STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **ORDER ON MOTIONS FOR PRELIMINARY INJUNCTION**

This matter is before the Court on the separate motions of Plaintiff City of Myrtle Beach ("City") and Defendant Horry County ("County") for a preliminary injunction. A hearing on these motions was held on June 14, 2019, and, after having fully considered the motions, memoranda of law, the related affidavits in support of and opposing the motions, the relevant case law, statutes, and constitutional provisions, and the arguments of counsel, the Court GRANTS the City's motion and DENIES the County's motion for the reasons set forth below.

FACTUAL/PROCEDURAL BACKGROUND

On October 15, 1996, the Horry County Council ("County Council") adopted Ordinance 105-96. The purpose of this ordinance was to implement the recommendations made by the Road Improvement and Development Effort (RIDE) Committee, which the South Carolina Department of Transportation formed at Governor Beasley's direction, regarding transportation infrastructure needs and improvements for the County and the various methods to fund them ("RIDE Report"). One such funding mechanism was a local hospitality fee recommended by the County administrator that was projected to be collected for twenty years.

In pertinent part, Ordinance 105-96 recognized that "[c]onsiderable time and effort was expended by the Governor's RIDE Committee to establish a new plan and a new timetable" to

address "the area's road problems," that "past efforts to institute a local option sales tax" to provide local funding for road improvements had failed, and that "current law allows local government to levy reasonable and necessary fees to provide needed infrastructure." To that end, Ordinance 105-96 imposed a 1.5% uniform service charge on the sales of accommodations, prepared food and beverage, and admissions within the entirety of the County, including within the limits of municipalities located within the County ("Hospitality Fee").[1] The ordinance mandated that Hospitality Fee revenues "shall be deposited into a Road Fund which will be used to implement a comprehensive road plan adopted by the County ***in concert with the municipalities of the County***" ("Fee Use Provision") (emphasis added). It further provided that the Hospitality Fee would take effect on January 1, 1997, and would terminate twenty years later, *i.e.*, on January 1, 2017 ("Sunset Provision"), assuming needed State funding was obtained.

Prior to the effective date of Ordinance 105-96, each municipality in Horry County adopted resolutions providing consent to the imposition of the Hospitality Fee within their respective corporate limits and recognizing that the RIDE Report presented a plan that "will provide substantial traffic relief and require participation in the funding package by the citizens of Horry County, ***as outlined by the proposed implementation of a 1.5% hospitality fee for a period of up to 20 years in partnership with the State of South Carolina***." Each municipality further resolved to "strongly and unanimously support the RIDE Committee Report to Governor David M. Beasley" and "***urge[d] Horry County Council to enact expeditiously the necessary ordinances to implement the RIDE Committee report***."

[1] Ordinance 105-96 also imposed an additional 1.0% uniform service charge (for a total of 2.5%) on the same transactions in the unincorporated portions of Horry County. A later amendment to Ordinance 105-96 added a 2.5% uniform service charge on rental cars in all areas of the County. The County also imposes a 0.5% accommodations tax in its unincorporated areas. The City has not challenged these fees or this tax.

The County applied for the necessary State funding by way of a loan from the State Transportation Infrastructure Bank ("SIB") in October 1997, with a revised application submitted in November 1997. Both applications referred to the 1.5% uniform service charge in Ordinance 105-96 as the source of local funding for projects under the RIDE Report. Shortly before the County's submission of its revised application, County Council adopted Resolution No. 224-97 wherein the County represented that it passed Ordinance 105-96 "to collect a Hospitality Fee to pay for road construction pursuant to the RIDE Plan," "reaffirm[ed] its support for the RIDE Plan," and "endorse[d] and approve[d]" the SIB application.

Three subsequent amendments to Ordinance 105-96 are asserted by the County to be relevant to these motions. First, on April 20, 2004, County Council adopted Ordinance 11-04 which purported to "extend[]" the Hospitality Fee "for an additional period ***not to exceed*** five (5) years." (emphasis added). The stated purpose of this extension was to allow extra time, if needed, for the County to re-pay its SIB loans. Ordinance 11-04 was not codified in the County's Code of Ordinances. Instead, it was only referenced in an Editor's Note to Section 19-6, where the other amendments to Ordinance 105-96 were codified. The City did not consent to this ordinance, and it appears that no other Horry County municipality did either.

