



Beaufort County Caucus

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STU RODMAN

Interim County Administrator

ERIC GREENWAY

Clerk to Council

SARAH W. BROCK

Administration Building

Beaufort County Government
Robert Smalls Complex
100 Ribaut Road

Contact

Post Office Drawer 1228
Beaufort, South Carolina 29901-1228
(843) 255-2180
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County Council Caucus Meeting Agenda

Monday, March 22, 2021 at 5:00 PM

This meeting will be held both in person at County Council Chambers, 100 Ribaut Road, Beaufort, and also virtually through Webex. Please be aware that there is limited seating available for the in-person meeting and attendees must wear a face covering and practice social distancing per Beaufort County Emergency Ordinance 2021-01

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE – Council Member Gerald Dawson
3. *PUBLIC NOTIFICATION OF THIS MEETING HAS BEEN PUBLISHED, POSTED, AND DISTRIBUTED IN COMPLIANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT*
4. APPROVAL OF AGENDA

UPDATES

5. DISCUSSION OF MINOR AND NECESSARY AMENDMENT TO LEASE OF 15 HAIG POINT ROAD, DAUFUSKIE ISLAND (MARSHSIDE MAMA'S)
6. LITIGATION UPDATE REGARDING BEAUFORT MEMORIAL HOSPITAL

DISCUSSION ITEMS

7. AGENDA REVIEW
8. NEW BUSINESS

EXECUTIVE SESSION

9. SECTION 30-4-70. (A) (2) DISCUSSION OF NEGOTIATIONS INCIDENT TO PROPOSED CONTRACTUAL AGREEMENTS REGARDING ECONOMIC DEVELOPMENT.
10. PURSUANT TO SC CODE SECTION 30-4-70 (A) (2) FOR THE RECEIPT OF LEGAL ADVICE WHERE THE LEGAL ADVICE RELATES TO A PENDING, THREATENED, OR POTENTIAL CLAIM.

CITIZEN COMMENTS

11. CITIZENS MAY JOIN VIA ZOOM USING THE LINK AND MEETING INFORMATION BELOW:

[MEETING LINK:](#)

Meeting Access Code: 161 960 5575

Password: BC123

(ANYONE who wishes to speak during the Citizen Comment portion of the meeting will limit their comments to no longer than three (3) minutes (a total of 15 minutes) and will address Council in a respectful manner appropriate to the decorum of the meeting, refraining from the use of profane, abusive, or obscene language)

12. ADJOURNMENT



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
<i>Discussion of minor and necessary amendment to lease of 15 Haig Point Road, Daufuskie Island (Marshside Mama's)</i>
MEETING NAME AND DATE:
<i>Caucus Meeting March 22, 2021</i>
PRESENTER INFORMATION:
<i>Thomas J. Keaveny, II Deputy County Attorney 5 minutes</i>
ITEM BACKGROUND:
<i>On October 1, 2019 Beaufort County entered into a Lease Agreement with Property Management Company, LLC for 15 Haig Point Road, Daufuskie Island. This property is generally known as Marshside Mama's and the General Store. The Lease Agreement requires the lessor to make substantial improvements to the property and then to reopen the property under the name of Marshside Mama's 2. The lessor has informed the County that it is legally precluded from using the name Marshside Mama's 2. It wishes to call the property D'fuskie's.</i>
PROJECT / ITEM NARRATIVE:
<i>Lease of 15 Haig Point Road, Daufuskie Island (Marshside Mama's).</i>
FISCAL IMPACT:
<i>The name change is not expected to have a fiscal impact on the County or on the project.</i>
STAFF RECOMMENDATIONS TO COUNCIL:
<i>Allow the name change and lease amendment.</i>
OPTIONS FOR COUNCIL MOTION:
<i>Allow the name change and lease amendment.</i>

COUNTY OF BEAUFORT

**FIRST AMENDED
LEASE AGREEMENT**

STATE OF SOUTH CAROLINA

FOR AND IN CONSIDERATION of the mutual promises, obligations and agreements set forth herein, this Amended Lease Agreement (referred to as the "Lease") is made and entered into on this _____ day of _____, 2021, between **Beaufort County**, a political subdivision of the State of South Carolina, hereinafter referred to as "Landlord" whose mailing address is County of Beaufort, Attention Beaufort County Facilities Maintenance, P.O. Drawer 1228, Beaufort, South Carolina 29901-1228, and **Property Management Company LLC**, whose mailing addressee is 4 Stoney Landing Road Bluffton, SC, 29936, referred to as "Tenant". The Landlord and Tenant hereinafter will collectively be referred to as the "Parties".

WHEREAS Landlord leases to Tenant the following described premises:

1. **DESCRIPTION OF LEASED PREMISES.** Approximately one-acre parcel including the public bathrooms, the restaurant facility, community playground and the general store all located at 15 Haig Point Road, Daufuskie Island, SC on Parcel Number R800 024 000 0032 0000, commonly known as Marshside Mama's and the Daufuskie Island General Store. This lease excludes the public docks on the same site. Tenant shall not impede public use of the docks, boat landing, or the parking area for the docks and boat landing. The Premises described in this paragraph shall be referred to hereafter as the "Leased Premises".

2. **TERM.** The initial term of this Lease shall be ten (10) years commencing upon the 1st day of October, 2019 and ending on the 30th day of September, 2029 ("Initial Term").

(A) *Renewal of Lease.* This Lease may be renewed upon the mutual consent of the Parties and agreed upon in writing. Any lease renewal shall include the same terms as this Lease and be for a period of five (5) years. This Lease may only be renewed up to two (2) times. Tenant shall notify the Landlord in writing of its desire to renew no later than ninety (90) days before the expiration of the Initial Term or any renewal term. The terms set forth in this Paragraph shall collectively be referred to hereafter as a "Renewal Term".

