

**CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA
NORTH MYRTLE BEACH CITY HALL
SPECIAL CALLED CITY COUNCIL MEETING
Wednesday, July 6, 2022, 1:30 PM**

Minutes

1. ROLL CALL:

Mayor Hatley called the meeting to order and asked the Clerk to call the roll.

Marilyn Hatley
JO Baldwin
Bubba Collins, Absent
Fred Coyne
Nicole Fontana
Trey Skidmore
Hank Thomas

A quorum was established.

2. BUSINESS:

A. **ORDINANCE/SECOND READING:** Amendment to Chapter 12, Health and Sanitation, of the Code of Ordinances of North Myrtle Beach, South Carolina revising Article 8, Sale, Use or Distribution of Single-Use Carryout Plastic Bags by Retail Establishments within the City. Mayor Hatley read the ordinance by title and called for a motion. The motion to approve was made by Councilwoman Fontana and seconded by Mayor Pro Tempore Baldwin. Manager Mahaney went over the changes to the ordinance, utilizing 2.25 mil plastic bags. The effective date would be October 1, 2022 to get the supply of 2.25 plastic bags or paper bags. The Council may take a look at it in 24 months, October 1, 2024. Mayor Hatley stated the Council had tried to listen to concerns and wanted to commend the retail businesses that had already switched to paper bags. The 2.25 mil bag would not help the landfill issues. Mayor Pro Tempore stated he was still not sold on the 2.25 mil bag as an alternative, but it was a better solution to what they had. He stated in the short term, he would agree to do this, but would like to bring it back up sooner and suggested January 2024. If the supply chain issues had changed, he wanted to look at it again. He did not believe the 2.25 mil bag was going to be an acceptable alternative. Councilman Skidmore thanked the committee for all they had done. He had looked into some of the suppliers, like Sysco and they said they would try to keep up with the demand. His concern was the smaller businesses that didn't have the access. Councilman Coyne stated they needed to look at it sooner and he agreed the 2.25 mil bag was not the answer. Mayor Hatley stated she didn't have a problem changing it to January 1, 2024. Councilwoman Fontana amended her motion to relook at the ordinance on January 1, 2024 and was seconded by Mayor Pro Tempore Baldwin.

Mayor Hatley opened the floor for public comment.

Gerry Ferguson, 1602 25th Avenue North, North Myrtle Beach, thanked the businesses that had complied with the ordinance. The ban in Beaufort County went into effect November 1, 2018, before the pandemic and related supply issues. Four years later, they were still using the thick bags in Beaufort County. One of the arguments made was that the thick bags could be reused. There was an ocean of difference between could and would. Many would end up in the landfill and litter. That would take much longer to biodegrade. The earth would be a loser again. She urged them not to wait until January 2024. It wasn't fair to the businesses that complied on day one. They found

the bags. It was longer than they need if they were operating in good faith, considering other businesses complied on day one. She stated she asked them a long time ago not to delay the implementation of the ban until she was in a nursing home...that was about here.

Luke Sharp, 314 34th Avenue North, North Myrtle Beach, thanked the Council for doing this for the city. He agreed with the last speaker and wished they would bite the bullet and ban all plastic bags. They were moving in the right direction. This community was a leader up and down the Grand Strand. Businesses were able to get the paper, it was just more expensive. He went online and tried to order 20,000 paper sacks. It was going to cost 8 cents each. The issue was cost. Mr. Sharp stated you get what you pay for. To protect the beaches, adding more plastic was not the answer. He asked them to protect the beaches and encouraged them to ban all plastic, but if they put a date to end them, that was a step in the right direction. He thanked the Council for being great.

John Griffiths, 612 20th Avenue North, North Myrtle Beach, stated a couple of observations. The 2.25 mil bag was a move in the right direction, but it would take longer in the landfills to break down. He asked them to continue what was decided two years ago. He asked why they were making exceptions for businesses that knew this was coming. Publix had paper bags and had managed this. He appreciated Frank; he did a lot for the community. He spoke with some baggers and the visitors up north tell them that they already have the bag bans. You put the stuff in your car and when you get home, you already have the bags, basket, or box. There were ways around this. Having a bag was not a necessity. They could figure out how to take groceries from the store, to the car, and to the house without relying on a bag.

Skip Dowl, 608 Johnstone Place, North Myrtle Beach, asked why they would put off revisiting that long. The worst that could happen if they visited it sooner, would be where they were now. If they revisited it sooner and there was an opportunity, they could take advantage of it. By putting it off 18 months, they had to maintain the status quo as it was now. Why not revisit it 6 months down the road? They may not see there would be a change, but hopefully they would, and they could move forward faster. What he found in business was the longer they made the deadline, the longer people would take to accomplish the goal. He didn't want them to take 18 months to revisit it when a positive outcome could come sooner.

