

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

RECEIVED

JUL 29 2019

SC Court of Appeals

City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, ... Respondents,

v.

Horry County, ... Appellant.

SUPPLEMENTAL APPENDIX

John M.S. Hoefer
Chad N. Johnston
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202
(803) 252-3300

R. Walker Humphrey, II
WILLOUGHBY & HOEFER, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Attorneys for Respondents

SUPPLEMENTAL APPENDIX INDEX

Page

ORDERS

1. Order Assigning Case to Business Court Project (May 6, 2019) 001

MOTIONS

2. City's Motion for Assignment to Business Court Project (May 3, 2019) 003

OTHER MATERIALS OR DOCUMENTS

3. City's Transmittal Correspondence and Proposed Order (June 19, 2019) 012
4. County's Transmittal Correspondence and Proposed Order (June, 19, 2019) 032
5. County's Correspondence to Circuit Court, City's Response, Circuit Court's Instructions
(July 12 - 15, 2019).....035
6. County's Transmittal Correspondence to Circuit Court re: Motion to Stay, Circuit Court's
Inquiry to City, City's Response, County's Response, City's Response, County's
Response (July 15-17, 2019) 037
7. City of North Myrtle Beach Resolution 19-03 (July 23, 2019).....041
8. Town of Surfside Beach Resolution #19-197 (July 23, 2019) 043
9. Affidavit of Adam Emerick (July 26, 2019).....045

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

City of Myrtle Beach, For Itself and a Class of
Similarly Situated Plaintiffs,

Plaintiffs,

vs.

Horry County,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-26-1732

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT**

It is hereby ordered that assignment to the Business Court for Horry County is **granted**. It is further ordered that exclusive jurisdiction over this case be assigned to the **Honorable William H. Seals, Jr.** to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

Charleston, South Carolina



Horry Common Pleas

Case Caption: Myrtle Beach City Of VS Horry County Of
Case Number: 2019CP2601732
Type: Order/Case Assignment to Business Court Approved

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2019-05-06 09:08:11 page 2 of 2

STATE OF SOUTH CAROLINA,

IN THE CIRCUIT COURT

COUNTY OF HORRY

**MOTION FOR CASE ASSIGNMENT
TO THE BUSINESS COURT PROGRAM**City of Myrtle Beach,
For Itself and a Class of Similarly
Situated Plaintiffs,

Plaintiffs

CASE NO. 2019-CP-26-01732

vs.

Horry County,

Defendant.

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Business Court Judge assigning this case to the Business Court Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Program.

(Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.)

- ☐ Title 33—South Carolina Business Corporation Act of 1988;
☐ Title 35—South Carolina Uniform Securities Act of 2005;
☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
☒ Other Appropriate Matter determined by the Chief Justice. (See attached.)

3. Indicate whether the non-moving party or parties consents, ☐ does not oppose, ☒ opposes;
☐ position on assignment is unknown.

Non-Moving Party Signature (if applicable)

Attorney Name: Henrietta U. Golding, Esq.
 Firm: Burr Forman McNair
 Contact Information: 2411 Oak St, Ste 206
 Myrtle Beach, SC 29577
 hgolding@burr.com
 843-443-3003
 SC Bar # 2173
 Location: Myrtle Beach, South Carolina
 Date: May __, 2019

Attorney for Horry County

SCCA BC Form 101 (Rev. (05/2017))

s/John M. S. Hoefer**Signature**

Attorney Name: John M. S. Hoefer
 Firm: Willoughby & Hoefer, P.A.
 Contact Information: Post Office Box 8416
 Columbia, SC 29202-8416
 jhoefer@willoughbyhoefer.com
 803-252-3300
 SC Bar # 2549
 Location: Columbia, South Carolina
 Date: May 3, 2019

Attorneys for City of Myrtle Beach

ATTACHMENT TO MOTION OF PLAINTIFF CITY OF MYRTLE FOR ASSIGNMENT OF CIVIL ACTION NO. 2019-CP-26-01732 TO THE BUSINESS COURT PROGRAM

Description of Claims

The City of Myrtle Beach (“City”) has brought a civil action, on behalf of itself and a proposed class of similarly situated plaintiffs,¹ against Horry County (“County”) seeking declaratory, permanent injunctive, and other relief arising out of the County’s collection of a 1.5% fee on the sale of accommodations, prepared food and beverage, and amusements (the “Hospitality Fee”) within the City’s corporate limits from and after January 1, 2017. The ordinance imposing the Hospitality Fee was adopted by the County in 1996 for an express duration of 20 years, and only with the required consent of the respective municipalities within the County, which consent was required by law and obtained in order to allow the County to borrow monies from the South Carolina State Infrastructure Bank for the limited purpose of funding a comprehensive road plan in Horry County known as the “RIDE Project.”

The City contends that the County’s ordinance under which the Hospitality Fee is imposed and collected is, and has been since January 1, 2017, invalid as a matter of law because, *inter alia*, (a) this ordinance terminated by its own terms on that date, following the expiration of the express 20-year duration, (b) the County neither sought nor obtained the City’s consent to continue to collect the Hospitality Fee within its corporate limits after January 1, 2017, and, on information and belief, the consent of the other municipalities within Horry County was neither sought nor obtained by the County for same, and (c) the County’s collection, retention, and use of revenues that have continued to be generated thereby are beyond the scope of use provided for in this ordinance (i.e., the RIDE Project), and have been unjustly retained and expended by the County.

In addition to the declaratory, permanent injunctive, and other equitable relief (which consists of a return of monies to the persons or entities who have paid the illegally-collected Hospitality Fee on or after January 1, 2017) that is being sought, the City will also seek preliminary injunctive relief precluding the County from continuing to collect the Hospitality Fee within the corporate limits of the City (and any other municipality within Horry County as members of the proposed plaintiff class) during the pendency of this litigation.

¹ The Complaint defines the proposed class as “[a]ll individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, political subdivisions, counties, municipalities, state agencies, and instrumentalities of the State of South Carolina who have paid 1.5% fee under Section 19-6(a) of the Code of Ordinances of Horry County, South Carolina, on or after January 1, 2017, and/or are subject to paying such 1.5% fee on a going forward basis, for purchases of covered accommodations, food, beverage, and amusements within the Municipalities situated in Horry County.”

Justification for Assignment

The action brought by the City is unusual in a number of ways which justify its assignment to the Business Court.

First, the nature of this action is unique as it involves two (and potentially as many as nine²) political subdivisions and an unknown number of individuals and other entities in a class action. This by itself warrants an assignment to a single judge which an exercise of jurisdiction by the Business Court would achieve.

Second, this action challenges the ability of the County to collect a fee based upon certain retail sales within the corporate limits of municipalities in the County under an ordinance which the City contends is invalid. The County currently collects approximately \$29.1 Million annually from the Hospitality Fee imposed within the limits of Horry County municipalities. The City asserts that the County has lacked the authority to collect those funds since January 1, 2017. According to an April 2, 2019, resolution adopted by the County's governing body, Horry County Council (Resolution R-36-19), a copy of which (along with its two attachments) is attached hereto as Exhibit A, the County continues to collect the Hospitality Fee and has proposed to continue collecting it despite this lawsuit. Furthermore, it has earmarked these funds for a number of uses besides the RIDE Project, which now has been paid in full. *Id.* Therefore, this action will have a significant financial impact on a going forward basis on as many as nine political subdivisions, the residents thereof, the affected retail businesses therein, and payers of the Hospitality Fee from across the country and beyond. In addition, the action will resolve the legality of the County's collection and retention of the Hospitality Fee since January 1, 2017, resulting alternatively in a windfall to the County, or the creation of a constructive trust facilitating the return of those illegally-collected fees to the respective payors.

Third, members of the proposed class face imposition of the unlawful fee and proper local taxes on the same transaction if the Hospitality Fee is allowed to stand. The City and several other municipalities in Horry County (who are included in the proposed Plaintiff class) have enacted proper accommodations and hospitality taxes under Chapters 5 and 7 of Title 6. These taxes cover the same sales of accommodations and prepared food and beverage as the Hospitality Fee. This case thus concerns the rights of multiple municipalities to enact lawful taxes within their corporate limits versus Horry County's unilateral effort to impose an illegal fee inside a municipality without consent.

Fourth, and quite apart from the legal and financial interests of the City and the County, municipal residents have an interest in having input into the election of **all** persons³ who make

² Other municipalities within the proposed plaintiff class are the Town of Atlantic Beach, the Town of Aynor, the Town of Briarcliffe Acres, the City of Conway, the City of Loris, the City of North Myrtle Beach, and the Town of Surfside Beach.

³ Because eleven of the twelve members of Horry County Council are elected by districts which cover various parts but not all the County area, some of them may be elected by residents of a given municipality and others may not. This can be seen in the County's on-line district map.

decisions regarding the adoption of ordinances under which revenues are generated from the sale of accommodations, prepared food and beverages, and amusements within their municipalities and the use of such revenues. The County was previously required to obtain the consent of all of the municipalities in Horry County to the imposition of the Hospitality Fee within their corporate limits. The consent given by these municipalities was expressly limited to a twenty (20) year term and a single purpose, i.e., support of the RIDE Project. Now, the County desires to unilaterally extend that fee in perpetuity and to fund projects other than the RIDE Project. Continued enforcement of the County's ordinance imposing the Hospitality Fee deprives the residents of the City (and other municipalities) of their rights by allowing members of Horry County council who are not elected by residents of one or more of the municipalities to make decisions for those citizens.

The City therefore respectfully submits that an assignment of this action to the Business Court is appropriate and so moves.

See <https://hcg.maps.arcgis.com/home/webmap/viewer.html?webmap=02595aede8594611b340ba237b59bdec>. By contrast, all members of the governing body of the eight municipalities are elected only by the residents of those municipalities.



ELECTRONICALLY FILED - 2019 May 03 4:12 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

Horry County Council

Johnny Gardner
Chairman

Harold Worley
District 1
Vice Chairman

Bill Howard
District 2

Dennis DiSabato
District 3

Gary Loftus
District 4

Tyler Servant
District 5

Cam Crawford
District 6

Orton Bellamy
District 7

Johnny Vaught
District 8

W. Paul Prince
District 9

Danny Hardee
District 10

Al Allen
District 11

Patricia S. Hartley
Clerk to Council

(843) 915-5120
(843) 915-6120 Fax

April 3, 2019

VIA EMAIL

TO: Mayor Brenda Bethune
Mayor Marilyn Hatley
Mayor Barbara Blaine Bellamy
Mayor Bob Childs
Mayor John Gardner
Mayor Pro Tempore Todd Harrelson
Mayor Jake Evans

FROM: Johnny Gardner, Horry County Chairman

As you know by now, Horry County Council at its April 2nd meeting discussed a proposed allocation of hospitality fee revenues and adopted the attached Resolution and Exhibits. I am forwarding this to you for your consideration. County Council feels that this represents a good-faith offer to settle any disputes on the allocation of these fees.