3. **RENT AMOUNT, PAYMENT AND ADDITIONAL CONSIDERATION.** Tenant agrees to pay an annual rent in the amount of \$10,800 payable as \$900 per month due on the 1st day of each month ("Rent Amount"). In addition to the Rent Amount, Tenant shall also maintain the restrooms and keep them in a clean, sanitary and acceptable condition on a daily basis. Tenant shall be responsible for regular maintenance of the grounds surrounding the restaurant, store, and public restrooms in a neat and orderly manner, including the community playground and county dock. Landlord shall not be required to make any repairs or improvements to the Leased Premises or fixtures.

(A) *Payment.* Each monthly payment (\$900.00) shall be submitted by check with payment to "Beaufort County" and mailed to:

Beaufort County
 Attention: Finance Dept. Accounts Receivable
 P.O. Drawer 1228
 Beaufort, SC 29901

Each payment shall provide the following account reference in the "memo" line or otherwise: "Marshside Mama's 15 Haig Point Rd."

(B) *Late Payment.* Any rents not paid within five (5) days of the due date shall be deemed late and shall obligate Tenant to pay a late charge of ten percent (10%) of the sum then due.

(C) *Capital Investment.* Tenant shall provide as additional consideration a minimum capital investment of at least \$100,000 upon lease execution to facilitate renovation, up fit, equipment, furniture, and related food preparation/serving solutions which are required to support an ongoing business on-property, as well as, all other "Proposed Mutually Beneficial Efforts" as set forth in Tenant's Bid submission in response to RFP 103118. Any and all property purchased with any portion of the previously described \$100,000 capital investment shall be deemed a fixture to the Leased Premises, and shall not be removed at the conclusion of either the Initial Term or any Renewal Term. Tenant shall provide the Landlord with proof of this investment in summary form, with receipts, upon the completion of the improvements or otherwise as requested by the Landlord.

(D) *Annual Investment.* Upon expiration of the Initial Term, and during any Renewal Term, Tenant shall provide a minimum \$2,500 annual investment to capital improvements to ensure the building and all fixtures are properly maintained and continuously improved. Tenant shall provide proof of this capital investment on at least an annual basis or as otherwise requested by the Landlord. Any and all property purchased with any portion of the previously described annual \$2,500 capital improvement shall be deemed a fixture to the Leased Premises, and shall not be removed at the conclusion of either the Initial Term or any Renewal Term.

(E) *Merchandise Sales.* The Tenant shall donate five percent (5%) of all music and music related merchandise sales from at least twelve (12) music and artist events annually to the Daufuskie Island Historic Preservation Society as set forth in Tenant's Bid submission in response to RFP 103118. The Tenant shall provide an account of the donations described in this section to Landlord on an annual basis or as otherwise requested by the Landlord.

(F) *Utilities.* Tenant shall be responsible for paying one hundred percent (100%) of all utility expenses associated with the Leased Premises during the Initial Term and any Renewal Term.

4. COMPLIANCE WITH LAWS. Tenant shall not make or permit any use of the Leased Premises which are unlawful, improper, or contrary to any applicable law or ordinance, including without limitation all zoning, building, or sanitary statutes, codes, rules, regulations or ordinances, or which will make voidable or increase the cost of any insurance maintained on the leased premises by Landlord.

5. CONDITION OF THE LEASED PREMISES. Tenant is fully familiar with the physical condition of the Leased Premises. Landlord has made no representation in connection with the Leased Premises and shall not be liable for any latent defects therein; provided, however, that if such latent defects render the Leased Premises uninhabitable for the purposes of this Lease, Tenant may at its option, and upon written notice to Landlord, terminate this Lease. Tenant stipulates that he or she has examined the Leased Premises, including the grounds and all buildings and improvements, and agrees to accept the Leased Premises "as-is" condition.

6. USE OF PREMISES (AMENDED). The Leased Premises shall be used and occupied by Tenant exclusively as a restaurant (to include the sale of beer wine and alcoholic beverages with appropriate State licenses) called the "D'Fuskie's" and a general store. Tenant agrees the general store shall serve the island residents and will carry the kinds of products a general store has traditionally carried for the convenience of islanders. The general store may also carry other items that would appeal to visitors to the island. Neither the Leased Premises nor any part thereof shall be used at any time during the any lease term by Tenant for any purpose other than as D'Fuskie's and the general store. Tenant shall comply with all the sanitary laws, ordinances, rules, and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the Leased Premises, during the terms of this Lease.

7. TENANTS OBLIGATIONS. Tenant agrees and shall maintain the Leased Premises as follows: (1) comply with all obligations primarily imposed upon Tenant by applicable provisions of building and housing codes materially affecting health and safety; (2) keep the Leased Premises reasonably safe and clean; (3) dispose from the Leased Premises all ashes, garbage, rubbish, and other waste in a reasonably clean and safe manner; (4) keep all plumbing fixtures in the Leased Premises or used by the Tenant reasonably clean and in working order; (5) use and maintain in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating air-conditioning, and other facilities and appliances in the Leased Premises and to keep said systems in good working order; (6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the Leased Premises or knowingly permit any person to do so who is on the Leased Premises with the Tenant's permission or who is allowed access to the Leased Premises by the Tenant; (7) conduct himself and require other persons on the Leased Premises with the Tenant's permission or who are allowed access to the Leased Premises by the Tenant to conduct themselves in a manner that will not disturb other Tenant's or neighboring property owner's peaceful enjoyment of their premises; (8) dispel or cause to have dispelled from the Leased Premises any individual(s) that do not have the express authorization or permission to occupy said premises either from the Tenant or the Landlord; and (9) comply with this Lease and rules and regulations which are enforceable pursuant to S.C. Code of Laws Section 27-35-75. In addition to the obligations stated above, Tenant shall also be responsible for any and all janitorial services that may be necessary during those dates and times that Tenant shall enjoy possession and use of the Leased Premises.

