

Exhibit 1 to Return to Motion

Case 2025 - 001773

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 THE TOWN OF HILTON HEAD)
 ISLAND, SOUTH CAROLINA, JOHN)
 J. MCCANN and STEPHEN G. RILEY,)
)
 Interveners/Plaintiffs,)
)
 vs.)
)
 BEAUFORT COUNTY, SOUTH)
 CAROLINA,)
)
 Defendant/Plaintiff)
)
 vs.)
)
 JAMES BECKERT,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CASE NUMBER: 2020-CP-07-1840

AMENDED COMPLAINT

The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley, complaining of Beaufort County, South Carolina, allege as follows:

1. The Town of Hilton Head Island, South Carolina (hereinafter, the “Town”), is a municipality and political subdivision of the State of South Carolina, organized and existing under the Constitution and statutes of the State of South Carolina.
2. John J. McCann (hereinafter, “McCann”) is a citizen, resident and property owner in the municipal limits of The Town of Hilton Head Island, South Carolina.
3. Stephen G. Riley (hereinafter, “Riley”) is a citizen, resident and property owner in the municipal limits of The Town of Hilton Head Island, South Carolina.
4. Beaufort County, South Carolina (hereinafter, “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.
5. The Town lies within and is a part of Beaufort County.
6. The Town, McCann and Riley, as property owners in the Town, and pay the Beaufort County Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29.

7. The Hon. P. J. Tanner (hereinafter, the “Sheriff”) is the duly elected Sheriff of Beaufort County and he heads the Beaufort County Sheriff’s Office (hereinafter, the “BCSO”).

8. The Town has an interest in the health and well-being, both physical and economic, of its residents, property owners and taxpayers and the Town owns real property situate in the Town. McCann and Riley are freeholders and taxpayers. The Plaintiffs have standing to bring this suit.

9. Under S.C. Const. art. V, § 24, the Sheriff is a constitutional officer, whose duties are described in S. C. Code Ann. § 23-13-10 *et seq.* (Supp. 2023), and § 23-15-10 *et seq.* (Supp. 2023).

10. Among the statutory duties of Sheriff is the duty to patrol the entire county under the Sheriff’s jurisdiction. See: S. C. Code Ann. 23-13-70 (Supp. 2023).

11. The BCSO, under the direction of the Sheriff, patrols the entirety of Beaufort County, including areas within the municipal limits of every city or town in Beaufort County.

12. The BCSO, under the direction of the Sheriff, provides a uniform level of service throughout the County, and the personnel and assets of the BCSO are utilized throughout the entirety of Beaufort County, as the Sheriff determines the needs of any particular time and place require.

13. The Town does not have a municipal police department.

14. There is no statutory or other requirement for the Town to have a police department.

15. Enforcement of Town ordinances is a separate and distinct function from the Sheriff’s duty to patrol the entirety of Beaufort County.

16. On August 24, 2020, Beaufort County adopted Ordinance 2020-29 entitled: “Establishing a Beaufort County Law Enforcement Service Charge and Uniform User Fee” (hereinafter the “Law Enforcement Service Charge”). A true and accurate copy of Beaufort County Ordinance 2020-29 is attached as Exhibit “A.” Beaufort County Ordinance 2020-29

incorporated the text of a report of TischlerBise, entitled “Law Enforcement User Fee Study Approach and Findings,” dated July 13, 2020. A copy of the report is attached as Exhibit “B.”

18. The Law Enforcement Service Charge, as described in text of Beaufort County Ordinance 2020-29 and the Tischler Bise Study show that Ordinance 2029-29 is designed to recoup the entire cost of the delivery of primary law enforcement services by the BCSO in the municipal limits of the Town.

19. The Law Enforcement Service Charge is paid only by real property owners including the owners of property that is otherwise exempt from the payment of *ad valorem* property taxes to Beaufort County, South Carolina, which includes the Town.

20. S. C. Code Ann. § 6-1-300(6) (Supp. 2023), as amended in 2022, reads:

- (6) “Service or user fee” means a charge required to be paid in return for a particular government service or program. “Service or user fee” also includes “uniform service charges”. The revenue generated from the fee must:
 - (a) be used to the benefit of the payers, even if the general public also benefits;
 - (b) only be used for the specific improvement contemplated;
 - (c) not exceed the cost of the improvement; and
 - (d) be uniformly imposed on all payers.

21. The text of S. C. Code Ann. § 6-1-300(6) (Supp. 2023) requires a benefit to the payer of the fee. This text does not authorize charging a fee to offset the cost of a mandated or any other county-wide service.

22. The text of S. C. Code Ann. § 6-1-300(6) (Supp. 2023) requires that funds collected through the device of any service or user fee can only be used for the specific improvement contemplated, and that fee cannot exceed the cost of the improvement.

23. The text of Beaufort County Ordinance 2020-29 is based on a study prepared by TischlerBise attached hereto as Exhibit “B.”

24. The calculation of the Law Enforcement Service Charge is based on the total of the cost of the BCSO to delivery of primary law enforcement services in the Town. The TischlerBise study does not quantify any level of enhanced level of service delivered by the BSCO to the Town that is not delivered in any like area. Because the improvement necessary to justify a fee under S. C. Code Ann. § 6-1-300(6)(Supp. 2023) is neither identified nor quantified in Beaufort County Ordinance 2020-29, the Law Enforcement Service Charge imposed by it does not meet the requirements of S. C. Code Ann. § 6-1-300(6)(Supp. 2023).

25. Because the amount of the Law Enforcement Service Charge is based on the total of the cost of the BCSO to deliver primary law enforcement services in the Town and not the amount of any claimed improvement or enhancement of services delivered by the BCSO to any like area, the Law Enforcement Service Charge exceeds the cost of the improvement. Because the Law Enforcement Service Charge exceeds the cost of any claimed improvement or enhancement of services. Beaufort County Ordinance 2020-29, and the Law Enforcement Service Charge imposed by it do not meet the requirements of S. C. Code Ann. § 6-1-300(6)(Supp. 2023) for a valid service or user fee.

26. The Sheriff has testified that the Town is similarly situated to unincorporated Beaufort County, and there is no difference in the level of primary law enforcement service delivered to the Town over the unincorporated Beaufort County. Secondary law enforcement services is that secondary services are things such as the crime lab, hostage negotiator, SWAT team and similar, not deputy sheriffs on patrol and are not part of the Law Enforcement Service Charge.

27. The effect of the Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 on property values in the Town was not considered by Beaufort County in the adoption of Beaufort County Ordinance 2020-29.

28. Neither the text of Beaufort County Ordinance 2020-29 nor the text of the

TischlerBise study show that the imposition of the Law Enforcement Service Charge cause an increase in property values to increase an any significant or meaningful way.

29. Prior to the adoption of Beaufort County Ordinance 2020-29, and currently, revenue from the Town to Beaufort County equals approximately forty (40%) of the total revenue raised by Beaufort County each calendar year. For the years 2020 and 2021:

- (a) The annual Budget for Beaufort County for fiscal year 2020 was \$135,162,698.00;
- (b) Revenue from taxpayers in the Town totaled \$53,255,174.00, which represented 39% of the total annual budget for Beaufort County for fiscal year 2020;
- (c) The annual budget for the BCSO for fiscal year 2020 was \$33,399,342.00;
- (d) Ordinance 2020-29 includes text stating that the cost of delivery of the uniform level of service by the Sheriff within the municipal limits of the Town was \$4,383,257.00, for Fiscal Year 2020;
- (e) The cost of delivery of the uniform level of service by the Sheriff in the Town as stated in Ordinance 2020-29 is approximately 13.01% of the total annual budget for the BCSO for fiscal year 2020;
- (f) The fee imposed by Ordinance 2029-29 equals the entire cost of the delivery of law enforcement services by the BCSO in the Town;
- (g) The annual Budget for Beaufort County for fiscal year 2021 is \$130,300,431.00;
- (h) Revenue from taxpayers in the Town were approximately \$53,787,726.00, and will represented approximately 41% of the total annual budget for Beaufort County for fiscal year 2021;
- (i) The annual budget of the BCSO is a part of the annual budget for Beaufort County. There is no separate millage stated to fund the operations of the BCSO, it is a part of the overall Beaufort County budget;
- (j) For fiscal year 2020, revenue from taxpayers in the Town equaled approximately 39% of the budget of the BSCO, and for fiscal year 2021, it is anticipated that taxpayers in the Town contributed approximately 41% of the budget of the BCSO;
- (k) In both cases, revenue from taxpayers hin the Town exceed the stated cost of delivery of services in the Town in Ordinance 2020-29 because revenue from taxpayers in the Town contributed more than 39 % of the total budget of the BCSO.

Because property owners in the Town pay more than the cost of delivery of direct law enforcement services of the BCSO in the Town, there is no special benefit to property owners in the Town as is required by S. C. Code Ann. § 6-1-300(6) (Supp. 2023).

30. The only municipality in Beaufort County that funds its own municipal EMS Department is the Town. No other municipality maintains an EMS Department, and Beaufort County delivers EMS services to the other municipalities without a charging any fee property owners or anyone else in the other municipalities.

BY WAY OF A FIRST CAUSE OF ACTION

31. Each and every allegation of paragraphs 1 through 30 is re-alleged, as if fully repeated.

32. The Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6) (Supp. 2023), because property owners in the municipal limits of the Town do not receive a distinct or special benefit from the BCSO that is different from any like area in Beaufort County. The services of the BCSO are delivered to the Town are the same as in any like area of Beaufort County.

33. The Law Enforcement Service Charge is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6) (Supp. 2023), because text of Beaufort County Ordinance 2020-29 and the text of the TischlerBise study on which Ordinance 2020-29 is based do not show that the imposition of the Law Enforcement Service Charge will cause property values to increase. The legislative history of Beaufort County Ordinance 2020-29 shows that a purported increase in property values was not a rationale for the enactment of Beaufort County Ordinance 2020-29.

34. Because the Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6) (Supp. 2023), it is an illegal tax that is prohibited by S. C. C § 6-1-310 (Supp. 2023).

35. Neither the text of Ordinance 2020-29 nor the TischlerBise study state that the Law Enforcement Service Charge will result in an increased level of service to the Town over that delivered by the BCSO in any like area.

36. Neither the text of Ordinance 2020-29 nor the TischlerBise study state that the Law

Enforcement Service Charge will result in an increased level of service in the Town over that which existed prior to the adoption of Ordinance 2020-29. Rather, the Law Enforcement Service Charge imposes a new charge for a service that was already being delivered and which does not differ from the mandated county-wide service delivered to any like area or in the Town prior to the adoption of Ordinance 2020-29.

37. The Town, John J. McCann and Stephen G. Riley are entitled an Order of the Court of Common Pleas declaring that the Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 is an illegal tax, and that the taxpayers who paid it are entitled to a refund.

BY WAY OF A SECOND CAUSE OF ACTION

38. Each and every allegation of paragraphs 1 through 37 is re-alleged, as if fully repeated.

39. The Law Enforcement Service Charge imposed by Beaufort County Ordinance 2020-29 is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6)(Supp. 2023), because property owners in the municipal limits of the Town do not receive a distinct or special benefit from the BCSO that is different from any like area in Beaufort County. The services of the BCSO are delivered to the Town are the same as in any like area of Beaufort County and are the same as the services delivered by the BCSO in the Town prior to the adoption of Ordinance 2020-29.

40. The classification created by Ordinance 2020-29 is arbitrary, and does not treat the Plaintiffs in the same manner as others who are similarly situated.