I am willing to meet with you, prior to the County Council meeting on April 16, to discuss this in hopes of reaching a satisfactory resolution. I would ask that you contact me, or Pat Hartley, our Clerk, as soon as possible with dates/times that you would be available to meet. I hope that you agree with me that this is a fair and equitable resolution for all jurisdictions and I sincerely look forward to meeting with you and working together to benefit all of our citizens.

It is the intent of County Council to have this resolved by the April 16th meeting. Please let me know if you require any additional information.

Warm regards,

COUNTY OF HORRY

STATE OF SOUTH CAROLINA

RESOLUTION R-36-19

A RESOLUTION ENDORSING HORRY COUNTY'S 1.5% COUNTYWIDE HOSPITALITY FEE, ADDRESSING THE COST OF PUBLIC SAFETY RESULTING FROM TOURISM, AND PROVIDING A GOOD FAITH OFFER TO THE MUNICIPALITIES FOR THE CONTINUED USE OF SUCH HOSPITALITY FEE

WHEREAS, Horry County imposed a 1.5% countywide Hospitality Fee in 1996 on prepared meals, accommodations, and admissions (subsequently including car rentals) to undertake a comprehensive countywide road construction program known as RIDE I, the proceeds from which were used to repay loans with the State Infrastructure Bank (SIB) used to finance RIDE I; and

WHEREAS, Horry County amended the 1996 ordinance several times, as recently as 2017, without objection from the municipalities in Horry County, to include extensions of the original sunset date; and

WHEREAS, Horry County repaid the final loan with the SIB on February 15, 2019, affording an opportunity to provide funding to address the construction of I-73 and offset the increasing costs of public safety resulting from tourism; and

WHEREAS, upon repayment, defeasance of the SIB loan resulted in a net balance in the 1.5 % Hospitality Fee account of \$ 9,681,738; and

WHEREAS, the County has continued to collect the 1.5% Hospitality Fee; and

WHEREAS, the City of Myrtle Beach, the City of North Myrtle Beach, and the Town of Surfside Beach have passed ordinances imposing a Hospitality Tax and an Accommodations Tax pursuant to current State law, and have initiated a law suit against the County to prevent it from collecting the 1.5% Hospitality Fee within their corporate limits; and

WHEREAS, the actions of the City of Myrtle Beach, the City of North Myrtle Beach, and the Town of Surfside Beach grievously threaten the local funding for I-73 and would shrink the total tourism-related funds collected by all entities by approximately \$13,561,992 annually as noted in Attachment A hereto; and

WHEREAS, County Council believes that Horry County and its municipalities are stronger by preserving the 1.5% Hospitality Fee as opposed to current legislative and judicial actions, and that the community's priorities can be advanced by working together; and

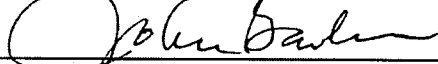
WHEREAS, County Council desires to make a good faith offer to the municipalities that advances the construction of I-73 and allows each community to address the escalating cost of public safety resulting from the growing tourism industry in a manner that preserves the 1.5% countywide Hospitality Fee for the benefit of both incorporated and unincorporated residents, businesses, and visitors; and

WHEREAS, County Council's offer includes preserving the 1.5% countywide Hospitality Fee and, effective for FY2020, dedication of \$18 million toward the construction of I-73, which would allow for a borrowing of approximately \$275 million over 30 years for the project based on current interest rates, and allocation of the remaining approximately \$24.5 million as follows: approximately \$9.8 million to the County, and the remaining approximately \$14.7 million to the municipalities in proportion to where the revenue is collected, to allow each community to address the escalating costs of tourism. In addition, the net balance in the 1.5% Hospitality Fee account after defeasance of the SIB loan and amounts collected through June 30, 2019 are to be allocated to the County and municipalities in proportion to where the revenue was collected, and in future years annual revenue above the FY2020 baseline is to be allocated in like manner.

NOW, THEREFORE, BE IT RESOLVED that Horry County Council authorizes the County Council Chairman to convey this Resolution and good faith offer, more fully described in Attachment B hereto, requesting that they respond in kind.

AND IT IS SO RESOLVED this 2nd day of April, 2019.

HORRY COUNTY COUNCIL

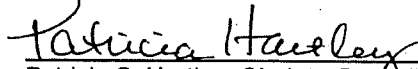


Johnny Gardner, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6

Orton Bellamy, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:



Patricia S. Hartley, Clerk to Council

Attachment A

Horry County, South Carolina
FY2018 Hospitality & Accommodations Revenue Impact Analysis

	Revenues				
	Current ¹	%	No 1.5% ²	%	Variance
City of Myrtle Beach	14,607,215	19.7%	27,122,212	44.9%	12,514,997
Horry	9,496,938	12.8%	17,503,226	29.0%	8,006,288
North Myrtle Beach	6,116,010	8.3%	11,592,816	19.2%	5,476,806
Surfside	1,047,224	1.4%	2,022,680	3.3%	975,456
Conway	869,233	1.2%	1,683,512	2.8%	814,279
Aynor	82,228	0.1%	164,456	0.3%	82,228
Loris	65,163	0.1%	260,653	0.4%	195,490
Atlantic Beach	33,539	0.0%	51,887	0.1%	18,348
1.5% Hospitality & 2.5% Rental Car	41,645,884	56.3%	-	0.0%	(41,645,884)
	<u>73,963,435</u>	<u>100.0%</u>	<u>60,401,442</u>	<u>100.0%</u>	<u>(13,561,992)</u>

Analysis of Variance

RIDE Admissions	(3,287,248)
County Admissions	(745,325)
Municipal Admissions	(1,436,667)
Total Admissions	<u>(5,469,240)</u>
Rental Car 2.5%	(1,473,717)
RIDE Food/Beverage 0.5%	(6,619,035)
	<u>(13,561,992)</u>

¹ Current is based on County 1.5% Hospitality & 2.5% Rental Car Collections by Municipality and Analysis of Municipal Financial Reports.

² No 1.5% is calculated at 2% Food/Beverage, 3% Accommodations, 0% Admissions and 0% Car Rental.

Prepared by Horry County Finance, March 28, 2019

ELECTRONICALLY FILED - 2019 May 03 4:12 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

Attachment B

Horry County, South Carolina
FY2020 Hospitality Revenue Allocation Analysis

Projected Revenue FY2020	42,488,568
Debt Service	18,000,000
County Portion	<u>9,795,427</u>
Balance	<u><u>14,693,141</u></u>

Projected Revenues - FY2020			
	Projected ¹	%	Allocation
City of Myrtle Beach	18,594,121	63.6%	9,345,750
North Myrtle Beach	7,704,558	26.4%	3,872,454
Surfside	1,195,839	4.1%	601,051
Conway	1,363,457	4.7%	685,299
Aynor	125,838	0.4%	63,248
Loris	199,445	0.7%	100,245
Atlantic Beach	49,929	0.2%	25,095
	<u>29,233,187</u>	<u>100.0%</u>	<u>14,693,141</u>

Revenue through June 30, 2019				
RIDE				
	Allocation % ²	Balance ³	Collections ⁴	Total
City of Myrtle Beach	43.8%	4,236,985	7,862,410	12,099,395
Horry County	31.2%	3,020,463	5,604,957	8,625,419
North Myrtle Beach	18.1%	1,755,614	3,257,825	5,013,439
Surfside	2.8%	272,492	505,653	778,145
Conway	3.2%	310,687	576,529	887,216
Aynor	0.3%	28,674	53,210	81,884
Loris	0.5%	45,447	84,334	129,781
Atlantic Beach	0.1%	11,377	21,112	32,489
	<u>100.0%</u>	<u>9,681,738</u>	<u>17,966,031</u>	<u>27,647,769</u>

¹ Projected is based on County 1.5% Hospitality & 2.5% Rental Car estimated revenues for FY2018.

² Allocation % is based on County 1.5% Hospitality & 2.5% Rental Car revenues for Fiscal Year 2018.

³ RIDE Balance funds remaining at the repayment of the SIB Loan on February 15, 2019.

⁴ FY2019 Collections from February 15, 2019 until June 30, 2019.

Use of Hospitality revenues exclusively for purposes set forth at Section 6-1-530 and 6-1-730 of the Code of Laws of South Carolina 1976, as amended.

In future years, all annual revenue above the FY2020 baseline will be allocated to the County and municipalities in proportion to where the revenue was collected.

Prepared by Horry County Finance, April 3, 2019

From: John Hoefer
To: wseals@sccourts.org
Cc: [Seals, William Law Clerk \(Christopher Kinon\)](#); [Golding, Henrietta](#); [Lambert, Grayson](#); [Artigliere, Adam](#); [Walker Humphrey](#); [Chad Johnston](#)
Subject: City of Myrtle Beach v. Horry County; C/A No. 2019-CP-26-1732
Date: Wednesday, June 19, 2019 5:20:00 PM
Attachments: [2019-06-19 Ltr to Judge Seals with Prop. Order.pdf](#)
[2019-06-19 City of Myrtle Beach Proposed Order.doc](#)

Dear Judge Seals:

Per Mr. Kinon's electronic mail instructions on June 14th, please see attached a proposed order ruling on the parties' motions to compel heard that day in the above-referenced action. As directed, I am contemporaneously submitting this document to Ms. Golding for her review.

Also attached is a copy of my transmittal correspondence forwarding to Your Honor via U.S. Mail a "hard" copy of this proposed order as further directed by Mr. Kinon.

Please advise if the Court requires anything further. Thanking the Court for its assistance in this matter, I am

Respectfully,

John M.S. Hoefer, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202-8416
Telephone #: (803) 252-3300
Facsimile #: (803) 771-2410
E-mail address: jhoefer@willoughbyhoefer.com

Confidentiality Notice: The information contained in this transmittal, including any attachment, is privileged and confidential information and is intended only for the person or entity to which it is addressed. If you are neither the intended recipient nor the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, copying or distribution or the taking of any action in reliance on the contents of this transmittal is strictly prohibited. If you have received this transmittal in error, please contact the sender immediately by telephoning the sender at (803) 252-3300 and, also, please delete this transmittal from any computer or other data bank. Upon request, we will reimburse your reasonable costs of notifying us of a transmission error. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it was sent) without our express written consent.

