

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

Case No. 2019-CP-26-01732

RECEIVED
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SC Court of Appeals

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

v.

Horry County, ... Appellant.

APPENDIX TO COUNTY'S PETITION FOR WRIT OF SUPERSEDEAS
VOL III of III

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SECOND DEFENSE

88. The allegations of the First Defense are incorporated herein and made a part and parcel of this Second Defense.

89. The City fails to allege any state law or constitutional provision whereby the City's consent or approval was, or is, required for the Defendant to amend Ordinance No. 105-96.

90. Therefore, there is no justiciable question or fact or law at issue.

91. The Complaint fails to state facts sufficient to constitute a cause of action against the Defendant. Therefore, each of the City's claims should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

THIRD DEFENSE

92. The allegations of the First and Second Defenses are incorporated herein and made a part and parcel of this Third Defense.

93. By bringing this legal action, the City, without legal authority or standing, has requested that the Court amend and rewrite the Horry County ordinances.

94. The City may not exceed the authority granted to it by the South Carolina State Constitution and the South Carolina General Assembly.

95. The South Carolina State Constitution and the South Carolina General Assembly has not granted the City the authority to bring suit against political subdivisions for matters such as those alleged in the Complaint. Moreover, the purported class members do not have standing to sue a political subdivision of South Carolina for the matters alleged in the Complaint.

96. The City and/or any member of the purported class do not have standing to bring suit against the Defendant under the facts alleged, and therefore, the Complaint should be dismissed.

FOURTH DEFENSE

97. The allegations of the First, Second, and Third Defenses are incorporated herein and made a part and parcel of this Fourth Defense.

98. The Defendant is organized under the Council-Administrator form of government as provided by Sections 4-9-20 and 4-9-610, et seq. of the Code of Laws for the State of South Carolina.

99. As a political subdivision of the State of South Carolina., the Defendant has certain powers conferred upon it by the South Carolina Constitution and state law.

100. All ordinances of the Defendant are duly considered and approved after three readings by Horry County Council and a public hearing.

101. The ordinances cited in the Complaint, including Ordinance No. 105-66, Ordinance No. 7-97, Ordinance No. 76-97, Ordinance No. 80-01, Ordinance No. 80-01, Ordinance No. 111-01, Ordinance No. 11-04, Ordinance No. 50-04, Ordinance No. 93-16, and Ordinance No. 32-17, were duly enacted after three readings and a public hearing.

102. All ordinances of the Defendant carry a presumption of validity and should not be disturbed.

103. The City fails to state any facts that the ordinances cited in the Complaint were not properly considered or enacted by the Defendant.

104. The City fails to allege any state law or constitutional provision whereby the ordinances cited in the Complaint are not valid.

105. The City fails to allege any facts, state law or constitutional provision whereby the Defendant must obtain any consent or approval of the City or any other entity before passage of any of the ordinances cited in the Complaint.

106. Therefore, there is no justiciable question of fact or law at issue.

107. The Complaint fails to state facts sufficient to constitute a cause of action against the Defendant. Therefore, each of The City's claims should be dismissed.

FIFTH DEFENSE

108. The allegations of the First, Second, Third, and Fourth Defenses are incorporated herein and made a part and parcel of this Fifth Defense.

109. The Defendant fails to plead the essential elements of unjust enrichment, a cause of action also known as quantum meruit.

110. The City's allegations that an implied contract exists between the Defendant, the City, and any other party by and through the Hospitality Fee or the ordinance that created the Hospitality Fee is an incorrect reading of the law, and would create an absurd precedence whereby a government collecting a fee would thereby be considered to be in an implied contractual relationship with the fee payer.

111. Despite the allegations of the City, nothing about the Hospitality Fee is illegal.

112. The City has failed to state a prima facie case that an implied contract exists between the Defendant, the City, and any other party, including the putative class members.

113. The City has failed to state a prima facie case for breach of duty of good faith and fair dealing.

114. Therefore, City's Third and Fourth causes of action should be dismissed.

SIXTH DEFENSE

115. The allegations of the First, Second, Third, Fourth, and Fifth Defenses are incorporated herein and made a part and parcel of this Sixth Defense.

116. Inasmuch as the claims made by the City are tort claims of actual or constructive fraud, abuse of confidence, and/or unconscionable conduct, the City's tort claims are barred by the economic loss doctrine.

SEVENTH DEFENSE

117. The allegations of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are incorporated herein and made a part and parcel of this Seventh Defense.

118. Complaint fails to plead the essential elements of an entitlement to a declaratory judgment.

119. The City has failed to state a prima facie case for declaratory relief in that City failed to allege a substantial, direct, and legally protected present right or interest.

120. The City lacks standing to seek declaratory relief in that it has not alleged sufficient facts to fall within Sections 15-53-10, *et seq.*, of the Code of Laws for the State of South Carolina.

121. The City has not asserted a legal right and a denial of that right by Defendant. Therefore, a justiciable controversy does not exist in this case.

122. City has failed to state a cause of action for which declaratory relief may be granted. Therefore, City's request for declaratory relief should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

EIGHTH DEFENSE

123. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are incorporated herein and made a part and parcel of this Eighth Defense.

124. The Complaint fails to plead the essential elements of a request for a preliminary or permanent injunction.

125. Injunction is an extraordinary remedy that should not be granted where, as in this case, the City's right to a remedy under any legal or equitable theory is doubtful.

126. The City has not asserted a legal or equitable right of the City and a denial of that right by Defendant. Therefore, a justiciable controversy does not exist in this case.

127. There is no present or future justiciable controversy between the City and Defendant; therefore, the court lacks jurisdiction to grant injunctive relief.

128. The City has failed to establish an actual and substantial injury, or affirmative prospect thereof, and is not entitled to injunctive relief.

129. Through its own actions in not asserting any legal claim or equitable right for at least two years and for as many as fifteen years, the City has failed to establish that damages are immediate.

130. In accordance with the equitable maxim "he who seeks equity must do equity," the City is not entitled to equitable relief.

131. Therefore, the City's request for injunctive relief should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

NINTH DEFENSE

132. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth and Defenses are incorporated herein and made a part and parcel of this Ninth Defense.

133. The City's claims are barred by the doctrines of waiver, acquiescence, ratification, or estoppel.

TENTH DEFENSE

134. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Defenses are incorporated herein and made a part and parcel of this Tenth Defense.

135. The voluntary payment doctrine bars all claims of the City, and of any member of the purported class whose Hospitality Fees have been paid in part or in full.

ELEVENTH DEFENSE

136. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, and Tenth Defenses are incorporated herein and made a part and parcel of this Eleventh Defense.

137. Any claim or allegation regarding the Sunset Provision can and should have been brought at the time of the amendments made by County Council to Ordinance No. 105-96, including, but not limited to Ordinance No. 11-04 enacted on April 20, 2004.

138. Moreover, any further claim or allegation could or should have been brought prior to the alleged subjected payment of “illegally charged Hospitality Fees.”

139. The City and any purported class members had a duty to mitigate any or all of the alleged damages allegedly suffered by the City or the purported class members on or before January 1, 2017.

140. The City’s recovery for any damages allegedly sustained by the City, which damages are specifically denied, must be reduced to the extent that the City has had the ability and opportunity to fully mitigate its damages, but has failed or refused to do so.

TWELFTH DEFENSE

141. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, and Eleventh Defenses are incorporated herein and made a part and parcel of this Twelfth Defense.

142. The City knew or should have known of the extension of the Sunset Provision and amendments to Ordinance No. 105-96, including, but not limited to Ordinance No. 11-04 enacted on April 20, 2004.

143. If any valid claim were to be made regarding the consent of any municipality, including the City, to any amendments to Ordinance No. 105-96, such claim should have been brought at the time of said amendments.