On December 6, 2016, County Council adopted Ordinance 93-16. In pertinent part, this ordinance amended the Sunset Provision to state that the Hospitality Fee "will terminate on January 1, 2022." (emphasis added). While Ordinance 93-16 retained the language that Hospitality Fee revenues are to be used to implement "a comprehensive road plan adopted by the County in concert with the municipalities," and appears to broaden the Fee Use Provision to allow for these funds to be spent on seven categories of expenses, only one of which was roads and none of which were limited to the RIDE Report's identified projects. Shortly thereafter, it

appears that the County Council adopted Ordinance 32-17 to remove the Sunset Provision altogether. Two resolutions passed by County Council, R-82-18 and R-83-18, admit that County Council "passed Ordinance 93-16 and 32-17 . . . to extend [the Hospitality Fee's] imposition following the repayment of loans due the State Transportation Infrastructure Bank." Via Resolution R-82-18, County Council expressed its intention to use continued Hospitality Fee collections on "other major road projects" and thereby dedicated a portion of the revenues to the Interstate 73 ("I-73") project. I-73 is not a project proposed by the RIDE Report. To resolve any discrepancy in the revised Fee Use Provision, Resolution R-84-18 "direct[ed] staff to draft an ordinance amending Section 19-6(h) of the Horry County Code of Ordinances," which contains the "comprehensive road plan" restriction, "to allow the 1.5% hospitality fee for all eligible uses under applicable law, as set forth in Section 19-6(j)," the section with the seven categories of approved expenses.[2] It appears that no such ordinance has, however, been adopted by the County.

On March 7, 2019, the City adopted Ordinance 2019-22, which increased its existing local accommodations tax from 0.5% to 3%, the maximum allowed by S.C. Code Ann. § 6-1-540. That same day, it also adopted Ordinance 2019-23 to impose a 2% hospitality tax, which also is the maximum rate S.C. Code Ann. § 6-1-740 permits. These ordinances (the "Local Tax Ordinances") go into effect July 1, 2019.

The City brought this lawsuit on March 20, 2019, individually and on behalf of a class of all similarly situated plaintiffs who have paid the Hospitality Fee since January 1, 2017 ("Class Members"). The lawsuit primarily seeks declaratory and injunctive relief, as well as the imposition of a constructive trust and damages for unjust enrichment. The County filed its

[2] A third resolution adopted by the County Council on April 2, 2019, specifically R-36-19, states that the loans from the SIB were repaid on February 15, 2019, and that the net balance in the Road Fund created by Ordinance 105-96 after that repayment was $9,681,738.

answer and counterclaims on April 19. It asserted one counterclaim for attorneys' fees and costs, and one for promissory estoppel. The City moved to preliminarily enjoin the County's continued imposition of the Hospitality Fee pursuant to the amendments to Ordinance 105-96 on May 3, and the County moved to preliminarily enjoin the Local Tax Ordinances on May 14.

LAW/ANALYSIS

Each party seeks to enjoin the actions of a governmental entity. Therefore, each must satisfy five elements to receive injunctive relief: (1) likelihood of success on the merits; (2) irreparable harm if an injunction is not granted: (3) an inadequate remedy at law; (4) an injunction is reasonably necessary to protect its legal rights in the pending litigation; and (5) the opposing party acted in an arbitrary, capricious, and oppressive manner. *See Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018); *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50-51, 674 S.E.2d 505, 508 (Ct. App. 2009), *modified on other grounds by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010). For the reasons set forth below, the Court finds that the City has satisfied all of these elements but that the County has satisfied none.