Mayor Pro Tempore Baldwin stated they were making a change from a thin to a thicker, which had some benefits. In South Carolina, some of the original municipalities were doing the same thing. As for a date, he stated he would bring it back sooner, if they needed to. Businesses needed time to buy the new bags, which would be in large quantities, and there needed to be a transition time.

Having no further comment from the Council or public, Mayor Hatley called for a vote. The motion to approve passed 6-0.

- B. ORDINANCE/FIRST READING: Amendment to Chapter 5, Beaches and Waterways, of the Code of Ordinances of North Myrtle Beach, South Carolina revising Section 5-24, *Placing Obstructions on the Beach*. Mayor Hatley read the ordinance by title. Manager Mahaney stated he believed it would be very useful to present the facts because a great deal of misinformation had been put out. He displayed a letter to Michael McShane dated July 24, 2009. The letter stated items could be delivered to customers at the customer's home or rental unit, not the beach. Manager Mahaney pointed out not being allowed to set up on the beach had existed for many years. The tweaks they were making to the ordinance a couple of weeks ago and the one today, had nothing to do with the basic premise of not being able to go to the beach and set up. The second letter to Michael McShane dated June 28, 2010 said they had not been awarded a beach franchise. They could deliver to customers, but not allowed to set it up on the beach. This went back to the previous

City Manager. The Council has never allowed an entity to go to the beach to set stuff up. The next exhibit was a truncated email chain between Sarah Clayton Wood and Derek Calhoun. A year ago, Ms. Wood relayed to Mr. Calhoun that businesses were prohibited from setting up on the beach. In another email, Mr. Calhoun asked to explore a franchise and Ms. Wood replied the city was not interested in a franchise agreement. Manager Mahaney pulled up truncated body cam video that occurred on the beach in April. It was very hard to hear due to the wind noise, but the video was transcribed on the bottom of the screen. Manager Mahaney stated Mr. Calhoun had been told he couldn't set up on the beach or would receive a ticket. That was why he was getting tickets. Businesses have never been allowed to go on the beach to set up. They have never been granted a franchise to do this. The changes being proposed, had nothing to do with it. It had to do with where the credit card transaction took place and to clarify people can go on the beach after 7:00 PM but chairs had to be attended. It had nothing to do with trying to change the law to not set up on the beach. You have never been allowed to set up on the beach or given a franchise for this since many years ago. It has been communicated to Mr. Calhoun. Mayor Hatley stated it was important for the public to know that for many years they did have a franchise on a beach. They provided the lifeguards, chairs, and umbrellas. They provided beach patrol except for the officers the city provided. In return, they were allowed to rent the chairs and umbrellas. Only the franchisee was allowed to do it and they paid a percentage to the city, which provided for cleaning and taking care of the trash. No one has ever been allowed to go and just set up on the beach. There was a big difference from a beach service franchisee. They would be always on the beach, taking care of the people renting their equipment. The beach chairs were heavy and didn't fly away in a wind. They were attended and could be taken down quickly when a storm would come up. The city decided several years ago to take over the service, because they wanted a higher qualified lifeguard. Today, they were highly trained and professional. The city can then offer a safer beach. Mayor Hatley pointed out they couldn't have everyone doing business on the beach. There would be people selling everything they possibly could. She explained how a franchise worked with an RFP and it was put out to bid. You couldn't just walk in and ask for a franchise. The changes today were clarifying what they have always meant them to be.

Mayor Hatley read the ordinance by title. Chris Noury, City Attorney, read the changes to the ordinance. The ordinance revised subsection (b) of Section 5-24 titled Placing Obstructions on the Beach as follows: "*Hours. Except for municipal beach service equipment or equipment authorized by franchise agreement, it shall be unlawful between the hours of 7:00 p.m. and 8:00 a.m. for any person to set up and leave unoccupied or unattended any equipment or other items on the public beach, including but not limited to, shading devices, floats, umbrellas, beach chairs, lounge chairs, life rafts, etc. (collectively, Beach Wares), so as to interfere with beach cleaning and/or beach concession operations.* The above amendment does not prohibit a person from placing beach chairs or other beach wares on the beach between the hours of 7:00 p.m. and 8:00 a.m. as long as the items are not left unattended or unoccupied so as to interfere with beach cleaning or beach concession operations. Subsection (e) of Section 5-24 contained amended language regarding "*Removal, disposal. Umbrellas, beach chairs, or other Beach Ware items/equipment remaining unattended on the beach between the hours of 7:00 p.m. and 8:00 a.m. that interfere with beach cleaning and/or beach concession operations will be removed from the beach and disposed of.*" Mr. Noury stated those were the only changes to the ordinance.