144. The applicable statute of limitations bars all claims of the City and/or any member of the purported class which arose three years or more prior to the filing of this lawsuit.

THIRTEENTH DEFENSE

145. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, and Twelfth Defenses are incorporated herein and made a part and parcel of this Thirteenth Defense.

146. The Defendant extended the sunset provisions to Ordinance 105-96 in 2004.

147. If it is found that the City's allegations state a claim, which is specifically denied, the City neglected for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Specifically, and without prejudice to the generality of the forgoing, if it is found that the City's allegations state a claim, which is specifically denied, the City is required by the doctrine of laches to have brought the allegations on or before April 20, 2004, on or before December 6, 2016, or on or before January 1, 2017.

148. Instead, the City sat on its allegations for an unreasonable and unexplained length of time.

149. The Defendant has rightfully relied on the actions it has taken on April 20, 2004, on December 6, 2016, and on January 1, 2017.

150. In light of the allegations made by the City, the delay in the City making the allegations has caused injury, prejudice, and disadvantage to the Defendant.

151. The doctrine of laches bars all claims of the City and/or any member of the purported class.

FOURTEENTH DEFENSE

152. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Defenses are incorporated herein and made a part and parcel of this Fourteenth Defense.

153. The City cannot assert its claims as a class action because the City has failed to define a legally definable and identifiable class of similarly situated entities or persons.

154. The City cannot assert its claims as a class action because the claims alleged would require an individualized inquiry for every purported class member which precludes class certification.

155. The City cannot prosecute its claims as a class action because whether a purported class member conferred a benefit upon Defendant such that its retention of that benefit is "unjust" requires an individualized inquiry that precludes class certification.

156. The City cannot prosecute its claims as a class action because the City has not suffered damages in excess of \$100.00. Furthermore, the City fails to adequately allege that each member of the purported class has an amount in controversy in excess of \$100.00.

157. To the extent members of the proposed class have paid the Hospitality Fee, the voluntary payment doctrine bars any claims for relief.

158. The City is not an adequate representative of the class it seeks to represent.

159. The City cannot prosecute its claims as a class action because the City is not in the best position to fairly protect the interests of the class members.

160. The City cannot prosecute its claims as a class action because due process entitles Defendant to assert and prove any and all individual defenses it has to the claims asserted against Defendant by every purported class member.

FIFTEENTH DEFENSE

161. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, Thirteenth, and Fourteenth Defenses are incorporated herein and made a part and parcel of this Fifteenth Defense.

162. Defendant is a governmental entity within the meaning of § 15-78-10, *et seq.* of the Code of Laws for the State of South Carolina

163. Any claim for damages based on a legislative action or inaction is barred and/or limited by the provisions of § 15-78-60 of the Code of Laws for the State of South Carolina.

164. Any claim for damages based on a tortious act of commission or omission, including the claims of actual or constructive fraud, abuse of confidence, and/or unconscionable conduct, is barred and/or limited by the provisions of § 15-78-60 of the Code of Laws for the State of South Carolina.

SIXTEENTH DEFENSE AND FIRST COUNTERCLAIM

165. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Defenses are incorporated herein and made a part and parcel of this Sixteenth Defense and First Counterclaim.

166. The City unambiguously made certain promises to Defendant, including, but not limited to the City's strong and unanimous support of the Defendant's actions whereby the City urged the Defendant to implement the RIDE Report and collect a Hospitality Fee (the "City's Promises").

167. In reasonable reliance on City's Promises, Defendant agreed to incur the cost and expense associated with implementing the recommendations in the RIDE Report and in collecting and disbursing the Hospitality Fee.

168. Defendant only agreed to incur the cost and expense associated with such actions based on the City's Promises and upon the expectation that the City would keep the City's Promises.

169. In reasonable reliance on City's Promises, and with no expectation of having a lawsuit brought against it, the Defendant is now having to incur unexpected costs and expense in order to defend itself from the City's claims.

170. After unanimously and strongly urging Defendant to act, and then after Defendant so acted, in good faith with the express and implied support of the City for over twenty years, the City has now broken its promise of support.

171. The City expected and could foresee that Defendant would rely on the City's Promises.

172. Defendant did in fact rely on the City's Promises, and in reliance on the City's Promises, Defendant incurred costs and expenses.

173. The City's Promises were broken when the City commenced this lawsuit against Defendant.

174. Defendant has been injured in reliance on the City's Promises, as Defendant incurred the needless cost and expense associated with the City's Promises.

175. Because the City has not kept its promises to Defendant, Plaintiffs should, in equity, have to pay the costs Defendant incurred in implementing the Hospitality Fee and in defending this lawsuit.

SEVENTEENTH DEFENSE
AND
SECOND COUNTERCLAIM

176. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth Defenses are incorporated herein and made a part and parcel of this Seventeenth Defense and Second Counterclaim.

177. A justiciable controversy exists between the parties.

178. This Court has jurisdiction to issue a declaratory judgment pursuant to S.C. Code § 15-53-10 *et seq.*

179. In its Complaint, the City has challenged the validity of certain ordinances of the Defendant.

180. The Defendant is entitled to a declaratory judgment that:

- A. Ordinance No. 105-96 was validity enacted on October 15, 1996, following third and final reading;
- B. Defendant was not required to obtain approval or consent from the City for the passage of Ordinance No. 105-96;
- C. Ordinance No. Ordinance No. 11-04 was validly enacted on April 20, 2004, following third and final reading;

- D. Defendant was not required to obtain approval or consent from the City for the passage of Ordinance No. 11-04;
- E. The Hospitality Fee was validly extended by the Defendant in accordance with Ordinance No. 11-04;
- F. Ordinance No. 93-16 was validly enacted on December 6, 2016, following third and final reading;
- G. Defendant was not required to obtain approval or consent from the City for the passage of Ordinance No. 93-16;
- H. Ordinance No. 32-17 was validly enacted on May 2, 2017, following third and final reading;
- I. Defendant was not required to obtain approval or consent from the City for the passage of Ordinance No. 32-17;
- J. The sunset provision of the Hospitality Fee was validly eliminated by the Defendant in accordance with Ordinance No. 32-17;
- K. The Defendant may continue collecting the Hospitality Fee;
- L. The Defendant was not required to obtain approval or consent from the City under state law or otherwise for the Defendant to extend the Hospitality Fee;
- M. The Defendant was not required to obtain approval or consent from the City under state law or otherwise for the Defendant to eliminate the sunset provision for the Hospitality Fee; and
- N. The City's collection of its new local accommodations and hospitality taxes under City Ordinances 2019-22 and 2019-23 would violate state law.

EIGHTEENTH DEFENSE
AND
THIRD COUNTERCLAIM

181. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth Defenses are incorporated herein and made a part and parcel of this Eighteenth Defense and Third Counterclaim.

182. If the City collects its new local accommodations and hospitality taxes on top of the Hospitality Fee, those taxes would exceed the maximum amount that a municipality may impose under state law for local accommodations and hospitality taxes. Therefore, the Defendant is likely to succeed on the merits.

183. The Defendant has no adequate remedy at law to stop the irreparable harm that it (along with the taxpayers) would suffer if the City collects taxes above the threshold set by state law.

184. The Defendant is entitled to preliminary and permanent injunctive relief prohibiting the City from collecting the taxes imposed by City Ordinances 2019-22 and 2019-23.

WHEREFORE, the Defendant, having fully answered the Complaint, pray for the following:

- (1) the Complaint be dismissed with prejudice;
- (2) the County be awarded declaratory and injunctive relief;
- (3) the City be required to pay to the County all of the County's attorney's fees and costs it has incurred to defend this money-grabbing, frivolous lawsuit; and
- (4) for such other and further relief as this Court may deem just and proper.