A. The City's Motion for Temporary Injunctive Relief

1. The City Has Demonstrated a Likelihood of Success on the Merits.

This Court examines the merits of the underlying claims "only to the extent necessary to determine whether [the City] has made a sufficient prima facia showing of entitlement to relief." *Compton v. S.C. Dept. of Corrs.*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). A party need not "prove an absolute legal right;" it need only "present a reasonable question as to the existence of such a right." *AJG Holdings*, 382 S.C. at 51, 674 S.E.2d at 509.

The City argues that the County could not extend the Sunset Provision or expend funds for purposes other than those provided in the Fee Use Provision of Ordinance 105-96 without consent of the City and the other municipalities within Horry County.[3] The narrow question presented is thus whether the County may unilaterally extend the time and scope of a previously consented-to uniform service charge imposed within municipal limits without the further consent of the municipality. The Court finds the City has demonstrated a likelihood of success on the merits of its argument that its consent is required in these circumstances.

First, the text of Ordinance 105-96 and the parties' actions contemporaneous with its passage tends to demonstrate that municipal consent is required. The ordinance allowed only for the collection of a fee "which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County." As the County acknowledged and represented to the SIB, this "comprehensive road plan" consisted of the projects set out in the RIDE Report. The Fee Use Provision thus allowed the County to collect the Hospitality Fee only to the extent the municipalities agreed to the RIDE Report. The RIDE Report incorporated the Hospitality Fee as a fundamental funding mechanism being available for twenty years. Without this fee, the RIDE Report could not be implemented. By way of their respective resolutions, the municipalities consented to the Hospitality Fee for that twenty-year period to implement the plan under the RIDE Report. The County then relied upon this consent in its SIB applications in order to obtain the complete funding for the projects within that plan.

Second, the State Constitution and statutes implementing Home Rule tend to demonstrate a reasonable likelihood that municipal consent is required. Counties have the statutory authority to adopt ordinances that are "not inconsistent with the Constitution and general law of this

[3] Contrary to the County's assertion, the City does not challenge a county's general right to pass and amend ordinances, including extending or repealing sunset clauses.

State." S.C. Code Ann. § 4-9-25. They also have the authority to impose "uniform service charges," but only "within the authority granted by the Constitution and subject to the general law of this State." S.C. Code Ann. § 4-9-30(a)(5). Both the Constitution and statutes enacted under Home Rule provide for the relationship between counties and municipalities, and in particular when each may perform its functions and provide its services within the boundaries of the other. *See* S.C. Const. art. XIII, § 13(A); S.C. Code Ann. § 4-9-40; *id.* § 4-9-41(A); *id.* § 5-7-60.

South Carolina law thus preserves the autonomy of municipalities within their borders absent their agreement or consent or an express statutory provision to the contrary.[4] The County and the City each possess the authority to enact uniform service charges, and in particular the authority to enact them to support road improvements. S.C. Code Ann. § 4-9-30(a)(5) (counties); *id.* § 5-7-30 (cities). However, neither section grants the City or the County the power to unilaterally impose such a uniform service charge within the jurisdictional limits of the other. Consistent with these principles, each municipality consented to Ordinance 105-96 and the imposition of the Hospitality Fee within its boundaries for twenty years.[5] But because there is no evidence of consent to any ordinance extending or expanding the Hospitality Fee, the City has demonstrated a likelihood of success on the merits of its claim.[6]

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[4] For over thirty years, the Attorney General similarly has recognized the independence of municipalities from county interference absent consent or express statutory authority. *E.g.*, S.C. Att'y Gen. Op., 2016 WL 7031993 (Nov. 15, 2016); S.C. Att'y Gen. Op., 2011 WL 3918176 (Aug. 10, 2011); S.C. Att'y Gen. Gen. Op., 1988 WL 383501 (Feb. 25, 1988); 1984 WL 249691 (Oct. 2, 1984). Although these opinions are not binding on this Court, the Court finds them persuasive in determining whether the City has stated a reasonable question on the merits of its argument.

[5] The County argues these resolutions did not supply any consent because they did not use that word. The Court rejects this premise. A resolution "urg[ing]" the adoption of the ordinance providing for the Hospitality Fee is tantamount to, if not stronger than, consenting to it. Regardless, the County does not now have the required consent of the City and the other municipalities.

