other livestock or engaged in conduct that is directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

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Sec. 14-36. - Sale of animals, pets or livestock.

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(a) —No person shall sell, trade, barter, auction, lease, rent, give away, or display for commercial purpose, any live animal, pet or livestock on any roadside, public right-of-way, public property, commercial parking lot or sidewalk, or at any flea market, fair, or carnival.

(b) —No person shall offer an animal, pet or livestock as an inducement to purchase a product, commodity, or service.

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(c) —No person shall sell, offer for sale, or give away any animal or pet under five four (4) weeks of age, except as surrender to the county animal services facility or to a licensed pet rescue organization.

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(d) —Licensed pet shops, commercial kennels, county animal services facilities, and licensed pet rescue organizations are exempt from the requirements of this section 14-36.

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(e) —Any sale of wildlife will be reported to the South Carolina Department of Natural Resources, United States Department of Agriculture, and United States Fish and Wildlife Service.

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Sec. 14-37. - Seizure and right of entry to protect abandoned, neglected, or cruelly treated pets or livestock.

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(a) —Seizure and right of entry. If the owner does not give permission to the animal services officers for right of entry on private property to examine suspected abandoned, neglected or cruelly treated pets or

livestock, the animal services officers shall petition the appropriate magistrate for an animal pickup order or a search warrant for the seizure of the pet or livestock to determine whether the owner, if known, is able to adequately provide for the pet or livestock and is a fit person to own the pet or livestock.

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(b) —Citation. The animal services officers shall cause to be served upon the owner, if known, and residing within the jurisdiction wherein the pet or livestock is found, a written citation at least five days prior to the hearing containing the time and date and place of the hearing. If the owner is not known or cannot be found within the jurisdiction wherein the pet or livestock was found, the animal services officers shall post a copy of the notice at the property where the animal was seized.

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(c) —Custody. The pet or livestock shall remain in the custody and care of BCAS until such matter is heard before a magistrate. The magistrate shall make the final determination as to whether the pet or livestock is returned to the owner or whether ownership is transferred to the BCAS whereby the pet or livestock may be put up for adoption or humanely euthanized. If the magistrate orders the return of the pet or livestock to its owner, BCAS shall release the pet or livestock upon receipt from the owner of all redemption fees as described in section 14-39, below.

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(d) —Nothing in this section shall be construed to prohibit the euthanasia of a critically injured or ill animal for humane purposes.

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Sec. 14-38. - Impoundment.

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(a) —Any pet or livestock found within the county in violation of the provisions of this chapter may be caught and impounded by BCAS. BCAS may, thereafter, make available for adoption or humanely euthanize impounded pets or livestock not positively identified or redeemed within five working days.

(b) —When a person arrested is, at the time of arrest, in charge of an animal, BCAS may take charge of the animal and deposit the animal in a safe place of custody or impound the pet or livestock at its animal care facility.

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(c) —The owner of a pet or livestock that may be positively identified shall be notified at the owner's last known address by registered mail if attempts by telephone are not successful. The owner has **1410 days** from the date of mailing to contact BCAS for pick-up. Redemption costs will include the cost of mailing, any established costs, fines, fees, or other charges. If the owner does not make contact within **1410 days** of the date of mailing, the pet or livestock will be deemed abandoned and becomes the property of BCAS. For pets or livestock impounded at BCAS, the director of animal services, or his/her designee in agreement with a licensed veterinarian, shall either place the pet or livestock for adoption or have the pet or livestock humanely euthanized, pursuant to S.C. Code, § 47-3-540 (Supp. 1999).

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(d) —Notwithstanding the above, pets or livestock impounded at BCAS, which are deemed by the director of animal services, or his/her designee or a licensed veterinarian to constitute a danger to other

pets, livestock or persons at the facility, or which are infectious to other pets or livestock, in pain or near death may be humanely euthanized immediately.

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(e) —Any pet or livestock surrendered to BCAS may be adopted or euthanized at any time provided there is a completed and signed surrender form on file for the pet or livestock concerned.

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~~(f) Only government agencies or organizations that are contracted with a government agency to perform animal control services have the authority to impound animals. All stray animals must be taken or reported to the Beaufort County Animal Shelter and or affiliated organizations as soon as possible for the mandatory holding period.~~

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Sec. 14-39. - Redemption.

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(a) —The owner or keeper of any pet or livestock that has been impounded under the provisions of this chapter, and which has not been found to be dangerous or vicious, shall have the right to redeem such pet or livestock at any time when proper ownership has been confirmed by BCAS personnel; upon payment of a fee as follows:

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~~(1) —For a pet or livestock that has not been properly inoculated, licensed, microchipped, microchipped, and spayed or neutered or spayed, at the BCAS director of animal services or his/her designee, may issue a warning or Administrative Citation for the first offense at their discretion after a thorough investigation of the circumstances. First offense Redemption fees shall be published on the BCAS fee is \$50.00, second offense is \$150.00, third offense schedule and any subsequent offense is \$250.00. be subject to County Council approval.~~

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~~(2) —In addition to the administrative penalty, for a pet or livestock not properly inoculated, licensed, microchipped and spayed or neutered, the fee shall be \$50.00 plus the an appropriate microchip license fee, the charge for rabies inoculation, and the cost of spaying or neutering the pet or livestock as appropriate may be charged to the owner.~~

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~~(3) —Fertile pets or livestock (as appropriate) shall not be redeemed or adopted unless one of the criteria under the exemptions provisions in subsections 14-29(e)(1) —(4) has been met.~~

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~~(3) Pets or livestock will not be released without proof of inoculation and without an implanted microchip. The requirements of spaying or neutering shall not be waived under the exceptions in subsections 14-29(14-29(e)(1) —(4) when the pet or livestock (as appropriate) has been impounded a second time for any violations of sections-14-32, 14-33, 14-34, or 14-35.~~

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(b) —In addition to the redemption fee, a boarding fee after 24 hours of \$25.00 per the published fee schedule per day per pet or livestock shall be paid by the owner or keeper when a pet or livestock is redeemed.

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(c) —The fees set out in this section shall be doubled for any pet or livestock impounded twice or more within the same 12-month period.

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Sec. 14-40. - Adoption.

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(a) —Any pet or livestock impounded under the provisions of this chapter may, at the end of the legal detention period, be adopted provided the new owner will agree to comply with the provisions contained herein.

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(b) —Any pet or livestock surrendered to BCAS may be adopted at any time provided there is a completed and signed surrender form on file for the pet or livestock concerned.

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(c) —Those individuals adopting puppies or kittens too young to be neutered or spayed or receive rabies inoculations will pay the cost of these procedures at the time of adoption and be given an appointment for a later time to have these procedures completed. In the event the pet is deceased prior to the appointment date, the applicable portion of the adoption fee will be returned.

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(d) —The county animal services director or designee shall have the authority to refuse adoption of any animal to any person deemed unable to provide proper shelter, confinement, medical care and food or to any person who has a past history of inhumane treatment of or neglect to pets or livestock. Any person seeking adoption of a pet or livestock more frequently than 90 from the last adoption shall be subject to refusal of adoption. Any person who has been refused adoption of a pet or livestock may appeal his case to the assistant county administrator for public safety. If any person surrenders an owned pet or livestock to the animal services department, they will not be able to adopt a pet or livestock for 90 days from the date of the original surrender.

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Sec. 14-41. - Trapping.

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(a) —It shall be unlawful for any person or business to conduct trapping of any pets, livestock or domestic animals within Beaufort County without prior approval from the animal services department. Any pets, livestock or domestic animals trapped with prior approval from the animal services department will be reported or delivered to the animal services department for purposes of identification of the pet's owner and record keeping of the trapping. It shall be unlawful for any person to remove, destroy, or liberate any trap and/or trapped animal set by the Beaufort County Animal Services Department or enter any animal services vehicle with the intent to rescue or deliver it from the custody of the animal services department. If a trapped animal is in need of immediate attention, the animal services department or 911 will be notified immediately of the animal in distress.

(b) —Exemption. Trapping is permitted for hogs.

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Sec. 14-42. - Management of feral cat colonies.

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(a) —Definitions.

Caregiver means any person who provides food, water or shelter to or otherwise cares for a feral cat colony and has made application to the animal services department for management of a feral cat colony.

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Caregiver manager means any person in charge of a caregiver program.

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Ear tipping means straight-line cutting of the tip of the left ear of a cat while the cat is anesthetized.

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Feral cat means a cat which currently exists in a wild or untamed state.

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Feral cat colony means a group of cats that congregate. Although not every cat in a colony may be feral, non-feral cats routinely congregate with a colony shall be deemed to be a part of it.

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Nuisance means disturbing the peace by:

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(1) —Habitually or continually howling, crying or screaming, or

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(2) —The habitual and significant destruction of property against the wishes of the owner of the property.

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Suitable shelter means shelter that provides protection from rain, sun and other elements and is adequate to protect the health of the cat.

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TNR means trap, neuter/spay and release.

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TNA program means a program pursuant to which cats are trapped, neutered or spayed, vaccinated against rabies, ear tipped or tattooed and released to a designated location of a managed colony.

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(b) —Feral cat colony management. Feral cat colonies shall be permitted (no fee) by the Beaufort County Animal Services Department and caregivers shall be responsible for applying for the permit for each colony and be entitled to maintain them in accordance with the terms and conditions of the BCAS policy on feral cat colony management, once the permit is approved by animal services department.

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Sec. 14-43. - Livestock.

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(a) —All livestock shall be properly housed with adequate food, water and confined within a fenced enclosure. The fenced enclosure shall be maintained in such a manner as to keep any average livestock animal from escaping the enclosed compound and causing damage, accidents or injury to any person or property. No person shall tie, stake or fasten any livestock within any street, highway, road, alley, sidewalk, right-of-way, or other public place within the county or in such manner that the animal has access to any portion of any street, highway, road, alley, sidewalk, right-of-way, or other public place.

(b) —Owners or possessors of livestock impounded for violation of this article or any state and/or federal laws, will be charged in accordance with actual costs of impoundment plus impounding and boarding fees.

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(c) —Impounded livestock shall be held for a period of ~~21~~ 10 days. If such impounded animals are not claimed by the owners during that period of time, the animals may be given to persons willing to accept them, in the discretion of the Beaufort County Animal Services Department.

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(d) —Exception: No other swine or livestock shall be kept within the corporate limits of Port Royal and Bluffton except as is permissible under the municipal zoning regulations. No approval shall be granted or continued if such keeping shall constitute a menace to health or welfare of the public. To the extent that other section within this chapter reference livestock this section shall be controlling.

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Sec. 14-44. - Importation of exotic animals prohibited.

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(a) —Definition. An "exotic animal" shall be defined as one which would ordinarily be confined to a zoo, or one which would ordinarily be found in the wilderness of this or any other country or one which is a species of animal not indigenous to the United States or to North America, or one which otherwise causes a reasonable person to be fearful of significant destruction of property or of bodily harm and the latter includes, but would not be limited to, such animals as monkeys, raccoons, squirrels, ocelots, bobcats, lions, tigers, bears, wolves, hybrid wolves, and other such animals or one which causes zoonotic diseases. Such animals are further defined as being those mammals or those nonvenomous reptiles weighing over 50 pounds at maturity which are known at law as Ferae naturae. Wild or exotic animals specifically do not include animals of a species customarily used in South Carolina as ordinary household pets, animals of a species customarily used in South Carolina as domestic farm animals, fish contained in an aquarium, birds or insects.

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(b) —Unlawful act. It shall be unlawful for any person, firm, or corporation to import into Beaufort County, any venomous reptile or any other exotic animal.

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(c) —Exceptions. This division shall not apply to following entities:

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(1) —An entity licensed as a Class R Research Facility by the United States of America or any agency thereof pursuant to the Animal Welfare Act (7 U.S.C. 2131 et seq.).

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(2) —An entity properly accredited by the Association of Zoos and Aquariums or the Zoological Association of America.

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(3) —An entity licensed as a Class C Facility by the United States of America or any agency thereof pursuant to the Animal Welfare Act (7 U.S.C. 2131 et seq.) for exhibition not to exceed seven days within a 52-week period.

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(4) —A team mascot for a university or educational facility.

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Sec. 14-45. - Rabies Control Act (S.C. State Law 47-5-10).

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This law is strictly enforced by South Carolina Department of Health and Environmental Control (DHEC) in cooperation with Beaufort County Animal Services Department and any state, county or municipal law enforcement agencies.

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(A) Vaccinations: It shall be unlawful for any owner of a dog or cat four (4) months of age or older to fail to have such animal vaccinated against rabies, unless recommended otherwise by veterinarian for medical reasons. All dogs and cats shall be vaccinated at four (4) months of age (unless recommended otherwise by veterinarian) and revaccinated thereafter at the expiration of the validity of the vaccine used, as shown on the written document prepared by a licensed veterinarian. The vaccination shall be valid for the period shown on the document. Any person moving into the County from a location outside the County shall comply with this Section within 30 days after having moved into the County by having the animal vaccinated or showing proof of current, valid vaccination. If the dog or cat has inflicted a bite on any person or another animal within the last ten days, the owner of said animal shall report such fact to a veterinarian, and no rabies vaccine shall be administered until after the required observation or quarantine period.

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(B) Proof of Vaccination: It shall be unlawful for any person who owns a vaccinated animal to fail or refuse to exhibit his copy of the certificate of vaccination upon demand to any person charged with the enforcement of this Chapter. A current rabies tag, if provided by the veterinarian administering the vaccine, shall be attached to a collar, harness or other device and shall be worn by the vaccinated dog or cat at all times. The requirement for a dog to display a current rabies tag shall not apply to a dog that is displaying a current dog license tag affixed to a collar, harness or other device worn on the dog.