8. MAINTENANCE AND REPAIRS. Tenant shall, at his sole expense, keep and maintain the Leased Premises, fixtures, and appurtenances in good and sanitary condition during the Initial Term and any Renewal Term. Subject to applicable law, the Tenant shall keep and maintain the Leased Premises and all equipment and fixtures thereon or used therewith, including but not limited to exterior walls, roof, HVAC

equipment, electrical and plumbing fixtures, whole and of the same kind, quality and description and in such good repair, order and condition as the same are at the beginning of the Initial Term or may be put in thereafter, reasonable and ordinary wear and tear only excepted.

9. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease, nor sublet this lease, nor grant any concession or license to use the Leased Premises or any part thereof. The Tenant shall not, without the Landlord's prior written consent: (i) mortgage, pledge, encumber, or otherwise transfer (whether voluntarily, by operation of law, or otherwise) this Lease or any interest hereunder; (ii) allow any lien to attach to Tenant's interest in the Leased Premises or this Lease; (iii) permit the use or occupancy of the Leased Premises or any part thereof by anyone for a purpose other than as set forth herein; (iv) assign or convey this Lease or any interest herein; or (v) sublet the Premises or any part thereof; and any attempt to consummate any of the foregoing without Landlord's consent shall be void.

A consent by Landlord to one assignment, subletting, concession or license shall not be deemed to be a consent to any subsequent assignment, subletting, or license. An assignment, subletting, concession, or license without the prior written consent of Landlord or an assignment or subletting by operation of law, shall be void and shall at Landlord's option, terminate this Lease immediately. Failure by Landlord to assert its rights under this Lease upon a violation, shall not be deemed waiver or abandonment of its rights subsequently or at any time during the violation.

10. RIGHT OF INSPECTION. Landlord and his or her agents shall have the unfettered right at all reasonable times during the Initial Term or any Renewal Term enter the Leased Premises for any reason whatsoever. Landlord agrees, when able, to provide Tenant with reasonable notice of said entry upon the Leased Premises. No notice will be required in emergency situations or for access or entry upon the Leased Premises.

11. INSURANCE. Landlord has obtained Premise Liability Insurance, which does not cover Tenant's possessions or Tenant's negligence. Tenant must obtain a Renter's Insurance Policy, in an amount of no less than \$1,000,000 in commercial general liability, or other appropriate policies to cover damage or loss resulting from Tenant's negligence. Tenant shall name Landlord as an additional party in any and all insurance policies, and shall provide Landlord with a copy of all policies. Tenant shall also obtain and keep in force Dram Shop Liability Insurance in the same amount. Servers shall obtain a PIPS certification.

12. INDEMNIFICATION. Tenant hereby agrees to indemnify and hold harmless Landlord against and from any and all claims for property damage, or for personal injury, arising out of or in any way arising out of Tenant's use of the Leased Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Leased Premises.

13. SURRENDER OF PREMISES. At the expiration of this Lease, Tenant shall quit and surrender the Leased Premises hereby demised quietly, peacefully and in as good state, reasonable use and wear thereof accepted.

14. DEFAULT. In the event Tenant defaults in the observance or performance of any of Tenant's covenants, agreements or obligations hereunder and such default shall not be corrected within ten (10)

days after written notice thereof, Landlord may elect to enter upon said Leased Premises and take possession thereof, whereupon this Lease shall absolutely terminate. It shall be no defense to Tenant that previous violations of any covenants have not been raised or asserted by Landlord either expressly or impliedly. Any such election by Landlord shall not discharge Tenant's obligations under this Lease and Tenant shall indemnify Landlord against all loss or damages suffered by reason of such termination.

(A) *Insolvency or Bankruptcy.* The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant, or any action against Tenant, under any insolvency, bankruptcy, or reorganization, shall at Landlord's option constitute an event of default under this Lease. Upon the happening of any such event of default or at any time thereafter, this Lease shall terminate five (5) days after written notice of termination from Landlord to Tenant. In no event shall this Lease be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise and in no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency, or reorganization proceedings.

(B) *No Waiver.* No course of dealing between Landlord and Tenant or any failure or delay on the part of Landlord in exercising any rights of Landlord under any provisions of this Lease shall operate as a waiver of any rights of Landlord, nor shall any waiver of a default on one occasion operate as a waiver of any subsequent default or any other default. No express waiver shall affect any condition, covenant, rule or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

(C) *No Election of Remedies.* The exercise by Landlord of any right or remedy shall not prevent the subsequent exercise by Landlord of other rights and remedies. All remedies provided for in this Lease are cumulative and may, at the election of Landlord, be exercised alternatively, successively, or in any other manner, and all remedies provided for in this Lease are in addition to any other rights provided for or allowed by law or in equity.

15. ABANDONMENT. If Landlord's right of entry is exercised following abandonment of the Leased Premises by Tenant, then Landlord may consider any personal property belonging to Tenant and left on the Leased Premises to have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and is hereby relieved of all liability for doing so.

16. TERMINATION. Tenant agrees to quit and deliver up the Leased Premises peaceably and quietly to Landlord, or its attorney, or other duly authorized agent, at the expiration or other termination of this Lease. This Lease may be terminated upon the occurrence of any default event as set forth in this Lease and as provided by the law governing governmental subdivisions and the length of contracts they may enter into.

17. **QUIET ENJOYMENT / PERMITTED OCCUPANTS.** Landlord covenants that upon Tenant's performance of the covenants and obligations herein contained, Tenant shall peacefully and quietly have, hold, and enjoy the Leased Premises for the agreed term. Tenant shall not allow or permit the Leased Premises to be occupied for purposes that may injure the reputation, safety, or welfare of the property. Landlord shall have the right to terminate this Lease should Tenant fail to comply with the terms of this provision.