Respectfully submitted:

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Dated: May 29, 2019
1975872v3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	REPLY MEMORANDUM OF LAW IN
Plaintiff,	)	SUPPORT OF MOTION TO DISMISS
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	

Plaintiff, City of Myrtle Beach ("City"), submits this reply memorandum in support of its motion to dismiss ("Motion") the counterclaims brought by Defendant Horry County ("County").

INTRODUCTION

The County's arguments in opposition to the Motion, whether intentionally or through misapprehension, wholly mischaracterize the City's arguments for why the County failed to state a claim for promissory estoppel in an attempt to conjure a non-existent inconsistency. But one thing is now clear: the County believes that the City's support of the Hospitality Fee for the definite term of twenty years and for a limited express purpose somehow constitutes an unambiguous, clear, definite, and specific promise to support the fee *after* that twenty-year period and for whatever purpose the County now unilaterally chooses. The County's position defies all logic and fails as a matter of law. Recognizing the flaws in this argument, the County now advances the unpled but equally untenable argument that silence fills the void and supplies a clearly articulated and definite promise. This Court should reject the County's continued efforts to distort and misapply South Carolina law.

LAW/ANALYSIS

I. The City's Arguments are Not Inconsistent.

The County's opposition leads off by claiming that the City's arguments on promissory estoppel are "remarkable," "inconsistent," and suggest the City wants to "have it both ways." County Opp. to Mot. to Dismiss ("County Opp.") at 3-4. This is both incorrect and misrepresentative of the City's position.

The City's original memorandum addressed two related but separate points. The first was the County's allegation in its counterclaim that "[t]he City made certain unambiguous promises to [the County], including, but not limited to the City's strong and unanimous support of [the County's] actions whereby the City urged the Defendant to implement the RIDE Report and collect a Hospitality Fee (the 'City's Promises')." Def.'s Answer and Countercl. ("Answer") ¶ 170. The City accurately argued that "[t]here is nothing specific, definite, or unambiguous about the terms of this 'promise.' This general but vague allegation of support for a local initiative is legally insufficient to support promissory estoppel." City Mem. of Law in Supp. of Mot. to Dismiss ("City Mem.") at 6. As it pertains to this language in the counterclaim, that was true then and remains true today: simply claiming that a party pledged "strong and unanimous support" for a program in 1996 is not a clear, unambiguous, and definite promise to do anything over twenty years later such that promissory estoppel steps in. *See Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6, 11 (Ct. App. 2013) (requiring that "the promise to be enforced must be unambiguous with clearly articulated, definite terms").

The second is the City's 1996 resolution consenting to the Hospitality Fee. In making the Motion, the City deduced (and the County has now confirmed) that the referenced "promise" asserted by the County was in fact this resolution. *See City Mem.* at 2. As should be familiar to

the Court, the resolution “strongly and unanimously support[ed] the RIDE Committee Report,” “urge[d] Horry County to enact expeditiously the necessary ordinances to implement the RIDE Committee Report,” and consented to the imposition of “a 1.5 percent hospitality fee” by the County for purposes of implementing “the plan” set out in the RIDE Committee Report “for a period of up to 20 years.” City Mem. Ex. B at 1-2. The City addressed this resolution separately from the general averments made in the counterclaim. City Mem. at 6-7. Yet the County misleadingly attributes quotes and argument regarding *the text of the counterclaim* to the text of this resolution. City Opp. at 3-4. There is nothing inconsistent or remarkable about arguing that generalizations regarding public pronouncements of support and urging do not rise to the level of being a “promise,” while simultaneously making the point that, even if the Court were inclined to view the City’s resolution as a promise, the City abided by the express terms of its support and urging, thereby fulfilling to the terms of such “promise” in any event.

II. The County’s Allegations Prove the City Complied with Its 1996 Resolution.

The County maintains that the City’s resolution is “sufficiently definite to support this claim.” Opp. a 1; *see also id.* at 4 (“The City has made a sufficiently clear promise to support the County’s counterclaim.”). The text of the resolution itself defeats the County’s position.

Assuming *arguendo* that the resolution constitutes a “promise” only for purposes of addressing the County’s promissory estoppel claim, it provided for the following: (1) support of the RIDE Committee’s report; (2) urging the County to “enact expeditiously the necessary ordinances to implement the RIDE Committee Report”; and (3) consenting to the County’s imposition of the Hospitality Fee within its corporate limits for twenty years. The counterclaim does not allege the City breached any of these. Instead, it implicitly acknowledges that the City complied with the terms of the resolution for the requisite twenty-year period; however, the City

did not support or otherwise consent to the imposition of the Hospitality Fee after January 1, 2017. *Cf.* Answer ¶ 174. Because the County acknowledges that the City acted consistently with the aforementioned requirements of the resolution, promissory estoppel does not lie. *See Barnes*, 402 S.C. at 469, 742 S.E.2d at 11 (requiring “the promisor’s inconsistent disposition”).

III. Silence Does Not Constitute a Promise for Purposes of Promissory Estoppel.

Recognizing the need to fill this fatal gap in its analysis, the County switches gears and argues – for the first time in its opposition – that the City’s “silence over the past twenty-three years” could “constitute consent to the Fee being extended” and may estop the City from asserting a lack of consent, essentially attempting to turn its ineffective defense of laches, *see* June 21, 2019 Order Granting the City’s Motion for Preliminary Injunction at pp. 8-10, into an affirmative counterclaim. Opp. at 4-5. The County has not pled this novel theory of promissory estoppel. But even if it had, it fails as a matter of law.

Silence, by its very nature, cannot be a promise that gives rise to promissory estoppel. To do so, the promise “must be unambiguous with clearly articulated, definite terms.” *Barnes*, 402 S.C. at 470, 742 S.E.2d at 11. There must be “clarity, definiteness, and specificity.” *Id.* at 470-71, 742 S.E.2d at 12. The party asserting estoppel must be able to “clearly articulate the terms” of the alleged promise. *Rushing v. McKinney*, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006). “[W]here a promise is unclear . . . the doctrine does not risk imposing its own inequity against the party sought to be estopped.” *Barnes*, 402 S.C. at 470, 742 S.E.2d at 12. Silence does not give clearly articulated, definite terms or provide any specificity. As a matter of law, it cannot and does not support a promissory estoppel claim.

The sole case the County cites in support of its position, *Faulkner v. Millar*, 319 S.C. 216, 460 S.E.2d 378 (1995), concerns *equitable estoppel* and not promissory estoppel. Equitable

estoppel is a defense, not an independent cause of action giving rise to the monetary damages the County seeks. *See Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) (“Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do.”). It therefore has no bearing on whether the County has stated an affirmative claim for promissory estoppel. Regardless, the County still fails to demonstrate that silence operates to estop the City from claiming it did not consent to the Hospitality Fee.

The gravamen of a claim for equitable estoppel is that the party being estopped engaged in “conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert.” *Strickland v. Strickland*, 375 S.C. 76, 84-85, 650 S.E.2d 465, 470 (2007). “Estoppel by silence arises where a person owing another a duty to speak refrains from doing so and thereby leads the other to believe in the existence of an erroneous state of facts.” *S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 33, 426 S.E.2d 748, 751 (1993). A duty to speak arises for these purposes when there is a preexisting definite fiduciary relationship, one party “expressly reposes a trust and confidence in the other” or the facts and circumstances imply such a trust and confidence, or the essential nature of the contract or transaction “is intrinsically fiduciary and calls for perfect good faith and full disclosure without regard to any particular intention of the parties.” *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 361, 559 S.E.2d 327, 339 (Ct. App. 2001). No such duty exists here. Neither can the City’s alleged silence “lead[] [the County] to believe in the existence of an erroneous state of facts” when the County neither requested nor otherwise sought the City’s consent to extend the Hospitality Fee.

In sum, silence does not give rise to promissory estoppel as a matter of law. And the County's citation to a case supporting the different affirmative defense of equitable estoppel is erroneous, misleading, and similarly inapplicable to these facts.