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
CHAD N. JOHNSTON
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
JOHN W. ROBERTS
R. WALKER HUMPHREY, II***
ANDREW R. HAND****

ELIZABETH S. MABRY
JAMES PATRICK HUDSON
OF COUNSEL
JOSEPH H. FARRELL, III
SPECIAL COUNSEL

*ALSO ADMITTED IN TEXAS

**ALSO ADMITTED IN WASHINGTON, D.C.

***ALSO ADMITTED IN CALIFORNIA

****ALSO ADMITTED IN NORTH CAROLINA

OFFICES:

COLUMBIA

930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SC 29202-8416

AREA CODE 803
TELEPHONE 252-3300
FAX 256-8062

CHARLESTON

133 RIVER-LANDING DRIVE
SUITE 200
CHARLESTON, SC 29492

AREA CODE 843
TELEPHONE 619-4426
FAX 619-4430

June 19, 2019

VIA ELECTRONIC AND
U.S. MAIL

The Honorable William H. Seals, Jr.
Circuit Court Judge, At-Large, Seat 6
103 North Main Street
Marion, South Carolina 29571
wseals@scccourts.org

RE: City of Myrtle Beach v. Horry County; C/A No. 2019-CP-26-1732

Dear Judge Seals:

Per the Court's instructions, enclosed on behalf of Plaintiff City of Myrtle Beach please find a proposed order granting the Plaintiff's motion for preliminary injunction and denying the Defendant's motion for preliminary injunction in the above-referenced action, which motions were heard by Your Honor in Conway on June 14, 2019.

As instructed, I am contemporaneously providing via electronic and United States mail a copy of this proposed order to your law clerk, Mr. Kinon, and to opposing counsel, Ms. Golding, for her review.

The Honorable William H. Seals, Jr.
June 19, 2019
Page 2 of 2

We very much appreciate the Court's assistance in this matter. Please do not hesitate to contact me if the Court requires further information in regard to this matter.

With best regards, I am

Respectfully,

WILLOUGHBY & HOEFER, P.A.


John M. S. Hoefer

JMSH/cgc
Enclosure

cc: Christopher C. Kinon, Esquire (wsealslc@sccourts.org)
Chad N. Johnston, Esquire
R. Walker Humphrey, Esquire
Henrietta U. Golding, Esquire (hgolding@burr.com)
Adam R. Artigliere, Esquire
William G. Lambert, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

City of Myrtle Beach,

)
) CIVIL ACTION NO. 2019-CP-26-01732

For Itself and a Class of Similarly
Situated Plaintiffs,

)
)
)

Plaintiff,

)
)

**ORDER ON MOTIONS FOR
PRELIMINARY INJUNCTION**

vs.

)
)

Horry County,

)
)

Defendant.

)
)

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 a limited 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.*” The only ordinance under consideration in this regard was Ordinance 105-96.

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 there is no evidence any 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,” it also broadened 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, County

Council adopted Ordinance 32-17 to remove the Sunset Provision altogether. There is no evidence the City or any other municipality consented to Ordinance Nos. 93-16 and 32-17.

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 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 facie 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 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. Consequently, the Court finds that any extension of the Hospitality Fee, whether in time or scope, without municipal consent is not "implement[ing] a comprehensive road plan adopted by the County in concert with the

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.

municipalities of the County.”⁴

Second, the State Constitution and statutes implementing Home Rule also 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 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.⁵ 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

⁴ To avoid this result, the County asks this Court to separate the portion of Ordinance 105-96 “establishing” the Hospitality Fee from its Sunset and Fee Use Provisions. This Court declines to do so. *See Atkins v. Wilson*, 417 S.C. 3, 12-13, 788 S.E.2d 228, 233 (Ct. App. 2016) (requiring ordinances be read as whole).

⁵ 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.

imposition of the Hospitality Fee within its boundaries for twenty years.⁶ 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.⁷

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

⁶ 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.

⁷ 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 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.

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 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.⁸

Moreover, the three-year statute of limitations, and not laches, governs the timeliness of the City’s claims.⁹ *See Wells Fargo Bank v. Carter*, 2014 WL 11034776 at *2 (D.S.C. 2014);

⁸ 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.

⁹ 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.

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-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

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.

if this power exists, the City correctly points out that Ordinance 8-00 suffers from several other legal infirmities.¹⁰

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 illegal 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.

¹⁰ 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 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.

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 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 shows the County knew municipal consent was required, 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. The County Has Not Demonstrated a Likelihood of Success on the Merits.

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. Although the Court agrees with the City's argument that these counterclaims have been waived by the County under Rule 13(a), SCRCF, the Court finds the County is otherwise not entitled to temporary injunctive relief.

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 6-1-740.¹¹ 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

¹¹ 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.

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 food and beverage in the unincorporated area in excess of the 2% cumulative hospitality tax cap in § 6-1-740.¹²

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.

2. The County Has Not Shown It Will Suffer Irreparable Harm and It Lacks an Adequate Remedy at Law.

¹² 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 County claims that, absent injunctive relief against the City, taxpayers will “pay more than the maximum amount that can be charged by local governments for local accommodations and hospitality taxes,” such a situation “could easily lead to challenges, more lawsuits, and significant confusion for businesses charging the taxes to the consumer,” and businesses and taxpayers will be subjected to “mayhem.”

As above, the County’s argument incorrectly presupposes that the County will be permitted to continue imposing the Hospitality Fee. In any event, such “harm” is impermissibly speculative, conjectural, and hypothetical. *See Proctor v. Dep’t of Health & Envtl. Control*, 368 S.C. 279, 317, 628 S.E.2d 496, 516 (Ct. App. 2006) (“It is, of course, true that the existence or amount of damages cannot be left to conjecture, guess or speculation.”). Furthermore, challenges and lawsuits are not any new harm to the County; the City has already challenged the County’s fee, and any challenge to the City’s taxes do not harm the County. The County also does not allege it will pay more than the law allows; therefore, it lacks standing to make these hypothetical arguments on behalf others in any event. The County has failed to show it will suffer any actionable harm in the absence of an injunction.

The County makes no effort to show it lacks an adequate remedy at law apart from relying on this claimed harm. The County’s failure to identify a harm is dispositive of this argument.

3. The County Has Not Shown an Injunction is Reasonably Necessary to Protect Its Rights.

The County does not mention or address this element for an injunction. The County therefore has waived it and consequently cannot prove entitlement to an injunction. Regardless, the record shows at least four other municipalities within the County have adopted, or are in the

process of adopting, similar hospitality and accommodations taxes. The County does not seek to enjoin their imposition. Thus, other municipalities will collect 3% accommodations and 2% hospitality taxes even if the County prevails on this motion. An injunction would therefore fail to protect the County's claimed rights.

4. The County Has Not Shown the City Acted in an Arbitrary, Capricious, or Oppressive Manner.

The County's sole argument here is that it meets this element because "[t]he timing of [the City's] new taxes and its lawsuit against the County demonstrate that this litigation is a scheme to undermine the long-standing Hospitality Fee and grab that revenue for itself." At oral argument, the County characterized the City's actions a "diabolical." The Court disagrees with both assertions. The Local Tax Ordinances are authorized by statute, and the City's lawsuit seeks to require that the County act within the confines of our constitution and statutes. As concluded above, the City presents a likelihood of success on the merits of its claims. And the City does not seek to "grab that revenue for itself," but only asks that the right of *each* municipality to determine where revenues generated within its boundaries will be expended pursuant to ordinances adopted by a governing body elected by its citizens. The County therefore has failed to show that the City acted in an arbitrary, capricious, or oppressive manner.

CONCLUSION

For the foregoing reasons, the Court GRANTS the City's motion and DENIES the County's motion.

IT IS SO ORDERED.

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

This ____ day of June, 2019
_____, South Carolina

From: [Golding, Henrietta](#)
To: [Seals, William Law Clerk \(Christopher Kinon\)](#)
Cc: [John Hoefer](#); [Walker Humphrey](#); [Chad Johnston](#); [Lambert, Grayson](#); [Artigliere, Adam](#); [Gilliam, James](#)
Subject: City of Myrtle Beach v. Horry County
Date: Wednesday, June 19, 2019 5:27:01 PM
Attachments: [33687143_1.docx](#)

Hello Judge Seals-

I have attached a proposed Order denying the 2 motions for preliminary injunction. While I know your law clerk sent an email shortly after the Friday hearing to John Hoefer, the City's attorney, which email asked for an order granting the City's injunction request, I feel compelled to provide you an order denying both motions.

Both Parties, in their submittals to the Court and during the hearing, presented legal arguments that, essentially, are diametrically opposite each other. Many years ago, I distinctly recall being before Judge Kinon (do not know if your law clerk is related) in circuit court when he told me that he respects me for he knows that any law I present to the court is correct. I always have taken it as a personal responsibility to not misinterpret or misrepresent to the court legal cases or their interpretations. I believe that John Hoefer is the same. I sincerely believe that Horry County's legal positions are correct and I expect that John Hoefer believes that the legal positions he presented are correct. This leads me to conclude that in this legal action, there are many legal issues for which there is no direct guidance from any legal decisions and the state statutes cited by the parties do not directly, nor indirectly, provide answers.

I respectfully request that the motions for preliminary injunctions be denied and this case be placed on a fast track for trial. Thank you Henri



AL • DE • FL • GA
MS • NC • SC • TN

Henrietta Golding • *Partner*

Founders Centre, 2411 Oak St. Suite 206, Myrtle Beach, South Carolina 29577
main 843-444-1107 • fax 843-444-4729
hgolding@burr.com • www.burr.com

Burr & Forman Joins Forces with McNair Law Firm, P.A., Effective January 1, 2019
360 Attorneys. 19 Offices. 1 Firm. Southeast Strong.

The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you

Click [here](#) to report this email as spam.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
NO.: 2019-CP-26-01732

City of Myrtle Beach,)
)
For Itself and a Class of Similarly)
Situated Plaintiffs,)

**Order Denying Motions for
Preliminary Injunction**

Plaintiff,)

vs.)

Horry County,)

Defendant.)
_____)

THIS MATTER came before the Court on the Parties' cross-motions for preliminary injunction. Having considered the motions, memoranda, exhibits, and arguments during the June 14, 2019 hearing, the Court **DENIES** both motions.

Among other things, a party seeking a preliminary injunction must demonstrate that "it will likely succeed on the merits of the litigation." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). Although this element typically requires a party to make only a "prima facie showing" that it is entitled to relief, *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011), this case is unusual in that both parties seek injunctive relief on the same issue. Our appellate courts have not addressed this issue, or anything particularly close to it. With no case law interpreting the statutory provisions the Parties invoke, neither Party has established that it is likely to prevail in this matter, so neither is entitled to a preliminary injunction.

Furthermore, this Court is aware of the decisions from the Supreme Court of South Carolina, cautioning against the issuing of a preliminary injunction. *See Scratch Golf Co. v. Dunes West Resid. Golf Prop., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (A preliminary injunction is a drastic remedy, which should be cautiously invoked.). This Court can only issue a preliminary injunction where there is a need to preserve the status quo, and based on the evidence presented, the one thing that seems clear is that the conduct the Parties seeks to enjoin has gone on for some time. If this Court were to grant either Parties' request for injunctive relief, it would upset rather than preserve the status quo, and such an approach is inconsistent with the law. *See Poynter Invs. Inc., Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010) (A temporary injunction will only be issued if necessary to preserve the status quo).