41. Further evidence that the classification created by Ordinance 2020-29 is this: the only municipality in Beaufort County that funds its own municipal EMS Department is the Town. No other municipality maintains an EMS Department, and Beaufort County delivers EMS services to the other municipalities without a charging any fee property owners or anyone else in the other municipalities.

42. Beaufort County Ordinance 2020-29 does not apply and is not applied equally to persons similarly situated.

43. Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike.

44. Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

BY WAY OF A THIRD CAUSE OF ACTION

45. Each and every allegation of paragraphs 1 through 44 is re-alleged, as if fully repeated.

46. Neither the text of Ordinance 2020-29 nor the TischlerBise study state that the Law Enforcement Service Charge will result in an increased level of service to the Town over that delivered by the BCSO in any like area. Rather, the Law Enforcement Service Charge imposes a new charge for a service that is already being delivered and which does not differ from the mandated county-wide service delivered to any like area.

47. The Law Enforcement Service Charge is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6) (Supp. 2023), because tax payers in the municipal limits of the Town do not receive a distinct or special benefit from the BCSO that is different from that delivered in any like area.

48. The Law Enforcement Service Charge is not a valid fee authorized by S. C. Code Ann. § 6-1-300(6) (Supp. 2023), because text of Beaufort County Ordinance 2020-29 and the text of the TischlerBise study on which Ordinance 2020-29 is based do not show that the

imposition of the Law Enforcement Service Charge will cause property values to increase. The legislative history of Beaufort County Ordinance 2020-29 shows that a purported increase in property values was not a rationale for the enactment of Beaufort County Ordinance 2020-29.

49. Because the Law Enforcement Service Charge because it does not comply with the requirements S. C. Code Ann. § 6-1-300(6) (Supp. 2023), is an illegal tax, and violates their right to equal protection under the law, The Town, John J. McCann and Stephen G. Riley are entitled an Order of the Court of Common Pleas granting a temporary and permanent injunction, enjoining collection of and requiring Beaufort County to refund the Law Enforcement Service Charges collected by it to date.

50. No adequate remedy at law exists to halt the illegal and unconstitutional imposition of the Law Enforcement Service Fee in the Town. Because it is characterized as a fee and is not an assessment of real property taxes, no method exists for a taxpayer to appeal the imposition of the fee. There are approximately 40,965 tax parcels in the Town, and thus 40,695 payments under protest and lawsuits would be required for the taxpayers to defend against this illegal tax. That is not a practical or adequate remedy.

BY WAY OF A FOURTH CAUSE OF ACTION

51. Each and every allegation of paragraphs 1 through 50 is re-alleged, as if fully repeated.

52. On information and belief, Beaufort County collected approximately 4.6 million dollars through the Law Enforcement Service Charge in calendar year 2020 and thereafter.

53. Because Beaufort County collected this money through an illegal tax, the taxpayers who paid it are entitled to a refund.

54. Because the amount of money collected is a fixed sum capable of determination, Beaufort County must also pay pre-judgment interest on the amounts wrongfully collected at the statutory rate of eight and three-quarters percent, under S. C. Code Ann. § 34-31-

20(A)(Supp. 2023).

BY WAY OF A FIFTH CAUSE OF ACTION

55. Each and every allegation of paragraphs 1 through 54 is re-alleged, as if fully repeated.

56. Beaufort County Ordinance 2020-29 violates the plain language of S. C. Code Ann. § 6-1-300(6)(Supp. 2023), and Beaufort County has acted without substantial justification in pressing its claim in this case.

57. Under S. C. Code Ann. § 15-77-300 (Supp. 2023), the Town is entitled to an award of its reasonable attorney's fees incurred in this case.

CONCLUSION

Wherefore, The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley pray that this Court inquire into the matters set forth herein, and that it enter its Order as follows:

1. Finding that the Beaufort County, South Carolina, Law Enforcement Service Charge, is not a valid service or user fee under S. C. Code Ann. § 6-1-300(6)(Supp. 2023), and Ordering Beaufort County, South Carolina, to refund the amounts collected to date, with interest thereon at the statutory rate of eight and three quarters per cent;
2. Finding that Ordinance 2020-29 violates their right to equal protection under U.S. Const. amend. XIV; S.C. Const. art. I, § 3, and requiring Beaufort County, South Carolina to refund the Law Enforcement Service Charge collected by it to date.
3. Granting a temporary and permanent injunction, enjoining the collection of the Beaufort County, South Carolina, Law Enforcement Service Charge, and requiring Beaufort County, South Carolina to refund the Law Enforcement Service Charge collected by it to date.
4. Awarding pre-judgment interest and reasonable attorney's fees against Beaufort County as authorized by S. C. Code Ann. § 15-77-300 (Supp. 2023); and,

5 For all other and further relief as this Court may deem just and proper.

Respectfully Submitted:

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Hilton Head Island, South Carolina

September 15, 2023.

EXHIBIT "A" TO AMENDED COMPLAINT
CASE NUMBER 2020-CP-070-1840

Certified True Copy
Clerk to Council
Beaufort County, SC
By: Sarah W. Brock
Sarah W. Brock, JD
Date: 1.13.2023

ORDINANCE 2020/29

ESTABLISHING A BEAUFORT COUNTY LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE

WHEREAS, Beaufort County Council and Beaufort County (the "County") is a body politic and political subdivision of the State of South Carolina; and

WHEREAS, under SC Code Ann. Section 4-9-10 et seq. and other applicable law, specifically including Section 4-9-25 and 4-9-30(5)(a), Beaufort County Council is empowered to act in the interests of public safety, and in matters involving the health and welfare of its citizens; and

WHEREAS, law enforcement services are critical to the health and welfare of the citizens of the County; and

WHEREAS, the expenses of the County involving law enforcement are significant aspects of the County's financing and operations; and

WHEREAS, Beaufort County Council has, after extensive study and consideration, determined that it is in the best interest of the citizens and taxpayers of Beaufort County, South Carolina, that an Ordinance Establishing a Law Enforcement Service Charge and Uniform User Fee for portions of Beaufort County South Carolina should be enacted;

NOW, THEREFORE, IT IS RESOLVED AND ORDAINED AS FOLLOWS:

Section 1. FINDINGS OF FACT:

- a. Since its incorporation in 1983, the Town of Hilton Head Island (The "Town") has contracted with and otherwise received certain law enforcement services from the Beaufort County Sheriff (the "Sheriff") and the County, in exchange for annual payments.
- b. Counties are specifically authorized by Section 4-9-30(5) of the Code of Laws of South Carolina "...to assess property and levy...uniform service charges, ... and make appropriations for functions and operations of the county, including, but not limited to... public safety, including police and fire protection... "
- c. The health, order, general welfare, and convenience of the County and the County's citizens within the town limits of Hilton Head Island will be served by the enactment of this ordinance.
- d. The Town has chosen not to create and maintain its own police force, instead relying on the contract and the services provided by the County and the Sheriff's Office.
- e. In the most recent year of analysis, there have been 97,335 calls for service for the Sheriff's Office within the Town.
- f. The Sheriff's Office provides law enforcement services to the Town, above and beyond what the Sheriff's Office provides to other incorporated municipalities in the County.
- g. The estimated most recent annual cost to provide services within the Town of Hilton Head Island is \$4,383,257.
- h. The Law Enforcement Service Charge and Uniform User Fee is to be charged to properties in the Town to cover the cost of law enforcement services provided within the Town by the Sheriff's Office over and beyond the level of services provided in the incorporated municipalities which provide their own law enforcement services.

- i. It is fair and reasonable to assess the Law Enforcement Service Charge and Uniform User Fee to the areas within the Town.
- j. The fiscal, economic, and planning consulting firm TischlerBise has prepared over 900 impact fees and over 800 fiscal impact analyses for clients across the United States and Canada.
- k. TischlerBise is well qualified to have studied the relevant issues surrounding the provision of law enforcement services by the Sheriff's Office in the Town.
- l. The detailed approach, methodology, narrative and findings of that certain study report and findings of TischlerBise entitled "Law Enforcement User Fee Study Approach and Findings" dated July 13, 2020 are appropriate, thorough, and complete.
- m. The findings and recommendations of the TischlerBise report are hereby incorporated by reference and included as a basis for the implementation of the Law Enforcement Service Charge and Uniform User Fee imposed herein.

Section 2. ESTABLISHMENT OF LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE

A law enforcement service charge and uniform user fee in the amounts set forth in Section 4 hereof shall be levied annually upon all parcels of real property located within the municipal boundaries of the Town of Hilton Head Island (all such parcels being collectively referred to herein as the "Service Area"). The law enforcement service charge and uniform user fee authorized hereby shall be included on real property tax notices for all such parcels. For such parcels that are exempt from ad valorem taxes, the law enforcement service charge and uniform user fee authorized hereby shall be billed by the County as a separate invoice to be mailed to applicable property owners on or about the time that real property tax notices are mailed, and will be due on January 15 of each succeeding year.

Section 3. RECORDING AND USE OF PROCEEDS

All proceeds derived from the law enforcement service charge and uniform user fee authorized hereby shall be recorded in a separate fund within the County's accounts. Such proceeds shall be used for law enforcement and related administrative services to be provided by the Beaufort County Sheriff's Office in the Service Area, in lieu of the applicable municipality providing its own law enforcement force at a level above the base level of law enforcement services provided by the Sheriff's Office in the unincorporated County.

Section 4. TABLE OF CHARGES; EXCEPTIONS

The law enforcement service charge and uniform user fee shall be charged to each applicable parcel based on use and size as set forth in the following table. The types of "land use" in the following table are defined as provided for in the Beaufort County Community Development Code.

Except as provided for in this section, no public or private property shall be exempt from the law enforcement service charge and uniform user fee. No exemption, offset, or reduction shall be granted based on the age, tax, economic status, race, or religion of the property owner.

Land Use	Demand Unit	Service Charge per Demand Unit
----------	-------------	--------------------------------

Residential

Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88

Nonresidential

Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Section 5. PAYMENT AND COLLECTION

The law enforcement service charge and uniform user fee shall be due, payable and to be collected in the same manner as real property taxes and shall be subject to the same penalties and interest as overdue real property taxes.

Section 6. APPEAL AND ADJUSTMENT

A fee payer may appeal the assessment of the User Fee on a parcel of property at any time. The appeal must be submitted in writing to the law enforcement service charge and uniform user fee appeal officer(s), as may be appointed from time to time by the County Administrator. An appeal submitted before the January 15th due date shall be considered for the current year owed. An appeal submitted on or after January 15th shall only apply to the succeeding year.

An appeal must be submitted in writing to the appeal officer c/o county administrator, and shall contain the reason for appeal and required supporting documents. Required documents may include, but are not limited to, a survey prepared by a registered land surveyor or professional engineer containing information on the size and type of the property, business license or other license documentation, utility bills, company registration from the SC Secretary of State's Office, or other verifiable documentation which may tend to establish the use(s) to which the property is put, and/or the size or other relevant information. Using the information provided by the appellant, the appeal officer shall conduct a review of the property and fee assessment. The appeal officer may also request reasonable additional documentation pertinent to the appeal. The appeal officer shall respond to an appeal in writing within thirty (30) days. In response to an appeal, the appeal officer may adjust the fee applicable to the property in conformance with Section 4.