[6] The Court also agrees with the City's contention that, without municipal consent the County's extension and expansion of the Hospitality Fee constitutes a new uniform service charge which is not

The County argues the City cannot demonstrate a likelihood of success on the merits because its claims are barred by the doctrine of laches. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Harrison v. Owen Steel Co.*, 422 S.C. 132, 138 n.2, 810 S.E.2d 433, 436 n.2 (citations omitted). It requires that the asserting party prove "negligence, the opportunity to act sooner, and material prejudice. In order to constitute laches, the delay in bringing suit must have caused some injury, prejudice[,] or disadvantage to the party claiming laches." *Id.* The County argues laches applies because Ordinance 11-04 extended the Sunset Provision in 2004 and neither the City nor any other municipality objected until 2019.

The Court disagrees. Courts have long disfavored applying the equitable doctrine of laches against the government. *See, e.g, United States v. Kirkpatrick*, 22 U.S. 720, 735 (1824); *United States v. City of Greenville*, 118 F.2d 963, 966 (4th Cir. 1941). The facts here do not warrant departing from this long-standing practice. First, the City has demonstrated a likelihood of success on the merits that its consent is required to extend the duration or purpose of the Hospitality Fee. Ordinance 11-04 therefore was legally inoperative to extend the Sunset Provision. Second, the plain language of Ordinance 11-04 only gave the County the *option* to extend the Hospitality Fee for a period "not to exceed" five years if the County needed additional time to repay the SIB loan. The earliest the City might have had an actionable claim would have been in December 2016 when the County extended the Sunset Provision without qualification or

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permitted by South Carolina law. The General Assembly grandfathered uniform service charges properly adopted before December 31, 1996, when it enacted new rules regarding local government uniform service charges and taxes, particularly hospitality and accommodations taxes. S.C. Code Ann. § 6-1-330(A). The grandfathering of Ordinance 105-96 did not exempt it from existing municipal consent requirements; it merely ensured the ordinance was not invalidated because of the new procedural requirements for uniform service charges. The substantive changes to the Fee Use and Sunset provisions constituted an attempt to enact a new uniform service charge that is perpetual in duration and broader in scope, and is unlawful because the County lacked the requisite municipal consent.

condition until January 1, 2022, although such a claim would not have fully ripened until the County actually collected the Hospitality Fee after its original expiration on January 1, 2017. *See Sloan v. Greenville Cnty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) ("A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract nature."). Third, the County has not demonstrated any prejudice; it submitted only arguments of counsel, not facts, and its claimed prejudice—that it continued developing plans for I-73 and incurring administrative costs—are insufficient as the County will continue collecting at least $22 Million per year from the remaining portions of Ordinance 105-96 and the County's accommodations tax. And fourth, the County never codified Ordinance 11-04 as required by S.C. Code Ann. § 4-9-120. While an Editor's Note "referenced" the ordinance, as the County notes, it was never fully codified in the text of Horry County's municipal code.[7]

Moreover, the three-year statute of limitations, and not laches, governs the timeliness of the City's claims.[8] *See Wells Fargo Bank v. Carter*, 2014 WL 11034776 at *2 (D.S.C. 2014); *PCS Nitrogen, Inc. v. Ross Dev. Corp.*, 127 F. Supp. 3d 568, 590 (D.S.C. 2015); 22A Am. Jur. 2d. *Declaratory Judgments* § 182 (2019). Because the City brought its claims within three years of any cause of action having accrued, the City's actions are timely. Furthermore, the County's imposition of the Hospitality Fee also is a recurring violation that gives rise to a new claim every time it is paid, thus triggering a new limitations period. *See State ex rel. Wilson v. Ortho-McNeil-*

[7] While the City's complaint alleges that the County codified Ordinance 11-04, the City expressed its intent to amend its complaint to conform to the evidence at the appropriate time.