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(C) Harboring Unvaccinated Dogs and Cats: It shall be unlawful for any person to harbor any dog or cat that has not been vaccinated against rabies, as provided herein, or that cannot be identified as having a current vaccination certificate.

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(D) Non-transferability: Vaccination certificates and tags are not transferable and cannot be used for any animal other than the animal that received the vaccination and for which the certificate was originally issued.

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(E) Exceptions: No person charged with violating 14-45 Rabies Control shall be convicted if he produces in Court a bona fide and valid certificate of vaccination that was in full force and effect at the time of the alleged violation.

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Sec. 14-46. - Interference with animal services officers.

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It shall be unlawful for any person to interfere with, hinder, or molest an animal services officers in the performance of his or her duties or seek to release any pet or livestock in his/her custody without his/her consent.

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Sec. 14-47. - Enforcement and penalties.

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(a) —The animal services officers of the Beaufort County Animal Services Department shall be charged with the responsibility of enforcing all ordinances enacted by the county and contracts entered into with the county for the care, control and custody of pets or livestock covered by this article. All violations of this article shall be heard by the Beaufort County Magistrate Court.

(b) —The provisions of this article shall not apply to any dog or cat owned within the confines of any incorporated municipality within the county, unless and until the governing body of a municipality requests in writing that county council include the area of such municipality within the coverage of this article, and county council has acted favorably on such request and has so notified such municipality of its approval of such request.

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(c) —Any person who violates the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine not exceeding ~~\$\$\$500.00~~ the maximum allowed within the jurisdiction of the magistrate courts, or imprisonment not exceeding 30 days, or both. However, infractions as provided in paragraph (f) below, are intended to be non-criminal, civil penalties and not subject to jail time.

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(d) When any person is found guilty of a violation of the provisions of this chapter, or has been found in non-compliance of a Final Dangerous Dog Determination of the Court, a Magistrate may order possession and custody of the animal to be surrendered permanently to the Beaufort County Animal Shelter.

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-(f) Infractions Resulting in Administrative citations and penalties.

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In addition to the remedies and penalties contained in this chapter, and in accordance with S.C. Code Section 47-3-20, an administrative citation may be issued for certain infractions of county animal control ordinances. Infractions of this Chapter subject to administrative citation and penalty are in the discretion of the Animal Services Officer and include but are not limited to: Mandatory dog licenses/registration, mandatory rabies vaccination, permitting a dog to run at large, mandatory spay/neuter, and warnings for a noisy public nuisance animal. Animal cruelty charges and Dangerous Dog Determinations are not violations subject to administrative citations.

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The following procedures shall govern infractions of this chapter and the imposition, enforcement, collection and administrative review of administrative citations and penalties.

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A. Notice of infraction. If an animal is owned, kept, maintained, or found to be in violation of a county animal control ordinance, an administrative citation may be issued by the animal services officer.

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B. Content of citation. The administrative citation shall be issued on a form approved by the Director of Beaufort County Animal Services and shall contain the following information:

1. Date, location and approximate time of the infraction;

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2. The ordinance violated and a brief description of the infraction;

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3. The amount of the administrative penalty imposed for the infraction;

4. Instructions for payment of the penalty, and the time period by which it shall be paid and the consequences of failure to pay the penalty within the required time period;

5. Instructions on how to appeal the citation;

6. The signature of the animal control officer.

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The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.

C. Service of citation.

1. If the person who has violated the county animal control ordinance is present at the scene of the infraction, the animal control officer shall attempt to obtain his signature on the administrative citation and shall deliver a copy of the administrative citation to him/her.

2. If the owner, occupant or other person who has an infraction of a county animal control ordinance is a business, and the business owner is on the premises, the animal control officer shall attempt to deliver the administrative citation to him/her. If the animal control officer is unable to serve the business owner on the premises, the administrative citation may be left with the manager or employee of the business. If left with the manager or employee of the business, a copy of the administrative citation shall also be mailed to the business owner by certified mail, return receipt requested.

3. If no one can be located at the property where the infraction occurred, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy mailed by certified mail, return receipt requested to the owner, occupant or other person who has violated the ordinance. The citation shall be mailed to the property address and/or the address listed for the owner on the last county equalized assessment roll. The citation shall also be mailed to any additional addresses for the owner in department records.

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D. Administrative penalties.

1. The penalties assessed for each infraction of a county animal control ordinance shall not exceed the following amounts:

i. One hundred dollars (\$100.00) for a first infraction;

ii. Two hundred dollars (\$200.00) for a second infraction of the same administrative abatement order within one year;

iii. Five hundred dollars (\$500.00) for each additional infraction of the administrative abatement order within one year.

2. If the infraction is not corrected, additional administrative citations may be issued for the same infraction. The amount of penalty shall increase at the rate specified above.

3. Payment of the penalty shall not excuse the failure to correct the infraction nor shall it bar further enforcement action.

4. The penalties assessed shall be payable to the Beaufort County Treasurer.

5. Where the infraction would otherwise be a violation, the administrative penalty shall not exceed the maximum fine or infraction amount.

6. Failure to pay an administrative penalty may result in prosecution or petition for the original violation(s) in the Magistrate court of Beaufort County.

E. Administrative appeal of administrative citation.

1. Notice of appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the Department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation set forth in subsection C. above. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall be submitted on county forms and shall contain the following information:

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- i. A brief statement setting forth the appellant's interest in the proceedings;
- ii. A brief statement of the material facts which the appellant claims supports his contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
- iii. An address at which the appellant agrees notice of any additional proceeding or an order relating to the administrative penalty may be received by mail;
- iv. The notice of appeal must be signed by the appellant;
- v. A check or money order is required, as a deposit, for the total penalty amount shown on the front side of the citation, before the Administrative Appeal will be scheduled;
- vi. Indigence must be proved to have the deposit waived.

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2. Administrative hearing of appeal. Upon a timely written request by the recipient of an administrative citation, an administrative hearing shall be held as follows:

- i. Notice of hearing. Notice of the administrative hearing regarding the administrative citation shall be given at least ten (10) days before the hearing to the person requesting the hearing.
- ii. The administrative hearing regarding the administrative citation shall be held before the Public Safety Director, or a designee. The hearing officer shall not be the investigating animal control officer who issued the administrative citation or his immediate supervisor. The Director may contract with a qualified provider to conduct the administrative hearings or to process administrative citations.
- iii. Conduct of the hearing. The investigating animal control officer who issued the administrative citation shall be required to participate in the administrative hearing regarding the citation. The contents of the investigating animal control officer's file may be admitted in support of the administrative citation. The hearing officer shall not be limited by the technical rules of evidence. If the person requesting the appeal of the administrative citation fails to appear at the administrative hearing, the hearing officer shall make a determination based on the information available at the time of the hearing.
- iv. Hearing officer's decision. The hearing officer's decision regarding the administrative citation following the administrative hearing may be personally delivered to the person requesting the hearing or sent by mail. The hearing officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the hearing officer of an inability to pay the penalty in full at one time. The hearing officer's decision shall contain instruction for obtaining review of the decision by the circuit court.

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F. Appeal to Circuit Court. Any person who receives an unfavorable decision from the decision of an Administrative Appeal may file an appeal with the Circuit Court in Beaufort County. The appeal to Circuit Court must be filed within thirty (30) days of the notice of the Administrative Officer's decision being mailed to the recipient of an Administrative citation.

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MEMORANDUM

TO: Town Council

FROM: Brian Hulbert, Staff Attorney

VIA: Stephen G. Riley, ICMA-CM Town Manager
Joshua Gruber, Assistant Town Manager
Scott Liggett, Director Public Projects & Facilities

DATE: April 29, 2019

SUBJ: Shore Beach Services, Inc. Franchise and Services Agreements

Recommendation:

Staff recommends the approval of Proposed Ordinance 2019-09, granting a renewal term of five years to Shore Beach Services, Inc. for a non-exclusive Franchise for the purpose of conducting certain commercial activities within specified public beach areas on Hilton Head Island. Specifically, Staff and Shore Beach Services, Inc. recommend the adoption of the attached Franchise Agreement and the accompanying Services Agreement.

Summary:

Approval of Proposed Ordinance 2019-09 would renew the Franchise Agreement and Services Agreement for a five year term beginning on July 1, 2019. The Town recommends that the franchise fee remain at current rate of one percent (1%).

Shore Beach Services would provide the services specified in Exhibit 1 of the Agreement. For the first year the fees would be Two Hundred Sixty Seven Thousand Six Hundred Sixty Nine dollars and no cents (\$267,669.00). The for these services may be increased each year by the lesser of three percent (3%) or the most recently published Consumer Price Index for all Urban Consumers (CPI-U) on the anniversary date of the Agreement.

The Agreement allows some flexibility for the Town and Contractor to add additional services if the Town deems it necessary. The fees for these services would be negotiated at the appropriate time.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2019-

PROPOSED ORDINANCE NO. 2019-09

AN ORDINANCE GRANTING A RENEWAL TERM OF FIVE YEARS TO SHORE BEACH SERVICES, INC. FOR A NON-EXCLUSIVE FRANCHISE FOR THE PURPOSE OF CONDUCTING CERTAIN COMMERCIAL ACTIVITIES WITHIN SPECIFIED PUBLIC BEACH AREAS ON HILTON HEAD ISLAND; AND, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 5-7-30 of the Code of Laws of South Carolina 1976 (Annotated), as amended, provides that the municipal government within the State of South Carolina may “grant franchises for the use of public streets and make charges for them”; and

WHEREAS, the Town Council of the Town of Hilton Head Island did previously adopt Section 10-5-50 of the Municipal Code of the Town of Hilton Head Island on November 15, 1994, granting Shore Beach Services, Inc., a non-exclusive franchise for the purpose of conducting certain commercial activities within specified public beach areas on Hilton Head Island; and

WHEREAS, the Town Council finds that the public health, safety and welfare would be benefitted by the renewal (for an additional five year period) of a non-exclusive franchise to Shore Beach Services, Inc. to conduct, within specified public beach areas, certain commercial activities, specifically, the leasing of items listed in Exhibit “A” to the Franchise Agreement.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SC; AND IT IS ORDAINED BY SAID AUTHORITY OF COUNCIL:

Section 1. Amendment. That Section 10-5-50 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby is amended as follows:

"Section 10-5-50. Commercial activities franchise granted to Shore Beach Services, Inc.

A non-exclusive franchise is granted to Shore Beach Services, Inc. to conduct, within specified public beach areas, certain commercial activities pursuant to the terms and conditions of the attached franchise agreement which is attached hereto and made a part hereof, is hereby renewed.”

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2019.

John J. McCann, Mayor

ATTEST:

Krista M. Wiedmeyer, Town Clerk

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

Curtis L. Coltrane, Town Attorney

Introduced by Council Member:

STATE OF SOUTH CAROLINA)
) **FRANCHISE AGREEMENT**
COUNTY OF BEAUFORT)
)
TOWN OF HILTON HEAD ISLAND)

THIS FRANCHISE AGREEMENT is entered into this ____ day of _____, 2019, by and between the Town of Hilton Head Island (hereinafter the “Town”), a municipal corporation organized and existing under the laws of the State of South Carolina, and Shore Beach Services, Inc. (hereinafter the “Franchisee”).

WHEREAS, the Franchisee, which maintains a business office located at 116 Arrow Road, Hilton Head Island, South Carolina 29928, desires to enter into a non-exclusive franchise agreement with the Town for the purpose of conducting, within the below-defined beach area, certain commercial activities, specifically, the renting of those items and water sports equipment listed in Exhibit A to this Franchise Agreement;

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. **TERM:** This Franchise Agreement shall be for a term of five (5) years, commencing on the 1st day of July, 2019 and expiring on the 30th day of June, 2024.
2. **HOURS OF OPERATION:** The Franchisee may conduct commercial activities (as defined herein) within the beach area from 8:00 a.m. to 8:00 p.m. each day, seven (7) days per week, from May 1st to September 1st and during daylight hours for the balance of any franchise year. Set up for commercial activities may begin earlier.
3. **VEHICLES:** Permission is hereby granted from the Town to the Franchisee to bring onto the beach those vehicles which are necessary for the operation of the franchise hereby granted. No vehicles operated by the Franchisee on the beach shall be driven at a speed in excess of ten (10) miles per hour, unless an emergency situation exists.
4. **AREAS OF OPERATION:** By this Franchise Agreement, the Franchisee is hereby authorized to operate and conduct commercial activities (as defined herein) in the following areas:
 - A. From the northern boundary of the Westin Hotel south to the southern boundary of the designated swimming area at Driessen Beach Park; the portion of the beach extending 300 feet from either side of the center of the boardwalk at Surf Watch; and from the Burkes Beach access north 400 feet.

- B. From Beach Emergency Marker 96 south to the northern boundary of Palmetto Dunes and from the northern boundary of Dunes House in Palmetto Dunes south to the southern boundary of the Omni Resort in Palmetto Dunes.
- C. From the northern boundary of Hampton Place in Palmetto Dunes south to the Southern Boundary of the Shipyard Beach.
- D. From the northern boundary of Sea Crest south to southern boundary of Alder Lane designated swim area.
- E. From Emergency Marker 39 south to the Southern Boundary of Turtle Lane Club and from Beach Emergency Marker 13 at Tower Beach Club westerly to Beach Emergency Marker 11 and easterly 300 feet.