18. **BINDING EFFECT and ENTIRE AGREEMENT.** This Lease is to be construed in accordance with the laws of the State of South Carolina. The Parties agree that this Lease, along with RFP No.: 103118, and Tenant's Bid Proposal (all of which are incorporated herein by reference) set forth the entire agreement between the Parties. This Agreement is binding upon and inures solely to the benefit of the Parties hereto. This Lease may be cancelled, modified, or amended only by written instrument signed by both Landlord and Tenant.

19. **SEVERABILITY.** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

20. **CAPTIONS.** The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

APPLICABLE LAW. The laws of the State of South Carolina shall govern the interpretation, validity, performance and enforcement of this Lease; and, of any personal guarantees given in connection with this Lease.

21. **TIME IS OF THE ESSENCE.** Time is of the essence of this Lease.

22. **NOTICES.** All notices hereunder by Landlord to Tenant shall be given in hand or in writing through certified mail addressed to Tenant at the Leased Premises, or to such other address as Tenant may from time to time give to Landlord for this purposes, and all notices by Tenant to Landlord shall be given in hand or by registered or certified mail addressed to Landlord's address shown in the initial paragraph of this Lease, or to such other address as Landlord may from time to time give in writing to Tenant for this purpose. Such notice shall be deemed delivered, if by hand when hand delivered or if by mail when deposited with the U.S. Postal Service.

23. **SPECIAL PROVISIONS.** Tenant acknowledges the special character of the Daufuskie Community. The Daufuskie Island Community Council coordinates special events each year. The Demised Premises have traditionally been made available for these events. The Tenant does hereby agree to make the Demised Premises available for the mutual benefit of the Tenant and the Daufuskie Island Community for the following events:

1. Daufuskie Days celebration typically held on the 4th Saturday in June.
2. Community Thanksgiving dinner typically held the Sunday before Thanksgiving between the times of 11:00 a.m. and 4:00 p.m.
3. Community Christmas Parade and Santa event, typically held on a Saturday afternoon in December as coordinated by the Daufuskie Island Community Council.

For the purposes of this section, "Demised Premises" shall mean that portion of the property outside of the restaurant and store; provided however for the Community Thanksgiving dinner, it shall include the dining area. During all of these special events, Tenant shall be entitled to operate its business in a normal manner.

IN WITNESS THEREOF, the Parties hereto have executed this Amended Lease Agreement the day and year first above written.

LANDLORD:

Witness

Eric Greenway
Beaufort County Administrator (Interim)

Witness

TENANT:

Witness

Property Management Company, LLC
By: _____
Its: _____

Witness

NOTICE: State law establishes rights and obligations for parties to rental agreements. If you have a question about the interpretation or legality of a provision of the Lease Agreement, you may want to seek assistance from a lawyer or other qualified person.



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
<i>Litigation Update Regarding Beaufort Memorial Hospital</i>
MEETING NAME AND DATE:
<i>Caucus Meeting March 22, 2021</i>
PRESENTER INFORMATION:
<i>Thomas J. Keaveny, II Deputy County Attorney 5 minutes</i>
ITEM BACKGROUND:
<i>On February 18, 2021 Beaufort Memorial Hospital filed a lawsuit against Beaufort County. The purpose of the lawsuit was to prevent Beaufort County Council from reinstating to the Hospital's Board of Trustees a member of the Board who previously resigned and who later rescinded her resignation. Council subsequently decided to take any action on the reinstatement. Rather than dismissing the lawsuit as moot Beaufort Memorial thereafter (on March 12, 2021) filed an amended complaint in which it seeks: (1) to prevent Beaufort County from reinstating any Board member who resigns; (2) to prevent Beaufort County from appointing to the Board anyone who has not been nominated to the Board by the Board itself; and (3) to prevent Beaufort County Council from amending its own ordinance without the Hospital's consent.</i>
PROJECT / ITEM NARRATIVE:
<i>See above</i>
FISCAL IMPACT:
<i>No fiscal impact is anticipated as a result of this lawsuit.</i>
STAFF RECOMMENDATIONS TO COUNCIL:
<i>Beaufort County is defending this lawsuit.</i>
OPTIONS FOR COUNCIL MOTION:
<i>This is for information only.</i>

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CIVIL ACTION NO.: 2021-CP-07-00298
)	
BEAUFORT COUNTY MEMORIAL)	
HOSPITAL d/b/a BEAUFORT)	
MEMORIAL HOSPITAL,)	
)	SUMMONS
)	
Plaintiff,)	
)	
vs.)	
)	
BEAUFORT COUNTY, SOUTH)	
CAROLINA,)	
)	
Defendant.)	
_____)	

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to respond to the First Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your response to said First Amended Complaint on the firm of Moore & Van Allen PLLC, 78 Wentworth Street, Charleston, South Carolina 29401, within the time remaining for response to the original Complaint or within fifteen (15) days after service of the First Amended Complaint, whichever period may be the longer. If you fail to respond to the First Amended Complaint within the time prescribed, the Plaintiff in this action will apply to the Court for default judgment against you and for an award of the relief demanded in this First Amended Complaint.

(signature on following page)

MOORE & VAN ALLEN PLLC

s/Douglas M. Muller

Douglas M. Muller (S.C. Bar 10277)

Trudy H. Robertson (S.C. Bar 64856)

78 Wentworth Street

P.O. Box 22828

Charleston, SC 29413-2828

Telephone: 843-579-7000

Facsimile: 843-579-7099

dougmuller@mvalaw.com

trudyrobertson@mvalaw.com

ATTORNEYS FOR PLAINTIFF

March 11, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2021-CP-07-00298

BEAUFORT COUNTY MEMORIAL)
HOSPITAL d/b/a BEAUFORT)
MEMORIAL HOSPITAL,)

Plaintiff,)

vs.)