IV. The County Still Fails to Allege Damages Caused by The City.

Assuming the County has pled the remaining elements of promissory estoppel, which it has not, the County still fails to allege damages caused by the claimed breach of the City's promises.

In the counterclaim, the County requested that the City be ordered to pay "the costs Defendant incurred in implementing the Hospitality Fee."¹ Answer ¶ 179. The County clarifies in its opposition that it seeks the money it spent "collecting and administering the Hospitality Fee within municipal limits" since January 1, 2017. County Opp. at 5. Ordinance 105-96, which, like the City's 1996 resolution, forms a part of the County's counterclaims,² provides for the recovery of administrative costs out of the proceeds of the fee. City Mem. Ex. A § G ("In the case of either fund, the costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of 1 percent (1%)."). The County fails to allege that any of these costs it incurred have not already been covered or reimbursed from the fee revenues themselves (which, on information and belief, they have). The County's claim therefore seeks double recovery of costs, an irony that is obviously lost on the County in its rush to disparage the City. *Cf.* n.1, *supra*. Regardless, the County has failed to sufficiently plead damages and thus fails to plead a claim for unjust enrichment.

¹ Curiously, the County's prayer does not request this award. It dramatically requests an award of "attorney's fees and costs it has incurred to defend this money grabbing, frivolous lawsuit" and a catch all "such other and further relief as this Court may deem just and proper." Answer at p. 29.

² The County agrees these documents can be considered at the 12(b)(6) stage. *See* County Opp. at 4 n.2.

CONCLUSION

For the foregoing reasons and in light of the County's decision to withdraw its first counterclaim, the City respectfully requests that this Court dismiss the County's only remaining counterclaim for promissory estoppel under Rule 12(b)(6), SCRPC.

Respectfully submitted,

s/Chad N. Johnston

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Columbia, South Carolina
June 24, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	
For Itself and a Class of Similarly	)	HORRY COUNTY'S
Situated Plaintiffs,	)	MOTION TO RECONSIDER
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Horry County, pursuant to Rules 52(b), 54(b), and 59(e), SCRCP, moves this Honorable Court to reconsider its Order granting the City's motion for a preliminary injunction and denying the County's.

Introduction

For more than twenty-two years, the County has been collecting lawfully a Hospitality Fee that has benefited the entire County, including the City of Myrtle Beach. The City only now claims that the County cannot continue collecting it and moved to enjoin the County from doing so, despite the fact that a preliminary injunction is supposed to preserve the *status quo ante* while litigation is pending. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010).

Respectfully, the Court's decision to grant an injunction is flawed in several ways. As entered, the Order violates basic tenets of Rule 65, SCRCP, and case law

regarding preliminary injunctions. The Order also contains faulty analysis of the merits of the City's consent argument. As explained more fully below, the Court should reconsider its Order, deny the City's motion for a preliminary injunction, and instead grant the County's motion for a preliminary injunction enjoining the City's new hospitality and local accommodations fees, which the City adopted only days before it filed this lawsuit.

Legal Standard

A trial court's "interlocutory orders are amendable." *Johnston v. Bowen*, 313 S.C. 61, 63, 437 S.E.2d 45, 47 (1993). Under Rule 54(b), such an order "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Rule 54(b), SCRPC; *see also* Rule 52(b), SCRPC (allowing for an amendment of findings by a trial court); Rule 59(e), SCRPC (allowing for an amendment of a judgment by a trial court).

Federal courts, applying similar a rule of civil procedure,¹ have explained that a motion to reconsider should be granted whenever reconsideration is necessary "(1) to follow an intervening change in controlling law; (2) on account of new evidence; or (3) to correct a clear error of law or prevent manifest injustice." *McLaughlin v. CSX Transp., Inc.*, 260 F. Supp. 3d 523, 526 (D.S.C. 2017) (internal quotation mark omitted); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (observing that a motion to reconsider may be filed when

¹ When South Carolina courts have not addressed a particular issue, courts must "look[] for guidance to cases interpreting the federal rules." *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016).

“the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue”). They have also instructed that “[m]otions for reconsideration of interlocutory orders are not subject to the strict standards applicable to motions for reconsideration of a final judgment.” *Am. Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505, 514 (4th Cir. 2003).

Argument

I. The Order is flawed, even if the City is likely to succeed on the merits, for the City is not exempt from posting a bond.

A. The Order does not require any security from the City.

A party who obtains a preliminary injunction must provide some security so that if the injunction was improper, the enjoined party can be made whole. *See* Rule 65(c), SCRCP; *see Hyler v. Wheeler*, 240 S.C. 386, 126 S.E.2d 173 (1962) (Generally speaking, the ability to recover damages will be limited to the amount of the security bond). Our State Supreme Court has made clear that this requirement is meaningful—some nominal security is insufficient and is a basis for reversing the circuit court’s decision. *See Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (reversing an order granting an injunction but requiring only “nominal” security based on Rule 65(c), SCRCP, and the fact that requiring nominal security “erroneously assumes the injunction is proper”).

Rule 65(c), SCRCP, exempts only the State of South Carolina and its officers and agencies from a bond requirement. The City, as a political subdivision, does not fit within this exemption. The County is aware of no South Carolina law that excuses the City from posting a bond, and the City pointed to no law in its earlier

briefing on this question. On this issue, South Carolina's rule is different from some other states, which by rule specifically exempt municipalities from posting a bond. *See, e.g., Provident Mgmt. Corp. v. City of Treasure Island*, 796 So. 2d 481, 483 (Fla. 2001); *Miller v. Knorr*, 553 So. 2d 1043, 1045 (La. Ct. App. 1989). Without such an exemption for the City in Rule 65(c), the City must be required to provide security for its injunction which must be in the amount of not less than \$28,000,000.00 Million based on the Affidavits of Mike Shelton and Barry Spivey.²

B. The Order ignores the South Carolina Supreme Court's repeated instructions about preserving the *status quo ante*.

The South Carolina Supreme Court has repeatedly held that a preliminary injunction may be issued "*only* if necessary to preserve the status quo ante." *Poynter Invs., Inc.*, 387 S.C. at 586, 694 S.E.2d at 17 (emphasis added). The Order never addresses, or even acknowledges, the effect it has on the status quo. The Order upsets rather than preserves the status quo, and such an approach is inconsistent with the law and constitutes reversible error.³ In addition the Order mandating that the County stop collecting fees, the fact that Horry County will not be receiving these fees as it had for over twenty (20) years, will immediately cause monetary shortages for budgeted items.

C. The Order does not sufficiently state what the County is enjoined from doing.

² Barry Spivey is a financial officer with the County and Mike Shelton is a financial officer with the City.

³ The City publicly issued, on June 24, 2019, the attached Notice entitled "Revised taxes effective Monday, July 1, in the City of Myrtle Beach."

When a court enters an injunction, the order “shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Rule 65(d), SCRPC. This Order does not do this. Rather, its conclusion simply grants the City’s motion. The Order violates Rule 65(d) and leaves open a greater possibility for dispute over whether the County is complying with the injunction, which is what Rule 65(d) seeks to avoid.

Regarding the scope of the injunction, the City has not been certified⁴ as a class representative, and the only evidence concerning the involvement of any other municipality is the new local accommodations and hospitality fees adopted by Surfside Beach attached to the City’s motion for preliminary injunction. At this early stage, the injunction, even if proper, can only apply to the 1.5 percent fee collected from within the City of Myrtle Beach but the Order may be construed differently.