[8] Even if the statute of limitations is not directly applicable, courts look for an analogous statute of limitations as a guide when applying laches. *See S.C. State Ports Auth. v. M/V Tyson Lykes*, 837 F. Supp. 1357 (D.S.C. 1993) (stating that "the fact that this action was commenced well within the state statute of limitations, while not controlling, is a consideration of the court in ruling on laches"); Am. Jur. 2d *Laches* § 38 (2019) ("However, a statute of limitations may serve as a guide in determining whether an action is barred by laches"). Because the City satisfied the statute of limitations, the Court finds the timing of the City's action was not unreasonable and thus does not trigger laches.

Janssen Pharmaceuticals, Inc., 414 S.C. 33, 78, 777 S.E.2d 176, 200 (2015) ("[W]here a liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period."). For all of these reasons, laches does not apply.

2. The City Will Suffer Irreparable Harm and Has No Adequate Remedy at Law.

Irreparable harm and inadequate remedy at law "are closely related, if not identical, concepts." 35 Am. Jur. 2d *Federal Tax Enforcement* § 1054. "[T]he duty rests upon" this Court to enjoin the collection of an illegal government assessment where the payer lacks a meaningful mechanism to challenge it, such as payment under protest with a right to recover in court. *Santee River Cypress Lumber Co. v. Query*, 168 S.C. 112, ___, 167 S.E. 22, 22 (1932); *see also Ware Shoals Mfg. Co. v. Jones*, 78 S.C. 211, ___, 58 S.E. 811, 813 (1907); *Riverwoods, LLC v. Cnty. of Charleston*, 348 S.C. 378, 563 S.E.2d 651 (2002). The General Assembly has provided no such mechanism with respect to uniform service charges. The County, however, contends that its Ordinance 8-00 creating a "Board of Fee Appeals" provides a sufficient remedy for fee payers to challenge their payment. The Court disagrees.

The County has no authority to appoint a "Board of Fee Appeals" as this entity does not "provide services of local concerns for public purposes." *See* S.C. Code Ann. § 4-9-30(6). Even if this power exists, the City correctly points out that Ordinance 8-00 suffers from several other legal infirmities.[9]

[9] Among these are the provision of Ordinance 8-00 allowing the County's administrator, and not its governing body, to appoint members of this board. *See* S.C. Code Ann. § 4-9-170; *id.* § 4-9-630 (setting forth powers of county administrators); Att'y Gen. Op., 1985 WL 166006 (April 11, 1985) ("Once the General Assembly has delegated appointment power to a body other than itself, additional delegation may not be made absent statutory authorization.") (citations omitted). Furthermore, Ordinance 8-00 purports to vest in "a court of competent jurisdiction" appellate authority to review the "written decision based on findings of fact and the applicable ordinance[]," but no court in South Carolina has jurisdiction in such matters. *See* S.C. Code Ann. § 14-25-45 (describing municipal court jurisdiction); S.C. Code Ann. § 22-3-10 (describing magistrates' court jurisdiction); *id.* § 1-23-600(D) (describing administrative law court appellate jurisdiction); *id.* § 14-5-340 (providing for circuit court appellate

There are practical difficulties as well. The requirement that a written appeal be filed within ten days of payment of the fee and be accompanied by a $25 filing fee is an unrealistic requirement and a disincentive to appeal given that $1,666.66 in purchases are required in order to cover just the fee at 1.5%. The ordinance also requires a hearing before the board within forty-five days of receipt of the notice (which would be unduly burdensome, and likely prohibitive, for tourists), and the board must issue a written decision setting forth findings of fact. The board would be swamped and unable to meet these requirements for the thousands of people and entities paying this fee daily.

The questionable establishment and composition of the County's "Board of Fee Appeals," coupled with the absence of any ability to obtain judicial review, deprives the City and the Class Members of the "meaningful backward looking relief" needed to rectify "any unconstitutional deprivation" because there is not a "clear and certain remedy." *See McKesson v. Div. of Alcoholic Bevs. & Tobacco*, 496 U.S. 18, 31 (1990). The County's Ordinance 8-00 therefore does not supply the City and the Class Members with an adequate remedy at law.