Maps of Hilton Head Island delineating the aforementioned areas of operation are attached hereto as Attachments A-1 through A-5 to this Franchise Agreement.

The beach area in front of the Sea Pine Beach Club is private and the Franchisee shall not set up concession services in this area without the written consent of Sea Pines Resort. The plat in Attachment B describes the property lines for the Sea Pines Beach Club.

Upon request by individuals, the Franchisee may deliver and set up rental equipment on the beach in places outside the approved areas of operation.

- 5. **APPROVAL PROCESS:** On or before February 1st of each year, the Franchisee shall submit to the Town for approval a listing of rental locations intended to be operated within the areas of operation during the next beach season. This listing shall include the product quantities for each rental location. The purpose of this approval process is to regulate the quantities for rental equipment in use on the beach. Product quantities for each rental location shall not depart significantly from amounts approved during the previous year. Upon request of the Franchisee, the Town Manager may approve product quantity increases in areas of operation when circumstances such as new or expanded beach parks, other development or change in demand warrant such increases.
- 6. **BEACH CLEANLINESS:** Pursuant to this Franchise Agreement and Code Section 8-1-317, Code of the Town of Hilton Head Island, (1983), the Franchisee hereby agrees to be responsible for maintaining beach cleanliness on a daily basis within the designated areas of operations as described in paragraph 4 above. Each morning, prior to the commencement of operations, employees of the Franchisee shall remove from the areas of operation any trash, cans, glass or other such debris found within such areas. The Franchisee shall provide trash and recycling containers, in quantities and locations as

determined by the Town for the deposit of such debris. The Franchisee employees shall encourage beachgoers to use such containers. The Franchisee shall be responsible for emptying trash and recycling containers, as well as removing such trash and debris from the beach as needed on a regular basis. The Franchisee shall be responsible for notifying on a timely basis the appropriate designated Town personnel of the existence of major beach debris and shall assist in the removal of such debris where possible.

7. **CONDUCT OF OPERATION:** The Franchisee and its employees shall at all times evidence a due concern for the preservation and enhancement of the health, safety and general welfare of beachgoers, and for preservation and enhancement of beach ecology, particularly by strict adherence to Article 4 of Title 8 of the Municipal Code regarding dune protection. In that regard, such employees shall assist beachgoers to be aware of and adhere to Town Beach Ordinances. The Franchisee and its employees are prohibited from consuming alcoholic beverages while on duty during the designated hours of operation. All Franchisee employees providing services on the beach under this Franchise Agreement shall, be trained in first aid and cardiopulmonary resuscitation (CPR) techniques at no cost to the Town.

8. **FRANCHISE CONSIDERATION:**

A. Franchise Fee: A franchise fee, calculated on a calendar year basis, in the amount of one percent (1%) of the Franchisee's gross rental receipts from the commercial activities described in Exhibit A, shall be paid annually by the Franchisee to the Town. Said payment shall be paid made no later than the following January 31st. If this Franchise Agreement expires or is terminated other than at the end of a calendar year, the Franchisee shall pay to the Town the applicable franchise fee within thirty (30) days of the end date of the Franchise Agreement. All amounts paid shall be subject to audit and recalculation by the Town and acceptance of any payment shall not be construed as acceptance that the amount paid is in fact the correct amount. In the event any audit reveals an error in the franchise fee paid by the Franchisee of five percent (5%) or more during any audit period, the Franchisee shall be responsible for the Town's reasonable out of pocket costs associated with such audit, in addition to any additional Franchise Fee that may be due to the Town. The Franchisee shall not offset Franchise Fees for any amount that the Town may owe to the Franchisee under this Franchise Agreement, without the prior written approval of the Town.

B. Service Agreement: In addition to the Franchise Fee described in paragraph 8.A above, the Franchisee agrees to execute the Services Agreement which is attached hereto and incorporated herein as Exhibit B and to perform the obligations thereunder. The Services Agreement shall be executed contemporaneously herewith,

and any breach of failure to perform by the Franchisee of its obligations under the Services Agreement shall be deemed a material breach of this Franchise Agreement.

9. **INSURANCE:** The Franchisee shall carry and maintain Worker's Compensation insurance in statutory amounts, comprehensive general liability insurance endorsed to include product and completed operations and contractual liability in a minimum amount of \$1,000,000.00 combined single limit and automobile liability insurance with minimum limits of \$500,000.00/\$1,000,000.00, or \$1,000,000.00 combined single limit. Each policy shall provide that it may not be canceled or changed without at least ten (10) days' prior notice to the Town. The Town shall be included as a named insured on the comprehensive general liability policy. The Franchisee shall provide the Town with a certificate of insurance as evidence of compliance with the foregoing and, upon request, a copy of all policies and any endorsements thereto.

10. **INDEMNIFICATION:**

- A. The Franchisee shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses and/or damages, including attorneys' fees, whether incurred prior to the institution of litigation, during litigation, or on appeal arising out of or resulting from the conduct of any commercial activity hereby authorized or the performance of any requirement imposed pursuant by this Franchise Agreement, including the performance of the Franchisee's obligations under the Services Agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.
- B. The Franchisee shall further indemnify the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses and/or damage, including attorneys' fees, whether incurred prior to the institution of litigation, during litigation, or on appeal, for or arising out of any bodily injuries to or the death of any of the Franchisee's employees working at the specified location of operation during the specified hours of operation which may occur, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.

11. **NO AGENCY CREATED:** The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this Franchise Agreement. Nothing contained herein creates any relationship between the Franchisee and the Town, other than that which is expressly stated herein. The Town is interested only in the results to be achieved through this grant of franchise and the conduct and control of the agents and employees of the Franchisee and the methods utilized by the Franchisee in

fulfilling its obligations hereunder shall lie solely and exclusively with the Franchisee. The Franchisee and its agents, officers, directors, and employees shall not be considered agents or employees of the Town for any purpose. No person employed by the Franchisee shall have any benefit, status, or right of employment with the Town.

12. **ASSIGNMENT:** The Franchisee may assign or transfer its franchise to another entity or person subject to a sixty (60) day notification to the Town Manager and upon approval in writing of the Town Council.

13. **TERMINATION:** This Franchise Agreement may be terminated without cause, either in whole or in part, by either party upon one (1) year prior written notice to the other party. The violation of any provision of this Franchise Agreement by the Franchisee and/or his agents or employees may result in termination of this Franchise Agreement, after due notice by the Town and the opportunity for the Franchisee to remedy the violation.

14. **EFFECTIVE DATE:** This Franchise Agreement shall become effective upon adoption of the Ordinance creating this Franchise.

IN WITNESS WHEREOF, the parties hereto have executed this Franchise Agreement as of the date and year first above written.

TOWN OF HILTON HEAD ISLAND, SC

Witness

By _____
Stephen G. Riley, AICP
Town Manager

Witness

SHORE BEACH SERVICES, INC.

Witness

By _____
Ralph Wagner
President

Witness

EXHIBIT A TO FRANCHISE AGREEMENT

The following is a list of approved equipment to be rented by the Franchisee for use on the beach and in the ocean waters. The quantities below are representative of the levels currently in service and the Franchisee is expected to maintain these levels during the term of this Franchise Agreement unless otherwise approved by the Town.

Equipment	Quantities
Umbrellas	1,500
Chairs/Lounges	3,200
Body Boards	200
12-18 Foot Sailboats	4
Kayaks	20

The Franchisee shall take appropriate and necessary steps to ensure: 1) that beachgoers use all equipment in a safe manner; 2) that Franchisee employees thoroughly instruct any beachgoers renting sailboats and kayaks on the safe use thereof; and 3) that sailboats and kayaks are not launched or used in areas where beachgoers are swimming.

After rental rates for the year are established, the Franchisee will provide such rates to the Town.

EXHIBIT B TO FRANCHISE AGREEMENT

STATE OF SOUTH CAROLINA)
) **SERVICES AGREEMENT**
COUNTY OF BEAUFORT)

THIS SERVICES AGREEMENT (“Services Agreement”) is entered into this ____ day of _____, 2019 by and between the Town of Hilton Head Island (hereinafter the "Town"), a municipal corporation organized and existing under the laws of the State of South Carolina and Shore Beach Services, Inc. (hereinafter the “Contractor”).

WHEREAS, the Town has a need for a qualified contractor to provide beach patrol services for the safety of beachgoers; and

WHEREAS, the Town and the Contractor desire to enter into an agreement wherein the Contractor shall provide such services as set forth herein below.

NOW, THEREFORE, for and in consideration of the mutual promises, undertakings and covenants set forth herein, the receipt and sufficiency of which is acknowledged and affirmed by the Town and the Contractor, the parties hereto agree as follows:

1. **Services.** The Contractor shall provide to the Town, beach patrol and related services as specified in Exhibit 1, which is attached hereto and made part of this Services Agreement.

2. **Compensation.** The Town shall pay the Contractor for services rendered in accordance with the terms and conditions in Exhibit 1.

3. **Term.** The term of this Services Agreement shall be for a period of five (5) years, commencing on July 1, 2019 and expiring on June 30, 2024.

4. **Insurance.** The Contractor shall carry and maintain Worker’s Compensation insurance in statutory amounts, comprehensive general liability insurance endorsed to include product and completed operations and contractual liability in a minimum amount of \$1,000,000.00 combined single limit and automobile liability insurance with minimum limits of \$500,000.00/\$1,000,000.00, or \$1,000,000.00 combined single limit. Each policy shall provide that it may not be canceled or changed without at least ten (10) days’ prior notice to the Town. The Town shall be included as a named insured on the comprehensive general liability policy. The Contractor shall provide the Town with a certificate of insurance as evidence of compliance with the foregoing and, upon request, a copy of all policies and any endorsements thereto.

5. **Termination.** This Services Agreement may be terminated without cause, either in whole or in part, by either party upon one (1) year prior written notice to the other party. The violation of any provision of this Services Agreement by the Contractor and/or his agents or employees may result in termination of this Services Agreement, after due notice by the Town and the opportunity for the Contractor to remedy the violation. The Town may also terminate this Services Agreement when funds are not appropriated or otherwise made available to support continuation of this Services Agreement in subsequent fiscal periods. If the Services Agreement is terminated for any reason, the Town will pay the Contractor for costs incurred to that date of termination.
6. **Validity/Enforceability.** Should any part of this Services Agreement be rendered void, invalid, or unenforceable by any court of law, such a determination shall not render void, invalid, or unenforceable any other part of this Services Agreement.
7. **Governing Law.** This Services Agreement has been made and entered into in the State of South Carolina, and the laws of South Carolina shall govern the validity and interpretation of this Services Agreement in the performance due hereunder.
8. **Modification.** This Services Agreement may not be modified unless such modification is in writing and signed by both parties.
9. **Assignment.** The Contractor may not assign this Services Agreement without the prior written approval of the Town.
10. **Indemnification.** The Contractor shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses, and/or damages, including attorney's fees, whether incurred prior to the institution of litigation, during litigation, or on appeal arising out of or resulting from the conduct of any activity hereby authorized or the performance of any requirement imposed pursuant by this Services Agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.
11. **Relationship of Parties.** The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this Services Agreement. Nothing contained herein creates any relationship between the Town and the Contractor other than that which is expressly stated herein. The Town is interested only in the results to be achieved under this Services Agreement, and the conduct and control of the agents and

employees of the Contractor and the methods utilized by the Contractor in fulfilling its obligations hereunder shall lie solely and exclusively with the Contractor and its agents and employees shall not be considered agents or employees of the Town for any purpose. No person employed by the Contractor shall have any benefits, status, or right of employment with the Town.

12. **South Carolina Illegal Immigration Reform Act.** The Contractor, by signing this Services Agreement, hereby certifies that the Contractor shall comply with all applicable requirements of the South Carolina Illegal Immigration Reform Act, S.C. Code Ann. §41-8-10 (2007) et seq., (the "Act"), and that the Contractor covenants and agrees as follows:

12.1. The Contractor shall not knowingly or intentionally employ any unauthorized alien and, unless excluded from coverage of the Act, shall verify the work authorization of newly hired employees performing work under the Services Agreement by registering and participating in the Federal Work Authorization Program (E-verify) and verifying the work authorization of every new hired employee within three (3) business days after employing employee.

12.2. Contractor agrees to provide to the Town all documentation requested by it to establish either:

- (a) the applicability of the South Carolina Illegal Immigration Reform Act to the Contractor; or
- (b) compliance with the South Carolina Illegal Immigration Reform Act by the Contractor.

12.3. Contractor agrees to include in any contracts with its sub-contractors language requiring its sub-contractors to:

- (a) comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws; and
- (b) include in their contracts with its sub-subcontractors language requiring its sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws.

12.4. Contractor acknowledges and agrees that it shall comply with requirements of the Immigration Reform and Control Act of 1986 including the non-discrimination provisions thereof, and shall complete all required I-9 documentation for all workers employed by it.

12.5. Contractor certifies it shall comply with all state, federal, and local laws, rules, regulations and orders applicable to it in performance of work under the contract.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures hereto the date first written hereinabove.

WITNESSES:

SHORE BEACH SERVICES, INC.

By: _____

**Ralph A. Wagner
President**

WITNESSES:

TOWN OF HILTON HEAD ISLAND

By: _____

**Stephen G. Riley, AICP
Town Manager**

EXHIBIT 1 TO SERVICES AGREEMENT

I. GENERAL

Contractor shall provide services generally known as the Beach Patrol. The organization and operation of the Beach Patrol shall be the responsibility of the Contractor.

The primary purpose of the Beach Patrol is to protect the safety of beachgoers in their use of the beaches and ocean waters of the Town and to render assistance to those in need of assistance.