A decision of the appeal officer which is adverse to the appellant may be further appealed to the Beaufort County Administrator or his/her designee within thirty (30) days of the adverse decision. The appellant, stating the grounds for further appeal, shall deliver notice of the appeal to the County Administrator or his/her designee. The County Administrator or his/her designee shall issue a written decision on the appeal within thirty (30) days. All decisions by the County Administrator or his/her designee shall be served on the appellant personally or by registered or certified mail to the billing address of the property owner. All decisions of the County Administrator or his/her designee shall be final.

Section 7. LIABILITY; NO HINDRANCE OF SHERIFF'S DISCRETION

This chapter does not imply that a benefitted property will be free from criminal activity, and does not create additional duties on the part of the County or Sheriff's Office. This chapter does not waive the County's or Sheriff's Office's immunity or limited liability under any law. Nothing herein shall serve to hinder the exercise of law enforcement and other discretion held by the Sheriff's Office under the South Carolina Constitution and applicable law.

Section 8. LEGISLATIVE INTENT; SEVERABILITY

It is, inter alia, the legislative intent of the County that a law enforcement service charge and uniform user fee be levied under the terms described herein. The County asserts that this legislative intent must prevail if it can be reasonably discovered in the language used, and such language must be construed in light of the ordinance's intended purpose. To the extent any portion of this ordinance should be found illegal or unenforceable by a court of competent jurisdiction, the offending portion shall be void and of no effect, and is deemed severable from the remainder. The rest of the ordinance shall remain in force and of effect and shall be interpreted according to the findings and express and implied legislative intent to be operative and enforceable to the fullest extent.

Section 9. REPEALER, EFFECTIVE DATE

All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with its provisions are hereby repealed or superseded to the extent necessary to give this ordinance full force and effect. This ordinance shall take effect upon final approval.

ADOPTED IN MEETING DULY ASSEMBLED this 24th day of August 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: 
Joseph Passiment, Chairman

ATTEST:



Sarah W. Brock, Clerk to Council

Third and Final Reading: August 24, 2020 / Vote: 9-2

Public Hearing: August 24, 2020

Second Reading: August 10, 2020/ Vote: 6-3

First Reading by Title Only: July 13, 2020/ Vote: 7-3

EXHIBIT "B" TO AMENDED COMPLAINT
CASE NUMBER 2020-CP-070-1840



Law Enforcement Service Charge and Uniform User Fee Study Approach and Findings

Prepared for:

Beaufort County, South Carolina

July 13, 2020

Prepared by:



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EXECUTIVE SUMMARY

Beaufort County, South Carolina, retained TischlerBise to develop a methodology for a Law Enforcement Service Charge and Uniform User Fee to be implemented in the Town of Hilton Head Island. The Law Enforcement Service Charge and Uniform User Fee would cover the cost for law enforcement services provided by the Beaufort County Sheriff's Office (BCSO) to the Town of Hilton Head Island.

The BCSO provides law enforcement services in the Unincorporated County and supports municipal police departments. Although the Town of Hilton Head Island is an incorporated municipality in Beaufort County it does not have its own police force. Instead, the Town contracts with the BCSO for Law Enforcement Services.

The Law Enforcement Service Charge and Uniform User Fee is calculated to reflect the direct cost for services provided by the BCSO to the Town of Hilton Head Island. The report sets out a methodology to allocate those costs to the user of the services. The process is as follows:

- First, the total cost for BCSO law enforcement services provided to the Town of Hilton Head Island is documented. This cost reflects the actual cost for law enforcement services provided per the contract between BCSO and the Town.
- Second, the cost is allocated to residential and nonresidential land uses. This reflects the demand for law enforcement services from different users of the service.
- Finally, a service charge schedule is developed by type of land use. The summary schedule is shown below in Figure 1.

Figure 1. Beaufort County Law Enforcement Service Charge and Uniform User Fee Schedule

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

OVERVIEW

Several incorporated jurisdictions in Beaufort County have municipal police departments (e.g., cities of Beaufort and Bluffton; town of Port Royal). In incorporated places with municipal police departments in Beaufort County, the Beaufort County Sheriff's Office (BCSO) assists on calls for service but is not the primary responder.

BCSO is the main law enforcement agency in Unincorporated Beaufort County and provides support to incorporated localities with law enforcement agencies. BCSO also provides law enforcement services directly to the Town of Hilton Head Island via a contract for services executed between Beaufort County and the Town. These law enforcement services are provided to the Town in lieu of the Town providing its own police force and is above the base level of law enforcement service provided to incorporated places in the County.

Prior to Fiscal Year 2021, the Town of Hilton Head Island paid Beaufort County directly for the contracted services. As of FY2021, the Town has indicated it will stop paying the contracted amount yet expects continuation of law enforcement services.

To recoup direct costs for law enforcement services provided by the BCSO to the Town of Hilton Head Island, the County is exploring a Law Enforcement Service Charge and Uniform User Fee District. The Law Enforcement Service Charge and Uniform User Fee District is calculated to allocate costs to different types of land uses based on a commensurate demand for services.

The BCSO responded to over 320,000 law enforcement calls for service in Beaufort County in calendar year 2019. Of those calls, approximately 97,000 were in the Town of Hilton Head Island, or 30 percent of total County law enforcement calls. The BCSO FY2021 budget is approximately \$32 million.

APPROACH AND METHODOLOGY

Approach

The approach to calculate the Law Enforcement Service Charge and Uniform User Fee is:

- Identify and quantify law enforcement costs provided by the BCSO to the Town of Hilton Head Island. This reflects the actual costs for law enforcement services consumed by the Town.
- Develop the Service Charge and Uniform User Fee methodology to allocate costs to land uses on the Town of Hilton Head Island.
- Calculate the Service Charge and Uniform User Fee and schedule based on the methodologies developed.

Methodology

The following is a summary of steps used to calculate the Law Enforcement Service Charge and Uniform User Fee reflecting the services provided by BCSO in the Town of Hilton Head Island. Each step is discussed in further detail in this section.

1. Calculate the cost for Law Enforcement Services provided in Town of Hilton Head Island. This is separate from countywide services provided in both the unincorporated and incorporated County (such as Civil Processing, Court Security, Forensics Services Lab, Bomb Squad).
2. Allocate BCSO law enforcement costs serving Hilton Head Island to residential and nonresidential development using functional population split (i.e., demand from residential versus nonresidential development).
3. Calculate costs per service unit for residential (per person) and nonresidential (per nonresidential vehicle trip) development.
4. Calculate service charge for residential and nonresidential land uses and produce a schedule of charges by type of land use.

Cost for Law Enforcement Services provided in Town of Hilton Head Island

BCSO is a countywide agency. The range of services provided include Victims Advocate, School Resource Officers, Administration, Enforcement, Forensics Laboratory, Crime Suppression, Emergency Management, Communications, and Traffic Management. The total BCSO budget for FY21 is \$32 million. Of that amount, approximately \$4.4 million is spent on law enforcement services to the Town of Hilton Head Island. Detail is provided below.

Figure 2. FY2021 BCSO Budget for Town of Hilton Head Island Law Enforcement Services

	FY2021
Base Budget Positions^	\$3,704,257
Victim Advocate Officer	\$100,000
Benefits	\$504,000
Hilton Head Bar Patrol Overtime	\$75,000
Total HHI Cost	\$4,383,257
RBC Heritage Golf Tournament*	\$26,500

^ Reflects 41 positions

** Town of Hilton Head Island reimburses Beaufort County*

As identified above, costs for services to Hilton Head Island reflect personnel (authorized at 41 positions), employee benefits, Victim Advocate Officer, and Hilton Head Bar Patrol Overtime. (BCSO also provides law enforcement services for the RBC Heritage Golf Tournament held on the Island. The Town reimburses the County for those services.)

The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

BCSO Law Enforcement Costs for Hilton Head Island Allocated to Residential and Nonresidential Development

To allocate costs to land uses, functional population is used. Functional population is a standard methodology to apportion costs between residential and nonresidential development. Further detail is provided below.

Functional Population

Both residential and nonresidential development place demand on law enforcement services. To calculate the proportionate share between residential and nonresidential demand for a particular service or facility, a “functional population” approach is used. The functional population approach allocates the cost of law

enforcement services to residential and nonresidential development based on the activity of residents and workers in the Town of Hilton Head Island over a 24-hour time period.

Residents that do not work are assigned 20 hours per day to residential development and 4 hours per day to nonresidential development (annualized averages). Residents that work in Hilton County are assigned 14 hours to residential development and 10 hours to nonresidential development. Residents that work outside the Town are assigned 14 hours to residential development, the remaining hours in the day are assumed to be spent outside of the Town working. Inflow commuters are assigned 10 hours to nonresidential development. Based on 2017 data (the latest Origin-Destination data available from U.S. Census Bureau), residential development accounts for 75 percent of the functional population, while nonresidential development accounts for 25 percent.

Figure 3. Town of Hilton Head Island Functional Population

Hilton Head Town, SC (2017)				
			<i>Demand Hours/Day</i>	<i>Person Hours</i>
Residential				
Population*	76,698			
Residents Not Working	61,816		20	1,236,320
Employed Residents	14,882			
Employed in Hilton Head		8,898	14	124,572
Employed outside Hilton Head		5,984	14	83,776
			Residential Subtotal	1,444,668
			Residential Share =>	75%
Nonresidential				
Non-working Residents	61,816		4	247,264
Jobs Located in Hilton Head	23,471			
Residents Employed in Hilton Head		8,898	10	88,980
Non-Resident Workers (inflow commuters)		14,573	10	145,730
			Nonresidential Subtotal	481,974
			Nonresidential Share =>	25%
			TOTAL	1,926,642

Source: U.S. Census Bureau, OnTheMap 6.1.1 Application and LEHD Origin-Destination Employment Statistics.

* Seasonal/peak population; TischlerBise calculation from housing unit estimate and U.S. Census household size

The cost for the Beaufort County Sheriff’s Office services provided in the Town of Hilton Head Island is allocated to residential and nonresidential development using the above proportionate share factors. Results are shown below.

Figure 4. Town of Hilton Head Island BCSO Law Enforcement Cost Allocated to Residential and Nonresidential Development

Hilton Head BCSO Law Enforcement Cost Allocated to Residential / Nonresidential		\$4,383,257
	<i>Functional Population*</i>	
Residential Proportionate Share	75%	\$3,287,443
Nonresidential Proportionate Share	25%	\$1,095,814
TOTAL COST	100%	\$4,383,257

* Functional population (see supporting figure)

Costs per Service Unit

Appropriate service units are identified for Law Enforcement Services. For residential development, population is the driver and is reflected in household size (i.e., persons per household) by type of housing unit. This captures demand from both year-round and seasonal housing units. Population is the appropriate service unit.

For nonresidential development, the appropriate service unit is vehicle trips. Vehicle trip rates are typically used for public safety-related fees and charges to reflect the relative demand for public safety services from nonresidential development. That is, vehicle trip rates are highest for commercial/retail development—reflecting demand from all activity (workers, shoppers, visitors) at a retail establishment. Conversely, industrial development has the lowest nonresidential trip rates and office development rates fall between the other two categories reflecting the level of activity at each type of facility.

BCSO Law Enforcement costs allocated between residential and nonresidential development are then divided by the applicable base year demand factors to determine a cost per demand factor—for residential, a cost per capita and for nonresidential, a cost per nonresidential vehicle trip.

Seasonal population in housing units is calculated to account for both year-round and seasonally-occupied housing units in Hilton Head Island. Nonresidential vehicle trips are calculated based on applicable vehicle trip rates and adjustment factors per the Institute of Transportation Engineers (ITE) applied to nonresidential land uses in Hilton Head Island. Data is based on the Beaufort County Development Impact Fee Study conducted by TischlerBise in 2019-2020. Detail is provided in Appendix A.