Mayor Hatley called for a motion. The motion to approve was made by Councilwoman Fontana and seconded by Councilman Coyne.

Mayor Hatley opened the floor for public comment.

Derek Calhoun, 1700 26th Avenue North, North Myrtle Beach, stated he was really glad that was brought up, but wished he was wearing something more flattering. When the incident occurred

was actually before you just changed. Immediately afterwards, he consulted an attorney and said as the ordinance was written, he was good to go. They continued to operate and had not been cited until the ordinance change last week. They were good to operate. It was all interpretation. It wasn't his fault the ordinance was written so poorly. Which was why it had to be changed last week to the wording they did. He was joined by several supporters and had been in talks with various veteran's organizations, which some were with him today. Mr. Calhoun stated mean what you say and say what you mean. Last week's Council meeting, Madam Mayor opened the session with 'we didn't mean you couldn't bring your chairs on the beach after 8 pm.' During the same session, he was sure she didn't mean to reduce him or business to timeshare peddlers harassing patrons on the beach. He was sure the Council didn't mean to make his business lawful one day and not the next. He was sure he didn't mean to target himself and business with the approved changes last week. From what he could find, they made 15 other businesses now illegal with the swipe of a pen. He was sure the Council didn't mean to allow over 500 golf carts travel on the road after 8 PM when they finished watching the fireworks at 9:30 on July 4th. Cherry Grove Beach Gear was a lawful business until June 29, 2022. He was able to freely operate for two years by delivering pre-ordered beach wares to the beach and serving the locals and visitors. They also stated that they depended on the revenue brought in on the city rentals to pay for safety and clean up on the beach. Cherry Grove Beach Gear had a very good weekend. They sold out. Despite the citations they have received totaling \$1,500 to date that they get a portion of. He wanted to publicly recognize Officer Gill for his kindness and professionalism in having to issue those citations. City beach services were also sold out. He paid his revenue earned to renew his business license with the city for this year and also collect and pay 9% sales tax on every order. Do you? If we had a franchise agreement as the ordinance states, even being sold out, they would have received royalties on sales over the weekend as well. There were no formal processes for franchise applications. There were no standard qualifications for approval. There were no franchise disclosure documents. And basic franchise laws were not being upheld. That lead him to the question if they ever intended to offer a franchise or if the term franchise was even applicable in this situation. He asked them to please tell him how his operation was taking money away from the city. Mr. Calhoun stated he was sure they didn't mean to create a social media storm, public outcry, and support for his business and very favorable news interviews. He was sure they didn't mean to bring to light what government overreach looked like. As a husband, father, veteran, small business owner and resident of the city, he says what he means. He was going to stand up to the city and prove the ordinance was unconstitutional. He would partner to raise up other small businesses in the area, where they have failed to do so. He promised to say what he means and means what he says. Thank you.

Jackson Garstka, 1700 26th Avenue North, North Myrtle Beach, stated the Sherman Antitrust Act of 1890 was a congressional act that passed to preserve the rule of free competition amongst commerce. As the step son of Derek Calhoun and a third year employee of Cherry Grove Beach Gear, he wanted to make a statement and question the Council in front of him. He asked if a company of 14 employees created too much competition for the City of North Myrtle Beach's chair and umbrella rental service? Why target a family that has put blood, sweat, and tears into a small business as a way of putting food on the table when there were multiple other commercial run businesses partaking in similar services? They were being ticketed daily while others were not. It seemed as though the city was directly targeting Cherry Grove Beach Gear. He was a 15-year-old kid standing in front of the people who were to lead and govern the city he called home. He was making an attempt to fight for his right to work and his family's future. It seemed as if they did not understand the number of people in the room that were small business owners, employees, and citizens of the city that were standing in support of their company. The City of North Myrtle Beach was a wonderful place to call home. He could think of plenty of subjects that

were much more important than putting a local business out of commission. He was sure the other 16,572 residents of the city could name plenty as well. He believed they would be alright paying a few more tax dollars to keep their place they called home free of monopolies. He concluded by asking the members of Council to take his word and consider again review of ordinance 5-24 to allow Cherry Grove Beach Gear to continue its services.

Claire Calhoun, 1700 26th Avenue North, North Myrtle Beach, thanked the City Manager for pointing out the emails that they were aware of. She wanted to point out they were emails and letters not laws.