D. The Order’s irreparable harm analysis is incorrect.

The irreparable harm analysis in the Order focuses on the County’s Board of Fee Appeals. Even if the Court is correct that the Board of Fee Appeals is deficient in its creation or as a remedial option for the City (both points with which the County disagrees), the Order has still disregarded the more fundamental point that a loss of money is not an irreparable harm because money is fungible. *See Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (“Normally the mere payment

⁴ In fact, the City has not filed a motion seeking certification.

of money is not considered irreparable”). To prevent an irreparable harm to the City, the Court merely has to order the County to segregate revenue from the 1.5 percent paid by the City within its borders pending the outcome of this litigation. After all, at this stage, the City is the only plaintiff, so harm to it is the only concern in this analysis. By having the County set that money aside, the City could recover it if it prevails. At most, if the Court ordered the County to segregate all of the revenue from the 1.5 percent collected from within the City’s borders, that would sufficiently protect the City’s interest both as an individual litigant and a political entity from any irreparable harm, all without so drastic a measure as enjoining the County from collecting a fee that has been in place for more than two decades.⁵ Because a less dramatic remedy exists, this Court should simply order the County to segregate all of the revenue from the 1.5 percent collected from within the City’s borders and deny the City’s motion for preliminary injunction. See *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 166 (2010) (An injunction should not be entered if a less drastic remedy would provide sufficient redress for the injury.); *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.).

⁵ In fact, if the Court required the County to segregate all revenue from the 1.5 percent within the City’s borders, the Court could enjoin the City’s new ordinances and still ensure that the City does not suffer any irreparable harm because if the City did prevail in this litigation, it could ultimately recover all of the revenue it would have obtained had its new ordinances gone into effect on July 1.

Indeed, the City's entire irreparable harm argument is belied by the fact that it waited more than two years to bring this lawsuit. If the City were truly irreparably harmed by the extension of the Hospitality Fee, the City would have filed suit in January 2017, not in March 2019.

E. The Order improperly appears to decide the merits of the entire case.

A preliminary injunction must be "made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992)

The Order granting the City's motion is seventeen pages, and it improperly makes findings of facts and draw conclusions of law that go to the ultimate issues and result in a decision by the Court on the merits of the entire case. Despite reciting the correct standard of likelihood of success on the merits, the analysis itself seems to unqualifiedly decide those issues in favor of the City and against the County, at this early stage of the litigation. At a very minimum, the Order should contain language to the effect that no findings of fact or conclusions of law in the Order have any binding effect on any ruling on the merits.

II. The City is not likely to succeed on the merits.

The crux of the Order is that the City's consent was required for the County to extend the Hospitality Fee. That conclusion is incorrect, as the City's consent has never been required, either to adopt or to extend the Hospitality Fee.

A. Adopting the Hospitality Fee did not require the City's consent.

The Order adopts, in toto, the City's argument on consent, pointing to the City's 1996 resolution and the text of Ordinance 105-96, as well as various provisions of State law. Yet the City's argument—and hence the Order granting the City's motion—is flawed. The City's October 8, 1996 resolution nowhere says that the City is "consenting." It nowhere cites any law that indicates consent. Similarly, County Ordinance 105-96 nowhere says that the City's consent is required or that the validity of the Ordinance is based on any consent. Nowhere does the County's Ordinance provide that the Hospitality Fee's is contingent on all of the County's municipalities consenting to it.

The 1996 resolution from the City was merely a show of political support for the Hospitality Fee, in the face of the failed referendum earlier in 1996. Were the resolution anything else, neither the State Department of Transportation nor the Horry County Board of Education would have had any reason to pass essentially identical resolutions.

The City's consent argument gains no more traction from looking at Ordinance 105-96 itself. The City claims that the various provisions of that ordinance must stand or fall together, a point on which the court agreed and for which it cited *Atkins v. Wilson*, 417 S.C. 3, 12–13, 788 S.E.2d 228, 233 (Ct. App. 2016). But the rule in *Atkins* is not one that requires an ordinance to stand or fall *in toto*. Rather, it is one that requires an ordinance be read to give effect to the legislative purpose of the ordinance.

The purpose of Ordinance 105-96 was to adopt the Hospitality Fee. The County did that in § 1(A). Subsequent sections dealt with related issues, each being a distinct part of the ordinance. For instance, § 1(G) addressed how revenue from the Hospitality Fee would be spent. It makes clear that the County would “adopt” the road plan “in concert” with the municipalities, meaning that the municipalities would have input. Municipalities were not given approval authority or a veto. Nothing about this provision required the City to consent to the imposition of the Hospitality Fee.

Likewise, § 1(H) established a time period for which the County intended to collect the Hospitality Fee. Sunset provisions like this are common in law, and legislatures are free to amend or even remove them, as the County did here. That the City’s October 8, 1996 resolution referred to twenty years as well is unsurprising; that recital was simply summarizing Ordinance 105-96.

Without support for its consent argument from its own 1996 resolution or Ordinance 105-96, the City pointed to various provisions of state law, but none of these are of any more help. Surprisingly, the Order never identifies which of these constitutional or statutory provisions the County allegedly violated when it extended the Hospitality Fee. Rather, the Court’s analysis appears to be like the often criticized and amorphous penumbra rational of a decision like *Griswold v. Connecticut*, 381 U.S. 479 (1965).

The County has not usurped the City’s autonomy by extending the Hospitality Fee. In 1996, it imposed a countywide fee for countywide projects,

projects that inure to the benefit of the City. As for paying the Hospitality Fee, residents of the City pay that fee just like everyone else who lives in the County and enjoy the benefits of the Hospitality Fee just like everyone else who lives in the County. Or put another way, being a resident of the City does not excuse someone from also being a resident of the County. And as for the projects, the County is not seeking to take over or jointly administer any governmental activity. The City is free to exercise all of its powers within its borders, just as the County is.

B. Extending the Hospitality Fee did not require the City's consent.

Just as the City did not have to consent to the adoption of the Hospitality Fee, the City did not have to consent to the extension of the Hospitality Fee. That fee is covered by § 6-1-330(A) and § 6-1-760(B) because of when the County adopted it, so it remains in effect until repealed by the County. The County alone, as the governing body that "enact[ed]" the Hospitality Fee (the City cannot plausibly argue that it enacted the Hospitality Fee), has the authority to repeal it. S.C. Code § 6-1-330(A). The County, of course, has not done so.

In extending and then removing the sunset provision of § 1(H), the County has not adopted a "new" fee, as the Order holds. The same fee is in place now as was in place in 1997. No substantive change has been made. The same 1.5 percent is being collected now as over two decades ago.⁶

⁶ The Order concludes in a footnote that the County has adopted a fee, but the City has adopted taxes. But the Order does so without any reference to case law on this subject, which makes clear this issue is not as simple as looking at the words in the statutes. Admittedly, S.C. Code §§ 6-1-500 *et seq.* and 6-1-700 *et seq.* refer to local accommodations and hospitality "taxes." Although the

Conclusion

The Court should reconsider its Order granting the City's motion for a preliminary injunction, withdraw that Order, deny the City's motion for a preliminary injunction, and grant the County's motion for a preliminary injunction.

Respectfully submitted:

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Myrtle Beach, South Carolina
Dated: June 25, 2019

Attorneys for Defendant

legislative designation receives "respect" in "doubtful cases," the legislative designation "is not determinative." *Brown v. Cty. of Horry*, 308 S.C. 180, 184, 417 S.E.2d 565, 567 (1992). Instead, this question is governed by the supreme court's four-part test to determine if a revenue source is a fee: "(1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers." *C.R. Campbell Constr. Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437, 438 (1997). The Order never applied this test.



Revised taxes effective Monday, July 1, in the City of Myrtle Beach

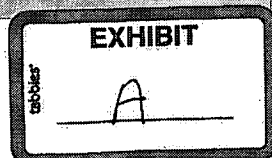
Pursuant to the South Carolina Circuit Court Order of June 21, 2019, the City of Myrtle Beach will begin charging its Local Accommodations Tax, Hospitality Tax and Hospitality Fee as outlined in the chart below on Monday, July 1, 2019. These revised taxes and fees will be reportable to the city by merchants/retailers no later than August 20, 2019, for July sales activity.