Figure 5. Town of Hilton Head Island BCSO Law Enforcement Cost per Service Unit

Hilton Head BCSO Law Enforcement Cost	\$4,383,257	
	Residential	Nonresidential
Proportionate Share %	75%	25%
Proportionate Share \$	\$3,287,443	\$1,095,814
Service Unit	Seasonal Population in Hsg Units	Nonresidential Vehicle Trips
Current Service Units (2020)*	79,046	64,997
Cost per Service Unit (rounded)	\$41.59	\$16.86

** See Appendix A for supporting detail.*

As shown, the calculated cost per person is \$41.59 and the cost per nonresidential vehicle trip is approximately \$16.86.

Service Charges and Uniform User Fees for Residential and Nonresidential Land Uses

Using the above factors, Law Enforcement Service Charges and Uniform User Fees for the Town of Hilton Head Island are calculated. The service charges are based on household size for residential development and vehicle trips per 1,000 square feet or hotel room for nonresidential development. Differentiating the service charge by housing type allows the results to reflect the level of demand (persons per household) from residential land uses. For residential development, the cost per person (\$41.59) is multiplied by household size to calculate the proposed service charge by type of unit. For nonresidential development, the cost per vehicle trip (\$16.86) is multiplied by trips per demand unit (either 1,000 square feet or lodging room) to calculate the proposed fee.

The schedule presented is meant to provide broad-based land use categories to capture the majority of types of land uses in the Town. Using ITE trip rates for nonresidential development allows additions to the schedule, as necessary.

Figure 6. Law Enforcement Service Charge and Uniform User Fee Proposed Schedule

Residential

Service Charge Component	Cost per Person
Hilton Head BCSO Law Enforcement Cost	\$41.59
Total	\$41.59

Housing Type	Persons per Household [^]	Service Charge per Housing Unit
Single Family	2.42	\$101
Multifamily	2.11	\$88

[^] Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Nonresidential

User Fee Component	Cost per Trip
Hilton Head BCSO Law Enforcement Cost	\$16.86
Total	\$16.86

Development Type	Demand Unit	Vehicle Trip Ends per Demand Unit*	Trip Adj. Factor*	Service Charge per Demand Unit
Retail	1,000 sq. ft.	37.75	38%	\$242
Office/Service	1,000 sq. ft.	9.74	50%	\$82
Industrial	1,000 sq. ft.	3.93	50%	\$33
Institutional	1,000 sq. ft.	10.72	50%	\$90
Lodging	Room	8.17	50%	\$69

* Source: *Trip Generation*, Institute of Transportation Engineers, 10th Edition (2017)

SUMMARY: LAW ENFORCEMENT SERVICE CHARGE AND UNIFORM USER FEE SCHEDULE

The figure below summarizes the proposed Law Enforcement Service Charge and Uniform User Fee schedule calculated to cover the costs incurred by BCSO to serve the Town of Hilton Head Island.

Figure 7. Proposed Law Enforcement Service Charge and Uniform User Fee Schedule

Land Use	Demand Unit	Service Charge per Demand Unit
Residential		
Single Family	Housing Unit	\$101
Multifamily	Housing Unit	\$88
Nonresidential		
Retail	1,000 sq. ft.	\$242
Office/Service	1,000 sq. ft.	\$82
Industrial	1,000 sq. ft.	\$33
Institutional	1,000 sq. ft.	\$90
Lodging	Room	\$69

Given the above schedule and estimated base year development in the Town of Hilton Head Island, an estimate of revenue can be provided. Please note, cost factors have been rounded in the analysis and therefore the total revenue calculated does not equal the total cost.

Figure 8. Law Enforcement Service Charge and Uniform User Fee Estimated Revenue

Land Use	Demand Unit	Service Charge per Demand Unit	Base Year Development	Estimated Revenue
Residential				
Single Family	Housing Unit	\$101	20,075	\$2,027,597
Multifamily	Housing Unit	\$88	14,438	\$1,270,525
			<i>Subtotal</i>	<i>\$3,298,122</i>
Nonresidential				
Retail	1,000 sq. ft.	\$242	2,724	\$659,168
Office/Service	1,000 sq. ft.	\$82	3,340	\$273,881
Industrial	1,000 sq. ft.	\$33	2,515	\$82,979
Institutional	1,000 sq. ft.	\$90	880	\$79,204
			<i>Subtotal</i>	<i>\$1,095,231</i>
			GRAND TOTAL*	<u>\$4,393,353</u>

* Does not equal total cost due to rounding.

APPENDIX A: DEMOGRAPHIC ASSUMPTIONS

Population and Housing Characteristics

Per capita standards and persons per housing unit or persons per household are used to derive proportionate service charge amounts. Household sizes vary by housing unit type and, consequently, demand for services vary. Thus, it is important to differentiate between housing types and size.

When persons per housing unit (PPHU) is used in service charge calculations, infrastructure standards are derived using year-round population. In contrast, when persons per household (PPHH) is used in the calculations, the service charge methodology assumes all housing units will be occupied, thus requiring seasonal population to be used when deriving infrastructure standards.

According to the state of South Carolina’s Department of Parks, Recreation, and Tourism, Beaufort County is the third most visited county in the state. Infrastructure and services are sized to accommodate not just permanent residents, but seasonal residents and workers as well. Therefore, TischlerBise recommends that service charges for residential development be calculated according to persons per household.

Based on housing characteristics, TischlerBise recommends using two housing unit categories for the service charges: (1) Single Family and (2) Multifamily. Each housing type has different characteristics resulting in a different demand for Law Enforcement services. Figure 9 shows the U.S. Census American Community Survey 2017, 5-Year Estimates data for the Town of Hilton Head Island. Single family units have a household size of 2.42 persons and multifamily units have a household size of 2.11 persons.

Figure 9. Town of Hilton Head Island Persons per Household

HILTON HEAD

Housing Type	Persons	Housing Units	Persons per Housing Unit	Households	Persons per Household	Housing Unit Mix
Single Family [1]	29,905	19,771	1.51	12,341	2.42	58%
Multifamily [2]	9,570	14,219	0.67	4,527	2.11	42%
Total	39,475	33,990	1.16	16,868	2.34	

[1] Includes attached and detached single family homes

[2] Includes structures with 2+ units

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Base Year Population and Housing Units

As noted above, the Town of Hilton Head Island has permanent and short-term (i.e., seasonal) residents. The current estimate of population, on which the service charge is based, accounts for full occupancy of residential units. Population estimates are based on assumptions in TischlerBise’s Development Impact Fee Study (with data from the Beaufort County Transportation Model at the Traffic Analysis Zone (TAZ) level) and population estimates for the Town of Hilton Head Island from the U.S. Census.

Town of Hilton Head Island Housing Unit and Population Estimate (2020)

Current housing units by type of unit are estimated and used to derive current estimated seasonal population in the Town of Hilton Head Island. First, permanent population for the Town of Hilton Head Island is obtained from the U.S. Census for 2019 and updated to 2020 using growth rate assumptions from TischlerBise’s Development Impact Fee Study. Next, the permanent population estimate is used to determine the estimated number of housing units in the Town. Then, persons per household (i.e., population in an occupied housing unit) is applied to the estimated number of housing units to calculate seasonal population in 2020. Detail is provided in the following two figures.

Figure 10. Town of Hilton Head Island Housing Unit Estimate (2020)

Hilton Head Permanent Population Estimate 2019 [1]	39,639
Estimated Growth 2019 to 2020 [2]	1.0%
2020 Hilton Head Permanent Population Estimate	40,035
Average Persons per Housing Unit [3]	1.16
Hilton Head Housing Unit Estimate 2020 [4]	34,513

[1] U.S. Census in Town of Hilton Head Island CAFR FY2019

[2] Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

[3] U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

[4] Calculated. Permanent population / persons per housing unit

Figure 11. Town of Hilton Head Island Seasonal Population Estimate (2020)

Town of Hilton Head Island Housing Unit Estimate 2020	34,513			
	<i>% Distr. [1]</i>	<i># by Type</i>	<i>PPHH [2]</i>	<i>Seasonal Pop. Est.</i>
Single Family Units	58%	20,075	2.42	48,582
Multifamily Units	42%	14,438	2.11	30,464
Total	100%	34,513		79,046

[1] U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

[2] Persons per Household; U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Law Enforcement Service Charge and Uniform User Fee Study: Approach and Findings
Beaufort County, South Carolina

Base Year Employment and Nonresidential Floor Area

The Law Enforcement Service Charge and Uniform User Fee is also applied to nonresidential development as discussed in the body of this report. Nonresidential vehicle trips are calculated for the base year using employment and nonresidential square footage in the Town of Hilton Head Island.

Figure 12 provides detail on base year employment and nonresidential square footage in the Town of Hilton Head Island. Nonresidential square footage is estimated based on number of jobs by type of industry and square feet per employee factors derived from the Institute of Transportation Engineers (ITE).

As shown below, it is estimated that there are 22,780 jobs in the Town of Hilton Head Island as of 2020. The estimate is from Traffic Analysis Zone (TAZ) data, provided in the Beaufort County Transportation Model for TischlerBise's Development Impact Fee Study (2020). Jobs are converted to nonresidential square footage with factors shown in Figure 13.

Figure 12. Town of Hilton Head Island Employment and Nonresidential Square Footage by Industry (2020)

Industry	Employment (2020)*	%	Sq. Ft./Emp [^]	Nonres. Sq. Ft. (2020)*
Retail	6,379	28%	427	2,723,833
Office	9,911	44%	337	3,340,007
Industrial	4,004	18%	628	2,514,512
Institutional	2,486	11%	354	880,044
Total	22,780	100%		9,458,396

* Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

[^] *Trip Generation*, Institute of Transportation Engineers (ITE), 10th Edition (2017)

Square feet per employee conversion factors (indicated above) along with weekday trip rates (referenced in Figure 14) per demand unit are shown below in Figure 13.

Figure 13. Institute of Transportation Engineers Nonresidential Factors

ITE Code	Land Use	Demand Unit	Wkdy Trip Ends Per Dmd Unit	Wkdy Trip Ends Per Employee	Emp Per Dmd Unit	Sq Ft Per Emp
820	Shopping Center (avg size)	1,000 Sq Ft	37.75	16.11	2.34	427
710	General Office (avg size)	1,000 Sq Ft	9.74	3.28	2.97	337
140	Manufacturing	1,000 Sq Ft	3.93	2.47	1.59	628
610	Institutional/Hospital	1,000 Sq Ft	10.72	3.79	2.83	354

Source: *Trip Generation*, Institute of Transportation Engineers, 10th Edition (2017)

Nonresidential Vehicle Trips

Vehicle trip generation for nonresidential land uses are calculated using average daily (weekday) trip end rates and adjustment factors from the Institute of Transportation Engineers in *Trip Generation*, 10th edition. To estimate base year nonresidential vehicle trips in Town of Hilton Head Island, weekday trip ends per 1,000 square feet factors shown in Figure 13 are used.

For nonresidential land uses, a standard 50 percent adjustment is applied to Office, Industrial, and Institutional to allocate trips to the nonresidential (destination) land use (with the other trip end allocated to the originating land use). A lower vehicle trip adjustment factor is used for Retail because this type of development attracts vehicles as they pass-by on arterial and collector roads. For example, when someone stops at a convenience store on their way home from work, the convenience store is not their primary destination.

In Figure 14, the Institute for Transportation Engineers' land use code, daily vehicle trip end rate, and trip adjustment factor is listed for each nonresidential land use.