John Griffiths, 612 20th Avenue North, North Myrtle Beach, stated he wanted to make an observation. His in-laws had health issues and were on a fixed income. They had used city services for many years, but now the price of the seasonal rentals was more than Cherry Grove Beach Gear offered. Frankly, the service was a little better and more flexible. It was difficult for them to go to the beach, carry chairs, carry umbrellas, a cooler, and a speaker. They found the service very valuable. He saw some Facebook feedback and support here that showed the same. Whether it was a private business, or the city could enhance their services to provide the other things, where an older person could be on the beach and have a cooler or speaker. He stated they mentioned this business would take away city revenues to provide services to the beach. If everyone benefitted from what the beach provides as a tourist attraction, perhaps it was time for a tax increase. With the influx of visitors from the north, they were used to paying higher taxes and whatever it would be down here would be lower than there. Most residents would be okay to paying more taxes if there were enhanced services on the beach, more clean up. He stated he asked for more trash cans and recycling cans on the beach and was told it wasn't in the budget. If they could provide better services, a tax increase would be acceptable.

Kendle McKeel, 1003 South Ocean Boulevard, North Myrtle Beach, stated the wording from 7 PM to 8 AM, to take their chairs down there. Did they think this would start the homeless to start hanging out on the beach on their chairs? Would this promote that? Mayor Hatley stated they wanted to clarify it was okay to take their chairs to the beach and watch the sunset. It was okay to do this as long as they stayed with them. Ms. McKeel stated a homeless person would do that. They would have their chair and stay with it. She asked to consider them saying they couldn't live on the beach. The way it was worded they would think it was okay to do it. Manager Mahaney stated he believed there was an ordinance that prohibited sleeping on the beach, which had existed for many years. He explained that the fare system on Coast RTA had been suspended, which allowed the large homeless population that's in Myrtle Beach to be able to get on the bus for free and ride to North Myrtle Beach. That fare system goes back in, beginning shortly, and then it would be a \$6 ride. Some of the large homeless population that's in Myrtle Beach that has been riding up for free, some of it will stop. When the fare system was suspended, the homeless population here increased significantly. Mayor Hatley stated they would keep an eye on it. Ms. McKeel stated she did rent from the city for the last couple of years, but they priced it out and ridiculously expensive. Now she understood that they were not offering it next year. She asked them to reconsider because this was a retirement community. A lot of people can't put up their own umbrellas and chairs and to take that into consideration. Manager Mahaney stated no other city of this size offered a seasonal pass. The 6-day rates were 60-70% higher than what we charge. Ms. McKeel stated she didn't see that as a good excuse.

Annadora Fowler, 101 Crossing Way Court, Little River, stated there was some confusion on what they did. She worked most days. Every morning they go out there and set up. They make sure everything was okay. If someone called to say their umbrella was broken or something fell over,

either Derek or whomever was working would go and fix it immediately. That's one thing that's been misconstrued. They were always on call. They could help someone whenever they need it. She could tell them for a fact that their city beach service workers were not always there. She sees them in the morning. They go. She goes to the beach and sees them sitting their sometimes. She has friends that work for them. She felt like it was a misconception on what they did. She promised if they would let them set up for them one day, they could show them how good they could do.

Councilwoman Fontana wanted to clarify to the public. They have never told Mr. Calhoun that they could not have their business. They've only asked to abide by the ordinance to not set up on the beach. They were not trying to stop them from making a living. That was the last thing the Council wanted to do, and they were all for small businesses. They have never told him he could not have his business. They love their businesses in North Myrtle Beach. They fight for them and try to make the best decisions they could possibly make for the city as a whole to run everything cohesive and do the best for the city. They have only asked Mr. Calhoun not to set up the items on the beach and that's all they've asked. They could deliver to the units, deliver to the end of the public beach access. They have asked him not to set up on the beach. Mayor Hatley reiterated one other thing. It had nothing to do with being against one business. It was about taking care of the beach and paying for lifeguards. It had always been that the franchisee or the city took care of the lifeguards. Mr. Calhoun did not provide a service for the health and welfare of the whole community. She stated she was sure his employees were wonderful, and he ran a very good business. They did not mind him running his business. If they allowed one person to start doing business on the beach, then they would have to open it up to everyone. They did not want a circus on the beach and multiple businesses on the beach. They wouldn't find that in public parks or on public land, except through a franchise. The beach belonged to the people and not to run his business.

Having no further comment from the Council or public, Mayor Hatley called for a vote. The motion passed 6-0.

Mayor Hatley thanked everyone for coming to the meeting. She adjourned the meeting at 2:30 PM.

Respectfully submitted,

Allison K. Galbreath, City Clerk

MARILYN HATLEY, MAYOR

Minutes approved and adopted this 18th day of July 2022