We recognize that this is relatively short notice for retailers and merchants to adjust cash registers and point-of-sale devices. Again, retailers and merchants have until August 20 to make payments for July sales activity. Prior to July 1, merchants and retailers should continue to pay the 1.0% City Hospitality Fee and the .05% Accommodations Tax.

A copy of the Court Order is available at <https://www.cityofmyrtlebeach.com/2019-06-21%20Order%20re%20Preliminary%20Injunctions.pdf>. Of interest to retailers and merchants, the order also addresses the Uniform Service Charge ("1.5% Hospitality Fee") previously collected by Horry County within the city's corporate limits.

The changes in the city's rates have been adopted by ordinance under authority of Title 6, Chapter 1, Articles 5 and 7, of the South Carolina Code of Laws. The following table shows the amounts that merchants/retailers currently collect and pay, versus amounts they will collect and pay as of Monday, July 1, 2019. Note that rates will decrease in two instances.

Type of Levy you pay	Previously you paid...	As of July 1, 2019...
Accommodations – Short Term Rentals	1.5% to City; 1.5% to County	3.0% Local Accommodations Tax to City, the maximum allowed by state law. No change in the amount the consumer pays.
Prepared Food & Beverages	1% to City; 1.5% to County	2.0% City Hospitality Tax, the maximum allowed by state law. Reduction of 0.5% to the consumer.
Places of Admissions	1% to City; 1.5% to County	1.0% City Hospitality Fee; state law does not provide for any additional local admissions tax. Reduction of 1.5% to the consumer.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	NOTICE OF MOTION AND MOTION
Plaintiff,	)	FOR RULE TO SHOW CAUSE WHY
vs.	)	DEFENDANT SHOULD NOT BE HELD
	)	IN CONTEMPT
Horry County,	)	
	)	
Defendant.	)	

TO: DEFENDANT HORRY COUNTY, by and through its Attorneys: Henrietta U. Golding, Esquire, Adam R. Artigliere, Esquire, and Wm. Grayson Lambert, Esquire, of Burr Forman McNair, Myrtle Beach, South Carolina:

YOU WILL PLEASE TAKE NOTICE that Plaintiff City of Myrtle Beach (“City”), on behalf of itself and all others similarly situated, pursuant to S.C. Code Ann. § 14-5-320 and Rule 65(f), SCRCF, will move for the issuance of an order holding Defendant Horry County (“County”) in contempt of this Honorable Court on the ground that the County is in violation of the Order filed in the above-captioned action on June 21, 2019, preliminarily enjoining the County from enforcing its Ordinance 105-96 within any municipality of Horry County. City will seek a hearing on the within motion, to the extent the Court deems it necessary, before the Honorable William H. Seals at the Horry County Courthouse, Conway, South Carolina, or such other location as the Court may set, as expeditiously as possible.

In support of this motion, the City would respectfully show:

1. The City’s motion for preliminary injunction under Rule 65, SCRCF, expressly requested that the Court issue an order “enjoining Defendant Horry County ... from continuing to collect its 1.5% fee on the sale of accommodations, prepared food and beverage, and amusements within the Corporate limits of the City **and any other Horry County municipality**

... during the pendency of this litigation.” City’s May 3, 2019, Motion at 1 (emphasis supplied); *see also* City Memorandum of Law in Support of Motion for Preliminary Injunction, May 3, 2019, at 1 (submitted “in support of its motion for this Court to enjoin Defendant ... from continuing to collect its 1.5% uniform service charge ... **within the corporate limits of any Horry County municipality** ... during the pendency of this litigation”) (emphasis supplied). The City’s reply memorandum reaffirmed the requested relief.

2. The Court’s Order granted the City’s Motion. *See* Order on Motions for Preliminary Injunction, June 21, 2019, at 1 (“the Court GRANTS the City’s motion”) and at 15 (“the Court GRANTS the City’s motion for the pendency of this litigation”).

3. The County, notwithstanding the Court’s Order, has publicly stated its intent to continue collection of the 1.5% uniform service charge previously imposed under Ordinance 105-96, within the corporate limits of municipalities in Horry County other than City, on and after June 21, 2019. *See* attached affidavits of Michael G. Mahaney and Dennis P. Pieper.

4. The County is therefore in contempt of the authority of this Court.

5. This motion is based upon the South Carolina Rules of Civil Procedure, S.C. Code Ann. § 14-5-320 and other applicable law, the motions and memoranda previously submitted by the parties in this matter on the underlying motion for preliminary injunction, the memoranda of law and affidavits submitted by the City concurrently herewith, and any other materials or matters the Court may permit to be presented.

6. Pursuant to Rule 65(f), SCRCP, the City requests that, if deemed necessary, the Court require a prompt response to this motion by the County and that it thereafter determine the within motion without hearing based upon the written submissions to the Court as expeditiously as possible.

7. The undersigned certifies, pursuant to Rule 11, SCRPC, that consultation with opposing counsel will serve no useful purpose.

WHEREFORE, having fully set forth its motion, the City moves the Court for an order (a) granting the rule to show cause and holding the County in civil contempt, (b) requiring the County to immediately issue a public statement retracting that which it issued on June 25, 2019, and informing the municipalities within Horry County other than the City, the public, and the media, that the 1.5% uniform service charge under Ordinance 105-96 will not continue to be collected during the pendency of this litigation within the limits of any Horry County municipality, and (c) awarding the City its costs and reasonable attorney fees for this motion in an amount to be determined by the Court following submission of an appropriate affidavit of counsel for the City. Should the Court be disposed to grant this relief, and the County fail to comply with this Court's order awarding same, the County should be fined by this Court in an amount appropriate to deter the County from further affronts to the authority of this Court.

Respectfully submitted,

s/ John M. S. Hoefler

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Columbia, South Carolina

June 26, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	PLAINTIFF'S MOTION FOR RULE TO
vs.	)	SHOW CAUSE WHY DEFENDANT
	)	SHOULD NOT BE HELD IN CONTEMPT
Horry County,	)	
	)	
Defendant.	)	

Plaintiff City of Myrtle Beach ("City"), on behalf of itself and all others similarly situated, submits the within Memorandum in Support of its Motion for a Rule to Show Cause and order holding Defendant Horry County ("County") in contempt of this Court's June 21, 2019, Order preliminarily enjoining the County from enforcing its Ordinance 105-96 within the corporate limits of any municipality within Horry County.

BACKGROUND

On May 3, 2019, the City's filed a motion for preliminary injunction under Rule 65, SCRCF, expressly requesting that this Court issue an order "enjoining Defendant Horry County ... from continuing to collect its 1.5% fee on the sale of accommodations, prepared food and beverage, and amusements within the Corporate limits of the City **and any other Horry County municipality** ... during the pendency of this litigation." City's May 3, 2019 Motion at 1 (emphasis supplied); *see also* City Memorandum of Law in Support of Motion for Preliminary Injunction, May 3, 2019, at 1 (submitted "in support of its motion for this Court to enjoin Defendant ... from continuing to collect its 1.5% uniform service charge ... **within the corporate limits of any Horry County municipality** ... during the pendency of this litigation") (emphasis supplied). The City's reply memorandum reaffirmed that the City was moving this

Court to enjoin the collection of the Hospitality Fee within *all* municipalities. City Reply Memorandum of Law in Support of Motion for Preliminary Injunction, May 24, 2019 at 1 (“By its motion, the City seeks to prevent Defendant Horry County ... from continuing to collect its 1.5% uniform service charge on the sale of accommodations, prepared food and beverage, and amusements within the corporate limits of any Horry County municipality ... during the pendency of this litigation.”). The County understood the City’s motion applied to all municipalities. For instance, the affidavit of Barry Spivey, the County’s Finance Director, attested to the “fiscal catastrophe” that would result from losing *all* Hospitality Fee revenues, not just those from within the City. County Memorandum of Law in Opposition to the City’s Motion for Preliminary Injunction, May 14, 2019, Ex. L at ¶¶ 4-5.