The Beach Patrol shall cover the area from the eastern shore of Fish Haul Creek to the southern shore of Braddock Cove. This area shall be split into four (4) patrol areas (hereinafter the "Patrol Areas") as follows:

- 1) Area 1 – From the eastern shore of Fish Haul Creek to Folly Creek
- 2) Area 2 – From Folly Creek to the southern boundary of Hampton Place
- 3) Area 3 – From the southern boundary of Hampton Place to the southern boundary of Ocean Club Villas
- 4) Area 4 – From the southern boundary of Ocean Club Villas to the southern boundary of Braddock Cove

A map of Hilton Head Island showing these areas is included as Attachment C.

Contractor shall obtain and maintain during the term of the Services Agreement the national certification extended to open water lifeguard agencies by the United States Lifesaving Association covering such agencies' training programs and standards. The Contractor shall ensure that all Beach Patrol personnel utilized to carry out the services herein, except for those under Items D, E & F below, shall be trained in accordance with such standards and adhere thereto. Those employees will be trained in first aid and CPR.

Beach Patrol personnel must have hearing and vision which would not impede the full performance of duties and be in sound physical condition and may not have any history of illness which would interfere with the performance of their duties. The fact that a person is on medication will not alter this restriction. Each person shall be at least sixteen (16) years of age, be of good moral character, and shall abide by high standards of cleanliness, physical appearance, health and ability. The Contractor's employees providing services under this Services Agreement who are hired after the effective date thereof shall be subject to a pre-employment criminal background check and drug screening test. In addition, all of the Contractor's employees providing services under this Services Agreement shall be subject to random drug

screening tests annually. The Contractor and its employees are prohibited from consuming alcoholic beverages while on duty. They shall be neatly attired in uniforms supplied by the Contractor and shall wear the supplied uniforms when on duty.

All Beach Patrol vehicles utilized to carry out the services herein shall be appropriately marked as Beach Patrol and be equipped with 4-wheel drive and two way radios (1 inter-agency and 1 intra-agency), a first aid kit, a torpedo-type rescue buoy, AED, oxygen kit, bag valve masks, rescue rope, red lights, speaker, siren box, binoculars, range finder, and swim fins, except that the vehicles utilized under Items D, E & F in Section II below will not have inter-agency radios, AED, oxygen kit, or bag valve masks. Each vehicle shall have a utility trailer available and shall be in good condition, reasonably free of visible rust, dents, or alterations to the vehicle body, and should be able to traverse difficult terrain. Such vehicles shall be new or like new and in good mechanical condition, shall have a current South Carolina state license plate, and shall have an overall appearance that does not detract in any way from the standards and image the Town wishes to project to the public. Such vehicles shall be operated in an extremely careful and prudent manner by a licensed driver. Such licensed driver shall not have been convicted of Driving Under the Influence within twelve (12) months of operating such vehicle. No person(s) other than authorized employees or officers of the Contractor, Town Officials, qualified lifeguards, or junior lifeguards shall be permitted to operate or ride in the Beach Patrol vehicle, with the exception of an individual or individuals who were rescued, lost or needed aid. In the event of such rendering of assistance, the passenger or passengers shall immediately be delivered to the appropriate destination.

Contractor will maintain an FCC licensed radio system for intra-agency communications. For inter-agency communications the Contractor shall follow the radio procedures of the Town's Fire Rescue Department and shall attend mutually agreed upon training on these procedures as necessary.

All Beach Patrol personnel utilized to carry out the services herein shall participate in the Beach Patrol program by:

- a) Advising beachgoers regarding Town Beach Ordinances and supervising adherence to the requirements of such Ordinance;
- b) Notifying and coordinating with law enforcement authorities regarding any continuing unlawful activities on the beach;
- c) Notifying and cooperating with members of the local EMS service when emergency medical services are required on the beach and assisting EMS with removing persons from the beach when requested;

- d) Administering (to the level of certification of the individual involved) first aid free of charge to persons who sustain minor injuries on the beach;
- e) Monitoring the operation of motorized watercraft for compliance with Section 8-1-211(2) of the Town's Beach Ordinance; advising, where practicable, any operator of motorized watercraft of violations of the Beach Ordinance; and notifying and coordinating with law enforcement authorities regarding any continuing violations of the Beach Ordinance.

II. BILLABLE BEACH PATROL SERVICES

Contractor will provide the following Beach Patrol Services, which may vary due to weather conditions, billable to the Town as set forth in Section VII. below.

- A. One person shall be designated as the Beach Patrol Director and shall have primary responsibility for administering the Beach Patrol program, for supervising all of the Contractor's employees who have Beach Patrol duties, and for acting as liaison with the Town.
- B. During April and September (after the Monday of Labor Day Weekend), not less than the full time equivalent of two (2) persons shall be designated as Beach Patrol Supervisors assigned to cover the four (4) Patrol Areas.

From May 1st through the Monday of Labor Day Weekend, not less than the full time equivalent of three (3) persons shall be designated as Beach Patrol Supervisors assigned to cover the four (4) Patrol Areas.

At any given time, the Town shall have full discretion and authority to request the Contractor to dispatch Beach Patrol Supervisors to specific areas on the beach to handle a particular situation. Once that situation has abated, the supervisor may return to assigned duties.

The duties of the Beach Patrol Supervisor shall include the following:

- Assisting beachgoers as needed.
- Informing beachgoers and watercraft operators of Town Beach Ordinances.
- Picking up trash and debris in the area.

The Town reserves the right to request the Contractor to assist in limited Code Enforcement activities as conditions warrant at an additional cost to be determined as set forth in Section VII. below.

- C. Between the hours of 5:00 p.m. and 9:00 p.m., seven (7) days a week from April 1st through September 30th one (1) supervisor will be available with a fully equipped Beach Patrol vehicle as needed on an “on call” basis through the 911 central dispatch.
- D. The Contractor shall provide an expanded beach patrol trash and debris collection between the hours of 5:00 p.m. and 9:00 a.m., seven (7) day a week from April 1st through September 30th in areas designated by the Town as experiencing trash and debris accumulation. A fully equipped Beach Patrol vehicle will be utilized, except that it will not be required to have AED, oxygen kit, or bag valve masks.
- E. Contractor shall provide year-round trash collection on public beach areas as designated by the Town. The Contractor is responsible for maintaining 32-gallon trash containers, in quantities and locations as determined by the Town, which shall be monitored and emptied daily as needed. The Contractor shall schedule and monitor at least five (5) waste dumpsters at locations designated by the Town, to be picked up as needed on a commercial waste route. The trash container and waste dumpster levels may be adjusted downward seasonally by mutual agreement.
- F. A fully equipped Beach Patrol vehicle, except that it will not have AED, oxygen kit, or bag valve masks, and utility trailer shall be provided for the purpose of collecting trash, recycling and debris on the beach and shall transport it outside the designated franchise areas. ATV’s may be used to assist in this process, but cannot be substituted for Beach Patrol vehicles. The Contractor is responsible for removing all trash and recycling from the beach. Reoccurring legitimate complaints about beach cleanliness in a specified area may be deemed a material breach of this Services Agreement.
- G. From May 1st through the Monday of Labor Day Weekend, two (2) manned Personal Watercraft (hereinafter “PWC”), each one stationed in the Patrol Areas, shall be provided for the purpose of immediately assisting in off-shore boat rescue and assisting in beach ordinance enforcement in all areas defined in Town Code Section 8-1-112(1), particularly in effecting direct contact with private boat operators to keep such boats a safe distance off shore. Contractor shall also provide a third PWC to be provided as backup.

The PWC’s shall be kept operational, and shall be

- Tested and inspected regularly.
- Equipped with Coast Guard approved or required safety equipment.

- Operated by Beach Patrol Personnel trained in the operation of the PWC's.

The Town acknowledges and accepts that there may be intervals where less than 3 PWC's may be operational due to maintenance and repair issues. The Contractor shall keep the Town informed if any PWC will be out of operation for more than a week.

- H. The Contractor is responsible for management of all situations on the beach involving live, injured or dead animals which are not being handled directly by another agency, e.g., Turtle Patrol. This may involve removal, storage, or burial of the animals. In that regard, the Contractor shall coordinate as necessary with other agencies such as SCDNR, Turtle Patrol, Beaufort County Sheriff, and Hilton Head Humane Association. The Contractor will provide an authorized participant in the SC Marine Mammal Stranding Network and the SC Marine Turtle Project.
- I. Contractor shall provide a year-round program for recycling on public beach areas as designated by the Town. The Contractor is responsible for maintaining 32-gallon recycling containers, in quantities and locations as determined by the Town, which shall be monitored and emptied daily as needed. The Contractor shall schedule and monitor recycling dumpsters, in quantities and locations as determined by the Town to be picked up weekly as needed on a recycling route. The recycling container and dumpster levels may be adjusted downward seasonally by mutual agreement.
- J. The Contractor shall store, install and maintain beach matting year-round on public beach areas as designated by the Town. Matting shall be provided by the Town. A tractor not less than thirty-four (34) horse power will be required as needed for leveling sand under beach matting on the beach.
- K. The Contractor shall maintain dog litter bag dispensing stations year-round at public beach access areas in quantities and locations as designated by the Town. The bags are provided by the Town and shall be picked up by the Contractor at the Facilities Management Office.

III. NON-BILLABLE BEACH PATROL SERVICES

Contractor will provide the following Beach Patrol Services, which may vary due to weather conditions, at no cost to the Town:

A. **Lifeguard Personnel Duties & Assignment** - The Contractor is responsible for deploying lifeguard personnel throughout the areas of operations. Lifeguard personnel shall consist of highchair lifeguards and rental lifeguards.

1. **Highchair Lifeguards.** The primary duty of highchair lifeguards is water surveillance, therefore, they shall not conduct commercial activities. It is mandatory that the highchair lifeguard's attention be focused on this duty; therefore, highchair lifeguards shall not:

- (a) Sit or lean on anything other than their highchair;
- (b) Conduct lengthy conversations with persons in a manner or in such a fashion as to impair the performance of safety duties;
- (c) Permit persons at their highchair other than agents of the Town, Beach Patrol personnel employed by the Contractor and persons seeking first aid or other assistance;
- (d) Read while on duty;
- (e) Turn their back on the ocean or permit others to obstruct their view of the ocean;
- (f) Allow their highchair to be littered at any time while on duty.

2. **Rental Lifeguards.** The primary duty of rental lifeguards is conducting commercial activities, however, when not so doing they shall be responsible for assisting in water surveillance. Furthermore, in the event of an emergency in their area rental lifeguards shall cease conducting commercial activities and respond to said emergency. It is mandatory that the rental lifeguard's attention be focused on these duties; therefore, rental lifeguards shall not:

- (a) Sit or lean on anything other than their stands;
- (b) Conduct lengthy conversations with persons in a manner or in such a fashion as to impair the performance of safety duties;
- (c) Permit persons at the stand other than agents of the Town, Beach Patrol personnel employed by the Contractor, persons seeking first aid or other assistance, and persons transacting equipment rental business;
- (d) Read while on duty;
- (e) Allow the area around their stand to be littered at any time while on duty.

Lifeguard personnel or their replacements shall remain at their stands in patrol areas while on duty. It is the Contractor's responsibility to monitor the health of its lifeguard

personnel and not to assign any lifeguard personnel who is ill or physically unable to execute his/her responsibilities.

The need for lifeguard personnel will fluctuate in accordance with the seasonal change in level of activity on the beaches. Therefore, the number of lifeguard personnel at any location will be determined by the Contractor based on the level of activity and other factors deemed relevant by the Contractor on any given day. However, lifeguard personnel shall be assigned at a minimum as follows:

- From Memorial Day Weekend through Labor Day each year lifeguard personnel shall be stationed at each of the Town's beach parks
 - Islanders Beach Park
 - Folly Field Beach Park
 - Driessen Beach Park
 - Coligny Beach Park
 - Alder Lane Beach Park

- From April 1st through the second weekend in May, no less than five (5) lifeguard personnel shall be stationed on the beach.

- From the second weekend in May through the Friday before Memorial Day, no less than twelve (12) lifeguard personnel shall be stationed on the beach.

- From Memorial Day weekend through the first weekend in August, no less than thirty-four (34) lifeguard personnel shall be stationed on the beach.

- From the second weekend in August through Labor Day, no less than nine (9) lifeguard personnel shall be stationed on the beach.

- From the day after Labor Day through September 30th, no less than five (5) lifeguard personnel shall be stationed on the beach.

All lifeguard personnel shall be equipped with a first aid kits, torpedo-type rescue buoys, two way intra agency radios, backboards, caution flags, and appropriately marked umbrellas and chairs.

B. Beach Patrol Vehicles - From Memorial Day weekend through August 31st, The Contractor will supply a minimum of four (4) Beach Patrol vehicles in addition to the five (5) Beach Patrol vehicles utilized under Billable Beach Services and Personnel above.

The Town acknowledges and accepts that there may be intervals where less than the four (4) additional Beach Patrol vehicles may be operational due to maintenance and repair issues. The Contractor shall keep the Town informed if any such Beach Patrol vehicle will be out operation for more than a week.

- C. **Boats On The Beach** - The Contractor, in conjunction with Town staff, will provide a program for control and inspection of permitted boats on the beach, and for removal of any abandoned boats. Costs for removal of any abandoned boats, either in part or in full, may be reimbursable to the Contractor, but only if the Town has given written approval prior to the Contractor incurring such costs.

IV. POLICIES

- A. The Contractor shall use the applicable portions of the United States Lifesaving Association Manual for Open Water Agencies as its policy guide.