Given that it cannot dispute that governmental exactions under invalid ordinances or the expenditure of public funds for invalid purposes constitute irreparable harm as a matter of law where no adequate remedy at law exists to protect the payor, the County attempts to flip the analysis and assert that the alleged irreparable harm *it* will suffer if the Court enjoins it from collecting the Hospitality Fee is pertinent to the analysis of the City's motion. To support its argument, the County cites to the affidavit of its Finance Director, Barry Spivey, who states that the County collects over $51 Million annually under the "Ordinance," and the City's success in this action would be "a fiscal catastrophe for Horry County as its residents." Mr. Spivey's

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jurisdiction); *id.* § 14-8-200 (providing for court of appeals' jurisdiction); *id.* §§ 14-3-310, *et seq.* (providing for supreme court appellate jurisdiction). And the County has no authority to create jurisdiction for an appellate court.

affidavit is unpersuasive whether viewed from the perspective of the City's or the County's motion. Primarily, the "Ordinance" described by Mr. Spivey consists of four separate revenue collection streams, only one of which is at issue here. As demonstrated in the affidavit of the City's Chief Financial Officer, Michael W. Shelton, if the City prevails in this matter, the County will continue collecting over $22 Million annually under the remaining portions of the "Ordinance." This is more than double the amount necessary to cover the "critical public safety expenditures" Mr. Spivey claims are in jeopardy. As described above, the County has not yet determined how it wishes to spend future Hospitality Fee revenues, aside from dedicating a portion of them to the proposed I-73 project and public safety. This injunction therefore will not cause the County irreparable harm.

3. An Injunction is Reasonably Necessary to Protect the City's Rights.

Absent an adequate remedy at law, the only way to safeguard the City and the Class Member's rights during the pendency of this litigation is an injunction. An injunction also protects the interests of municipal residents to give their local elected representatives, not members of County Council who are not elected by residents of one or more municipalities, input on whether a fee would be imposed upon them and the terms of such a fee. *Cf.* S.C. Code Ann.§ 4-9-41(B).

4. The City Has Shown the County Acted in an Arbitrary, Capricious, and Oppressive Manner.

As a final matter, the Court finds the City has sufficiently demonstrated that the County acted in an arbitrary, capricious, and oppressive manner.

South Carolina law requires municipal consent to the imposition of uniform service charges within incorporated areas. This fact is demonstrated by the fact that the County obtained this consent when it first enacted the Hospitality Fee in Ordinance 105-96. As the original

twenty-year term came to a close, the County unilaterally attempted to extend the Hospitality Fee for five years and then, just months later, attempted to remove the Sunset Provision altogether. It did so without soliciting any consent from each affected municipality. Minutes of the County Council meetings show that it felt it was "under urgency" that "they had been apprised of the problem that they would lose their grandfathered status once they paid off the SIB loan never to be recovered." These minutes further show that County acted without any specific plans for these funds; it would collect them and *then* determine how to spend the money. The County also believes, albeit incorrectly, that the Hospitality Fee precludes the City from adopting the Local Tax Ordinances to collect a portion of these revenues itself.

This evidence, at least at this point in time, tends to show the County knew municipal consent was required as it previously obtained municipal consent, but it nevertheless acted unilaterally to preserve a revenue source in perpetuity that it had no existing plans to use and, as it believes, to preclude the City from exercising its authority to collect tax revenues on sales of accommodations and hospitality services within its own borders. This sufficiently demonstrates the County acted in an arbitrary, capricious, or oppressive manner.

B. The County's Motion for Temporary Injunctive Relief

1. <u>The County Has Not Demonstrated a Likelihood of Success on the Merits.</u>

The County has not pled a cause of action for injunctive relief in its counterclaims, nor is there any claim whatsoever related to the Local Tax Ordinances. The County has moved to amend its counterclaims to include claims for declaratory and injunctive relief for these taxes. The City opposed that motion on the ground that they constitute compulsory counterclaims which the County waived by not pleading them originally. The County's sole argument is that the Local Tax Ordinances, when imposed in conjunction with the Hospitality Fee, exceed the

maximum cumulative tax rates in S.C. Code Ann. §§ 6-1-540 and 6-1-740.[10] As the County has misapprehended the application of these sections to the Hospitality fee, it has not demonstrated a likelihood of success on the merits of this argument.

