
1 **2022-41 (1ST READING): TO TERMINATE THE INTERGOVERNMENTAL**
2 **AGREEMENT ADOPTED PURSUANT TO ORDINANCE NO. 2004-33**

3 **Applicant/Purpose:** Staff / to terminate intergovernmental agreement
4

5 **Brief:**

- 6 • In 2004, the City and Horry County entered into an intergovernmental agreement
7 providing for distribution of certain funds held by the City derived from rentals
8 already received and future rental proceeds from tenants leasing the Seascope
9 Properties.
- 10 • Under the intergovernmental agreement, 75% of the proceeds from the Seascope
11 leases is distributed to Horry County and 25% is distributed to the City.
- 12 • Horry County has asserted, among other things, that it is entitled to the entirety of
13 the proceeds from rentals of the Seascope Properties.
- 14 • Because the 2004 intergovernmental agreement contains no term and no term can
15 be reasonably implied, the City is authorized to terminate the 2004
16 intergovernmental agreement with reasonable notice to Horry County.

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18 **Issues:**

- 19 • The Ordinance contemplates the City will pass an accompanying resolution
20 providing for the disposition of the rental revenues derived from the leases of the
21 Seascope Properties.
- 22 • The proposed resolution calls for 75% of the rental proceeds derived from the
23 current leases of the Seascope Properties to be reflected in a ledger account as
24 being held in escrow pending a final determination of the administrative proceeding
25 before the Federal Aviation Administration; 25% of the rental proceeds from the
26 current leases of the Seascope Properties will continue to be deposited in the
27 City's General Fund.

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29 **Public Notification:** Normal meeting notification.
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31 **Alternatives:**

- 32 • Amend Ordinance
- 33 • Deny Ordinance

34
35 **Financial Impact:**

- 36 • See Issues above.

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38 **Manager's Recommendation:**

- 39 • I recommend 1st reading (9.27.22).

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41 **Attachment(s):** Ordinance
42 Notice of Termination

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4 **CITY OF MYRTLE BEACH**
5 **COUNTY OF HORRY**
6 **STATE OF SOUTH CAROLINA**
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**TO TERMINATE INTERGOVERNMENTAL
AGREEMENT ADOPTED PURSUANT TO
ORDINANCE NO. 2004-33**

11 WHEREAS, by Ordinance No. 2004-33, duly adopted by the City Council of the
12 City of Myrtle Beach ("City") on May 5, 2004, the City entered into that certain
13 Intergovernmental Agreement (the "2004 IGA") with Horry County ("County")
14 providing for a distribution of certain funds held by the City derived from rentals
15 already received, and future proceeds from the rentals to be received by the City,
16 from tenants leasing portions of a One Hundred Forty Three (143) acre parcel of
17 land owned by the City (the "Seascape Properties"); and
18

19 WHEREAS, the 2004 IGA provides that future rental proceeds from the
20 Seascape Properties may be used for any purpose; and
21

22 WHEREAS, the County brought a civil action against the City in the Horry County
23 Court of Common Pleas, under Civil Action Number 2020-CP-26-07070, by which action
24 the County unsuccessfully attempted to have the City enjoined from selling the Seascape
25 Properties, as authorized by City Council in its duly adopted Ordinance Numbers 2020-048
26 and 2020-049, asserting therein various positions, including that the City cannot sell the
27 Seascape Properties, that the County is entitled to the entirety of proceeds from rentals of
28 the Seascape Properties, that the proceeds of the sale of the Seascape Properties
29 authorized by the City Council are insufficient, and that the proceeds of any such sale
30 belong in their entirety to the County; and
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32 WHEREAS, the result of the County's civil action was the issuance of an order of
33 the Circuit Court for the Fifteenth Judicial Circuit dated January 25, 2021, concluding,
34 among other things, that the County has no interest, legal, equitable, or otherwise in the
35 Seascape Properties which allows it to control the disposition of same or to receive the
36 proceeds thereof, from which order no appeal was taken and after which the County
37 voluntarily dismissed its claims asserted therein; and
38

39 WHEREAS, the County thereupon instituted an administrative proceeding against
40 the City before the Federal Aviation Administration (the "FAA") in which proceeding the
41 County has asserted, in addition to positions asserted in the aforementioned civil action, that
42 the proceeds from a lease or sale of the Seascape Properties must be used solely for airport
43 purposes, which proceeding remains pending; and
44

45 WHEREAS, the County's institution of legal and administrative proceedings
46 constitutes a repudiation of the 2004 IGA generally and specifically with respect to the
47 use of the proceeds derived from the Seascape Properties; and
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49 WHEREAS, the 2004 IGA contains no term and no term can be reasonably
50 implied by its circumstances given that perpetual agreements are both disfavored by
51 law and, in this instance, would constitute an unlawful delegation of the authority of
52 City Council to determine the disposition of real property owned by the City; and

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WHEREAS, the City is authorized to terminate the 2004 IGA and reasonable notice of such termination has been given by the County's own legal action and administrative complaint repudiating same, the City's response to same, and the public noticing and readings of the instant ordinance,

NOW, THEREFORE, BE IT ORDAINED that the City Council hereby authorizes the City Manager to issue the attached Notice of Termination to the County, same to be effective October 14, 2022, whereupon the 2004 IGA will be deemed terminated, null, void and of no further effect.

BE IT FURTHER ORDAINED THAT the rental revenues derived from the lease of the Seascape Properties, and proceeds from the sale of same, shall be disposed of by the City in accordance with a resolution to be adopted in form by City Council pertaining to same on the date of the first reading hereof, such resolution to be effective upon the effective date of this ordinance.

This ordinance is effective upon second reading.

ATTEST:

BRENDA BETHUNE, MAYOR

JENNIFER ADKINS, CITY CLERK

1st Reading: 9-27-2022

2nd Reading:



CITY OF MYRTLE BEACH
OFFICE OF THE CITY MANAGER

(VIA U.S. MAIL and FAX 843-915-6020)

**NOTICE OF TERMINATION OF INTERGOVERNMENTAL AGREEMENT ADOPTED
PURSUANT TO ORDINANCE NO. 2004-33**

TO: Mr. Steve Gosnell
Horry County Administrator
Post Office Box 1236
Conway, South Carolina
29528
(Via U.S. Mail and Fax No. 843-915-6020)

FROM: Jonathan "Fox" Simons, Jr.
City Manager
City of Myrtle Beach

Notice is hereby given to Horry County that the City of Myrtle Beach will terminate the above-referenced Intergovernmental Agreement effective October 14, 2022. Thereafter, proceeds from the rental of the real properties referenced in Ordinance No. 2004-003 shall no longer be paid to Horry County or any of its departments by the City of Myrtle Beach. Instead, seventy-five percent (75%) of rental proceeds from the current leases of the Seascape Properties will be reflected in a ledger account as being held in escrow pending a final determination in the administrative proceeding before the Federal Aviation Administration to include a final appeal from which no further or additional appeals lie or may be taken.

Jonathan "Fox" Simons, Jr.
City Manager

September 28, 2022