Upon request of the Town, Contractor agrees to provide information and/or documentation on its policies or procedures directly related to its operations in providing services under this Agreement the distribution of which will be limited internally to those with direct responsibility for managing Beach Patrol Services. To the extent allowed under applicable Freedom of Information laws, the Town agrees that any such information and/or documentation provided by Contractor, which is identified by Contractor as confidential and proprietary, shall not be subject to public disclosure.

V. REPORTING REQUIREMENTS

Contractor shall provide monthly reports to the Town as follows:

- A. **Beach Patrol Activities** – Include number of incidents by location along with any need for caution flags, clearing of water, use of PWC's, and interactions with other agencies in the following areas:
- Safety Incidents
 - Medical Incidents
 - Beach Ordinance Advisements
 - Missing Persons
 - Wildlife Actions
 - Fishing Complaints

- B. **Staffing For Billable Services** – Include schedules by location of Beach Patrol personnel assigned to provide the services under Section II. above.
- C. **Trash & Recycling** – Include estimated gallons of trash & recycling removed from the beach.
- D. **Franchise Fees** – Include year to date franchise fees due based on gross rental receipts from commercial activities.

VI. MEETING REQUIREMENTS

Contractor shall participate in meetings as follows:

- An annual “kick-off” meeting to take place not later than before Memorial Day weekend The Town’s Director or Assistant Director of Facilities Management shall be responsible for coordinating this meeting. One purpose of this meeting is the review of the Contractor’s policies and procedures directly related to its operations in providing services under this Agreement.
- The Town reserves the right to require periodic meetings with the Contractor regarding Beach Patrol Services.

VII. FEES PAYABLE TO CONTRACTOR

- A. **Beach Patrol Fees** – The Contractor shall bill the Town for the Beach Patrol Services listed below in monthly installments. Amounts billed shall be inclusive of all labor, equipment and materials necessary to provide the full scope of services described in this Services Agreement. The amounts billable for Contract Year 1 are shown below.

Shore Beach Services, Inc. Town of Hilton Head Island Detail Of Proposed Annual Fees Payable To Contractor For Service Year 1 With 1% Franchise Fee											
Calendar Month	Lettered Column References Are To Exhibit 1 Section II.										Totals
	A Beach Patrol Director	B Beach Patrol	C Night Patrol	D Expanded Trash Pickup	E & F Trash Pickup*	G PWC's	H Animal Control	I Recycling*	J Beach Matting	K Dog Litter Stations	
2019 July	\$ -	\$ 21,137	\$ 1,965	\$ 6,364	\$ 12,954	\$ 2,351	\$ -	\$ 1,475	\$ 660	\$ 60	\$ 46,966
2019 August	-	21,137	1,965	6,364	10,525	2,351	-	1,070.00	460	100	43,972
2019 September	-	14,091	1,902	4,620	4,309	228	-	585.00	520	60	26,315
2019 October	-	-	-	-	2,977	-	-	330.00	720	120	4,147
2019 November	-	-	-	-	3,134	-	-	40.00	360	140	3,674
2019 December	-	-	-	-	4,048	-	-	40.00	335	120	4,543
2020 January	-	-	-	-	4,823	-	-	44.00	465	132	5,464
2020 February	-	-	-	-	4,356	-	-	944.00	465	154	5,919
2020 March	-	-	-	-	9,258	-	-	412.00	465	88	10,223
2020 April	-	15,312	2,069	4,984	3,547	-	-	623.00	519	88	27,142
2020 May	-	23,734	2,138	6,008	4,574	2,413	-	895.00	492	66	40,320
2020 June	-	22,968	2,069	6,645	13,068	2,335	-	1,238.00	573	88	48,984
Total For Year	\$ -	\$ 118,379	\$ 12,108	\$ 34,985	\$ 77,573	\$ 9,678	\$ -	\$ 7,696	\$ 6,034	\$ 1,216	\$ 267,669

* Cost exclude trash and recycling fees for dumpsters

Contractor shall be allowed to increase its fees for the Beach Patrol Services listed above on each anniversary of the contract commencement date, and such increase shall be limited to the lesser of: (i) three percent (3%) or (ii) the most recently published Consumer Price Index for All Urban Consumers (CPI-U), before seasonal adjustment, as of thirty (30) days prior to the anniversary date. Notwithstanding the foregoing, the Contractor may request and the Town may, at its sole discretion, grant an annual increase greater than that allowed above if the Contractor can demonstrate to the sole satisfaction of the Town, evidence of specific material costs that it has incurred, which are not under the Contractor's control (e.g., a 25% increase in insurance costs in one year).

- B. Trash & Recycling Fees** – The Contractor shall bill the Town for trash and recycling dumpster fees annually on a calendar year basis at the Contractor's cost. The Contractor's bill shall include copies of invoices it has paid for trash and recycling dumpsters.

Trash & Recycling Fees in Contract Year 1 are estimated at \$59,000.

- C. Fees for Expanded Scope of Services** – If during the term of the Services Agreement between the Town and the Contractor: (i) the Town requests the Contractor to provide services that exceed the original scope of work as detailed in this Services Agreement, or (ii) unforeseen circumstances (e.g., severe weather event) create the need for the Contractor to temporarily exceed the original scope of work as detailed in this Services

Agreement; fees for such services shall be negotiated at such time as applicable, and shall be substantially based on the hourly labor and equipment rates provided below, adjusted for any annual increases. A written amendment to the Services Agreement shall be executed detailing the expanded scope and related fees to be charged.

Labor and Equipment Hourly Rates:

Hourly Labor & Equipment Rates For Expanded Scope Of Services In Contract Year 1

Beach Patrol Labor Rates				
Years Worked	Lifeguard Personnel	Supervisors	Other Employees	Managers
1st Year	\$ 18.00	\$ 20.00	\$ 14.00	\$ 36.00
2nd Year	20.00	22.00	15.00	36.00
3rd Year	22.00	24.00	16.00	36.00
4th Year	24.00	26.00	17.00	36.00
5th Year	26.00	28.00	18.00	36.00
6th Year	28.00	30.00	19.00	36.00
7th Year	30.00	32.00	20.00	36.00
8th Year	32.00	34.00	21.00	36.00

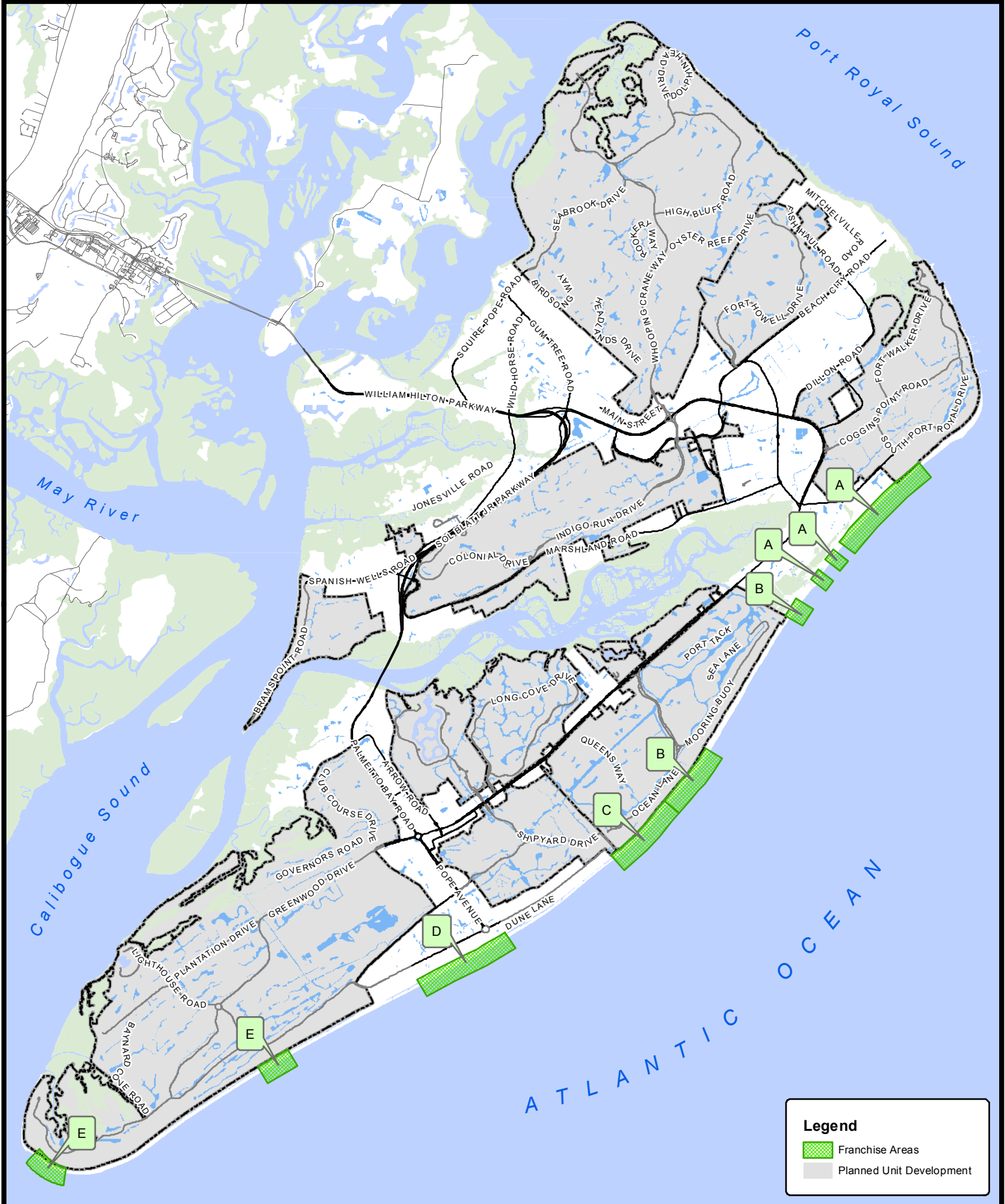
Beach Patrol Equipment Rates			
Tractor	Vehicle	ATV	PWC
\$ 30.00	\$ 9.25	\$ 3.00	\$ -

D. Payments & Annual Approvals

The Town shall pay all amounts due under this Agreement within thirty (30) days from the date of invoice receipt.

Contractor shall not offset Franchise Fees due to the Town under the Franchise Agreement for any amount that the Town may owe to the Contractor under this Services Agreement, without the prior written approval of the Town.

On or before March 1st of each year the Contractor shall submit to the Town its proposal for the fees and labor rates in Sections A, B and C above for the succeeding contract year. Any request by Contractor to increase to Beach Patrol Fees shall be subject to the limitations outlined in Section VII.A above.



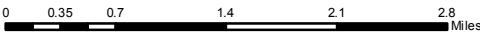
Legend

- Franchise Areas
- Planned Unit Development

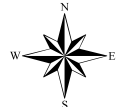
Attachment A-1

Areas of Operation

2018



1 in = 1 miles

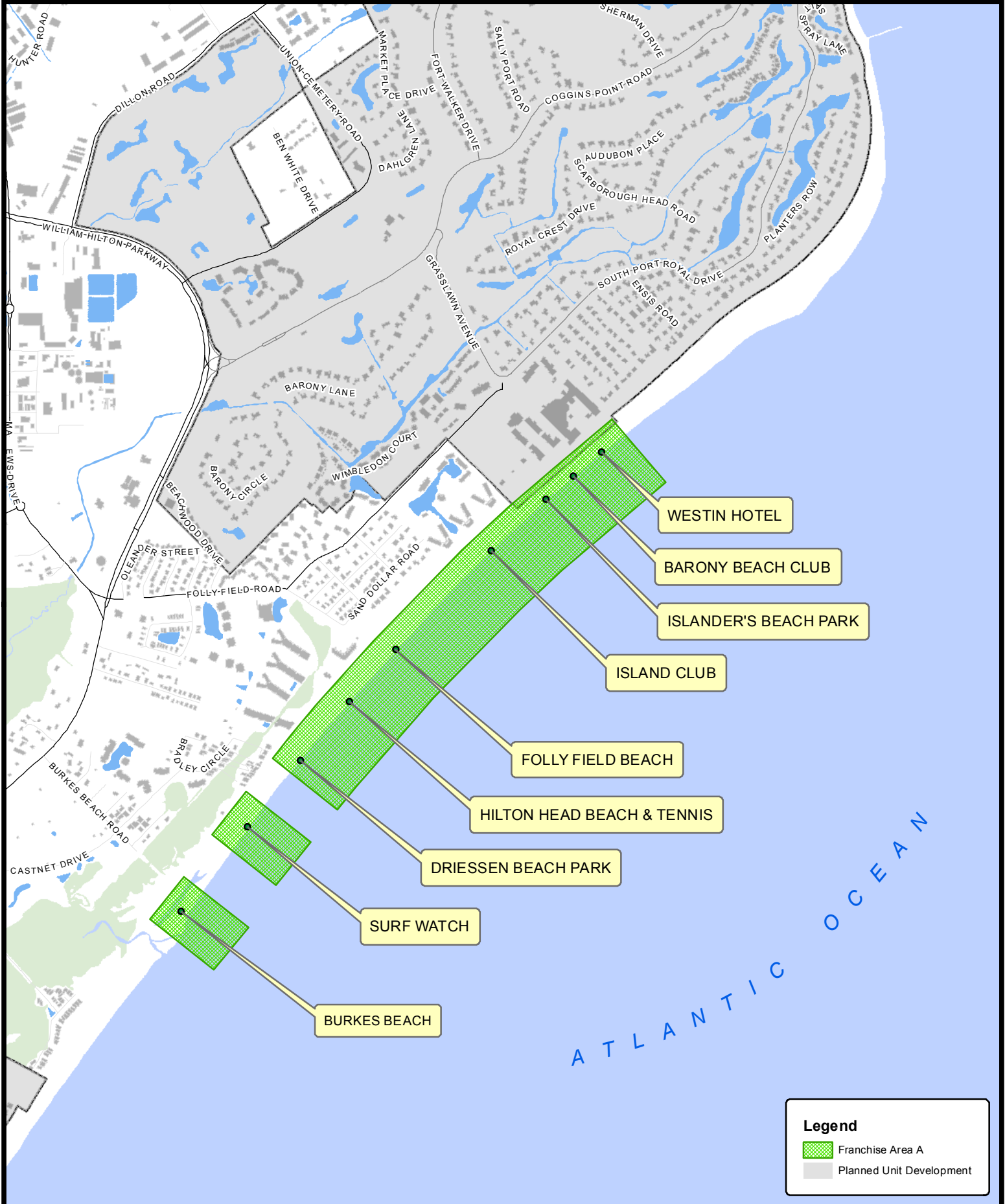


The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



TOWN OF HILTON HEAD ISLAND
 ONE TOWN CENTER COURT
 HILTON HEAD ISLAND, S.C. 29928
 PHONE (843) 341-4000
 Data Created: 08/06/08