BEAUFORT COUNTY, SOUTH)
CAROLINA,)

Defendant.)

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
AND OTHER RELIEF**

(Non-Jury)

Plaintiff Beaufort County Memorial Hospital d/b/a Beaufort Memorial Hospital, complaining of the Defendant Beaufort County, South Carolina and as its First Amended Complaint, alleges and states as follows:

PARTIES, JURISDICTION, VENUE AND STANDING

1. Plaintiff Beaufort County Memorial Hospital d/b/a Beaufort Memorial Hospital ("Plaintiff" or the "Hospital") is a public hospital established for a public purpose by an act of the South Carolina legislature, with its principal place of business in Beaufort County, South Carolina.

2. Defendant Beaufort County ("Beaufort County") is a county and political subdivision of the State of South Carolina, organized and existing under the Constitution and statutes of the State of South Carolina.

3. This is an action for declaratory relief under the South Carolina Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10, *et seq.*, and Rule 57 of the South Carolina

Rules of Civil Procedure and for other legal, injunctive, and equitable relief as more fully set forth herein.

4. This Court has personal jurisdiction over the parties pursuant to S.C. Code Ann. § 36-2-802.

5. This Court has subject matter jurisdiction over this action pursuant to S.C. Code Ann. § 15-53-20.

6. Venue for this action is proper in this Court pursuant to S.C. Code Ann § 15-7-20 and § 15-7-30.

7. The Hospital has standing to maintain this action under S.C. Code Ann. § 15-53-30.

BACKGROUND OF HOSPITAL

8. The Hospital was created by Act No. 1197 of the General Assembly of the State of South Carolina, (the "Act") approved on June 8, 1966.

9. The governing authority of the Hospital is the Board of Trustees of the Hospital (the "Board").

10. Section 8 of the Act provides that the Board shall control and manage the Hospital and its financial affairs.

11. The governing authority of Beaufort County is Beaufort County Council (the "County Council").

12. § 46-27 of the Beaufort County Code of Ordinances (the "County Ordinances") specifies that County Council may appoint trustees to the Board provided they are first nominated by the Board of the Hospital, and that the Board will determine the number of Board trustees as long as the Board has at least seven (7) voting members.

13. Specifically, § 46-27 of the County Ordinances provides as follows:

"The initial board of trustees shall be composed of the existing nine members of the Beaufort Memorial Hospital Boards of Regents. The initial board members shall complete their terms as defined at the time of their most recent appointment. Hereafter, vacancies in the board of trustees of Beaufort County Memorial Hospital shall be filled by the county council from nominees submitted by the board. Section 2-193 shall not govern the number of voting members of the board, which shall be determined by the board, provided that the board is comprised of a minimum of seven voting members."

14. § 46-33 of the County Ordinances further provides that: "This article shall not be amended, nor shall the agency's relationship created by this article be modified or terminated without the express mutual consent and approval of the [County Council] and the [Board] of Beaufort County Memorial Hospital."

15. After their appointment, the powers and the responsibilities of the Board's trustees are established in the Amended and Restated Beaufort Memorial Hospital Board of Trustees Bylaws (the "Bylaws").

16. Article 1 of the Bylaws specifies the Hospital's Mission, Vision, Culture and Core Values as follows:

- (a) Mission. To deliver superior health care services to our patients and to improve the health of our community.
- (b) Vision. To exceed expectations for quality and excellence.
- (c) Culture. To implement our vision of quality and excellence through our core values.
- (d) Core Values:
 - Integrity – Know the right thing and DO it consistently.
 - Compassion – Act with genuine concern for the well-being of others.

- Communication – Respectfully seek and share information.
- Responsibility – Be collectively and personally accountable for the success of Beaufort Memorial Hospital.
- Safety – Keep patients, visitors, co-workers and ourselves free from injury and harm.

17. The qualifications required of Board trustees as specified in Section 3.4 of the Bylaws include, among other requirements, an "[i]nterest in, and commitment to, the Hospital;..." and "[k]nowledge of health care issues or a firm commitment to acquire such knowledge, and a firm commitment to keep this knowledge up-to-date."

FACTS GIVING RISE TO THE FIRST AMENDED COMPLAINT

18. In December of 2019, international scientists discovered a novel Coronavirus that was potentially fatal to humans and that was spreading rapidly. This new Coronavirus was identified as "COVID-19."

19. On March 6, 2020, two (2) individuals were diagnosed in South Carolina with the disease – one in Charleston County, and one in Lancaster County.

20. On March 12, 2020, South Carolina Governor Henry McMaster declared a statewide state of emergency and closed the schools in two upstate counties where COVID-19 appeared to be spreading rapidly.

21. On March 14, 2020, three (3) individuals were diagnosed with COVID-19 in Beaufort County, South Carolina. On March 15, 2020, Beaufort County schools were closed, and by March 16, 2020, Beaufort County declared a state of emergency within Beaufort County. On March 30, 2020, a Beaufort man becomes the first person to die in Beaufort County as the result of COVID-19.

22. Thereafter, a series of local and state governmental actions sought to slow the spread of COVID-19. Most of these state and local government orders were intended to slow the

transmission of COVID-19 through compliance with guidelines established and issued by the U.S. Centers for Disease Control and Prevention (the "CDC Guidelines").

23. The CDC Guidelines emphasized social distancing, wearing masks and avoiding large gatherings in an effort to stem the spread of COVID-19, but these guidelines were not made mandatory in all jurisdictions, and they were often not followed by the general public.

24. On May 28, 2020, the number of deaths in the United States attributed to COVID-19 surpassed 100,000.

25. On June 12, 2020, Beaufort County broke its single-day record for coronavirus cases, as 33 people tested positive. The state as a whole saw record case counts for almost a week, and state health officials stated that these numbers weren't simply a result of more access to testing and they expressed an increasing concern about the spread of COVID-19.