First, the County's argument presupposes that it will be permitted to continue collecting the Hospitality Fee. Because the Court enjoins the County from doing so during the pendency of this litigation, the County's argument necessarily fails. Second, the County's argument misapprehends the distinction between uniform services charges and taxes. Under South Carolina law, uniform service charges (such as the Hospitality Fee) and taxes (such as the Local Tax Ordinances) are fundamentally different means of raising revenue. *See Brown v. Cnty. of Horry*, 308 S.C. 180, 185, 417 S.E.2d 565, 568 (1992) ("Although a service charge may possess points of similarity to a tax, it is inherently different and governed by different principles"). Within Chapter 1, Title 6 of the South Carolina Code, the General Assembly retains and recognizes this distinction. *Compare* S.C. Code Ann. § 6-1-330 (providing for the imposition of uniform service charges), *with id.* §§ 6-1-500, *et seq.* (providing for local accommodations taxes) *and id.* §§ 6-1-700, *et seq.* (providing for local hospitality taxes). The County itself adheres to this critical distinction, as integral parts of the Hospitality Fee are not authorized taxes a county may impose, such as the fee on admissions, the fee on rental cars, and the 2.5% fee on prepared

[10] Section 6-1-540 provides, "The **cumulative rate of** county and municipal local **accommodations taxes** for any portion of the county area **may not exceed three percent**, unless the cumulative total of such taxes were in excess of three percent prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed as of December 31, 1996," and § 6-1-740 similarly states, "The **cumulative rate of** county and municipal **hospitality taxes** for any portion of the county area **may not exceed two percent**, unless the cumulative total of such taxes was in excess of two percent or were authorized to be in excess of two percent prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed or adopted as of December 31, 1996." (Emphasis supplied.) The County has not adopted an ordinance imposing either a local accommodations tax under S.C. Code Ann. § 6-1-520 or a local hospitality tax under S.C. Code Ann. § 6-1-720 within corporate limits in Horry County.

food and beverage in the unincorporated area in excess of the 2% cumulative hospitality tax cap in § 6-1-740.[11]

Sections 6-1-540 and 6-1-740, by their express terms, cap only the amount of accommodations and hospitality *taxes* within a municipality. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). The Local Tax Ordinances do not exceed these statutory caps, and because the Hospitality Fee is a uniform service charge and not a tax, it is irrelevant to the analysis. The County therefore has not shown a likelihood of success on the merits of a claim seeking to enjoin the City's lawful imposition of the Local Tax Ordinances.

Thus, this Court finds that for the purposes of a Temporary Restraining Order, the County's likelihood of success does not exist, therefore the four remaining elements of temporary injunctive relief need not be addressed by this Court. Lastly, the County proffers the argument that a preliminary injunction should only be issued to preserve the status quo. However, this Court believes if preliminary injunctions were issued to only preserve the status quo, then a preliminary injunction should never be issued, even though the rules in South Carolina allow same. This position in and of itself is not logical.

CONCLUSION

For the foregoing reasons, the Court GRANTS the City's motion for the pendency of this litigation and DENIES the County's motion.

IT IS SO ORDERED.

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[11] In addition, Ordinance 105-96 states that the Hospitality Fee is a uniform service charge, as does Mr. Spivey in his affidavit. *See Brown*, 308 S.C. at 184, 417 S.E.2d at 567 (holding that an ordinance's designation of a charge as a fee instead of a tax may be some evidence as to its nature).

The Honorable William H. Seals, Jr.
Judge for the Fifteenth Judicial Circuit

This ____ day of June, 2019
_____, South Carolina

Horry Common Pleas

Case Caption: Myrtle Beach City Of VS Horry County Of

Case Number: 2019CP2601732

Type: Order/Temporary Injunction

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157