Project - 143 SP Special Facilities Maps Attachment A_Areas of Operation.mxd



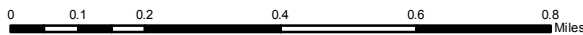
Legend

- Franchise Area A
- Planned Unit Development

Attachment A-2

Rental Locations - Area A

2018



1 inch = 1,500 feet



TOWN OF HILTON HEAD ISLAND
 ONE TOWN CENTER COURT
 HILTON HEAD ISLAND, S.C. 29928
 PHONE (843) 341-6400
 Fax (843) 341-6400

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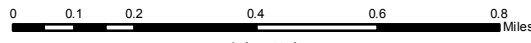
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- Franchise Areas B & C
- Planned Unit Development

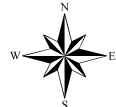
Attachment A-3

Rental Locations - Area B & C

2018



1 inch = 1,667 feet



TOWN OF HILTON HEAD ISLAND
 ONE TOWN CENTER COURT
 HILTON HEAD ISLAND, S.C. 29928
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 Date Created: 08/06/08

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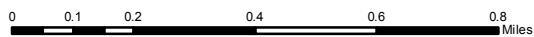
Legend

-  Franchise Area D
-  Planned Unit Development

Attachment A-4

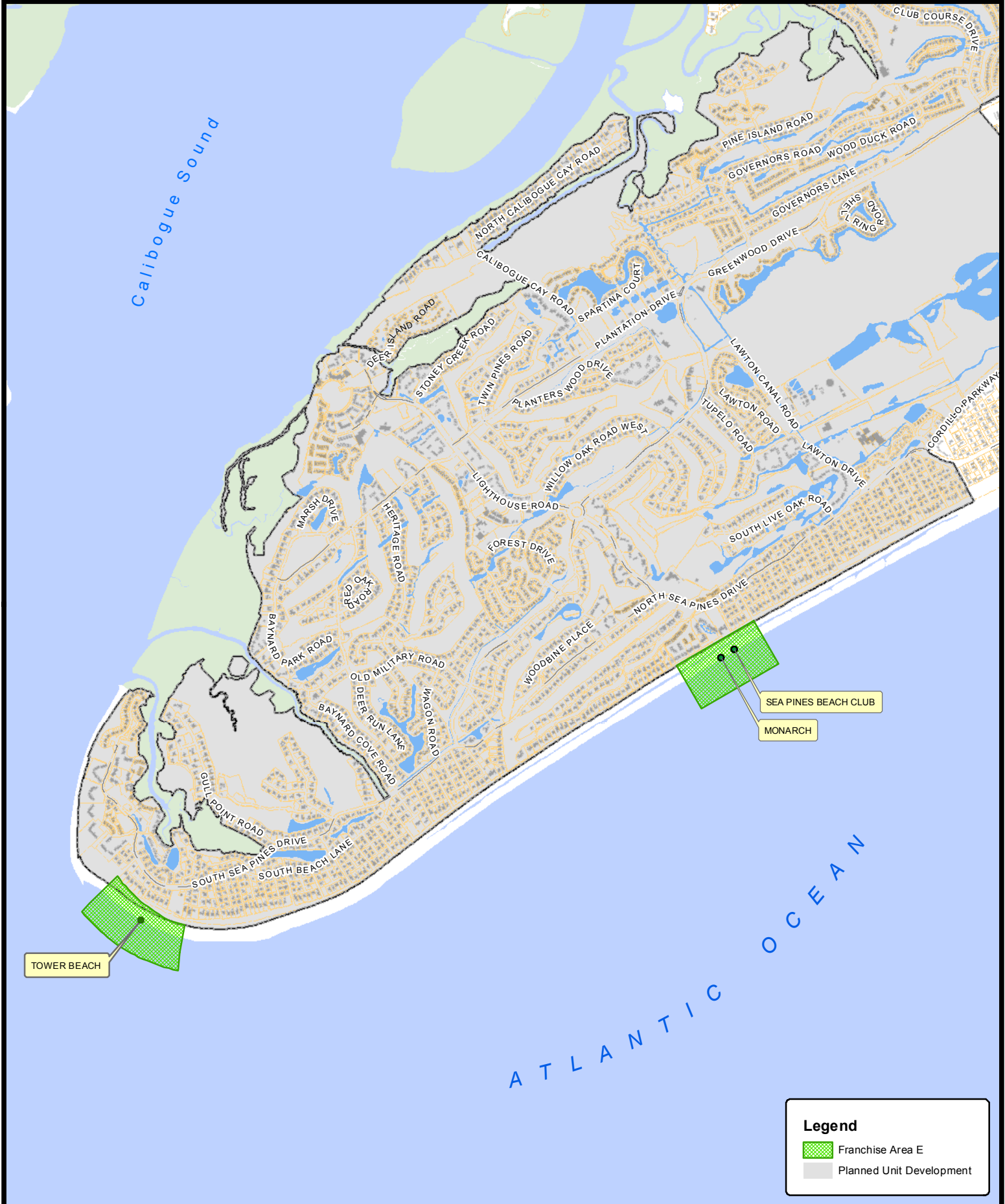
Rental Locations - Area D

2018



1 inch = 1,667 feet

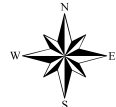
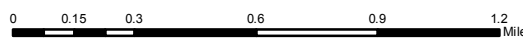




Attachment A-5

Rental Locations - Area E

2018

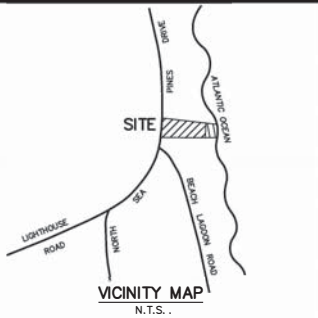


Legend

- Franchise Area E
- Planned Unit Development

TOWN OF HILTON HEAD ISLAND
 ONE TOWN CENTER COURT
 HILTON HEAD ISLAND, S.C. 29928
 PHONE (843) 341-6000
 DATE CREATED: 08/06/08
 PROJECT: I:\GIS\Projects\Facilities\MapAttachments_A_AnnexA\Expression.mxd

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



SPECIAL NOTE

Some or all areas on this plot are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes. Local regulations require that certain flood hazard measures be incorporated in the design and construction of structures in these designated areas. Reference shall be made to the development covenants and restrictions of this development and requirements of the town building official. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas.

LEGEND

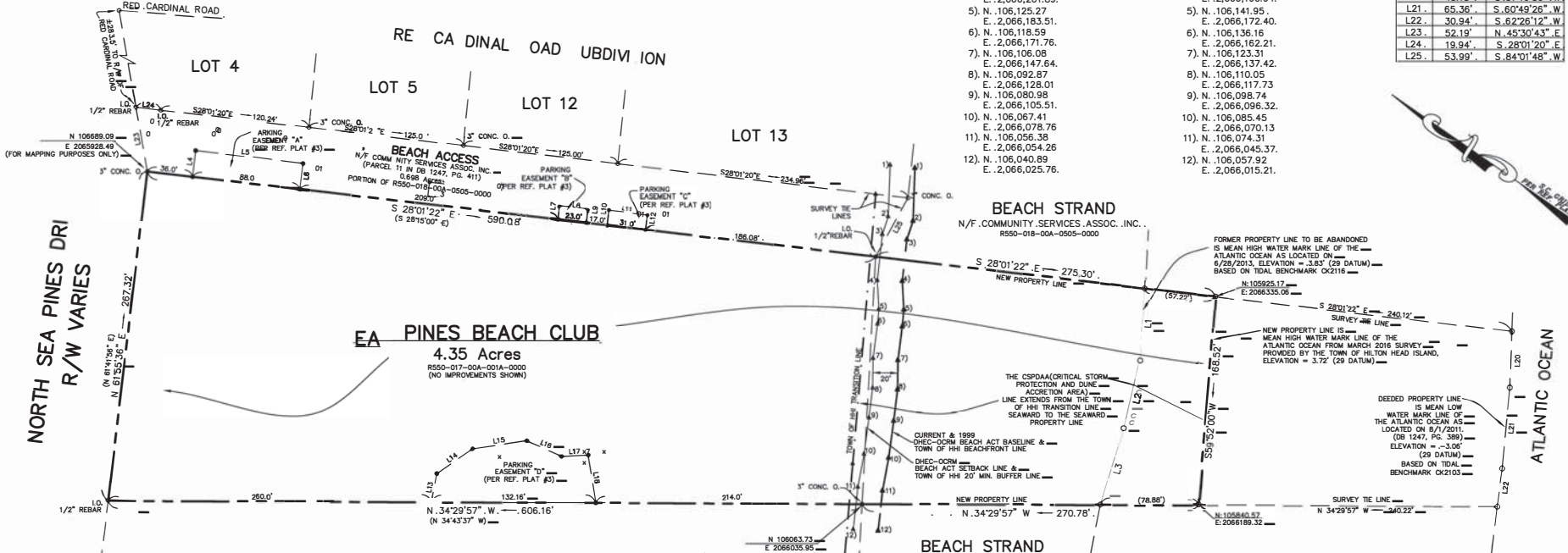
- I.O. x IRON OLD FOUND
CONC. O. 3"x3" CONCRETE MONUMENT FOUND
N.T.S. NOT TO SCALE

I, the undersigned, as the Owner of Record of parcel R550-017-00A-001A-0000, agree to the recording of this plat.

Representatives of Sea Pines Resort, LLC DATE

LINE TABLE with columns for LINE, LENGTH, and BEARING. Lists 25 lines with their respective measurements and bearings.

- DHEC-OCRM BASELINE COORDINATES
DHEC-OCRM SETBACK LINE COORDINATES
1) N. 106,182.93' E. 2,066,282.39'
2) N. 106,159.94' E. 2,066,246.51'
... 25) S. 84,01'48" W. E. 2,066,015.21'



- NOTES:
1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.
2) AS OF THE DATE OF THIS SURVEY, THE ORIGINAL 3.20 AC. BEACH CLUB PARCEL IS LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D., PANEL 12-D, COMMUNITY NO. 450250, MAP DATED 9/29/86, BASE ELEVATION 14.0'.

- SOURCE OF TITLE:
1) DB 2336, PAGE 1107.
2) DB 1247, PAGE 389.
3) DB 1247, PAGE 411.
4) PB 137, PAGE 29.

- REFERENCE PLATS:
1) 3.894 ACRES BEACH CLUB AND 50' BEACH ACCESS, SEA PINES PLANTATION, DATED: 11/9/87; LATEST REVISION: 1/29/91, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059, RECORDED: P.B. 35, PG. 71.
2) PARKING EASEMENTS A, B & C ACROSS 50' BEACH ACCESS AND PARKING EASEMENT D ADJACENT TO SEA PINES BEACH CLUB & RED CARDINAL ROAD SUBDIVISION, SEA PINES PLANTATION, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059, DATED: 03/11/2008; LATEST REVISION: 03/17/2008, RECORDED: P.B. 124, PG. 101.
3) BOUNDARY CONSOLIDATION SURVEY OF SEA PINES BEACH CLUB, NORTH SEA PINES DRIVE, A PORTION OF SEA PINES RESORT, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059, DATED: 07/02/2013, RECORDED: P.B. 137, PG. 29.
4) EXHIBIT PLAT OF SEA PINES BEACH CLUB SHOWING MARCH 2016 MEAN HIGH WATER LINE, PREPARED FOR THE TOWN OF HILTON HEAD ISLAND, PROVIDED FOR: SURVEYING CONSULTANTS ON 10/30/2017, BY: CHRISTOPHER G. CREED, P.E., D.C.E., OLSEN ASSOCIATES, INC.