Figure 14. Town of Hilton Head Island Average Daily Nonresidential Vehicle Trips (2020)

Industry	Nonres. Sq. Ft. (2020)*	Vehicle Trip Ends per 1,000 Sq. Ft.^	Trip Adj. Factor^	Vehicle Trip Ends (2020)
Retail	2,723,833	37.75	38%	39,073
Office	3,340,007	9.74	50%	16,266
Industrial	2,514,512	3.93	50%	4,941
Institutional	880,044	10.72	50%	4,717
Total	9,458,396			64,997

* Beaufort County TAZ Transportation Model in TischlerBise Development Impact Fee Study (2020)

^ *Trip Generation*, Institute of Transportation Engineers (ITE), 10th Edition (2017)

APPENDIX B: LAND USE DEFINITIONS

Residential Development

As discussed below, residential development categories are based on data from the U.S. Census Bureau, American Community Survey. It is anticipated that Beaufort County will collect the Law Enforcement Service Charge and Uniform User Fee from all residential units.

Single Family:

1. Single family detached is a one-unit structure detached from any other house, that is, with open space on all four sides. Such structures are considered detached even if they have an adjoining shed or garage. A one-family house that contains a business is considered detached as long as the building has open space on all four sides.
2. Single family attached (townhouse) is a one-unit structure that has one or more walls extending from ground to roof separating it from adjoining structures. In row houses (sometimes called townhouses), double houses, or houses attached to nonresidential structures, each house is a separate, attached structure if the dividing or common wall goes from ground to roof.
3. Mobile home includes both occupied and vacant mobile homes, to which no permanent rooms have been added, are counted in this category. Mobile homes used only for business purposes or for extra sleeping space and mobile homes for sale on a dealer's lot, at the factory, or in storage are not counted in the housing inventory.
 - Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 210

Multifamily:

1. 2+ units (duplexes and apartments) are units in structures containing two or more housing units, further categorized as units in structures with "2, 3 or 4, 5 to 9, 10 to 19, 20 to 49, and 50 or more apartments."
2. Boat, RV, Van, Etc. includes any living quarters occupied as a housing unit that does not fit the other categories (e.g., houseboats, railroad cars, campers, and vans). Recreational vehicles, boats, vans, railroad cars, and the like are included only if they are occupied as a current place of residence.
 - Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 220, 221, 222

Nonresidential Development

Nonresidential development categories represent general groups of land uses that share similar average weekday vehicle trip generation rates and employment densities (i.e., jobs per thousand square feet of floor area).

Retail: Establishments primarily selling merchandise, eating/drinking places, and entertainment uses. By way of example, *Retail* includes shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, automobile dealerships, and movie theaters.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 820, 815, 823, 850, 875, 880

Office/Service: Establishments providing management, administrative, professional, or business services; By way of example, *Office/Service* includes banks, business offices, headquarter buildings, business parks, and research and development centers.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 710, 712, 714, 720, 750, 770

Industrial: Establishments primarily engaged in the production, transportation, or storage of goods. By way of example, *Industrial* includes manufacturing plants, distribution warehouses, trucking companies, utility substations, power generation facilities, and telecommunications buildings.

- Examples of respective land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 110, 130, 150, 154, 160, 170

Institutional: Establishments providing management, administrative, professional, or business services; By way of example, *Institutional* includes assisted living facilities, nursing homes, hospitals, medical offices, veterinarian clinics, schools, universities, churches, daycare facilities, government buildings, and prisons.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 520, 560, 565, 575, 580, 590

Lodging: Establishments that provide sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops.

- Examples of respective and related land use codes in the Institute of Transportation Engineers Trip Generation Manual, 2017: 310, 311, 312, 320, 330.

APPENDIX C: COMPARISON LOCALITIES

Below is a list of communities with seasonal population demands and their respective Law Enforcement agency budgets. This is provided for comparison purposes only, at a high level, and is not meant to be exhaustive or reflective of a recommended level of service.

	Year Round Population	FY19 Police Budget (rounded)
City of Bluffton, SC	19,000	\$6,600,000
City of Beaufort, SC	13,357	\$4,500,000
Rehoboth Beach, DE	1,520	\$3,700,000
Gulf Shores, AL	12,517	\$6,200,000

Source: TischlerBise research from publicly available sources.

Exhibit 2 to Return to Motion

Case 2025 - 001773

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT	)	CASE NUMBER: 2020-CP-07-1840
)	
THE TOWN OF HILTON HEAD)	
ISLAND, SOUTH CAROLINA, JOHN)	
J. MCCANN and STEPHEN G. RILEY,)	
)	
Plaintiffs,	)	STIPULATION OF FACTS
)	
vs.)	
)	
BEAUFORT COUNTY, SOUTH)	
CAROLINA,)	
)	
Defendant.)	

Plaintiffs The Town of Hilton Head Island, South Carolina, John J. McCann, and Stephen G. Riley, and Defendant Beaufort County, South Carolina, stipulate the following to be relevant facts in this case which are not in dispute.

1. The Town of Hilton Head Island, South Carolina is a municipality and a political subdivision of the State of South Carolina.
2. Beaufort County is a County and a political subdivision of the State of South Carolina.
3. The municipal boundaries of the Town of Hilton Head Island, South Carolina, are within Beaufort County, South Carolina.
4. John J. McCann is a citizen and resident of the Town of Hilton Head Island, South Carolina, and owns real property in the Town of Hilton Head Island, South Carolina.
5. Stephen G. Riley is a citizen and resident of the Town of Hilton Head Island,

South Carolina, and owns real property in the Town of Hilton Head Island, South Carolina.

6. The Town of Hilton Head Island, South Carolina, does not have a municipal police department and has never had a municipal police department.

7. All other municipalities in Beaufort County (including the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee) have municipal police departments. All of those municipalities pay for the maintenance and operation of police departments as a part of their municipal budgets.

8. The Town of Hilton Head Island, South Carolina, has an Emergency Medical Services Department.

9. No other municipality in Beaufort County (the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee) has an emergency medical transport services department. Emergency medical transport services are provided in those municipalities by Beaufort County.

10. On August 24, 2020, Beaufort County Adopted Beaufort County Ordinance 2020-29, establishing a “Law Enforcement Service Charge and Uniform Service Fee” (“LESC”). Ordinance 2020-29 imposed the LESC on all parcels of real property located within the municipal boundaries of the Town of Hilton Head Island, South Carolina, including parcels of real property that are exempt from the payment of *ad valorem* real property taxes. A copy of Ordinance 2020-29 is attached as Exhibit 1.

11. Beaufort County has not adopted an ordinance imposing a fee on property

owners in the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee for emergency medical services.

12. Ordinance 2020-29 has not been amended.

13. The Town, John J. McCann, and Stephen G. Riley each own real property upon which the LESC is imposed by Ordinance 2020-29, and each has paid the LESC to Beaufort County.

14. Ordinance 2020-29 was based, in part, on a “Law Enforcement Service Charge Study” dated July 13, 2020, and prepared by Tischler Bise. A copy of the Law Enforcement Service Charge Study is attached as Exhibit 2.

15. Julie Herlands, a principal of Tischler Bise testified via deposition in this case. Ms. Herlands’ deposition and the exhibits to it are attached hereto as Exhibit 3.

16. Prior to January 31, 2018, and extending back for many years, the Town had entered into a series of “Agreements for Police Services” with Beaufort County. The last of these agreements, attached hereto as Exhibit 4, was made on or about January 31, 2015 and expired on January 31, 2018.

6. Under the “Agreements for Police Services” in existence from 2014 through 2018, the Town made paid Beaufort County as follows: FY 2014-15: \$2,683,883.00; FY 2015-16: \$2,814,593.00; FY 2016-17: \$3,043,963.00; FY 2017-18: \$3,050,137.07; FY 2018-19: \$3,195,769.44; and FY 2019-20: \$3,195,769.44.

7. The Hon. P. J. Tanner, Sheriff of Beaufort County has testified via deposition in

this case. Sheriff Tanner’s deposition and the exhibits to it are attached hereto as Exhibit 5.

8. The budget for the BCSO is part of the Beaufort County General Fund Budget.

9. Beginning with Fiscal Year 2020/2021, the record of the budget and receipts for Beaufort County shows the following for each fiscal year:

FY 2020/2021 – General Fund Budget Revenues	\$128,722,625.00
FY 2020/2021 - General Fund Budget Expenditures	\$129,669,366.00
FY 2020/2021 – BCSO General Fund Budget	\$ 26,568,325.00
FY 2020/2021 – Actual General Fund BCSO Expenditures	\$ 20,173,515.00
FY 2020/2021 – Sheriff HHI Services Fee Expenditures	\$ 4,255,542.00
FY 2020/2021 – LESC Collected	\$ 4,647,365.00
FY 2020/2021 – Ad Valorem Tax Collections from the Town	\$ 49,531,722.00
FY 2021/2022 – General Fund Budget Revenues	\$136,554,650.00
FY 2021/2022 - General Fund Budget Expenditures	\$139,363,350.00
FY 2021/2022 – BCSO General Fund Budget	\$ 22,176,969.00
FY 2021/2022 – Actual General Fund BCSO Expenditures	\$ 21,360,463.00
FY 2021/2022 – Sheriff HHI Services Fee Expenditures	\$ 5,095,848.00
FY 2021/2022 – LESC Collected	\$ 4,828,652.00
FY 2021/2022 – Ad Valorem Tax Collections from the Town	\$ 50,884,591.00
FY 2022/2023 – General Fund Budget Revenues	\$132,662,999.00
FY 2022/2022 - General Fund Budget Expenditures	\$132,402,978.00
FY 2022/2023– BCSO General Fund Budget	\$ 29,553,279.00
FY 2022/2023 – Actual General Fund BCSO Expenditures	\$ 29,280,585.00
FY 2022/2023 –Sheriff HHI Services Fee Expenditures	\$ 5,127,555.00
FY 2022/2023– LESC Collected	\$ 5,081,214.75
FY 2022/2023– Ad Valorem Tax Collections from the Town	\$ 53,635,604.00

10. The parties stipulate to the following data for population and annual police department budgets for the following municipalities in Beaufort County:

		BLUFFTON	BEAUFORT	PORT ROYAL
2020				

		BLUFFTON	BEAUFORT	PORT ROYAL
	Population	27,716	13,607	14,220
	P.D. Budget	\$7,270,955.00	\$4,688,073.00	\$2,349,405.00
2021				
	Population	32,191	12,960	14,753
	P.D. Budget	\$7,102,892.00	\$4,504,976.00	\$2,496,796.00
2022				
	Population	34,493	13,656	15,585
	P.D. Budget	\$7,727,168.00	\$4,783,813.00	\$2,705,235.00
2023				
	Population	35,243	13,850	16,287
	P.D. Budget	\$8,552,719.00	\$5,320,754.00	\$2,862,950.00
2024				
	Population	40,000	13,935	16,881
	P.D. Budget	\$10,272,435.00	\$6,054,894.00	\$3,183,400.00

COLTRANE & WILKINS, LLC

BARNWELL, WHALEY, PATTERSON & HELMS, LLC

By: s/Curtis L. Coltrane
 Curtis L. Coltrane
 Attorneys for The Town
 of Hilton Head Island,
 South Carolina, John J.
 McCann and Stephen G. Riley

By: s/John W. Fletcher
 M. Dawes Cooke, Jr.
 John W. Fletcher
 Attorneys for Beaufort County,
 South Carolina

Exhibit 3 to Return to Motion

Case 2025 - 001773

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT,	)	CASE NUMBER: 2020-CP-07-1840
THE TOWN OF HILTON HEAD ISLAND,)	
SOUTH CAROLINA; JOHN J. MCCANN and)	
STEPHEN G. RILEY,)	
)	
	)	NOTICE OF MOTION AND
	)	MOTION FOR
vs.	)	SUMMARY JUDGMENT
)	
BEAUFORT COUNTY, SOUTH CAROLINA,)	
)	
_____)	
Defendant.)	