The motions of both Parties are therefore **DENIED**.

The Court recognizes that this case raises novel issues that should be decided expeditiously. The parties are **ORDERED** to submit within one week a scheduling order that sets a trial date no later than October 30, 2019.

[Electronic signature of the Honorable William H. Seals, Jr. to follow.]

From: Seals, William Law Clerk (Christopher Kinon)
To: John Hoefer; Gilliam, James
Cc: Golding, Henrietta; Lambert, Grayson; Chad Johnston; Walker Humphrey; Artigliere, Adam; Evans, Sheila
Subject: RE: City of Myrtle Beach v. Horry County: Motion for Supersedeas
Date: Monday, July 15, 2019 9:58:53 AM

Counselors,

Judge Seals does not intend to stay the injunction. However, he is ordering in lieu of bond, that the City escrow the monies collected. Furthermore, Judge Seals is Ordering that this case be mediated within 20 days from the date he signs this Order. Judge Seals asks that Mr. Hoefer prepare a short Order to this effect, and that he share same with opposing counsel before submitting to the Court for signing. Please advise me via email once the Order has been submitted to the Judge for signing via e-filing. If there is any problem with finding a qualified mediator within the 20 days, and the parties need the Court's assistance, please let me know.

Best,

Chris Kinon

Law Clerk to the Honorable William H. Seals, Jr.
Circuit Court Judge, At-Large, Seat 6
103 North Main Street
Marion, South Carolina 29571
Ph: (843) 423-0446 | Cell: (843) 340-0892 | Fax: (843) 423-0535

From: John Hoefer <JHoefer@Willoughbyhoefer.com>
Sent: Friday, July 12, 2019 4:33 PM
To: Gilliam, James <JGilliam@burr.com>; Seals, William Law Clerk (Christopher Kinon) <wsealslc@sccourts.org>
Cc: Golding, Henrietta <HGolding@burr.com>; Lambert, Grayson <GLambert@burr.com>; Chad Johnston <CJohnston@Willoughbyhoefer.com>; Walker Humphrey <WHumphrey@Willoughbyhoefer.com>; Artigliere, Adam <AArtigliere@burr.com>; Evans, Sheila <SEvans@burr.com>
Subject: RE: City of Myrtle Beach v. Horry County: Motion for Supersedeas

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Mr. Kinon:

I am writing in response to Mr. Gilliam's email forwarding the County's motion for stay or supersedeas of the injunction granted to Plaintiffs against the County as set out Court's orders of June 21 and July 10 in the above-referenced matter. Of course, the City of Myrtle Beach, on behalf of itself and all others similarly situated, believes that the County's motion is not well-founded in law or fact.

However, before burdening the Court with a return to the motion, I thought it prudent to inquire whether the Court desires a response from Plaintiffs? If the Court does desire such a response, I would appreciate your guidance with respect to the time period within which it will require Plaintiffs to submit same.

In addition, it is apparent from the County's motion that it intends to continue in its assertion that Rule 65(c), SCRPC, does not relieve the City from the requirement that security be posted for the injunction that the Court has granted. Although the City continues to believe that the Court has properly applied the rule, we would note that Rule 62(c), SCRPC, specifically permits the Court to "modify ... an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party." We would also note

that the County has continued to assert in its motion for supersedeas that an escrow of its uniform service charges is a proper form of security. The City is, as it stated it would in its previous submissions and arguments to the Court, escrowing the monies it collects under the three ordinances it adopted to give effect to its local accommodations and hospitality taxes and would welcome a modification of the Court's order granting the injunction to formalize the City's commitment to do so. This would obviate the need for the Court to address the issue of security in determining the County's motion for supersedeas.

Thank you for your attention to and assistance with this matter.

John Hoefer

From: Gilliam, James <JGilliam@burr.com>

Sent: Friday, July 12, 2019 2:20 PM

To: Seals, William Law Clerk (Christopher Kinon) <wsealslc@sccourts.org>

Cc: Golding, Henrietta <HGolding@burr.com>; Lambert, Grayson <GLambert@burr.com>; John Hoefer <JHoefer@Willoughbyhoefer.com>; Chad Johnston <CJohnston@Willoughbyhoefer.com>; Walker Humphrey <WHumphrey@Willoughbyhoefer.com>; Artigliere, Adam <AArtigliere@burr.com>; Evans, Sheila <SEvans@burr.com>

Subject: City of Myrtle Beach v. Horry County: Motion for Supersedeas

Dear Judge Seals:

Horry County filed the attached Motion for Supersedeas this afternoon, asking the Court to stay the injunction while the County's appeal is pending. The County is required by Rule 241(d)(1) of the South Carolina Appellate Court Rules to make this motion to the circuit court before making it to the appellate court. Time is certainly of the essence for the County. I would respectfully request that this Court rule on the County's Motion for Supersedeas as soon as possible, to enable the County to raise this issue to the appellate court without delay. Thank you in advance.

Jim



AL • DE • FL • GA
MS • NC • SC • TN

James Gilliam • *Partner*

Founders Centre, 2411 Oak St. Suite 206, Myrtle Beach, South Carolina 29577
main 843-444-1107 • fax 843-444-4729
jgilliam@burr.com • www.burr.com

Burr & Forman Joins Forces with McNair Law Firm, P.A. Effective January 1, 2019
360 Attorneys. 19 Offices. 1 Firm. Southeast Strong.