MONARCH AT SEA PINES
N/F. MARRIOTT OWNERSHIP RESORTS, INC.
R550-017-00A-1281-0000

BEACH STRAND
N/F. COMMUNITY SERVICES ASSOC., INC.
R550-018-00A-0505-0000

BOUNDARY RECONFIGURATION PLAT F
SEA PINES BEACH CLUB
#87 NORTH SEA PINES DRIVE

A PORTION OF Y
SEA PINES RESORT I
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA Y

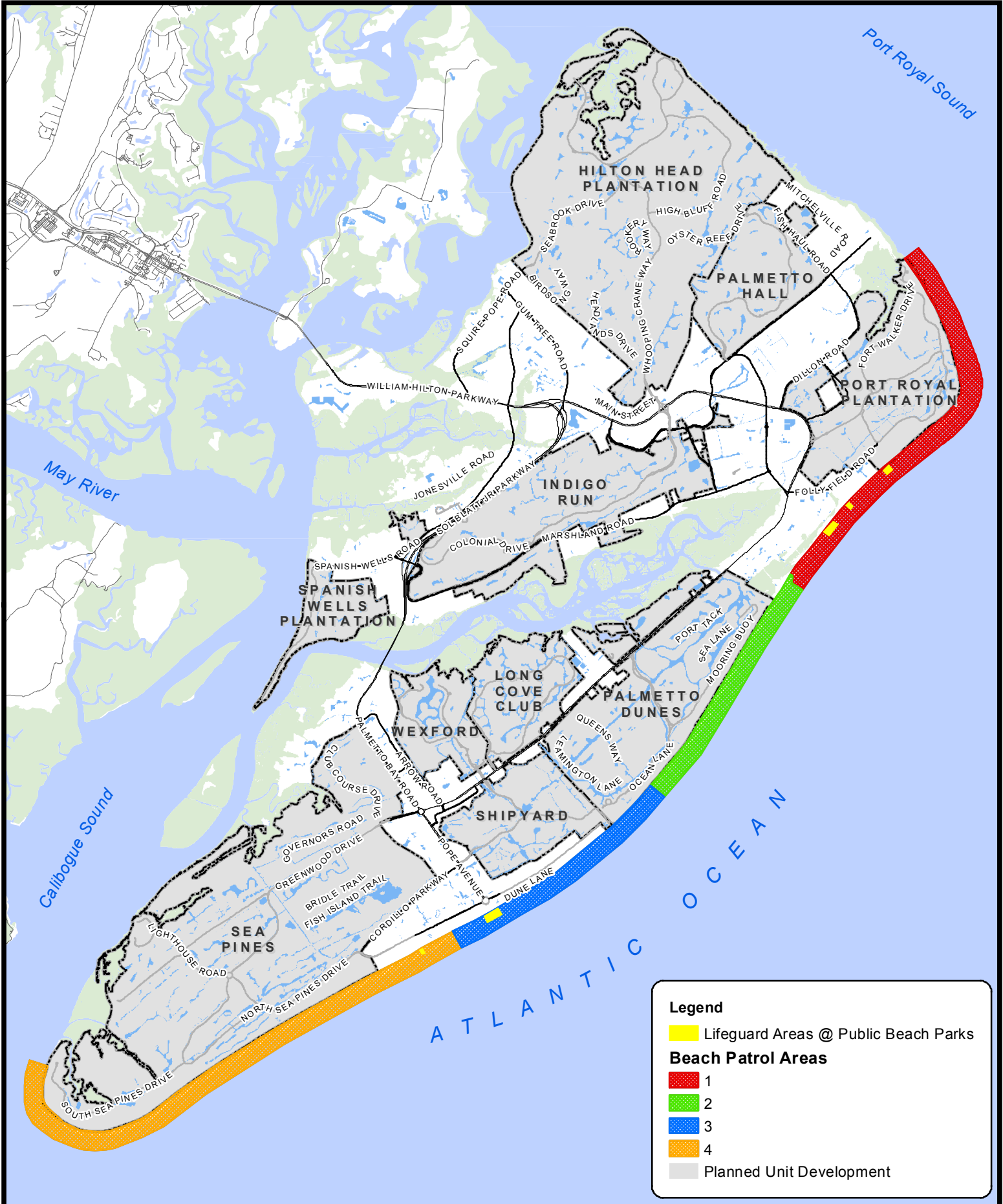
SCALE: 1" = 40' DATE: Y11/21/2017 JOB NO: SC96252J.2 Y

PREPARED FOR: SEA PINES COMPANY
ADDRESS: #87 NORTH SEA PINES DRIVE,

TAX PARCEL I.D. NO. R550-017-00A-001A-0000



Logo for Surveying Consultants, Inc. and contact information: 7 Sherrington Drive, Suite 6C, Bluffton, SC 29910. Telephone: (843) 615-3304, Fax: (843) 615-3305, GA: (912) 828-2775.



Attachment C

Beach Patrol Areas

2018



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MEMORANDUM

TO: Town Council

FROM: John M. Troyer, CPA, Director of Finance

VIA: Stephen G. Riley, ICMA-CM, Town Manager

DATE: May 7, 2019

RE: First Reading of Proposed Ordinance No. _____

Recommendation:

Staff recommends Council approve first reading of Proposed Ordinance No. _____. The ordinance establishes the fiscal year 2020 and 2021 budgets for the General Fund, Capital Projects Fund, Debt Service Fund and Stormwater Fund.

Summary:

Town Council will hold budget workshops on May 14 and 21, 2019. The proposed FY 2020 budget for the General Fund, Capital Projects Fund, Debt Service Fund, and Stormwater Fund is \$79,147,817. The proposed FY 2021 budget for the General Fund, Capital Projects Fund, Debt Service Fund, and Stormwater Fund is \$78,619,447.

	<u>FY 2019 Budget</u>	<u>FY 2020 Budget</u>	<u>FY 2021 Budget</u>
General Fund	\$ 40,257,829	\$ 41,108,317	\$ 42,558,447
Debt Service Fund	24,200,000	21,500,000	21,500,000
CIP	9,876,000	11,139,500	9,111,000
Stormwater Fund	5,311,000	5,400,000	5,450,000
Total	\$ 79,644,829	\$ 79,147,817	\$ 78,619,447

ORDINANCE NO. _____

PROPOSED ORDINANCE NO. 2019-15

AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2020; TO ESTABLISH A PROPERTY TAX LEVY; TO ESTABLISH FUNDS; TO ESTABLISH A POLICY FOR ACQUISITION OF RIGHTS OF WAY AND EASEMENTS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 5-7-260(3) of the Code of Laws for South Carolina 1976, as amended, and Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island, South Carolina, require that the Town Council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

WHEREAS, Town Council also desires to set aside funds for an Operating Reserve to provide for emergency-related expenditures and to offset fiscal year tax revenue income stream deficiency; and

WHEREAS, Town Council finds that it would be more economical and efficient to authorize the Town Manager to move forward with construction contract modifications, change orders, contract price adjustments, and execution of contracts for supplies, services, and construction where the contract amount involved does not exceed the budget line item or project budget as approved by Town Council in the Consolidated Municipal Budget.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

NOTE: Underlined and bold-face typed portions indicate additions to the Ordinance. ~~Stricken~~ Portions indicate deletions to the Ordinance.

Section 1. Adoption of the Budget. The prepared budget of estimated revenues and expenses, a copy of which is attached hereto and incorporated herein, is hereby adopted as the budget for the Town of Hilton Head Island for the fiscal year ending June 30, 2020.

The General Fund budgetary authority is adopted at the Departmental level as follows:

<u>Expenditure Type</u>	<u>2020 Budget</u>	<u>2021 Budget</u>
Town Council	\$ 479,224	\$ 493,601
Town Manager	846,440	871,833
Human Resources	687,766	648,424
Administrative Services	3,957,269	4,073,649
Finance	1,992,406	2,052,125
Community Development	3,553,997	3,601,547
Public Projects and Facilities	5,642,043	5,911,304
Fire Rescue	15,499,346	15,897,377
Sheriff / Other Public Safety	3,813,237	3,927,634
Townwide	2,823,316	3,289,036
Community / Grants	1,813,273	1,791,917
	<u>\$ 41,108,317</u>	<u>\$ 42,558,447</u>

The Debt Service Fund and the Stormwater Fund are adopted at the Fund level. Capital Improvement Projects are adopted at the Project level. The Town Manager is authorized to transfer amounts up to \$100,000; larger transfers require Town Council approval.

Section 2. Establishment of Property Tax Levy. A tax to cover the period from July 1, 2019 through June 30, 2020, inclusive, for the sums and in the manner hereinafter mentioned, is and shall be, levied, collected and paid into the treasury of the Town of Hilton Head Island for its uses at a rate of mills on assessed value of real estate and personal property of every description owned in the Town of Hilton Head Island, except such property as is exempt from taxation under the Constitution and laws of the State of South Carolina. Said tax levy shall be paid into the Town Treasury for the credit of the Town of Hilton Head Island for its corporate purposes, for the purpose of paying current operational expenses of the said municipality 17.13 mills, Debt Service 5.97 mills, and Disaster Recovery (millage override) 5.00 mills making the total levy of 28.10 mills.

Section 3. Establishment of Funds. To facilitate operations, there shall be established and maintained a General Fund, a Capital Projects Fund, a Debt Service Fund, a Stormwater Fund and other appropriate funds in such amounts as are provided for in the aforesaid Budget, as hereby adopted or as hereafter modified pursuant to law.

Section 4. Acquisition of Rights of Way and Easements. The Town Manager is charged with the duty of executing all necessary documents to obtain rights of way, easements, and other property interests necessary to complete duly authorized Capital Improvement Projects. Capital Improvement Projects based on the ownership and life expectancy of the assets or improvements or based on the funding source authorized may be budgeted in the General, Capital Projects or Stormwater Funds. If expenditures are expressly authorized for an approved Capital Improvement Project in any of the budgeted funds, then the Town Manager is hereby authorized to execute all

necessary documents and to expend such funds as are approved pursuant to the Capital Improvement budgets. Provided, however, in the event that the costs of an acquisition of such real property interests materially exceeds the amount budgeted in the approved Capital Improvement Project and the Town Manager is unable to shift additional funds from other authorized sources, the Town Manager shall be required to obtain the approval of Town Council for such additional expenditures. Nothing herein shall obviate the requirement that no condemnations shall be commenced without the appropriate approval of the Town Council for the Town of Hilton Head Island.

Section 5 Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 6. Effective Date. This Ordinance shall be effective upon its enactment by the Town Council for the Town of Hilton Head Island.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS ____ DAY OF _____, 2019.

John McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

First Reading: _____

Public Hearing: _____

Revised First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

_____, Town Attorney

Introduced by Council Member: _____



MEMORANDUM

TO: Town Council

FROM: John Troyer, CPA, Director of Finance

VIA: Stephen G. Riley, ICMA-CM, Town Manager

RE: Finance and Administrative Committee recommendations to Town Council regarding the contract with the Hilton Head Island/Bluffton Chamber of Commerce/Visitor & Convention Bureau as the current Designated Marketing Organization (DMO)

DATE: April 26, 2019

Recommendation: Staff recommends that Council consider approval of two recommendations from the Finance and Administrative Committee regarding the Chamber of Commerce Visitor and Convention Bureau (VCB) as the Town's designated marketing organization (DMO) for State Accommodations Tax purposes.

1. Review of the 2018/2019 Performance Metrics for the Hilton Head Island/Bluffton Chamber of Commerce as the Designated Marketing Organization for Hilton Head Island.
2. Notification to the Hilton Head Island/Bluffton Chamber of Commerce of the Town of Hilton Head Island's Intent to Not Automatically Renew its Current Contract for Designated Marketing Organization Services.

Summary:

On April 23, 2019, the VCB presented in detail to Finance and Administrative Committee its proposed budget and marketing plan for 2019-2020. The budget breaks down revenues and expenses in rows by functional categories and in columns by the major funding sources with the Town of Hilton Head Island in the second column (after the total column) with a budget of \$ 1,950,000.

As one result of that discussion, the Finance and Administrative Committee recommended the budget and marketing plan for 2019-20 which was later approved by Town Council.

As another result of that discussion, the Finance and Administrative Committee discussed the performance metrics and the term of the current DMO contract for which the initial term is expiring in the near future.

The Finance and Administrative Committee also recommended to Town Council to:

1. Review of the 2018/2019 Performance Metrics for the Hilton Head Island/Bluffton Chamber of Commerce as the Designated Marketing Organization for Hilton Head Island.
2. Notification to the Hilton Head Island/Bluffton Chamber of Commerce of the Town of Hilton Head Island's Intent to Not Automatically Renew its Current Contract for Designated Marketing Organization Services.

The Finance and Administrative Committee also discussed the Town conducting a competitive process to determine the future DMO when the current contract with the VCB as incumbent DMO expires.

The Finance and Administrative Committee also recommended to the current DMO (the Hilton Head Island/ Bluffton Chamber of Commerce Visitor and Convention Bureau (VCB) submit a proposal to continue its services as the Town's DMO at the end of the initial term of the existing contract.

Background: According to State law, 30% of the two percent bed tax funds collected by the State of South Carolina is allocated to the pre-determined Destination Marketing Organization with an ongoing tourist program, which for the Town is the VCB. Town Code requires ATAC to review the VCB's proposed budget and marketing plan each year and make a recommendation to Town Council.

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT FOR PROFESSIONAL SERVICES ("Contract") is entered into by and between **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**, a municipal corporation organized and existing under the laws of the State of South Carolina ("Town") and **HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE**, a nonprofit corporation existing under the laws of the State of South Carolina ("Chamber").

WHEREAS, accommodations tax is a state and local tax that is levied on the lodging industry and South Carolina Code Section 6-4-10(3) requires thirty percent of the state received accommodation tax be awarded to a nonprofit corporation and allocated to a special fund used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity ("Promotional Fund").

WHEREAS, the Promotional Fund is not part of the general fund of the Town.

WHEREAS, nonprofit corporations are formed and governed pursuant to the South Carolina Non Profit Act ("Act") and the Act requires the corporation to be governed by a board of directors.