TO: BEAUFORT COUNTY, SOUTH CAROLINA:

Please take notice that The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley (hereinafter, collectively, the “Town”), by and through their undersigned counsel, shall move before the Presiding Judge of the Beaufort County Court of Common Pleas, at the Beaufort County Court House, 102 Ribaut Road, Beaufort, South Carolina, on the 10th day following the service hereof, at 10:00 o'clock, A. M., or at such other time and place as is set by the Court, for an Order granting Summary Judgment in their favor and against Beaufort County, South Carolina (hereinafter, “Beaufort County”).

This motion is made under the authority of Rule 56, SCRCF, on the grounds that there is no genuine issue as to any material fact and the Town is entitled to judgment as a matter of law.

This motion is based on the pleadings, Stipulation of Facts filed by the Parties¹, other evidence that is of record in this case, and all applicable law.

¹ On March 7, 2025, the Parties filed a Stipulation of Facts in this case. Herein, the Stipulation of Facts will be referred to as the “Stipulation.”

SUMMARY JUDGMENT STANDARD

Under Rule 56, SCRCP, summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.² Under Rule 56, SCRCP, summary judgment must be granted:

[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In determining whether any material issue of fact exists, the evidence and all inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party, or the party resisting the motion.³ The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact-finder.⁴ For purposes of summary judgment, an issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.⁵ Once the moving party has met its burden of demonstrating that no genuine issue of material fact exists, a party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact.⁶

² *Café Associates Limited v. Gengross*, 305 S.C. 6, 406 S.E.2d 162 (1991).

³ *Redwend Limited Partnership v. Edwards*, 354 S.C. 58, 581 S.E.2d 496 (Ct.App. 2003).

⁴ *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

⁵ *P.P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (Ct. App., 1988).

⁶ Rule 56, SCRCP.

SUMMARY

In this case the Town challenges the “Law Enforcement Service Charge and Uniform User Fee” (herein, the “LESC”) imposed on real property owners in the Town. under Beaufort County, South Carolina (herein “Beaufort County”) Ordinance 2020-29.⁷ The Town, John J. McCann and Stephen G. Riley are property owners in the municipal limits of the Town, and each pays the LESC imposed by Ordinance 2020-29.⁸

S. C. Code Ann. § 6-1-300(6)(Supp. 2024) authorizes service or user fees as follows:

(6) “Service or user fee” means a charge required to be paid in return for a particular government service or program. “Service or user fee” also includes “uniform service charges”. The revenue generated from the fee must:

- (a) be used to the benefit of the payers, even if the general public also benefits;
- (b) only be used for the specific improvement contemplated;
- (c) not exceed the cost of the improvement; and
- (d) be uniformly imposed on all payers.

⁷ See Stipulation Number 10, and also Stipulation Exhibit 1 which reads, in relevant part:

A law enforcement service charge and uniform user fee in the amounts set forth in Section 4 hereof shall be levied annually upon all parcels or real property located within the municipal boundaries of the Town of Hilton Head Island (all such parcels being collectively referred to herein as the “Service Area”). The law enforcement service charge and uniform user fee authorized hereby shall be included on real property tax notices for all such parcels. For such parcels that are exempt from real property taxes, the law enforcement service charge and user fee authorized hereby shall be billed by the County as a separate invoice to be mailed to applicable property owners on or about the time that real property tax notices are mailed, and will be due on January 15 of each succeeding year.

Ordinance 2020-29 imposed the fee on all real property, including real property that is otherwise exempt, such as property owned by The Town of Hilton Head Island, South Carolina.

⁸ See Stipulation Number 13.

Ordinance 2020-29 imposes the LESC on the owners of real property in the municipal limits of the Town. In order for the LESC to be valid, it must:

- (a) provide a benefit to the payers of the fee.
- (b) covers only the cost of the additional service that is provided.
- (c) not exceed the cost of the additional service that is provided.

The LESC fails to meet the requirements of S. C. Code Ann. § 6-1-300(6) (Supp. 2024):

- (a) as a matter of fact, because the only evidence in the record is that the Beaufort County Sheriff's Office (herein, the "BCSO") does not deliver any enhanced level of service in the Town and there is no benefit to owners of real property in the Town⁹; and,
- (b) as a matter of fact, because there is no benefit to the payers of the fee in the form of increased property values as required under *Burns v. Greenville County Council, et al., supra.*¹⁰; and,

⁹ See Stipulation Exhibit 5, **Error! Main Document Only.** p. 11, l. 10 to p. 12, l. 4.. The Hon. P. J. Tanner, Sheriff of Beaufort County stated that no enhanced level of service is delivered in the municipal limits of the Town. The Sheriff's testimony on this point is unequivocal.

¹⁰ Prior to the Supreme Court's decision in *Burns, et al. v. Greenville County Council, et al.*, 433 S. C. 583, 861 S.E.2d 31 (2021), the text of S. C. Code Ann. § 6-1-300(6) required that the payer of a user fee receive a distinct benefit separate from a non-payer. Following the decision in *Burns*, S. C. Code Ann. § 6-1-300(6) was amended to read that a benefit could also be realized by members of the general public. The change to the text of S. C. Code Ann. § 6-1-300(6) does not affect the outcome in this case, for this reason: In *Burns*, the Supreme Court stated that when a fee is charged to property owners, the benefit that must be realized is increased property values. See also: *C.R. Campbell Construction Co., Inc. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997).

(c) as a matter of fact, because the LESC is not limited to the cost of any enhanced level of service, but rather is calculated to collect the entire cost of the delivery of all services by the BCSO in the Town¹¹; and,

(d) as a matter of law, because under S. C. Code Ann. § 6-1-300(6) (Supp. 2024), a valid fee must: provide a benefit to the payer, be used only for the specific service contemplated and not exceed the cost of the specific service contemplated.

THE PAYERS OF THE LESC DO NOT RECEIVE A BENEFIT

The only evidence in the record is that no benefit justifying the LESC is delivered to the Town by the BCSO, because the BCSO does not deliver any enhanced level of service in the municipal limits of the Town. On May 8, 2019, the Hon. P. J. Tanner corresponded with the County Administrator and advised that he did not deliver any enhanced level of service in the municipal limits of the Town. In the May 8, 2019, correspondence, Sheriff Tanner wrote:

The 42 personnel routinely deployed on HHI are supported by additional assets of my office. in the April 5, 2019, email from John Weaver, these personnel was referred to as “ENHANCED” law enforcement presence on HHI. However, to the contrary **the basic coverage on HHI is those 42 personnel.** (emphasis in the original).¹²

Sheriff Tanner testified that the statement in the May 8, 2019, correspondence was accurate when he wrote it, and nothing had changed as of the date of his deposition:

¹¹ See pages 7 and 8 below. The LESC was designed to collect the *entire* cost of the delivery of service by the Beaufort County Sheriff’s Office on Hilton Head Island. No effort was made to define any additional or enhanced level of service or to limit the LESC to the cost of any enhanced level of service.

¹² See Stipulation Exhibit 5 is the Deposition of the Hon. P. J. Tanner, Sheriff of Beaufort County, South Carolina. Exhibit 2 to the Deposition is the Sheriff’s May 8, 2019 correspondence quoted above.

Q. Sheriff Tanner, are the statements in your correspondence of May 8, 2019, now marked as Exhibit 2, to Ms. Jacobs, were they accurate at the time you made them?

A. At the time on May 8th, 2019 they were.

Q. Has anything changed from and after May 8, 2019, that would change the responses in your correspondence that is now marked as Exhibit 2?

A. Having the ability to remember 2019 is – is one thing that we can do, but also, unless I were to read through this document, I could only fairly respond to any changes. And that’s kind of a broad question, whatever changes may be considered not in comparison to 2019, but I don’t recall that there would be any changes. I mean, I could go through it line by line, paragraph by paragraph, to see if there’s any changes no in 2023 in comparison to that, but I don’t believe there is.¹³

Beaufort County argues that other municipalities in Beaufort County, South Carolina, have police forces, and that because the Town does not have a police force, it receives a benefit. Sheriff Tanner testified that this is not a like to like comparison. The like to like comparison is the Town and the unincorporated areas of Beaufort County, which also do not have a police force.¹⁴ On questioning by Beaufort County’s lawyer on this point, Sheriff Tanner testified:

Q. Okay. And so do you – does the Sheriff’s Office provide essentially police department -like services to Hilton Head?

A. You can compare to some degree the level of service we provide. The definition, of course, is a lot different. We’re not a municipal police department and the Town of Hilton Head doesn’t have one. The operation of a police force or police department is quite different, and our service that we provide Hilton Head is a service that is in line and alike to the unincorporated areas of Beaufort County. We treat Hilton Head no different when it comes to providing service.¹⁵

¹³ See Stipulation Exhibit 5, p. 11, l. 10 to p. 12, l. 4.

¹⁴ There is no statutory requirement for the Town to have a police department. There is, however, a requirement for the BCSO to patrol the entire County, which includes the municipal limits of the Town. See: S. C. Code Ann. § 23-13-70 (Supp, 2024).

¹⁵ See Stipulation Exhibit 5, p. 17, l. 11-25. Beaufort County will argue that “Agreements for Police Services” previously entered into by the Town are significant. See Stipulation Exhibit 4. These agreements

Because the BCSO does not deliver any enhanced level of service in the Town, there is no basis for the LESC. It is not a valid user fee; it is an illegal tax. *Burns, supra*.

As was stated in note 10 above, the Supreme Court has held that when a user fee is charged to real property tax payers the benefit to the taxpayer is increased property values. In *Burns*, the Supreme Court found that Greenville County's ordinance did not address property values in any. The same applies in this case. Ordinance 2020-29 does not include any findings to the effect that payers of the LESC will see the benefit of increased property values.¹⁶ Ms. Julie Herlands of the TischerBise firm that prepared the study on which Ordinance 220-29 was based, testified that the effect of the LESC on property values in the Town was not part of the discussion with the County, and that the County did not provide any evidence that the LESC would enhance property values in the Town.¹⁷

were for police services and not law enforcement services. The Sheriff's testimony is clear that police services and law enforcement services are different. The Agreements for Police Services are not relevant to this case.

¹⁶ See Stipulation Exhibit 1.

¹⁷ See Stipulation Exhibit 3, p. 24, l. 21 to p. 25, l. 20, which reads:

Error! Main Document Only.

Q. Since we're talking, based on your last answer of yes, whether or not this was real property, structures, what have you, did Beaufort County provide you with any evidence that the services described in your report of April 17 that is marked as Exhibit 8 enhanced the value of property within the Town of Hilton Head Island?

A. Can you clarify what you mean by "enhanced the value of the property"?

Q. Does it raise the monetary value of the property?

A. And your question is, did they provide me evidence to that effect?

Q. Yes.

A. Okay. No.

Q. Was the effect of the services described in your preliminary report of April 17, marked as Exhibit 8 – did the effect of those services on the monetary value of property within the Town, was that even part of the discussion with, between TischlerBise and the County?