26. Since early March of 2020, the Hospital's executives, medical staff and the Board had expressed deep concern about the spread of COVID-19 in the community. As part of the Board's mission to protect the health of the community and its front-line workers, the Board felt the spread of the virus could result in an overload of cases in the community and, thus, COVID-19 patients admitted to the Hospital. The Hospital executives, medical staff and the Board feared that a widespread impact of COVID-19 could potentially impact the Hospital's ability to care for residents of the community, including both individuals with COVID-19 and other individuals needed treatment at the Hospital, and they were equally concerned for the safety and health of the Hospital's healthcare providers.

27. Throughout this period of time, the Hospital's President and CEO had frequently and adamantly stated his opinion publicly that masks should be mandated by County Council to be worn in public places, as recommended by the CDC Guidelines.

28. The Hospital medical staff, executives and the Board had numerous discussions that focused on two factors that could stop or reduce the flow of COVID-19 cases into the Hospital: promoting the importance of social distancing and promoting the importance of wearing masks. The Board discussed this subject at every Board meeting from April through July. The Board Chairperson, on behalf of the Hospital, wrote to the Mayor of Beaufort and the leadership of County Council urging County Council to mandate wearing masks in public places. Board trustees were asked to do the same.

29. At no time did a Board trustee express a contrary opinion to the importance of wearing masks, either in a Board meeting, to the Hospital's President and CEO, or to the Board Chairperson. The Board Chairperson believed that the mandatory wearing of masks to help reduce the spread of COVID-19 had the complete and full endorsement of every trustee on the Board.

30. On June 30, 2020, and just prior to County Council's vote on a county-wide mask mandate ordinance, Ms. Kathleen Cooper, a trustee and officer of the Board, informed the Board Chairperson via e-mail that she had sent an e-mail to County Council expressing her personal belief that County Council should not adopt an ordinance with a county-wide mask mandate. In her e-mail to the Board Chairperson, Ms. Cooper stated: "I know you are adamant about city, town, and county ordinances regarding mandatory masks. I've kept my opinion (for the most part) to myself, but there is another side to this issue. I don't believe there should be a county-wide ordinance mandating wearing a mask. The following information is based on research and expert opinion, not my personal feelings. I thought I should tell you I've just sent the following email to county council members, though I didn't identify myself as a hospital board member or even as a nurse, I truly believe those who govern should have all the facts possible before making a decision that will affect many."

31. Included within Ms. Cooper's e-mail to the Hospital's Board Chairperson was an e-mail sent ten minutes earlier to the members of County Council entitled: "The Benefit of Wearing Masks is Inconclusive." In her June 30, 2020 e-mail to County Council, Ms. Cooper argued that despite CDC Guidelines that recommended the wearing of face masks and the efforts by the cities of Beaufort and Hilton Head Island to enforce mandatory wearing of masks in public, her personal research had determined that requiring citizens to wear masks in public was ineffective, and she advised County Council that she was providing them with "researched and expert evidence as to the opposing opinion on a mandatory mask decision."

32. Although Ms. Cooper did not identify herself as a Board trustee in her correspondence, she had been appointed to two (2) consecutive terms to the Board by County Council, and County Council was aware of her status as a trustee of the Board and as an officer of the Board.

33. By formulating and sending this letter to County Council without discussing her position with the Board, the Board Chairperson, the President and CEO of the Hospital or the Hospital's medical staff and health care providers, Ms. Cooper violated multiple fiduciary duties she owed to the Board and the Hospital, including her obligation of communication to "[r]espectfully seek and share information;" her obligation to maintain consistency with the Hospital's health care guidance to the public; and her obligation to protect the safety of the Hospital, its health care providers, its patients and its visitors.

34. On July 1, 2020, County Council passed a mandatory mask ordinance, despite opposition from several members of County Council and despite Ms. Cooper's efforts.

35. County Council's mandate was consistent with CDC Guidelines. As recently as February 14, 2021, the director of the CDC warned against the relaxing of mask mandates by state

and local governments, as there have been more than 27.6 million cases of COVID-19 diagnosed in the United States, and more than 485,000 deaths attributed to COVID-19, including over 7,000 confirmed deaths in South Carolina attributed to COVID-19.

36. On July 1, 2020, the Board Chairperson called Ms. Cooper, and told her that because of her philosophical difference with the Hospital and Board's position on mask wearing, and after consultation with other members of the Executive Committee of the Board, he felt that she should consider resigning as a Board trustee. Ms. Cooper offered no objection to the Board Chairperson's communication.

37. Ms. Cooper voluntarily resigned in writing to the Board Chairperson within one hour of the phone call through an e-mail to the Board Chairperson, which included a resignation letter she wrote.

38. In her resignation letter to the Board Chairperson of July 1, 2020, Ms. Cooper stated that her resignation was "effective immediately."

39. Shortly thereafter, the Board Chairperson was advised by Paul Sommerville, the Vice-Chair of County Council, through a telephone call that County Council refused to "accept" the resignation of Ms. Cooper because it had not been provided a copy of her resignation letter and it had not "approved" her resignation.

40. On July 10, 2020, the Board, through its legal counsel, provided County Council leadership with a copy of Ms. Cooper's resignation letter. In that forwarding correspondence, the Board's legal counsel noted that "the [Board] Bylaws do not contain any requirement that a [Board] Trustee who intends to voluntarily resign must give notice of such resignation to any other public body. Furthermore, it is very important to note that under ARTICLE II. - BEAUFORT COUNTY MEMORIAL HOSPITAL BOARD OF TRUSTEES of the Beaufort County Code of Ordinances,

Chapter 46, § 46-26, et seq., unlike other sections under Chapter 46 that expressly require a resignation of a board member to be submitted to Beaufort County Council and/or its chairperson, there is no such requirement that a [Board] Trustee must submit a resignation to the Beaufort County Council and/or its chairperson." The letter concluded by stating: "If you are aware of an existing ordinance or legislative rule specifically requiring the submission of Mrs. Cooper's resignation to the Beaufort County Council, please provide it to [the Board Chairperson] and me if you kindly would."