On June 21, the Court issued its order granting the City’s Motion without qualification or limitation. *See* Order on Motions for Preliminary Injunction, June 21, 2019, at 1 (“the Court GRANTS the City’s motion”) and at 15 (“the Court GRANTS the City’s motion for the pendency of this litigation”). In so doing, this Court expressly recognized that the preliminary injunction sought by the City applied to the County’s continued imposition of the 1.5% uniform service charge within all municipalities in Horry County. *See* Order at 2 (“Ordinance 105-96 imposed a 1.5% uniform service charge ... within the entirety of the County, including within the limits of the municipalities located within the County (‘Hospitality Fee’).”); *id.* at 5 (“[t]he City moved to enjoin the County’s continued imposition of the Hospitality Fee”); *see also id.* at 7 (“Consistent with these principles, each municipality consented to Ordinance 105-96 and the imposition of the Hospitality Fee within its boundaries for twenty years. 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.”); *id.* at 12

(referencing Michael Shelton's affidavit noting the only fees at issue in this case are the Hospitality Fees within each municipality's limits). This is further reinforced by the Court's conclusions regarding the reasonable necessity of the injunction which was granted. *See id.* ("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 ... input on whether a fee would be imposed upon them"). (Emphasis supplied.)

The County, notwithstanding the Court's Order, has publicly stated (by way of an electronic mail communication addressed to personnel with the City, news media, and others), its intent to continue collection of the 1.5% uniform service charge previously imposed under Ordinance 105-96, within the corporate limits of municipalities in Horry County other than City, on and after June 21, 2019. See attached affidavits of Michael G. Mahaney and Dennis P. Pieper, with exhibits, copies attached hereto and incorporated herein by reference as exhibits.

LAW/ANALYSIS

The County is in constructive, civil contempt of the authority of this Court.

"A party who refuses to abide by an injunction entered by the court would of course be in contempt of course and subject to sanctions" *Grosshuesch v. Cramer*, 377 S.C. 12, 29-30, 659 S.E.2d 112, 121 (2008). "Direct contempt is defined as contemptuous conduct occurring in the presence of the Court." *State v. Kennerly*, 331 S.C. 442, 450, 503 S.E.2d 214, 219 (Ct. App 1998), *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999) (citing *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955)). "Constructive contempt is contemptuous conduct occurring outside the presence of the court." *Kennerly*, 331 S.C. at 451, 503 S.E.2d at 219 (citing *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994)).

The Court, having granted the City's motion, enjoined the County from enforcing Ordinance 105-96 in any municipality within Horry County. Part and parcel of the Court's determination in this regard was the conclusion that municipal consent was required before the County could extend the duration and scope of a previously consented-to ordinance. Order at 6-7. The record before the Court reflects that the County did not have such consent from any municipality within Horry County. Order at 3. The County's apparent belief that Ordinance 105-96 is enjoined only in one municipality (the City) but not any other in these circumstances (*i.e.*, where no municipality has given the consent required by law) is incredible. The County's actions evince an unapologetic and callous disregard for the Court's orders and the integrity of the judicial process. In no manner can this Court countenance such actions and defiance. As the action taken by the County to inform municipalities in Horry County, other than the City, as well as the public at large, that the Hospitality Fee remains in effect everywhere other than within the City has clearly occurred outside the presence of the Court, the County's actions constitutes constructive contempt.

If the Court grants the relief requested by the City, the County's contempt will be civil and not criminal. Criminal and civil contempt are distinguishable by the form of the punishment which is sought to be used to enforce the Court's authority. Civil contempt is accompanied by a punishment intended to remedy the violation of the order and coerce the contemnor to abide by the court's directive. This is the remedy which the City recommends be imposed. Criminal contempt, on the other hand, is enforced by a sentence intended only to punish the wrongful act and cannot be purged by following the court's directive. *Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998). Civil contempt must be shown by clear and convincing evidence, which the City has done by the affidavits submitted herewith.

CONCLUSION

For the reasons set forth herein and in its Motion, the City respectfully requests that the Court grant the rule to show cause, issue an order holding the County in civil contempt, and require that the County immediately issue a public statement retracting that which it issued on June 25, 2019, and informing municipalities within Horry County other than the City, the public, and the media that the 1.5% uniform service charge under Ordinance 105-96 will not continue to be collected during the pendency of this litigation within the limits of any municipality, and awarding the City its costs and reasonable attorney fees for this motion in an amount to be determined by the Court following submission of an appropriate affidavit of counsel for the City. Should the Court be disposed to grant this relief, and the County fail to comply with this Court's order awarding same, the County should be fined by this Court.

Respectfully submitted,

s/ John M. S. Hoefer

John M.S. Hoefer, SC Bar # 2549

Chad N. Johnston, SC Bar # 73752

R. Walker Humphrey, II, SC Bar # 79426

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*Attorneys for Plaintiff City of Myrtle Beach and All
Others Similarly Situated*

Columbia, South Carolina
June 26, 2019

EXHIBIT A

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,

Plaintiffs,

**AFFIDAVIT OF
MICHAEL G. MAHANEY**

vs:

Horry County,

Defendant.

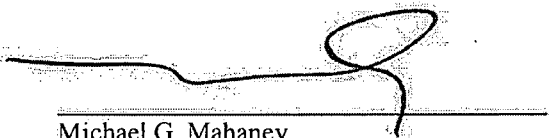
Personally appeared before me, Michael G. Mahaney, who being duly sworn, affirms and swears as follows:

1. I am in excess of eighteen years of age and competent to give this affidavit.
2. I am currently the City Manager of the City of North Myrtle Beach and have served as such since July 6, 2010.
3. In my position as City Manager, I am aware that the City of North Myrtle Beach is in receipt of a public statement issued by Horry County ("County") indicating that the County intends to continue imposing within the City of North Myrtle Beach, and all other municipalities situated within Horry County other than the City of Myrtle Beach, the 1.5% uniform service charge ("Hospitality Fee") provided for in County Ordinance 105-96. A copy of this public statement by the County is attached hereto and incorporated herein by reference as Exhibit "A" to this affidavit.
4. In that same capacity, I am also aware that the City of North Myrtle Beach has adopted an ordinance providing for the imposition of a 3% accommodations tax under S.C. Code Ann. §§ 6-1-500, et seq. and a 2% hospitality tax under S.C. Code Ann. §§ 6-1-700, et seq., effective July 1, 2019.

5. The City of North Myrtle Beach has not consented or agreed to the imposition and collection of the Hospitality Fee on any retail transaction within the City's corporate limits for any period of time on or after January 1, 2017. It is the City of North Myrtle Beach's understanding that the County has been enjoined from imposing the Hospitality Fee within the corporate limits of every municipality situated within Horry County effective June 21, 2019.

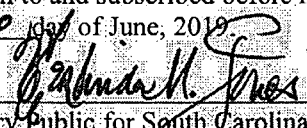
6. The City of North Myrtle Beach has instructed that I provide this affidavit in support of the efforts of the City of Myrtle Beach to enforce the Court's June 21, 2019, order in the above-captioned action and thereby require the County to comply with same.

FURTHER THE AFFIANT SAYETH NAUGHT.