WHEREAS, the Town has determined that entering into a contract with certain non-profit corporations which receive tax funding is in the best interest of the Town so these non-profit corporations will satisfy certain compliance and operating standards.

WHEREAS, the Chamber believes that entering into a contract with the Town is in the best interest of its members and will provide for improved long-term planning.

NOW, THEREFORE, it is hereby agreed to as follows:

1. Mutual Compliance with Laws. The Town and the Chamber agree that each of them shall adhere to all applicable laws which govern their respective entities. These laws include Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967, Title I of the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, the Fair Labor Standards Act of 1938, the Immigration Reform and Control Act of 1986, the South Carolina Wage Act, the South Carolina Worker's Compensation Act, all laws related to the South Carolina Accommodation Tax, the South Carolina Non-Profit Corporation Act, and all laws administered and enforced by the South Carolina Department of Revenue and the Internal Revenue Service.

2. Chamber Obligations.

2.1 Audit. The Chamber agrees to provide an independent auditor's report to the Town on an annual basis with regard to each of its fiscal years (July 1st to June 30th). The audit shall be delivered to the Town by November 15th after the applicable fiscal year end.

The following standards shall apply to the audit and/or the auditor.

(a) The audit shall be conducted in conformity with the statements, rules, policies, and procedures set forth by the American Institute of Certified Public Accountants (the "AICPA").

(b) The audit shall be performed in accordance with generally accepted auditing standards (the "GAAS").

(c) The auditor must comply with all applicable statements on auditing standards (the "SAS") that are issued by the Auditor's Standing Board of the AICPA.

(d) The auditor must maintain malpractice insurance in an amount equal to at least One Million and No/100 Dollars (\$1,000,000.00).

(e) The auditor must provide evidence of successful completion of the peer review process approved by the AICPA.

2.2 DMO Report. In addition to the audit, the Chamber shall also produce and deliver to the Town a schedule of revenues and expenses for each fiscal year (the "Report") for the destination marketing organization division of the Chamber ("DMO"). The DMO revenue shall include all accommodation tax revenue received from the Town and/or the State of South Carolina. This Report shall be produced under the standards set forth above in Section 2.1(a), (b), and (c) and by the same auditor that has satisfied the standards set forth above in Section 2.1(d) and (e). The Report shall be delivered to the Town by November 15th after the applicable fiscal year end.

2.3 Auditor. The Chamber agrees that it will cause its finance committee to interview other auditing firms when the existing contract with its auditor expires. A town staff member or a council member, at his/her election, shall participate with the finance committee during this process provided the individual demonstrates sufficient financial acumen (consistent with best practices for nonprofit finance/audit committee members) and agrees to all policies and procedures which apply to the Chamber's board of directors. The Chamber makes no representation or assurance that the individual who participates with the finance committee will be covered with directors and officers liability insurance.

2.4 Tax Returns. The federal and state tax returns shall be prepared and filed by a tax professional that must execute the returns as a tax preparer as defined by the Internal Revenue Code, the South Carolina tax code, and/or their regulations. This requirement will insure that such professional tax return preparer is subject to all penalties set forth in the Internal Revenue Code or the South Carolina code concerning tax preparers.

2.5 Promotional Fund. The Chamber shall manage and direct the expenditure of the Promotional Fund. In addition, the Chamber shall be eligible to apply for annual supplemental grants from the accommodation tax pool and from the emergency reserve fund established by the Town. All public funds received by the Chamber shall be subject to the auditing and reporting requirements of this Contract.

2.6 Process. The Chamber shall submit a budget of planned expenditures for the Promotional Fund ("Budget") and a marketing plan ("MP") for each fiscal year. The MP shall be recommended by the Chamber's marketing council and the MP and the Budget shall be approved by the board of directors of the Chamber. The Town may elect to have a staff

member or council member participate as a member of the marketing council provided the individual agrees to all policies and procedures which apply to the Chamber's board of directors. The Chamber makes no representation or assurance that the individual who participates on the marketing council will be covered with directors and officers liability insurance. The Budget and MP will then be submitted to the Town's accommodations tax ("ATAX") committee for review and recommendation. Upon the recommendation by the ATAX committee, the Budget and MP shall be forwarded for approval by the Town. The ATAX committee and the Town shall make all reasonable efforts to provide review and approval in a timely manner since private funds, state funds and placement of public relations and marketing programs are dependent on meeting deadlines. The Chamber shall submit the Report to the Town by November 15th after the applicable fiscal year end.

2.7 Inspection Rights. The Town Manager (or a designee that satisfies the same standard to interview auditors as set forth in Section 2.3), or a representative from the Town's Finance and Administration Committee (who also satisfies the same standard to interview auditors as set forth in Section 2.3) may, upon reasonable notice, inspect the necessary financial records, including third party invoices, of the Chamber in order to verify compliance of the Report in all material respects. This inspection right shall not be exercised more than twice in each fiscal year, unless otherwise agreed to by the parties.

2.8 Legal Opinion. The Chamber shall select and retain a law firm, with the consent of the Town, to deliver a third party opinion to the Town which opines that all expenditures from the Promotional Fund as set forth in the Report are in compliance with the then current requirements of South Carolina Code Section 6-4-10(3) and the Chamber is validly existing as a non-profit corporation under the laws of South Carolina. The legal opinion shall be addressed to the Town and the cost shall be equally divided by the Town and the Chamber. The legal opinion form and content shall adhere to the guidelines, to the extent applicable, of the South Carolina Third Party Legal Opinion Report approved by the Corporate, Banking and Securities Law Section of the South Carolina Bar on December 10, 2014 and approved by the House of Delegates of the South Carolina Bar on January 22, 2015.

3. Performance Standards.

3.1 DMO Standard. The Chamber and the Town agree that Destination Marketing Association International ("DMAI") is the industry leader in setting standards and accreditations with regard to destination marketing organizations. The Chamber agrees that it shall adopt policies and procedures and operate in a manner which satisfies the applicable standards set forth by DMAI under their categories of governance, finance, human resources, technology, marketing, visitor services, group services, sales, communications, membership, management and facilities, brand management, destination development, research and marketing intelligence, innovation, and stakeholder relationships with the goal of receiving accreditation by DMAI. The Chamber shall maintain accreditation with DMAI.

3.2 Organizational Standard. The United State Chamber of Commerce provides criteria to receive accreditation by a local chamber of commerce. The Chamber shall maintain the four star accreditation by the United States Chamber of Commerce.

3.3 DMO's Industry Metrics. The Chamber shall provide the Finance and Administration committee of the Town ("Committee") with certain tourism metrics and/or

reports such as:

- (a) revenue per available room;
- (b) occupancy rates;
- (c) visitor spending studies;
- (d) return on investment for visitor spending per dollar of investment;
- (e) local tax revenues generated by visitors;
- (f) number of visitors;
- (g) number of referrals made to area businesses and number of website hits and click through(s) made to area businesses;
- (h) numbers related to mail fulfillment and other contacts;
- (i) industry awards received for marketing and public relations efforts;
- (j) number of jobs created by tourism;
- (k) events held and participation in events by Chamber members; and
- (j) update on its public relations efforts to include the number of media impressions and the dollar equivalent for the media impressions.

It is understood and acknowledged that such metrics and/or reports may change from time to time based upon best practices, available funding and the goals set forth in the MP. The Committee shall review the data provided under this Section and evaluate the performance of the DMO. The evaluation shall consider the above metrics and reports, collectively, and shall be compared with peers and other factors that affect the tourism industry such as the state of the economy, weather, condition of the lodging properties, etc. The Committee shall report a summary of its evaluation to the Town Council.

If the Town Council determines that the Chamber has underperformed, it shall retain an industry recognized expert that has been recommended by DMAI ("Expert") to confirm its determination and to recommend strategies and policies to cure the deficiencies which have created the underperformance (the "Cure Plan").

In such an event, the Chamber shall cooperate with the Town Council and the Expert to implement the Cure Plan. If, after one year from the date of the delivery of the Cure Plan, the Town Council, after consultation with the Expert, determines the implementation of the Cure Plan has not occurred, the Town Council shall have the right to terminate this Contract by written notice, said termination to be effective sixty (60) days after said notice is given.

4. Chamber Covenants and Representations.

4.1 The Chamber covenants and represents that it has all necessary licenses and consents required for the Chamber to enter into and fully perform this Contract.

4.2 The Chamber covenants and represents to perform all tasks required under this Contract with a degree of skill and care of reputable organizations of the same profession in South Carolina.

4.3 The Chamber covenants and represents to properly withhold from all wages, commissions, salaries, and fees paid by Chamber to third parties or employees, agents, or sub-contractors of Chamber, all amounts required by state or federal law to be withheld for or on account of taxes, social security payments, or other withholdings mandated by law or regulation.

4.4 The Chamber covenants and represents that the MP shall include a public relations plan and a social media plan.

4.5 The Chamber covenants and represents that the Report shall include as exhibits the prior years' calendar of events and a dashboard of year over year tourism metrics as historically reported.

4.6 The Chamber covenants and represents to maintain www.ThinkHiltonHeadIsland.org and to post five (5) years of audits and tourism metrics as historically been reported.

4.7 The Chamber covenants and represents that it will comply with all state accommodation tax laws in administering the Promotional Fund.

4.8 The Chamber shall cause DMO revenue, less expenses, derived from DMO non programming activities to accrue for the benefit of the DMO.

5. Town Covenants and Representations.

5.1 The Town hereby covenants and represents that it will comply with all state accommodation tax laws in administering all such funds to the Chamber and other non-profit corporations.

5.2 The Town hereby covenants and represents that it shall comply will all such laws and procedures in a manner not to discriminate against one non-profit corporation versus another non-profit corporation.

5.3 The Town covenants and represents that it shall cause the Funding to promptly be paid to the Chamber in order for the Budget and MP to be implemented.

5.4 The Town hereby covenants and represents not to disturb, violate, request to be violated, any laws, loan covenants, policies and procedures, including but not limited to, all federal and state laws, and the South Carolina Non-Profit Act which effect the Chamber.

5.5 The Town hereby covenants and represents that Town has the lawful authority required under State law and Town's ordinances to enter into and perform this Contract.

6. Term. Since the current fiscal year's budget and MP have already been approved, this Contract shall be effective as of the 1st day of December 1, 2015, and shall continue for a period of five (5) years (the "Initial Term"), unless otherwise terminated as herein provided. If, at the expiration of the Initial Term, the Chamber has maintained the Performance Standards set forth in Section 3.1, 3.2, and 3.3 hereof, without interruption, then this Contract shall be extended by an additional five year term. Provided, however, each party shall have the ability to terminate this Contract upon the expiration of the Initial Term by providing the other party written notice during the month of November, 2019.

7. Termination.

7.1 If the Performance Standards set forth in Section 3.1 or 3.2 hereof have not been complied with in all material aspects as determined by DMAI, the United States Chamber of Commerce, or the Town, the Town shall provide written notice to the Chamber of the deficiency and the Chamber shall have one hundred eighty days (180) days to cure the deficiency. If the deficiency is not cured, the Town may terminate this Contract by providing ninety (90) day written notice to the Chamber. In addition, the Town shall have the right to terminate the contract by providing ninety (90) day notice if the auditor or DMAI determines fraud has occurred in the operation of the Chamber.

7.2 With respect to the Performance Standard set forth in Section 3.3 above, the termination process set forth in Section 3.3 shall control.

8. Updates. The Town acknowledges that the DMO makes a minimum of two public presentations to the ATAX committee each fiscal year. In addition to these appearances, the DMO shall report to the Committee on two other occasions during the fiscal year. These appearances shall be scheduled as to not interfere with any other presentation the DMO is making to a governmental body.

9. Other Provisions.

9.1 Headings. Headings to paragraphs in this Contract shall not interpret or alter the meaning of the words in the respective paragraph, nor any other provision of this Contract.

9.2 Notices. All notices to each party to this Contract shall be in writing, and sent as follows:

Town:

Town of Hilton Head Island, South Carolina
Attn: Stephen G. Riley, Town Manager
One Town Center Court
Hilton Head Island, SC 29928

Chamber:

Hilton Head Island – Bluffton Chamber of Commerce, Inc.
Attn: William G. Miles, President & CEO
1 Chamber of Commerce Drive
Hilton Head Island, SC 29928

9.3 Form of Notice. All notices required or permitted under this Contract shall be sent certified mail with signature required.

9.4 Merger, Amendment, and Waiver. This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document containing all such terms. This Contract merges all prior discussions, negotiations, contracts, agreements, and understandings between Town and Chamber concerning the subject matter described herein. This Contract may only be amended or varied by a written instrument signed by a

duly authorized signatory of Town and Chamber. Forbearance by Town from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle Chamber to rely upon such forbearance in the future.

9.5 Independent Contractor Status. Chamber shall not, by entering into this Contract, become a servant, agent, or employee of Town, but shall remain at all times an independent contractor. This Contract shall not be deemed to create any joint venture, partnership, or common enterprise between Chamber and Town, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

9.6 Attorney's Fees, Dispute Resolution. In the event of a dispute between the parties, the prevailing party in any dispute shall be entitled to an award of all reasonable attorneys and costs, including the costs of appeal, if any.



The parties have executed this Contract effective as of the date set forth in Section 6 above.

TOWN:

Town of Hilton Head Island, South Carolina

By: _____

Stephen G. Riley, Town Manager

CHAMBER:

Hilton Head Island Bluffton Chamber Of Commerce, Inc.

By: _____

William G. Miles, President & CEO