41. Neither Mr. Sommerville nor any other County Council member or attorney for Beaufort County disputed the position in such letter or responded with an existing ordinance or legislative rule that required County Council approval before a Board trustee's resignation was deemed effective.

42. On January 4, 2021, pursuant to the procedure set forth in § 46-27 of the County Ordinances, the Board Chairperson sent a letter to County Council in which the Hospital nominated several citizens of Beaufort County to be appointed by County Council to its Board to replace Board trustees whose terms were expiring or otherwise ending.

43. On February 5, 2021, the Board Chairperson and the Hospital's President and CEO gained knowledge that the pre-published agenda for County Council's Executive Committee Meeting on February 8, 2021 included a line item for "CONSIDERATION OF REINSTATMENT FOR KATHY COOPER (3rd TERM) OF 4 YEARS TO BEAUFORT MEMORIAL HOSPITAL BOARD OF TRUSTEES."

44. Ms. Cooper has not been nominated by the Hospital to be appointed or reappointed for a third term as a trustee. Further, her voluntary, written resignation of her second term some

seven (7) months earlier had been made "effective immediately" and that second term ended on February 28, 2021, so she could not be "reinstated" unilaterally by County Council.

45. On the morning of February 8, 2021, the Board's legal counsel communicated with the Beaufort County Attorney and pointed out that legally Ms. Cooper could not be reappointed without a nomination from the Board, and she cannot be reinstated unilaterally by County Council after resigning from her second term in writing seven (7) months earlier. The County Attorney's position was that Ms. Cooper had been forced to resign unlawfully by the Board, and that Ms. Cooper had "rescinded" her prior resignation of July 1, 2020. When he was asked to identify whether Ms. Cooper made the rescission of her prior resignation in writing, the County Attorney could not identify whether Ms. Cooper's rescission of her prior resignation was verbal or in writing.

46. Approximately twenty (20) minutes after such phone call concluded, the Board Chairperson and the Vice-Chair of County Council received an e-mail from Ms. Cooper with an attached rescission letter purportedly dated February 7, 2021. In the attached letter, Ms. Cooper stated that: "I am withdrawing my resignation, of July 1, 2020, as a trustee of the Beaufort Memorial Hospital Board. The request for my resignation was improper under the [Hospital] Board of Trustees By-Laws. Councilman Sommerville, I request reinstatement by Beaufort County Council to the [Hospital] Board of Trustees."

47. On February 8, 2021, the Executive Committee of County Council met and unanimously recommended that Ms. Cooper be "reinstated" to a third term as a trustee of the Hospital's Board without a nomination from the Hospital or the Hospital's approval, and over its objection.

48. On February 19, 2021, County Council published the agenda for County Council's monthly meeting of February 22, 2021 at 6:00 p.m., which included the following item:

"CONSIDERATION OF REINSTATEMENT (sic) FOR KATHY COOPER 3rd Term APPROVED ON 02.8.21 VIA EXECUTIVE COMMITTEE TERM EXPIRES IN 2025 VOTE 6/11 NEEDED FOR APPROVAL."

49. In the agenda package for the February 22, 2021 meeting of County Council, the agenda item read as "APPROVAL OF REINSTATEMENT OF APPOINTMENT" and described the proposed "reinstatement" as follows:

BEAUFORT MEMORIAL HOSPITAL BOARD FOR KATHY COOPER-
REINSTATEMENT 3rd TERM LIMITED TO (3) 4 YEAR TERMS= 12 YEARS
RESUMMING (sic) PREVIOUS POSITION

1st term - 2013

2nd term - 2017

3rd term -VOTE NEEDS TO BE 10/11 VOTE

50. Immediately following a "caucus" meeting held in Executive Session prior to the regular, monthly meeting on February 22, 2021, and at the commencement of the regular meeting, the Vice Chair of County Council, Paul Sommerville, moved to amend the agenda to remove the item appointing Ms. Cooper to the Hospital's Board, which motion was seconded by a member of County Council and then approved.

51. In explaining his motion, Mr. Sommerville stated: "I would like to remove item number 26 from the agenda. Item number 26 is a nomination of Ms. Kathy Cooper to the Beaufort Memorial Hospital Board. Actually, it's a reinstatement, and we could reinstate her, but unfortunately if we did, it would only be until Sunday because she's in her second term right now and her second term would expire on Sunday. And we can't appoint her to a third term because she hasn't been nominated by the Beaufort Memorial Hospital Board. So I would like to have that

removed, and what we intend to do is review all of our boards', agencies', and commissions' protocols, and when we do that we'll certainly be looking at the Beaufort Memorial Hospital protocols under the existing ordinances and we'll probably be looking at the ordinances themselves."

52. In an interview with a reporter from the local newspaper, the *Island Packet*, immediately following the meeting and subsequently published in the *Island Packet* on February 24, 2021, Mr. Sommerville responded to the reporter's questions by stating that County Council intended to examine the Board's nomination process, and that he couldn't "rule out" the future reappointment of Ms. Cooper. As reported in the *Island Packet*, the Vice Chair's responses were as follows:

"Asked if the council was reviewing the ordinances to allow the county nominating capabilities for the hospital board — the main focus of the lawsuit — Sommerville said the council was going to 'take a look at it'. Asked whether the council would then consider reinstating Cooper to the board, Sommerville said he 'wouldn't rule out anything.' "

53. In subsequent discussions between the Hospital's legal counsel and the Deputy County Attorney for Beaufort County, the Deputy County Attorney has made clear that Beaufort County does not believe it is bound by the language of § 46-33 of the County Ordinances that requires the "express mutual consent and approval" of both the Hospital and County Council before the County Ordinances affecting the Hospital can be amended, and that Beaufort County believes it has the unilateral and non-delegable authority to amend these County Ordinances without the consent and approval of the Hospital.