The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you

Click [here](#) to report this email as spam.

~~~~ CONFIDENTIALITY NOTICE ~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

From: Gilliam, James  
To: Seals, William Law Clerk (Christopher Kinon)  
Cc: Golding, Henrietta; Lambert, Grayson; Chad Johnston; Walker, Humphrey; Artigliere, Adam; Evans, Sheila; John Hoefer  
Subject: RE: City of Myrtle Beach v. Horry County; Motion to Stay  
Date: Wednesday, July 17, 2019 9:01:24 AM  
Attachments: 0357\_001.pdf  
0350\_001.pdf

Dear Judge Seals:

Mediation cannot be productive given the current posture of this case. If this Court orders mediation, it would prove to be nothing more than a charade and a drain of precious time and resources. The City is desperate to mediate this case before the County can seek appellate review. That much is clear. The County will be happy to mediate, if the City agreed (or the Court ordered) a return to the *status quo* that existed prior to the Court's injunction. In other words, if there were a lift or stay of the injunction, mediation would be appropriate, but otherwise, it is not.

Moreover, the County has grave concerns about the justification for requiring a mediation at this stage. This case is new, as the Complaint was filed on March 20, 2019. There is no exigency justifying a rush to mediation. The only purpose of a required mediation (which the County clearly opposes) would be to deprive the County of its Constitutional right to seek appellate review of the injunction. The County respects the Court's ruling. It disagrees with it, but it respects it. However, the County has the right to appeal, and if this Court orders a swift mediation, it will create a Constitutional crisis.

The County regrets very much that this Court has been swayed by the City's incorrect assertions of the law. Even in the City's email below, they argue, "[Rule 65(c)] does not require a security or bond be posted to protect the enjoined party for any damages that may be sustained." I am attaching a 2007 opinion from the Supreme Court, captioned *Atwood Agency v. Black*. I have highlighted the Court's pronouncement in *Atwood*, which states, "The circuit court's order requiring only a nominal security bond does not satisfy Rule 65(c) because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect appellants in the event that the injunction is ultimately deemed improper."

Furthermore, Your Honor, as the County has pointed out again and again, there is no other purpose to enter an injunction that to preserve the *status quo*. Unlike the City, this is not counsel's opinion. This is the law. I am also attaching an opinion from the Supreme Court in 2010, captioned *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.* In that case, the Supreme Court stated, "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Respectfully, the injunction upsets and does not preserve the status quo and is clear reversible error.

It is disturbing how little regard for the law the City has. At this point, the County has done all that it can to respectfully point out the errors that infect the current injunction. As the City points out, currently, this Court still maintains the power to fix them.

Jim

  
AL • DE • FL • GA  
MS • NC • SC • TN

James Gilliam • Partner

Founders Centre, 2411 Oak St. Suite 205, Myrtle Beach, South Carolina 29577  
main 843-444-1107 • fax 843-444-4729  
jgilliam@burr.com • www.burr.com

**Burr & Forman Joins Forces with McNair Law Firm P.A. Effective January 1, 2019**  
380 Attorneys. 19 Offices. 1 Firm. Southeast Strong.

The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you

From: John Hoefer <JHoefer@Willoughbyhoefer.com>

Sent: Wednesday, July 17, 2019 7:30 AM

To: Gilliam, James <JGilliam@burr.com>; Seals, William Law Clerk (Christopher Kinon) <cseals@sccourts.org>

Cc: Golding, Henrietta <HGolding@burr.com>; Lambert, Grayson <GLambert@burr.com>; Chad Johnston <CJohnston@Willoughbyhoefer.com>; Walker Humphrey <WHumphrey@Willoughbyhoefer.com>; Artigliere, Adam <AArtigliere@burr.com>; Evans, Sheila <SEvans@burr.com>

Subject: RE: City of Myrtle Beach v. Horry County; Motion to Stay

Dear Mr. Kinon:

Plaintiffs would offer for the Court's consideration the following regarding Mr. Gilliam's email.

The City has not "severely deviated" from its initial position, but merely complied with the instructions in your July 15 electronic mail to the parties that the City submit a proposed order directing the City to escrow monies collected on its recently enacted taxes in lieu of posting a bond. The City's request that the Court modify its injunction order pursuant to Rule 62(c) to provide for an escrow of the City's new tax revenues was consistent with (not contrary to) the City's prior suggestion that it could escrow those funds, which it made in its written response to the County's motion for reconsideration, as well as orally in the July 10, 2019 hearing on same -- a suggestion borne out the County's own argument regarding security for its motion for preliminary injunction.

Contrary to its assertion below, it is the County that is misstating the requirements of Rule 65(c). The rule does not require a security or bond be posted "to protect the enjoined party for any damages that may be sustained." It requires only that the security be "in such sum as the court deems proper, for the payment of such costs and damages as may be incurred." Indeed, the rule's reference to costs and damages that "may be" incurred in the future render any type of exact accounting and a dollar-for-dollar security, as the County implicitly argues, impossible to ascertain. Further, Rule 62(c) expressly authorizes the Court -- while its orders granting injunction are pending on appeal -- to modify same with respect to a bond or other form of security. The direction to the City to escrow the new taxes it will collect as set out in the proposed order modifying the injunction is imminently within the Court's discretion under Rule 62(c), and complies with the plain language of Rule 65(c).

As to the proposal of a July 24 mediation, which complies with this Court's direction and approves a mediator for whom the County expressed a preference, the County's true position is laid bare: it simply disagrees with this Court's authority to order the parties to mediate at this juncture, because the County believes that it is unfair to force it to mediate the case "in this posture," having been preliminarily enjoined on the primary legal issue. As to the issue of availability of the County Administrator and County Council Chairman, the Court is well aware that both of the parties are political subdivisions with governing councils and that any potential settlement reached in principle by mediation would be subject to approval by those respective bodies. A party is simply required to have present someone with the appropriate authority to settle a case, not any person in particular. And, confidential mediation briefs will require the parties to state their settlement positions in advance of the actual mediation session. Lastly, the Court should note that the County did not object to the mediation being held on August 1, which has also been reserved with Mr. Folkens and which is within the twenty day period directed by the Court.

In view of the foregoing, the City submits that the Court should issue its order requiring the parties to mediate within twenty days of the date of the order with Mr. Folkens serving as mediator. Should a date not open on his calendar prior to August 1, the initial mediation session should be required to be held on that date. The City does not object to a stay of further proceedings in this Court if the County will mediate in accordance with these terms.

John Hoefer

From: Gilliam, James <JGilliam@burr.com>  
Sent: Tuesday, July 16, 2019 4:24 PM  
To: Seals, William Law Clerk (Christopher Kinon) <wseals@scrcourts.org>  
Cc: Golding, Henrietta <HGolding@burr.com>; Lambert, Grayson <GLambert@burr.com>; Chad Johnston <CJohnston@Willoughbyhoefer.com>; Walker Humphrey <WHumphrey@Willoughbyhoefer.com>; Artigliere, Adam <AArtigliere@burr.com>; Evans, Sheila <SEvans@burr.com>; John Hoefer <JHoefer@Willoughbyhoefer.com>  
Subject: RE: City of Myrtle Beach v. Horry County: Motion to Stay

Dear Judge Seals:

In your email directive of July 15, 2019, you instructed the City's counsel to do two things: "prepare a short Order" and to "share the same with opposing counsel before submitting to the Court for signing." The City sent the proposed order to counsel for the County at 3:17 p.m. and then one minute later, at 3:18 p.m., the City emailed the Court with its proposed order.

The City continues to misstate the law pertaining to the security required by Rule 65(c). The Court should take note that the City has severely deviated from its initial position regarding the security requirements of Rule 65(c). The City initially took the position that no security was required at all, even though such a position ignores Rule 65(c). Now, in this proposed order, the City continues to disregard Rule 65(c) and argues that because it could potentially raise revenue via taxes, no further security is required. The City cites no legal authority for this position, because there is none. The order that the City would have this Court enter violates Rule 65(c), which requires a party obtaining an injunction to post adequate security to protect the enjoined party for any damages that may be sustained, if the injunction is reversed on appeal. That is all the County is requesting.

As for mediation, the Court should not require the parties to mediate at this early juncture of this case, while an injunction (which has been appealed) is entered against the County. There is no way for a meaningful settlement dialogue to occur in this posture. If this Court is intent on ordering the parties to mediate, the County respectfully requests that the order require the parties to mediate within 60 days, not 20 days. Furthermore, the County is unable to attend mediation on the City's proposed date of July 24. The County Administrator and Chairman of County Council will be in Washington D.C. on that day regarding beach re-nourishment issues.

Lastly, if the Court would like, I would be happy to prepare a proposed order staying the case.

Jim

  
AL • DE • FL • GA  
MS • NC • SC • TN

James Gilliam • Partner

Founders Centre, 2411 Cal. St. Suite 205, Myrtle Beach, South Carolina 29577  
main 843-444-1107 • fax 843-444-4729  
jgilliam@burr.com • www.burr.com

Burr & Forman Joins Forces with McNair Law Firm, P.A. Effective January 1, 2019  
360 Attorneys. 19 Offices. 1 Firm. Southeast Strong.

The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you

From: John Hoefer <JHoefer@Willoughbyhoefer.com>  
Sent: Tuesday, July 16, 2019 3:18 PM  
To: Seals, William Law Clerk (Christopher Kinon) <wseals@scrcourts.org>  
Cc: Gilliam, James <JGilliam@burr.com>; Golding, Henrietta <HGolding@burr.com>; Lambert, Grayson <GLambert@burr.com>; Chad Johnston <CJohnston@Willoughbyhoefer.com>; Walker Humphrey <WHumphrey@Willoughbyhoefer.com>; Artigliere, Adam <AArtigliere@burr.com>; Evans, Sheila <SEvans@burr.com>  
Subject: RE: City of Myrtle Beach v. Horry County: Motion to Stay

Dear Mr. Kinon:

I was in the process of discussing with my client your email of 10:28 a.m. today when I received notice of an electronic filing by the County regarding its July 12 motion for a stay and supersedeas of the Court's June 21 and July 10 orders in the above-captioned action. I would appreciate it if you would please convey the following to Judge Seals with respect to both of these matters:

1. In pursuance of the Court's July 15 direction that the parties mediate the matter, counsel for the City spoke with counsel for the County yesterday afternoon. In that conversation, counsel for the County indicated that Karl Folkens, Esquire, would be an acceptable mediator in this matter. However, counsel for the County indicated that the 20 day period within to conduct a mediation was not realistic, primarily based on their view that the parties would be unable to secure the services of a quality mediator in that time frame.
2. Following that conversation, I confirmed with Mr. Folkens' office that he is available to conduct a mediation on July 24, and continuing on August 1 if necessary, and communicated that information to counsel for the County in an email late yesterday afternoon, along with the City's agreement to one of the County's preferred mediators (Folkens). In that communication, I asked that counsel for the County respond by noon today to my email agreeing to Mr. Folkens as mediator and to a stay of the proceedings in this court if the County would also agree to a stay of proceedings in the appellate court(s) during the 20 day mediation period.
3. I received no response from counsel to the County to my email from late yesterday afternoon, but interpret the County's 11:48 a.m. electronic filing today to be a response declining my proposal yesterday afternoon.