A. No.

Because there is no evidence that the LESC enhances property values in the municipal limits of the Town, it is not a valid user fee, it is an illegal tax. *Burns, supra*.

THE FEE IMPOSED BY ORDINANCE 2020-29 IS NOT FOR THE COST OF ANY CLAIMED ENHANCED LEVEL OF SERVICE, RATHER IT IS FOR 100% OF THE COST OF LAW ENFORCEMENT SERVICES IN THE TOWN

The only evidence in the record is that the LESC is calculated to collect one hundred percent of the cost of the delivery of service by the BCSO in the Town, not the cost of any claimed enhanced level of service.¹⁸ The only evidence in the record is:

1. Ordinance 2020-29 includes this finding of fact: “The estimated most recent annual cost to provide services within The Town of Hilton Head Island is \$4,383,257.”¹⁹
2. Julie Herlands, a representative of the firm “TischlerBise,” testified as to the preparation of the study and report upon which Ordinance 2020-29 is based.²⁰ Julie Herter testified that the LESC was designed to collect the entire cost of delivery of law enforcement services by the BCSO in the Town. Exhibit 11 to Julie Herland’s deposition is a document from the BCSO identifying the total cost of law enforcement services in the Town to be \$4,383,257.00.²¹ Ms. Herlands delivered an explanatory presentation to Beaufort County in support of Ordinance 2020-29.²² On page 4 of the presentation, the

¹⁸ For all intents and purposes, the LESC has collected one hundred percent of the cost of the delivery of law enforcement services in the Town since it was adopted. See Stipulation Number 9.

¹⁹ See Stipulation Exhibit 1, Page 1, subparagraph “g,” and Stipulation Number 9. Although Ordinance 2020-29 sets the amount to be collected, Beaufort County has collected more than that each year, even though Ordinance 2020-29 has never been amended to authorize a higher collection amount. See Stipulation Number 12.

²⁰ See Stipulation Number 14 and Stipulation Exhibit 12, which is the deposition of Julie Herlands.

²¹ See Exhibit 11 to Stipulation Exhibit 5.

²² See Exhibit 14 to Stipulation Exhibit 5.

total cost for delivery of the BCSO's services in the municipal limits of the Town is stated to be 4,383,257.00.²³ The text of Ordinance 2020-29 states that the amount sought to be collected is \$4,383,257.²⁴

3. See Stipulation Exhibit 5. Sheriff Tanner testified that the BCSO does not deliver any enhanced level of service in the municipal limits of the Town.

Neither the text of Ordinance 2020-29, the testimony of the Sheriff nor the testimony of Julie Herter identify or quantify any enhanced level of service delivered to the Town or any increased property values to the payers of the fee. Rather, the text of Ordinance 2020-29 and the testimony of Julie Herter show that the LESC is calculated to collect one hundred percent of the cost of a mandated county wide service that the BCSO must provide under S. C. Code Ann. § 13-23-70 (Supp, 2024), and do not address increased property values in any way.²⁵

²³ See page 4 of Stipulation Exhibit 2. The text and data in the study reflect that the fee imposed by Ordinance 2020-29, is designed to collect one hundred percent of the cost of delivery of law enforcement services in the municipal limits of the Town.

(i) Figure 2, page 4, reflecting the "Total HHI Cost" at \$4,383,257.

(ii) The text following Figure 2 reads, in relevant part: "The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

(iii) Figure 8, page 10, shows that the fee is designed to collect the total cost of delivery of law enforcement services in the municipal limits of the Town.

²⁴ See Stipulation Exhibit 1, Ordinance 2020-29, Page 1, subparagraph g.

²⁵ See Stipulation Exhibit 5, p. 24, l. 20 to p. 25, l. 13. Whether the LESC would have any effect on property values in the municipal limits of the Town was not considered in the TischlerBise study (Stipulation Exhibit 2).

SEPARATE AND APART FROM THE LESC, THE REAL PROPERTY TAX PAYERS ON
HILTON HEAD ISLAND CONTRIBUTE MORE TO THE BUDGET OF THE BCSO
THAN THE COST OF THE DELIVERY OF SERVICES BY THE BCSO IN THE
MUNICIPAL LIMITS OF THE TOWN

The only evidence in the record is that real property taxpayers in the Town contributed between 37 and 40% of the General Fund Budget Revenues for Beaufort County for fiscal years 2020/2021 through 2022/2023.²⁶ In Fiscal Year 2021/2021, the real property tax payers in the Town contributed 38% of Beaufort County's General Fund Budget.²⁷ In Fiscal Year 2021/2022, real property taxpayers in the Town contributed 37% of Beaufort County's General Fund Budget. In Fiscal Year 2022/2023, *real property* taxpayers in the Town contributed 40% of Beaufort County's General Fund Budget.²⁸

The General Fund Budget of the BCSO is not a separate budget, but is a part of the General Fund Budget for Beaufort County.²⁹ Thus, for Fiscal Years 2020/2021, 2021/2022 and 2022/2023, the real property taxpayers in the Town contributed between 37 and 40% of the BCSO's General Fund Budget.

The only evidence in the record is that for fiscal year 2020, services delivered by the BCSO in the municipal limits Town account for approximately 22% for the BCSO's budget and in fiscal year 2023, services delivered in the municipal limits of the Town account for approximately 17% of the BCSO's budget.³⁰

²⁶ See Stipulation Number 9.

²⁷ The real property taxpayers are property tax payers who are also charged the LESC. See Stipulation Number 10 and Stipulation Exhibit 1.

²⁸ These Beaufort County and BCSO budget numbers from which these percentages are derived appear in Stipulation Number 9.

²⁹ See Stipulation Number 8.

³⁰ See Stipulation Number 9.

The math reveals that real property taxpayers in the Town have paid double or nearly double do the cost of the delivery of services by the BCSO in the Town in each year that the LESC has been in effect. The stipulated facts regarding the Beaufort County and BSCO budgets reveal that there is no special benefit conferred on the real property taxpayers in the Town by the LESC, because the real property taxpayers in the Town already contribute more to the budget of the BCSO than the total cost of delivery of services by the BCSO in the municipal limits of the Town. Not only do the real property taxpayers in the Town not receive an enhanced level of service over that which they already pay, but the real property taxpayers in the Town are donors to the rest of Beaufort County with respect to the payment of the BCSO's budget.³¹ There is no evidence that the real property taxpayers receive any special benefit as a result of the payment of the LESC. In the absence of a special benefit, there is no statutory authorization for a user fee. S. C. Code Ann. § 6-1-300(6) (Supp. 2024), *Burns, supra*.

³¹ Note that the real property tax collections do not include the funds generated by the LESC. The real property taxpayers in the Town are actually being charged twice for the services of the BCSO.

THE CLASSIFICATION CREATED IN ORDINANCE 2020-29 IS ARBITRARY AND DOES NOT TREAT THE PLAINTIFFS AS OTHERS WHO ARE SIMILARLY SITUATED

Beaufort County has argued and will argue that the Town does not have a municipal police department, that other municipalities in Beaufort County do and that such justifies the LESC imposed by Ordinance 2020-29. Beaufort County has and will argue that the “benefit” that the Plaintiffs receive is that they would pay more if the Town had a municipal police department.³²

The Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and those services are delivered in every other municipality in Beaufort County by Beaufort County.³³ Beaufort County has not imposed a user fee on real property taxpayers in other municipalities to cover the cost of the delivery of EMS services.³⁴

Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and as a result, all persons similarly circumstanced are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

³² This argument is backwards. The fact that other municipalities have a municipal police department says nothing about whether the real property taxpayers of the Town receive a benefit. The question does not turn on what other municipalities do, it turns on what Beaufort County and the BSCO do. The only evidence is that the BSCO does not deliver any enhanced level of service in the municipal limits of the Town, and the only evidence is that the real property taxpayers in the Town contribute more to the BSCO's budget than the value of the services delivered by the BCSO in the municipal limits of the Town.

³³ See Stipulation Numbers 8 and 9.

³⁴ See Stipulation Number 11.

CONCLUSION

1. Because the only evidence in the record is:
 - (a) the BCSO does not deliver any enhanced level of service in the Town; and,
 - (b) there is no benefit to owners of real property in the Town in the form of increased property values; and,
 - (c) the LESC is not limited to the cost of any claimed enhanced level of service (there is none) but rather is calculated to collect the entire cost of the delivery of all law enforcement services delivered by the BCSO in the Town,

all in contravention of S. C. Code Ann. § 6-1-300(6) (Supp. 2024), under which a valid fee must: provide a benefit to the payer, be used only for the specific service contemplated and not exceed the cost of the specific service contemplated, the LESC does not meet the requirements for a valid uniform service charge or user fee under S. C. Code Ann. § 6-1-300(6) (Supp. 2024) and is an illegal tax.

For these reasons, under the authority of Rule 56, SCRPC, the Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley move for Summary Judgment on their claims as follows:

- (a) Ordinance 2020-29 and LESC be declared invalid as a user fee under S. C. Code Ann. § 6-1-300(6) (Supp. 2024), and an illegal tax; and
- (b) Ordinance 2020-29 and LESC be declared denial of the Plaintiffs' right of equal protection as guaranteed in U.S. Const. amend. XIV; S.C. Const. art. I, § 3.

(c) All funds collected by Beaufort County under Ordinance 2020-29 and the LESC be refunded to the payers of the fee from the year 2020 forward; and,

(c) Attorney's fees under S. C. Code Ann. § 15-77-300 (Supp. 2024).

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By: s/Curtis L. Coltrane

Curtis L. Coltrane

South Carolina Bar Number: 1344

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curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 10th day of March, 2025.

Exhibit 4 to Return to Motion

Case 2025 - 001773

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT,	)	CASE NUMBER: 2020-CP-07-1840
THE TOWN OF HILTON HEAD ISLAND,)	
SOUTH CAROLINA; JOHN J. MCCANN and)	
STEPHEN G. RILEY,)	
)	
Plaintiffs,	)	NOTICE OF MOTION AND
	)	TO ALTER OR AMEND
vs.	)	(Rule 59, SCRCP)
)	
BEAUFORT COUNTY, SOUTH CAROLINA,)	
)	
Defendant.)	

TO: BEAUFORT COUNTY, SOUTH CAROLINA:

Please take notice that the Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley (collectively, the “Town”),) shall move before the Hon. H. Stephen DeBerry, IV, at the Beaufort County Courthouse, 102 Ribaut Road, Beaufort, South Carolina, at 10:00 o’clock, A. M., on the 10th Day following the service hereof, or at such other time and place as the Court may direct, as follows:

For an Order, pursuant to Rule 59, SCRCP, altering or amending its Order filed on August 7, 2025 (herein, the “Order”) denying the Town’s Motion for Summary Judgment, and Granting Beaufort County, South Carolina’s (herein, “Beaufort County”) Motion for Summary Judgment on the following Grounds.

1. Beaufort County argued, and the Order includes findings that the Town does not have a municipal police department, that other municipalities in Beaufort County do, and that such justifies the LESC imposed by Ordinance 2020-29. Beaufort County argued,

and the Order includes findings that the “benefit” the Town receives is that it would pay more if the Town funded a municipal police department.¹

The Town is the only municipality in Beaufort County with its own Emergency Medical Services (EMS) Department, and EMS services are delivered in every other municipality in Beaufort County by Beaufort County.² Beaufort County has not imposed a user fee on real property taxpayers in other municipalities to cover the cost of the delivery of EMS services.³

Beaufort County Ordinance 2020-29 creates a classification based on the claim that property taxpayers in the Town receive a benefit because they do not fund a municipal police department, but real property taxpayers in the other municipalities receive a benefit because they do not fund municipal EMS departments. Beaufort County treats them differently because they are not charged a user fee for EMS services.