54. Ms. Cooper cannot be unilaterally "reinstated" to the Hospital's Board, as she resigned on July 1, 2020 "effective immediately", and the term of Board membership for which

she seeks reinstatement has expired, and County Council does not possess the legal authority to "reinstate" any individual to the Board regardless of what caused an individual to no longer serve on the Board.

55. Ms. Cooper cannot by law be reappointed to the Board to a third term, as she has not been nominated by the Hospital as specifically required by § 46-27 of the County Ordinances, and County Council and Beaufort County do not have the unilateral authority to appoint trustees to the Board without a formal nomination by the Hospital.

56. As specifically set forth in § 46-33 of the County Ordinances, County Council and Beaufort County do not have the authority to amend the County Ordinances as they relate to the Hospital and its Board without the express consent and approval of the Hospital.

57. Beaufort County, through the actions of County Council, has sought to usurp the nomination powers of the Board that are set forth in the County Ordinances and to control and manage the Board, in violation of state law as set forth in Section 8 of the Act.

58. Beaufort County, through the actions of County Council, has acted and intends to act in a way that is unlawful, *ultra vires* and beyond its authority as a public body.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY RELIEF AGAINST BEAUFORT COUNTY)

59. The Hospital re-alleges Paragraphs 1 through 58 above as set forth verbatim herein.

60. By attempting: (1) to reinstate a Board trustee who voluntarily resigned "effective immediately" some 7 months earlier and whose term of service has expired; (2) to appoint a Board trustee without a formal nomination from the Hospital; and (3) to amend the County Ordinances related to the Hospital and the nomination of its Board unilaterally and without the consent and approval of the Hospital, Beaufort County, through the actions of County Council, is engaging in actions that are not permitted by law, that are a violation of the Hospital's enabling legislation as

set forth in the Act, that are in violation of the County Ordinances, and that represent actions that seek to usurp the authority of the Hospital to govern itself.

61. Beaufort County's actions are unlawful, *ultra vires* and beyond its authority as a public body.

62. Based on the foregoing allegations, a justiciable controversy exists between the Hospital and Beaufort County, and pursuant to the South Carolina Uniform Declaratory Judgments Act, codified as S.C. Code Ann. § 15-53-10 *et. seq.*, as well as Rule 57 of the South Carolina Rules of Civil Procedure, this Court should issue a Declaratory Judgment holding that Beaufort County lacks the legal authority to reinstate Board trustees who have resigned or left the Board, that it lacks the legal authority to appoint a Board trustee without a formal nomination from the Hospital, and that it lacks the legal authority to amend the County Ordinances relating to the Hospital and its Board without the express consent and approval of the Hospital; and that any attempt by Beaufort County to do so shall be invalid, null and void as *ultra vires* and beyond Beaufort County's authority.

FOR A SECOND CAUSE OF ACTION
(INJUNCTIVE RELIEF AGAINST BEAUFORT COUNTY)

63. The Hospital re-alleges Paragraphs 1 through 62 above as set forth verbatim herein.

64. The Hospital seeks, pursuant to the equitable powers of this Court, an immediate temporary injunction and/or preliminary injunction prohibiting Beaufort County from attempting to reinstate Board trustees who have resigned or left the Board; from attempting to appoint a Board trustee without a formal nomination from the Hospital; and from attempting to amend the County Ordinances relating to the Hospital and its Board without the express consent and approval of the Hospital until such time as this Court has ruled on the within causes of action.

65. Unless this Court issues an immediate temporary injunction and/or preliminary injunction prohibiting Beaufort County from proceeding to take the actions set forth above and which the Hospital seeks to enjoin, the Hospital will suffer immediate and irreparable injury.

66. The Hospital is likely to succeed on the merits of this action, as alleged herein, and be granted judgment in its favor on its causes of action.

67. If not enjoined, Beaufort County will take actions that are unlawful and harmful to the governance of the Hospital and its mission to protect the health and safety of the community. No adequate remedy exists at law, and money damages will not adequately compensate the Hospital for its injuries if Beaufort County proceeds to act as set forth above. The harm to the Hospital from this unlawful action can be readily avoided upon an award to the Hospital of the requested remedies under the causes of action for declaratory and injunctive relief.

68. The harm that will be suffered by the Hospital if the unlawful and invalid actions by Beaufort County continue outweighs the minimal harm to be suffered by Beaufort County if a temporary or permanent injunction is issued.

PRAYER FOR RELIEF

WHEREFORE, the Hospital prays for the following relief in this First Amended Complaint:

- a. That the Court declare pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* and Rule 57 of the South Carolina Rules of Civil Procedure, that Beaufort County lacks the legal authority to reinstate Board trustees who have resigned or left the Board, that it lacks the legal authority to appoint a Board trustee without a formal nomination from the Hospital; and that it lacks the legal authority to amend the County Ordinances relating to the Hospital and its Board without

the express consent and approval of the Hospital, and that any attempt by Beaufort County to do so shall be invalid, null and void and *ultra vires*;

b. That Beaufort County be enjoined and prohibited from attempting to reinstate Board trustees who have resigned or left the Board; from attempting to appoint a Board trustee without a formal nomination from the Hospital; and from attempting to amend the County Ordinances relating to the Hospital and its Board without the express consent and approval of the Hospital;

c. That the Court award the Hospital its attorneys' fees and legal expenses to be paid by Beaufort County; and/or

d. That the Court award all other appropriate relief, including further equitable relief, as is just and proper under the circumstances.

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March 11, 2021

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