4. In their memorandum filed today, Counsel for the county appear to criticize the City for not yet having provided to them a draft of a proposed order that would give effect to the ruling announced by the Court in the email issued yesterday, July 15. The reason no draft order was produced for the consideration of counsel for the County was that I was awaiting its response to my email from late yesterday afternoon, as County's position on the secured mediation with Mr. Folkens impacted a material term of this Court's instructions to the parties and could be included in the proposed order to the Court addressing same.
5. I have now provided a proposed order to counsel for the County which addresses the matters described in your email yesterday morning. In addition, I have included in that proposed order further matter addressing the County's filing today on the presumption that the Court does not desire a responsive filing to same (given that the Court did not desire a response to the initial motion). If I am incorrect in this regard, the City will of course be happy to file a response for the Court's consideration.
6. You will also see that, with respect to the matter raised by the County in its filing today which I have addressed in the attached proposed order, I am further presuming that the Court is not inclined to grant the relief the County seeks in its filing today. I do not believe that an exchange among counsel regarding the content of this proposed order would be productive at this point and am certain that counsel for the County will provide the Court with their comments regarding same.

I thank you and the Court for your attention to and assistance in this matter.

John Hoefer

-----Original Message-----

From: Seals, William Law Clerk (Christopher Kinon) <wsealslc@sccourts.org>  
Sent: Tuesday, July 16, 2019 11:34 AM  
To: John Hoefer <JHoefer@Willoughbyhoefer.com>  
Cc: Gilliam, James <JGilliam@burr.com>; Golding, Henrietta <HGolding@burr.com>; Lambert, Grayson <GLambert@burr.com>; Chad Johnston <CJohnston@Willoughbyhoefer.com>; Walker Humphrey <WHumphrey@Willoughbyhoefer.com>; Artigliere, Adam <AArtigliere@burr.com>; Evans, Sheila <SEvans@burr.com>  
Subject: Re: City of Myrtle Beach v. Horry County: Motion to Stay

Mr. Hoefer,

That is perfectly fine with Judge Seals.

Best,

Chris Kinon  
Law Clerk to the Honorable William H. Seals, Jr.  
Cell: (843)-340-0892

Sent from my iPhone

On Jul 16, 2019, at 11:23 AM, John Hoefer <JHoefer@willoughbyhoefer.com<mailto:JHoefer@willoughbyhoefer.com>> wrote:

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\* Mr. Kinon:

I have not yet had an opportunity to speak with my client, but hope to do so shortly and get back to you. I would appreciate the Court's indulgence to allow me to do so. Thank you.

John Hoefer

From: Seals, William Law Clerk (Christopher Kinon) <wsealslc@sccourts.org<mailto:wsealslc@sccourts.org>>  
Sent: Tuesday, July 16, 2019 10:28 AM  
To: Gilliam, James <JGilliam@burr.com<mailto:JGilliam@burr.com>>  
Cc: Golding, Henrietta <HGolding@burr.com<mailto:HGolding@burr.com>>; Lambert, Grayson <GLambert@burr.com<mailto:GLambert@burr.com>>; John Hoefer <JHoefer@Willoughbyhoefer.com<mailto:JHoefer@Willoughbyhoefer.com>>; Chad Johnston <CJohnston@Willoughbyhoefer.com<mailto:CJohnston@Willoughbyhoefer.com>>; Walker Humphrey <WHumphrey@Willoughbyhoefer.com<mailto:WHumphrey@Willoughbyhoefer.com>>; Artigliere, Adam <AArtigliere@burr.com<mailto:AArtigliere@burr.com>>; Evans, Sheila <SEvans@burr.com<mailto:SEvans@burr.com>>  
Subject: RE: City of Myrtle Beach v. Horry County: Motion to Stay

Counselors,

Judge Seals is inclined to stay the proceedings per Mr. Gilliam's request. Mr. Hoefer, what are your thoughts regarding this request? However, even if stayed, Judge Seals would like an exceptions to the stay requiring the parties to go forward with mediation within 20 days as previously stated, even though all other matters would be stayed. Judge Seals will await Mr. Hoefer's response.

Best,

Chris Kinon  
Law Clerk to the Honorable William H. Seals, Jr.  
Circuit Court Judge, At-Large, Seat 6  
103 North Main Street  
Marion, South Carolina 29571  
Ph: (843) 423-0446 | Cell: (843) 340-0892 | Fax: (843) 423-0535

From: Gilliam, James <JGilliam@burr.com<mailto:JGilliam@burr.com>>  
Sent: Monday, July 15, 2019 5:56 PM  
To: Seals, William Law Clerk (Christopher Kinon) <wsealslc@sccourts.org<mailto:wsealslc@sccourts.org>>  
Cc: Golding, Henrietta <HGolding@burr.com<mailto:HGolding@burr.com>>; Lambert, Grayson <GLambert@burr.com<mailto:GLambert@burr.com>>; John Hoefer <JHoefer@Willoughbyhoefer.com<mailto:JHoefer@Willoughbyhoefer.com>>; Chad Johnston <CJohnston@Willoughbyhoefer.com<mailto:CJohnston@Willoughbyhoefer.com>>; Walker Humphrey <WHumphrey@Willoughbyhoefer.com<mailto:WHumphrey@Willoughbyhoefer.com>>; Artigliere, Adam <AArtigliere@burr.com<mailto:AArtigliere@burr.com>>; Evans, Sheila <SEvans@burr.com<mailto:SEvans@burr.com>>  
Subject: City of Myrtle Beach v. Horry County: Motion to Stay

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\* Dear Judge Seals:

Attached for your review please find Horry County's motion to stay the case pending appeal. As set forth in the motion, Horry County respectfully believes that a stay would be in the best interests of conserving public resources, which fund the court system and the parties to this case. Thank you in advance for your consideration.

Jim

[Burr & Forman LLP Logo]

AL • DE • FL • GA  
MS • NC • SC • TN

James Gilliam • Partner

Founders Centre, 2411 Oak St. Suite 206, Myrtle Beach, South Carolina 29577 main 843-444-1107 • fax 843-444-4729 jgilliam@burr.com<mailto:jgilliam@burr.com> • www.burr.com<https://urldefense.proofpoint.com/v2/url?u=http-3A\_\_\_www.burr.com&d=DwMGaQ&c=YGvYmrQQ6VQOFx3Z93C9uQ&e=IKpBG--2nHp3-vnY\_aBu12nDLCMSKyh\_iYt18J9hY&m=x-TnjmKhugMewAHJNBs864dKcoWVRcOgV1OMh2mUE&s=rsTOgCUGZKrhH9nLr3EibPKXTODwLYXnT\_chIwnVq&c=>

Burr & Forman Joins Forces with McNair Law Firm, P.A., Effective January 1, 2019<https://urldefense.proofpoint.com/v2/url?u=http-3A\_\_\_www.burr.com\_2019\_01\_04\_burr-2Dforman-2Dand-2Dmcnair-2Dlaw-2Dfirm-2Dofficially-2Djoin-2Dforces\_-3Futm-5Fsource-3Dpress-2Drelease-2Dutm-5Fmedium-3Demail-2Dutm-5Fcampaign-3Dmcnair-5Fsignature&d=DwMGaQ&c=YGvYmrQQ6VQOFx3Z93C9uQ&e=IKpBG--2nHp3-vnY\_aBu12nDLCMSKyh\_iYt18J9hY&m=x-

TnjimKhugMewAHINBs864aJkcoWVRcOgV1OMh2m1UE&s=VEd8mL6z-GhEA-9XE7gnEZLljqeOKJsW1RgTyp-4eGs&c=>  
360 Attorneys. 19 Offices. 1 Firm. Southeast Strong.

The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Click here<https://urldefense.proofpoint.com/v2/url?u=https%3A%2F%2Fwww.mailcontrol.com_src_7cnaDn0ngil.GX2PQPOnyUjD8rK3nGsESkoSWAhOTuV0j50dvxSYgMAZ7D1Vyn2E1IE1OUm5klSGrh1Y9K1KtKg-3D-3D&d=DwMGaQ&c=YGvYmrQQ6YQOE3Z93C9uQ&r=iKpBG--2oHp3-vnY_nBu12nDLCMSKvh_jYt18J9hY&m=4h3JdbZaRSa9SPKAUWJwytXV17nKHcF27IGDOIKTaiY&s=x16_n5DGIUKvjD3yL7DyurgFiculvdcREnhhoPKGWqGM&c=>>
to report this email as spam.

RESOLUTION 19-03

CITY OF NORTH MYRTLE BEACH

COUNTY OF HORRY

STATE OF SOUTH CAROLINA

RESOLUTION TO ESCROW NEW REVENUES

GENERATED FROM LOCAL ACCOMMODATIONS

AND HOSPITALITY TAXES

WHEREAS, the City Council of the City of North Myrtle Beach has heretofore adopted Ordinance No. 7-206 dated March 18, 2019, for the purpose of imposing a 3% tax on the gross proceeds derived from the rental or charges for accommodations furnished to transients within the City's corporate limits as permitted by S.C. Code Ann. § 6-1- 500, *et seq*; and

WHEREAS, the City Council of the City of North Myrtle Beach has heretofore adopted Ordinance No. 7-120 dated March 18, 2019, for the purpose of imposing a 2% tax on the sales of prepared meals and beverages within the City's corporate limits as permitted by S.C. Code Ann. § 6-1- 700, *et seq*; and

WHEREAS, the City Council of the City of North Myrtle Beach has enacted no ordinance adopting a budget providing for the use of the revenues which will be generated under Ordinance No. 7-206 and Ordinance No. 7-120; and

WHEREAS, the City is a member of a proposed class of plaintiffs in that certain civil action styled "City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, vs. Horry County," brought in the Court of Common Pleas for Horry County in Civil Action Number 2019-CP-26-01732 ("Class Action"); and

WHEREAS, the City is informed and believes that Horry County, as the defendant in the Class Action, has challenged the adequacy of security provided by the City of Myrtle Beach with respect to the Court's orders dated June 21, 2019, and July 10, 2019, enjoining Horry County from collecting a uniform service charge of 1.5% on the sales of accommodations and prepared meals and beverages within the corporate limits of the City effective August 10, 2019; and

WHEREAS, the City is informed and believes that the City of Myrtle Beach, as the named Plaintiff in the Class Action, is holding in escrow the additional revenues it receives from the local accommodations tax and local hospitality tax that it is imposing under its own ordinances adopted pursuant to S.C. Code Ann. §6-1-520 and S.C. Code Ann. §6-1-720, which take into account credits for preexisting fees and deductions for the amount in tax revenues it was already receiving in preexisting accommodations and/or hospitality taxes pursuant to previously enacted ordinances; and

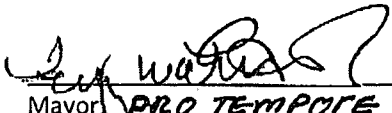
WHEREAS, the City, as an identified member of the purported class in the Class Action and as a municipality specifically covered by the Court's injunction orders against Horry County, and to provide assurance to the Court and security for the injunction as it relates to the City of North Myrtle Beach during the pendency of the injunction, is willing to record by ledger and escrow the additional revenues it receives from the local accommodations tax and local hospitality tax that it is imposing under Ordinance No. 7-206 and Ordinance No. 7-120, the amount of which will take into account revenues the City was already receiving in preexisting accommodations and hospitality taxes and/or fees pursuant to previously enacted ordinances,

RESOLUTION 19-03

NOW, THEREFORE, BE IT RESOLVED THAT:

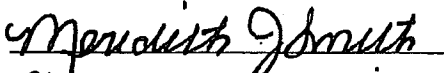
1. The City Council hereby directs the City Manager to record by ledger and hold in escrow during the pendency of the Injunction, the sums representing the additional revenue derived from the taxes imposed under Ordinance No. 7-206 and Ordinance No. 7-120, received from and after August 1, 2019, having deducted from same the amount in revenues the City was already receiving under preexisting accommodations and hospitality taxes and/or fees pursuant to previously enacted ordinances.
2. This resolution is made pursuant to S.C. Code Ann. §5-7-260.

SIGNED AND SEALED THIS 23 DAY OF JULY, 2019



Mayor, **PRO TEMPORE**
The City of North Myrtle Beach

ATTEST:



Merideth J. Smith

CLERK

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY
TOWN OF SURFSIDE BEACH**

**RESOLUTION #19-197 TO ESCROW NEW REVENUES
GENERATED FROM LOCAL ACCOMMODATIONS
AND HOSPITALITY TAXES**

WHEREAS, the Town Council of the Town of Surfside Beach has heretofore adopted Ordinance No. 19-0890 dated March 12, 2019, for the purpose of imposing a 3% tax on the gross proceeds derived from the rental or charges for accommodations furnished to transients within the Town's corporate limits as permitted by S.C. Code Ann. § 6-1- 500, *et seq.*; and

WHEREAS, the Town Council of the Town of Surfside Beach has heretofore adopted Ordinance No. 19-0889 dated March 12, 2019, for the purpose of imposing a 2% tax on the sales of prepared meals and beverages within the Town's corporate limits as permitted by S.C. Code Ann. § 6-1- 700, *et seq.*; and

WHEREAS, the Town Council of the Town of Surfside Beach has enacted no ordinance adopting a budget providing for the use of the revenues which will be generated under Ordinance No. 19-0889 and Ordinance No. 19-0890; and

WHEREAS, the Town is a member of a proposed class of plaintiffs in that certain civil action styled "City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, vs. Horry County," brought in the Court of Common Pleas for Horry County in Civil Action Number 2019-CP-26-01732 ("Class Action"); and

WHEREAS, the Town is informed and believes that Horry County, as the defendant in the Class Action, has challenged the adequacy of security provided by the City of Myrtle Beach with respect to the Court's orders dated June 21, 2019, and July 10, 2019, enjoining Horry County from collecting a uniform service charge of 1.5% on the sales of accommodations and prepared meals and beverages within the corporate limits of the City effective August 10, 2019; and

WHEREAS, the Town is informed and believes that the City of Myrtle Beach, as the named Plaintiff in the Class Action, is holding in escrow the additional revenues it receives from the local accommodations tax and local hospitality tax that it is imposing under its own ordinances adopted pursuant to S.C. Code Ann. §6-1-520 and S.C. Code Ann. §6-1-720, which take into account credits for preexisting fees and deductions for the amount in tax revenues it was already receiving in preexisting accommodations and/or hospitality taxes pursuant to previously enacted ordinances; and