Because Beaufort County Ordinance 2020-29 creates and applies a classification that is not reasonable, is arbitrary, and does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and all persons similarly situated are not treated alike, Beaufort County Ordinance violates U.S. Const. amend. XIV and S.C. Const. art. I, § 3.

The Order does not include findings of fact or conclusions on the Town’s equal protection claim, and the Town urges the Court to alter or amend the Order to find in the

¹ The classification is not reasonable, because the only evidence in the record does not support it. As was shown in the Town’s May 1, 2025, Motion for Summary Judgment and herein, the only evidence is that the BSCO does not deliver any enhanced level of service in the municipal limits of the Town, and the only evidence is that the real property taxpayers in the Town contribute more to the BSCO’s budget than the value of the services delivered by the BCSO in the municipal limits of the Town.

² See Stipulation Numbers 8 and 9.

³ See Stipulation Number 11.

Town's favor based on denial of equal protection that Ordinance 2020-29 imposed on real property tax payers in the Town.

2. The Order includes findings to the effect that real property taxpayers in the Town receive a benefit because the Law Enforcement Service Charge (the "LESC") imposed by Beaufort County Ordinance 2020-29 costs them less than funding a municipal police department. This analysis misses the point. In *Burns, et al. v. Greenville County Council, et al.*, 433 S. C. 583, 861 S.E.2d 31 (2021), the South Carolina Supreme Court stated that when a user fee is charged to real property taxpayers, the benefit that must be realized is increased property values. In the case of Beaufort County Ordinance 2020-29, the effect of the LESC on property values was not a consideration of Beaufort County when it adopted Beaufort County Ordinance 2020-29 which imposed the LESC.⁴

Beaufort County argued that the amendment to S. C. Code § 6-1-300(6)(Supp. 2025), removed the requirement for an exclusive benefit to the payer of the fee.⁵ Beaufort

⁴ See Stipulation Exhibit 3, p. 24, l. 21 to p. 25, l. 20, which reads:

Error! Main Document Only.

Q. Since we're talking, based on your last answer of yes, whether or not this was real property, structures, what have you, did Beaufort County provide you with any evidence that the services described in your report of April 17 that is marked as Exhibit 8 enhanced the value of property within the Town of Hilton Head Island?

A. Can you clarify what you mean by "enhanced the value of the property"?

Q. Does it raise the monetary value of the property?

A. And your question is, did they provide me evidence to that effect?

Q. Yes.

A. Okay. No.

Q. Was the effect of the services described in your preliminary report of April 17, marked as Exhibit 8 – did the effect of those services on the monetary value of property within the Town, was that even part of the discussion with, between TischlerBise and the County?

A. No.

⁵ Even with the amendments to S. C. Code Ann. § 6-1-300(6)(Supp. 2025), there still must be some benefit accruing to the payer of the fee other than what every other member of the general public receives. In the absence of such, the user fee is a tax. See *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 522 S.E.2d 804 (1999).

County failed to address the fact that the payer must still derive a benefit that is different from what everyone else receives, even though the benefit does not have to be exclusive, and because the payers of the LESC are real property tax payers, the benefit must be an increase in property values under *Burns, supra*.

The Order does not include any findings or conclusions on the requirements in *Burns, supra*, or address the fact that the payers of the LESC do not receive a benefit different from any other member of the public, and the Town urges the Court to alter or amend the Order to find in the Town's favor based the only evidence in the record being that there is no benefit because, among other things, the LESC does not increase property values as required by *Burns, supra*.

3. The Order includes findings and conclusions that the LESC is a valid service or user fee based on an invalid comparison and which are contrary to the only direct evidence related to the level and type of service delivered in the Town by the Beaufort County Sheriff's Office (herein, the "BCSO"). The finding in the Order that the BCSO serves as the Town's police department is without support in the record. The finding in the Order's that the BSCO delivers an enhanced level of service in the Town is without support in the record. The only evidence in the record related to the level and type of law enforcement services delivered in the Town is the testimony of the Sheriff of Beaufort County, which is:

Q. Okay. And so do you – does the Sheriff's Office provide essentially police department -like services to Hilton Head?

A. You can compare to some degree the level of service we provide. The definition, of course, is a lot different. We're not a municipal police department and the Town of Hilton Head doesn't have one. The operation of a police force or police department is quite different, and our service that we provide Hilton Head is a service that is in line and alike to the

unincorporated areas of Beaufort County. We treat Hilton Head no different when it comes to providing service.⁶

The Sheriff's testimony is clear that police services and law enforcement services are different and that police services are not delivered by the BCSO in the Town. The Sheriff's testimony is also clear that, compared to any like area, there is no difference in the level of service delivered by the BCSO in the Town.⁷ The Order does not address the Sheriff's testimony, which is the only evidence in the record that addresses the level and type of service delivered in the Town by the BCSO. The Town urges the Court to alter or amend the Order to find in the Town's favor based the only evidence in the record being that there is no enhanced level of service delivered in the Town, and the payers of the LESC receive no benefit.

4. The Order includes findings and conclusions that the amount collected by the LESC under Ordinance 2020-29 is not the total cost of the delivery of the services, and not a cost connected with an enhanced lever of services, even though the only evidence in the record is that the calculation of the fee was based on the total cost of the delivery of the services. Julie Herlands, a representative of the firm "TischlerBise," testified as to the preparation of the study and report upon which Ordinance 2020-29 is based.⁸

Julie Herter testified that the LESC was designed to collect the entire cost of delivery of law enforcement services by the BCSO in the Town. Exhibit 11 to Julie

⁶ See Stipulation Exhibit 5, p. 17, l. 11-25.

⁷ The findings in the Order are focused on the gross number of telephone calls to the dispatch center and cost of a municipal police force paid by other municipalities, neither of which address the actual question which is whether the Town receives a level of services over and above what it pays for.

⁸ See Stipulation Number 14 and Stipulation Exhibit 12, which is the deposition of Julie Herlands.

Herland's deposition is a document from the BCSO identifying the total cost of law enforcement services in the Town to be \$4,383,257.00.⁹ Ms. Herlands delivered an explanatory presentation to Beaufort County in support of Ordinance 2020-29.¹⁰ On page 4 of the presentation, the total cost for delivery of the BCSO's services in the municipal limits of the Town is stated to be 4,383,257.00.¹¹ The text of Ordinance 2020-29 states that the amount sought to be collected is \$4,383,257.¹²

The Order does not address Julie Herland's testimony and includes findings that are contrary to it, which is the only evidence in the record that addresses amount of the LESC and the basis on which it is calculated.¹³ The Town urges the Court to alter or amend the Order to find in the Town's favor based the only evidence in the record being that the LESC is not a valid service or user fee because it is designed to collect the total

⁹ See Exhibit 11 to Stipulation Exhibit 5.

¹⁰ See Exhibit 14 to Stipulation Exhibit 5.

¹¹ See page 4 of Stipulation Exhibit 2. The text and data in the study reflect that the fee imposed by Ordinance 2020-29, is designed to collect one hundred percent of the cost of delivery of law enforcement services in the municipal limits of the Town.

(i) Figure 2, page 4, reflecting the "Total HHI Cost" at \$4,383,257.

(ii) The text following Figure 2 reads, in relevant part: "The above calculated cost of \$4,383,257 is used to determine the proposed Law Enforcement Service Charge and Uniform User Fee. This figure can be adjusted as the budget changes.

(iii) Figure 8, page 10, shows that the fee is designed to collect the total cost of delivery of law enforcement services in the municipal limits of the Town.

¹² See Stipulation Exhibit 1, Ordinance 2020-29, Page 1, subparagraph g.

¹³ The findings in the Order that discuss "primary" and "secondary" law enforcement services miss the point. The data on which Beaufort County relied in adopting Beaufort County Ordinance 2022-29 state that the figures uses were the total of the delivery of the law enforcement services in the Town.

cost of the delivery of the services, and not the cost of any claimed enhanced level of service.¹⁴

6. The Order includes findings and conclusions that the payers of the LESC receive a benefit because the LESC is less than the cost of a municipal police department. There is no authority cited in the Order that such is a valid basis for the conclusion. The only evidence in the record is that real property taxpayers in the Town contributed between 37% and 40% of the General Fund Budget Revenues for Beaufort County for fiscal years 2020/2021 through 2022/2023.¹⁵ In Fiscal Year 2021/2021, the real property tax payers in the Town contributed 38% of Beaufort County's General Fund Budget.¹⁶ In Fiscal Year 2021/2022, real property taxpayers in the Town contributed 37% of Beaufort County's General Fund Budget. In Fiscal Year 2022/2023, real property taxpayers in the Town contributed 40% of Beaufort County's General Fund Budget.¹⁷

The General Fund Budget of the BCSO is not a separate budget, but is a part of the General Fund Budget for Beaufort County.¹⁸ Thus, for Fiscal Years 2020/2021, 2021/2022 and 2022/2023, the real property taxpayers in the Town contributed between 37 and 40% of the BCSO's General Fund Budget.

¹⁴ There is no evidence in the record that quantifies the claimed enhanced level of service, and the testimony of the Sheriff is that there is no enhanced level of service.

¹⁵ See Stipulation Number 9.

¹⁶ The real property taxpayers are property tax payers who are also charged the LESC. See Stipulation Number 10 and Stipulation Exhibit 1.

¹⁷ These Beaufort County and BCSO budget numbers from which these percentages are derived appear in Stipulation Number 9.

¹⁸ See Stipulation Number 8.

The only evidence in the record is that for the same period, services delivered by the BCSO in the municipal limits Town account for approximately 16% to 22% for the BCSO's budget.¹⁹

Real property taxpayers in the Town have paid double or nearly double do the cost of the delivery of services by the BCSO in the Town in each year that the LESC has been in effect.²⁰ The stipulated facts regarding the Beaufort County and BSCO budgets reveal that there is no special benefit conferred on the real property taxpayers in the Town by the LESC, because the real property taxpayers in the Town already contribute more to the budget of the BCSO than the total cost of delivery of services by the BCSO in the municipal limits of the Town. Not only do the real property taxpayers in the Town not receive an enhanced level of service over that which they already pay, but the real property taxpayers in the Town are donors to the rest of Beaufort County with respect to the payment of the BCSO's budget. There is no evidence that the real property taxpayers receive any distinct benefit as a result of the payment of the LESC. The Order does not address the stipulated facts which show that the payers of the LESC pay more than the cost of the delivery of law enforcement services in the Town. Because the payers of the LESC pay more than the cost of the services in the absence of the LESC, the LESC is not a valid user fee. The Town urges the Court to alter or amend the Order to find in the Town's favor based the only evidence in the record being that the payers of the LESC receive no benefit and pay more than the cost of the delivery of law enforcement services in the Town.

¹⁹ See Stipulation Number 9.

²⁰ It is actually more than that, because the real property tax collections do not include the funds generated by the LESC. The real property taxpayers in the Town are actually being charged twice for the services of the BCSO.

CONCLUSION

For the reasons stated above and in the Town's May 1, 2025, Motion for Summary Judgment, the Town urges the Court to alter or amend the Order to find in the Town's favor and grant the Town's Motion for Summary Judgment, and deny Beaufort County's Motion for Summary Judgment.

Respectfully Submitted:

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This 15th day of August, 2025.