WHEREAS, the Town, as an identified member of the purported class in the Class Action and as a municipality specifically covered by the Court's injunction orders against Horry County, and to provide assurance to the Court and security for the injunction as it relates to the Town of Surfside Beach during the pendency of the injunction, is willing to record by ledger and escrow the additional revenues it receives from the local accommodations tax and local hospitality tax that it is imposing under Ordinance No. 19-0889 and Ordinance No. 19-0890, the amount of which will take into account revenues the Town was already receiving in preexisting accommodations and hospitality taxes and/or fees pursuant to previously enacted ordinances,

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Town Council hereby directs the Town Administrator to record by ledger and hold in escrow

during the pendency of the injunction, the sums representing the additional revenue derived from the taxes imposed under Ordinance No. 19-0889 and Ordinance No. 19-0890, received from and after August 1, 2019, having deducted from same the amount in revenues the Town was already receiving under preexisting accommodations and hospitality taxes and/or fees pursuant to previously enacted ordinances.

2. This resolution is made pursuant to S.C. Code Ann. §5-7-260.

BE IT SO RESOLVED THIS 23rd DAY OF JULY, 2019.

TOWN OF SURFSIDE BEACH

Robert F. Childs, III

Robert F. Childs, III, Mayor

David L. Pellegrino

David L. Pellegrino, Mayor Pro Tempore

Mark L. Johnson

Mark L. Johnson, Town Council

Debbie Scoles

Debbie Scoles, Town Council

Bruce Dietrich

Bruce Dietrich, Town Council

Ron Ott

Ron Ott, Town Council

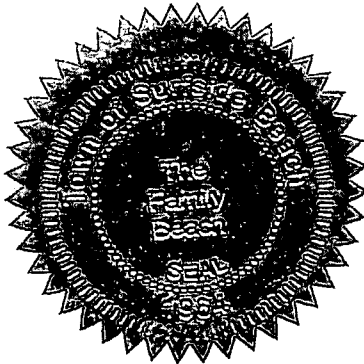
Randle M. Stevens

Randle M. Stevens, Town Council

Attest:

Debra E. Herrmann

Debra E. Herrmann, CMC
Town Clerk



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, ... Respondents,

v.

Horry County, ... Appellant.

AFFIDAVIT

Personally appeared before me, Adam Emrick, who being duly sworn, affirms and swears
as follows:

1. I am in excess of eighteen years of age and competent to give this affidavit.
2. I am currently the City Administrator for the City of Conway, South Carolina ("City"), and have served as such since July 1, 2017.
3. The City, on April 15, 2019, adopted Ordinance #ZA2019-04-15(J) imposing a 2% hospitality tax pursuant to S.C. Code Ann. §§6-1-700, et seq. and Ordinance #ZA2019-04-15(K) imposing a 3% accommodations tax pursuant to S.C. Code Ann. §§6-1-500, et seq. Copies of these two ordinances are attached hereto and incorporated herein by reference as Exhibits 1 and 2,



respectively. These taxes apply to sales of accommodations and prepared food and beverages, respectively, within the corporate limits of the City effective July 1, 2019.

4. The referenced Ordinances amend City collected tax and fee rates within the statutory guidelines as referenced above. The funds or collections resulting from previous rates collected by the County under the former Hospitality fee and Accommodations tax structure includes a base rate of one percent (1%) payable to the City.

5. In my capacity as Administrator for the City, I affirm that the City has not adopted any budget or other ordinance to appropriate incremental revenues collected beyond the one percent (1%) base rate which will result from the increase in City tax and fee rates by virtue of the referenced Ordinances. Any funds beyond the one percent (1%) base rate received from the taxes imposed under Ordinance #ZA2019-04-15(J) or Ordinance #ZA2019-04-15(K) are not presently subject to being expended by the City and are being held in a separate and identified fund.

6. In that same capacity, I am further aware that a resolution will be presented to the City's governing body, the Conway City Council, that the incremental revenues to the City, beyond the base rate, generated by these taxes be recorded by ledger and held in escrow pending the outcome of the class action claim brought by the City of Myrtle Beach on behalf of itself and all other similarly situated plaintiffs against Horry County for the purpose of reimbursing Horry County in the event that the injunction issued by the Circuit Court in that action is overturned. I am also aware that the City Administration Staff will recommend approval of that resolution to the Conway City Council.

FURTHER THE AFFIANT SAYETH NAUGHT.



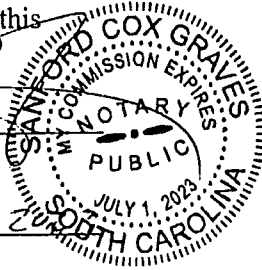
Adam Emrick

Sworn to and subscribed before me this
26 day of July, 2019.

Notary Public for South Carolina

Sanford Cox Graves
My Commission Expires: July 1, 2023

[NOTARIAL SEAL]



ORDINANCE # ZA2019-04-15 (J)

**AN ORDINANCE RELATING TO THE IDENTIFICATION AND COLLECTION OF
HOSPITALITY TAXES, TO SET AND IMPOSE THE TAX RATE AT 2% AS
AUTHORIZED BY STATE LAW, AND FOR REPEAL, REPLACEMENT, AND
AMENDMENT TO THE CITY OF CONWAY
MUNICIPAL CODE TITLE 1, CHAPTER 5, ARTICLE D.**

WHEREAS, the code of laws of South Carolina grants the authority to a municipal governing body to enact ordinances which appear to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government; and

WHEREAS, Council has deemed it to be in the best interest of the City of Conway that its Hospitality Fee Ordinance be revised in order to provide for the City as an attraction and destination for visitors and residents alike; and

WHEREAS, The City is a gateway location for millions of people traveling to and from the coastal regions of Horry County; and

WHEREAS, This article is enacted to preserve the general health, safety, and welfare of the general public within the City of Conway, South Carolina, by creating a uniform tax for the purpose of creating a fund to pay in whole or in part for the current and future preservation, maintenance, and expansion of the public facilities within the City of Conway, including those on the Conway Riverfront; public transportation improvements, including street construction, storm drainage, right-of-way acquisitions, median and right-of-way enhancements and landscaping, walkways and bikeways; public park facilities, public parking, capital facilities, and equipment necessary for the provision of police, fire, and other public safety activities; for costs associated with the promotion and marketing of the City of Conway; and any other use as defined under South Carolina Code Sec. 6-1-730: Therefore be it

ORDAINED, by the City Council of the City of Conway, in Council duly assembled, that the Title 19, Chapter 9, Article D, of the Code of Ordinances be amended as attached hereto.

EFFECTIVE DATE: This ordinance shall become effective on July 1, 2019 or at such earlier date as permitted under South Carolina Code.

DONE AND RATIFIED BY CITY COUNCIL duly assembled this 15th day of April, 2019.

Barbara A. Blain-Bellamy
Barbara Blain-Bellamy, Mayor

William M. Goldfinch IV
William M. Goldfinch IV, Mayor Pro Tem

Thomas J. Anderson II
Thomas J. Anderson II, Council Member

Shane Hubbard
Shane Hubbard, Council Member

Ashley Smith
Ashley Smith, Council Member

Jean M. Timbes
Jean M. Timbes, Council Member

Larry A. White
Larry A. White, Council Member

Barbara A. Tessier
ATTEST: Barbara A. Tessier, City Clerk

First Reading: 4/1/19

Final Reading: 4/15/19

ARTICLE D - Hospitality Tax

Sec. 1-5-40 - Authority.

This article shall be referred to as the City of Conway Hospitality Tax Ordinance. This chapter is enacted pursuant to S.C. Code Section 6-1-700 et seq. which provides for local hospitality tax; and with reference to the general authority of Title 5, Code of Laws of South Carolina (1976), as amended, including, without limitation, S.C. Code Sections 5-7-10 and 5-7-30 which provide, in relevant part, that municipalities may adopt all ordinances which appear necessary and proper for the security, general welfare, and convenience of the municipality and for the preservation of the general health, peace, and order in the municipality and further that municipalities may establish uniform taxes or service charges.

(Ord. No. ZA2019-04-15(J), 4/15/19)

Sec. 1-5-41 - Declaration of purpose and intent.

It is hereby found and declared by the Conway City Council that the city is an attraction and destination for visitors and residents alike, and that the city is in a gateway location for millions of people traveling to and from the coastal regions of Horry County. This article is enacted to preserve the general health, safety, and welfare of the general public within the City of Conway, South Carolina, by creating a uniform tax for the purpose of creating a fund to pay in whole or in part for the current and future preservation, maintenance, and expansion of the public facilities within the City of Conway, including those on the Conway Riverfront; public transportation improvements, including street construction, storm drainage, right-of-way acquisitions, median and right-of-way enhancements and landscaping, walkways and bikeways; public park facilities, public parking, capital facilities, and equipment necessary for the provision of police, fire, and other public safety activities; for costs associated with the promotion and marketing of the City of Conway; and any other use as defined under S.C. Code Section 6-1-730.

(Ord. No. ZA2019-04-15(J), 4/15/19)

Sec. 1-5-42 - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department of finance means the financial services department of the city.

Finance director means the director of finance for the city.

Hospitality tax means a uniform tax equal to two (2) percent imposed on gross proceeds derived from:

- (1) The sale of all food and beverages, served by a restaurant, hotel, motel, or other food

service facility within the City of Conway. In addition, the tax shall be imposed for all food and beverages prepared or modified by convenience stores or grocery stores within the City of Conway, South Carolina and for any food or beverage sold for immediate consumption by any entity doing business within the city limits.

- (2) Paid admissions to places of amusement within the City of Conway. Provided, however, that those places of admission which are specifically exempted from payment of the state license tax own admissions as established in S.C. Code Section 12-21-2420 shall also be exempt from this hospitality tax.

(Ord. No. ZA2019-04-15(J), 4/15/19)

Sec. 1-5-43 - Payment of hospitality tax.

Taxes imposed by this article shall be due on the same date in the same manner as provided in S.C. Code Section 12-36-2570, and in accordance with the provisions of S.C. Code Section 12-36-2570. The city shall make available the form for remittance of the tax to the entity providing the goods or services as defined by the hospitality tax. At the time of filing of such form, the provider shall pay to the finance department or its designee all taxes due for the period for which the form applies.

- (1) Remitting taxes to the City of Conway must be done in accordance with S.C. Code Section 6-1-770. The tax provided for in this article must be remitted to the local governing body on a monthly basis when the estimated amount of average tax is more than \$50 a month, on a quarterly basis when the estimated amount of average tax is \$25 to \$50 a month, and on an annual basis when the estimated amount of average tax is less than \$25 a month.
- (2) Taxes and required reports shall be submitted to the City of Conway by the 20th day of the month and shall cover sales for the previous month. When a hospitality tax return is filed and the taxes due on it are paid in full on or before the final due date, the filer is allowed a discount on the taxes shown to be due by the return of two (2) percent. Any taxes not timely remitted shall be subject to a penalty of five (5) percent of the unpaid tax for each month or portion thereof after the due date until paid. The failure to collect from patrons the tax imposed by this article shall not relieve any establishment subject to this article from making the required remittance.
- (3) Any person violating any provision of this article shall be deemed guilty of an offense and shall be subject to punishment under section 1-3-48 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for herein.

(Ord. No. ZA2019-04-15(J), 4/15/19)

Sec. 1-5-44 - Hospitality tax fund.

The fund, to be known as the City of Conway Hospitality Tax Fund, shall be established and all revenues received from the hospitality tax shall be deposited into this fund. The existing "hospitality fee" account may continue to be used in association with funds relating to this article, but shall be renamed pursuant to this article. The principal and any accrued interest from this fund shall be expended only as permitted in the permitted use of funds section [section 1-5-49] within this article.

(Ord. No. ZA2019-04-15(J), 4/15/19)

Sec. 1-5-45 - Verification.

Every business providing goods and/or services as defined in section 1-5-42 [definitions] in the city shall keep books and records show[ing] the prices and charges taxable under this article. The finance director or his/her designee shall at all reasonable times have full access to such books and records of such business.

(Ord. No. ZA2019-04-15(J), 4/15/19)

Sec. 1-5-46 - Penalty for tax avoidance.

If the city shall find that any person has willfully avoided payment of the taxes imposed by this article, the city may suspend and/or revoke all city licenses held by such business in accordance with the ordinance pertaining to such business licenses.

(Ord. No. ZA2019-04-15(J), 4/15/19)

Sec. 1-5-47 - Failure to comply.

It shall be unlawful to fail to collect the hospitality tax; or fail to remit to the city the tax collected pursuant to the ordinance; or knowingly provide false information on any form or return to the city; or fail to provide books and records for the proposed audit upon 24 hours' notice. Upon conviction, the penalty shall be as prescribed by law.

(Ord. No. ZA2019-04-15(J), 4/15/19)

Sec. 1-5-48 - Permitted uses of funds.

The city council of Conway, South Carolina is hereby authorized to utilize the funds collected from the imposition of the hospitality tax for the following purposes in accordance with the provisions of the S.C. Code Section 6-1-730 for:

- (1) Tourism-related buildings including, but not limited to, civic centers, coliseums, and

aquariums;

- (2) Tourism-related cultural, recreational, or historic facilities;
- (3) Beach access, re-nourishment, or other tourism-related lands and water access;
- (4) Highways, roads, streets, and bridges providing access to tourist destinations;
- (5) Advertisement and promotions related to tourism development;
- (6) Water and sewer infrastructure to serve tourism-related demand; or
- (7) Operation and maintenance of those items provided in [subsections] (1) through (6) including police, fire protection, emergency medical services, and emergency preparedness operations directly attendant to those facilities.

(Ord. No. ZA2019-04-15(j), 4/15/19)

Sec. 1-5-49 - Authorization for use, severability, and effective date.

Authorization to utilize revenues from the hospitality tax fund shall be by the annual budget ordinance duly adopted by the city council of the City of Conway, South Carolina. If any provisions, clause, sentence, paragraph, section, or part of this article, or the application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remainder of this article and the application of such provision to other persons, firms, corporation, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency or circumstances involved.

This article shall become effective on July 1, 2019 or such earlier date as allowed by South Carolina Law.

(Ord. No. ZA2019-04-15(j), 4/15/19)

ORDINANCE # ZA2019-04-15 (K)

AN ORDINANCE RELATING TO THE IDENTIFICATION AND COLLECTION OF LOCAL ACCOMMODATIONS TAX, TO SET AND INCREASE THE TAX RATE FROM 0.5% to 3% AS AUTHORIZED BY STATE LAW, AND TO REPEAL AND REPLACE THE RELEVANT PORTION OF THE CITY OF CONWAY MUNICIPAL CODE [TITLE 1, CHAPTER 5, ARTICLE D, SECTION 1-5-42(a)] AND ORDINANCE 2006-09-11, AND CREATING TITLE 1, CHAPTER 5, ARTICLE D, SECTIONS 55-*

WHEREAS, the code of laws of South Carolina grants the authority to a municipal governing body to enact ordinances which appear to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government; and

WHEREAS, Council has deemed it to be in the best interest of the City of Conway that its Accommodations Fee Ordinance be revised in order to provide for the City as an attraction and destination for visitors and residents alike; and

WHEREAS, The City is a gateway location for millions of people traveling to and from the coastal regions of Horry County; and

WHEREAS, This article is enacted to preserve the general health, safety, and welfare of the general public within the City of Conway, South Carolina, by creating a uniform tax for the purpose of creating a fund to pay in whole or in part for the current and future preservation, maintenance, and expansion of the public facilities within the City of Conway, including those on the Conway Riverfront; public transportation improvements, including street construction, storm drainage, right-of-way acquisitions, median and right-of-way enhancements and landscaping, walkways and bikeways; public park facilities, public parking, capital facilities, and equipment necessary for the provision of police, fire, and other public safety activities; for costs associated with the promotion and marketing of the City of Conway; and any other use as defined under South Carolina Code Sec. 6-1-530: Therefore be it

ORDAINED, by the City Council of the City of Conway, in Council duly assembled, that the Title 19, Chapter 9, Article D, of the Code of Ordinances be amended as attached hereto.

EFFECTIVE DATE: This ordinance shall become effective on July 1, 2019 or at such earlier date as permitted under South Carolina Code.

DONE AND RATIFIED BY CITY COUNCIL duly assembled this 15th day of April, 2019.

Barbara Blain-Bellamy
Barbara Blain-Bellamy, Mayor

William M. Goldfinch VI
William M. Goldfinch VI, Mayor Pro Tem

Thomas J. Anderson II
Thomas J. Anderson II, Council Member

Shane Hubbard
Shane Hubbard, Council Member

Ashley Smith
Ashley Smith, Council Member

Jean M. Timbes
Jean M. Timbes, Council Member

Larry A. White
Larry A. White, Council Member

Barbara A. Tessier
ATTEST: Barbara A. Tessier, City Clerk

First Reading: 4/1/19

Final Reading: 4/15/19

ARTICLE E.1 - Accommodations Tax

Sec. 1-5-57 - Local accommodations tax.

This article shall be referenced as the City of Conway Local Accommodations Tax Ordinance, enacted pursuant to S.C. Code Section 6-1-500 et seq.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-58 - Declaration of purpose and intent.

It is hereby found and declared by the Conway City Council that the city is an attraction and destination for visitors and residents alike, and that the city is in a gateway location for millions of people traveling to and from the coastal regions of Horry County. This article is enacted to preserve the general health, safety, and welfare of the general public within the City of Conway, South Carolina, by creating a uniform tax for the purpose of creating a fund to pay in whole or in part for the current and future preservation, maintenance, and expansion of the public facilities within the City of Conway, including those on the Conway Riverfront; public transportation improvements, including street construction, storm drainage, right-of-way acquisitions, median and right-of-way enhancements and landscaping, walkways and bikeways; public park facilities, public parking, capital facilities, and equipment necessary for the provision of police, fire, and other public safety activities; for costs associated with the promotion and marketing of the City of Conway; and any other use as defined under S.C. Code Section 6-1-530.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-59 - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department of finance means the financial services department of the city.

Finance director means the director of finance for the city.

Local accommodations tax means a uniform tax equal to three (3) percent imposed on gross proceeds derived from:

- (1) Accommodations for transients which includes the accommodations specified in S.C. Code Section 12-36-920, as amended from time to time, or any successor provision thereto, located within the jurisdiction and geographical limits of the City of Conway.

There shall be imposed and shall immediately accrue as of the first day of the month following such date a collected tax, as detailed in this provision, upon accommodations for transients. The tax imposed by this section shall not apply to additional guest charges as defined in S.C. Code Section 12-36-920(B). The tax shall be established at the rate of three (3) percent of the gross proceeds derived from the rental or charges for any accommodation for transients.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-60 - Payment of local accommodations tax.

Taxes imposed by this article shall be due on the same date in the same manner as provided in S.C. Code Section 12-36-2570, and in accordance with the provisions of S.C. Code Section 12-36-2570. The city shall make available the form for remittance of the tax to the entity providing the goods or services as defined by the local accommodations tax. At the time of filing of such form, the provider shall pay to the finance department or it's designee all taxes due for the period for which the form applies.

- (1) Remitting taxes to the City of Conway must be done in accordance with S.C. Code Section 6-1-570. The tax provided for in this article must be remitted to the local governing body on a monthly basis when the estimated amount of average tax is more than \$50 a month, on a quarterly basis when the estimated amount of average tax is \$25 to \$50 a month, and on an annual basis when the estimated amount of average tax is less than \$25 a month.
- (2) Taxes and required reports shall be submitted to the City of Conway by the twentieth day of the month and shall cover sales for the previous month. When a local accommodations tax return is filed and the taxes due on it are paid in full on or before the final due date, the filer is allowed a discount on the taxes shown to be due by the return of two (2) percent. Any taxes not timely remitted shall be subject to a penalty of five (5) percent of the unpaid tax for each month or portion thereof after the due date until paid. The failure to collect from patrons the tax imposed by this article shall not relieve any establishment subject to this article from making the required remittance.
- (3) Any person violating any provision of this article shall be deemed guilty of an offense and shall be subject to punishment under section 1-3-48 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for herein.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-61 - Local accommodations tax fund.

The fund, to be known as the City of Conway Local Accommodations Tax Fund, shall be established and all revenues received from the local accommodations tax shall be deposited into this fund. The principal and any accrued interest from this fund shall be expended only as permitted in the permitted use of funds section [section 1-5-66] within this article.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-62 - Verification.

Every business providing goods and/or services as defined in section 1-5-59 [definitions] in the city shall keep books and records show the prices and charges taxable under this article. The finance director or his/her designee shall at all reasonable times have full access to such books and records of such business.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-63 - Penalty for tax avoidance.

If the city shall find that any person has willfully avoided payment of the taxes imposed by this article, the city may suspend and/or revoke all city licenses held by such business in accordance with the ordinance pertaining to such business licenses.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-64 - Severability.

If any provisions, clause, sentence, paragraph, section, or part of this article, or the application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remainder of this article and the application of such provision to other persons, firms, corporation, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency or circumstances involved.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-65 - Failure to comply.

It shall be unlawful to fail to collect the local accommodations tax; or fail to remit to the city the tax collected pursuant to the ordinance; or knowingly provide false information on any form or return to the city; or fail to provide books and records for the proposed audit upon 24 hours' notice. Upon conviction, the penalty shall be as prescribed by law.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-66 - Permitted uses of funds.

The city council of Conway, South Carolina is hereby authorized to utilize the funds collected from the imposition of the local accommodations tax for the following purposes in accordance with the provisions of the S.C. Code Section 6-1-530 for:

- (1) Tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;
- (2) Tourism-related cultural, recreational, or historic facilities;
- (3) Beach access, re-nourishment, or other tourism-related lands and water access;
- (4) Highways, roads, streets, and bridges providing access to tourist destinations;
- (5) Advertisement and promotions related to tourism development;
- (6) Water and sewer infrastructure to serve tourism-related demand; or
- (7) Operation and maintenance of those items provided in [subsections] (1) through (6) including police, fire protection, emergency medical services, and emergency preparedness operations directly attendant to those facilities.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-67 - Authorization for use.

Authorization to utilize revenues from the local accommodations tax fund shall be by the annual budget ordinance duly adopted by the city council of the City of Conway, South Carolina.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Sec. 1-5-68 - Effective date.

This article shall become effective on July 1, 2019 or such earlier date as allowed by South Carolina law.

(Ord. No. ZA2019-04-15(K), 4/15/19)

Secs. 1-5-69—1-5-75 - reserved.