Michael G. Mahaney

Sworn to and subscribed before me this

26 day of June, 2019


Notary Public for South Carolina

My Commission Expires:

02/28/2022

[NOTARIAL SEAL]



**Exhibit “A” to the
Affidavit of Michael G. Mahaney
Civil Action No. 2019-CP-26-01732**

Dowling, Patrick

From: Public Information <PIO@horrycounty.org>
Sent: Tuesday, June 25, 2019 4:31 PM
To: apcolumbia@ap.org; tina@iconway.com; sneditors@thesunnews.com; cricket.alcorn@htcinc.net; salbright43@gmail.com; aljordan44@gmail.com; salbright@wfxb.com; editor@coastalobserver.com; nicole.aiello@santeecooper.com; news@scnow.com; jsneeves@gmail.com; smorgan@scac.sc; mmiller@wbtw.com; cmedeiros@coastal.edu; jlamson@wpde.com; megan.kuhn@flightglobal.com; mkruera@cityofmyrtlebeach.com; dknipes@cityofmyrtlebeach.com; dknight@solidwasteauthority.org; chiefknight@migcfd.org; akinseth@wpde.com; kimlewis@aohardee-son.com; mskahn@aol.com; cojohnson@hearst.com; nicole.hyman@htcinc.net; mhunn@coastal.edu; neighbors@thesunnews.com; thomaskherron@gmail.com; vhensley@coastal.edu; maryvip@juno.com; hgale@wpde.com; adobepalm@aol.com; rharrisinc@aol.com; harperstuff@gmail.com; kjhardee@sccoast.net; stephen.greene@mbhospitality.org; gaopaoma@gmail.com; bgolden@golfholiday.com; lizgilland2011@yahoo.com; news@gtowntimes.com; cindy.finney@twccable.com; editor@palmettomorning.com; luckydogtelevision@yahoo.com; ddawson@scprt.com; acooper@midlandsbiz.com; greta@sccoast.net; tbritton@horrycountyschools.net; rblomquist@wmbfnews.com; dbell@coastal.edu; wendy.baruch@gmail.com; feedback@wpde.com; bigradiostar@aol.com; news@wmbfnews.com; night.train@cumulus.com; janice.wideman@weoc.org; newsdirector@whqr.org; wgtnradio@aol.com; lweppeler@wmbfnews.com; wbtwnews@wbtw.com; ewalters@wbtw.com; tracy@unitedwayhorry.org; tviers@yahoo.com; countonwis@wistv.com; nmbtimes@sc.rr.com; news@tabor-loris.com; Susak, Steve; cassidy@myrtlebeach.com; diane@stagesvideo.com; stephen.harrill@rsandh.com; vspechko@wpde.com; larryscafricanvillage@hotmail.com; Sedota@wezv.com; smiles@wmbfnews.com; sallyphoward@aol.com; kathy.ropp@myhorrynews.com; cnews@florencenews.com; robertdshelley@gmail.com; paul.reynolds@thedigitel.com; mprufer@coastal.edu; spds@sccoast.net; Dowling, Patrick; tygerpaw77@hotmail.com; James, Kelli; Leann Hill (lhill@horrycountyschools.net); SC Radio Network; Sipe, Alan; norahembreebattle@gmail.com; tdannelly@haveanicebank.com; atalley@wmbfnews.com; brandon.hickman@cumulus.com; kvrettos@cityofmyrtlebeach.com; lnobles@coastrta.com; johnrees007@gmail.com; info@conwayscchamber.com; telvis@conwayscchamber.com; cpendergass@cityofmyrtlebeach.com; diana.greene@visitmyrtlebeach.com; kimhardee.rhc@gmail.com; Djh@sccoast.net; pio@w4gs.org; charles.perry@myhorrynews.com; robingauseforddistrict4@outlook.com; monikanewman@mac.com; spedersen@thesunnews.com; russellwilliamfry@gmail.com; mhigdon@live5news.com; jhulen@sc.rr.com; Jill.Lee@FSResidential.com; Amanda.Lewis@FSResidential.com; mary@marygilliamllc.com; jcox@mcleodhealth.org; jmcgowan43@optonline.net; jskrajc@outlook.com; Sherrie Glensky; Andy Shain; Jamie Steele; news@southstrandnews.com; Anita Crone; gjackson@scetv.org; iklein@wmbfnews.com; Felix@g3engineering.org; emurphy@solidwasteauthority.org; cjohnson@postandcourier.com; lbourcier@horrycountyschools.net; jgotz@g3engineering.org; allwmbfnews@wmbfnews.com; ablondin@thesunnews.com; Moore, Kelly; vkolb-lugo@scpublicradio.org; janet.morgan@myhorrynews.com; CWhite@oceanlakes.com; Barb Krumm; mbeachpost@gmail.com; djones@scfc.gov; ettie.newlands@myhorrynews.com; Holden, Brooke; pete@northmyrtlebeachchamber.com; indigowebmmorin@gmail.com; Deuce Niven; Julia R. Billington; trish.ragsdale@weathergroup.com; ronblome@msn.com;

ELECTRONICALLY FILED - 2019 Jun 26 1:19 PM - Horry - COMMON PLEAS - CASE#2019CP2601732

To: southnewsdesk@nbcuni.com; Collins, Jeffrey S.; rfodera@wral.com; hcahill@lex-co.com; Root, Tonya; Vreeland, Tracy; mollie.gore@santeecooper.com; erinp@sccl.org; dbryant@tidelandshhealth.org; david@myrtlebeachsc.com; Liz Cooper; Gina Vasselli; rbergeron@g3engineering.org; editor@grandstrandbusiness.com; David Thomas; jellisonkathy@gmail.com; lexi507@sbcglobal.net; pgrisham@ccarsc.org; cribbpaula@yahoo.com; Katherine.Maclay@hcahealthcare.com; mschwartz@wbw.com; tnewell@cityofconway.com; jarohner@outlook.com; Katie Powell

Subject: Revised Hospitality Fees in Horry County

For Immediate Release

Revised Hospitality Fees effective Monday, July 1, 2019 in Horry County

Pursuant to South Carolina Circuit Court Order dated June 21, 2019, there will be a temporary change in fee collection due solely to the temporary injunction obtained by the City of Myrtle Beach. The County's "Hospitality Fee" collection within the City of Myrtle Beach is being temporarily suspended, but may be re-activated in the future as a result of pending litigation.

Horry County will continue charging its 1.5% Hospitality Fee, 1.0% Local Hospitality Fee, 0.5% Local Accommodations Tax, and 2.5% Rental Car Fee in all unincorporated areas of Horry County and charging its 1.5% Hospitality Fee and 2.5% Rental Car Fee within all municipalities except the City of Myrtle Beach. Refer to guidance from the City of Myrtle Beach for transactions within the City of Myrtle Beach.

Businesses situated or completing sales subject to these fees within the unincorporated areas of the county and all municipalities except the City of Myrtle Beach are required to continue to collect and remit to Horry County as outlined in the chart below. These revised taxes and fees will be reportable to the County by merchants/retailers no later than August 20, 2019, for July sales activity.

This is not a change to the current rates in the unincorporated areas of the county.

Type of Levy you pay	Previously you paid...	As of July 1, 2019...
Unincorporated Areas of Horry County		
Accommodations – Short Term Rentals	3.0% total fee – 1.5% County Hospitality Fee, 1.0% County Local Hospitality Fee, and 0.5% County Local Accommodations Fee	No change in the 3.0% amount the consumer pays.
Prepared Food & Beverages	2.5% total fee – 1.5% County Hospitality Fee and 1.0% County Local Hospitality Fee	No change in the 2.5% amount the consumer pays
Places of Admissions	2.5% total fee – 1.5% County Hospitality Fee and 1.0% County Local Hospitality Fee	No change in the 2.5% amount the consumer pays
Rental Car Fee	2.5% County Fee	No change in the 2.5% amount the consumer pays
Municipalities (Except City of Myrtle Beach)		

Businesses and merchants situated in Municipalities except the City of Myrtle Beach are required to continue to collect and remit the following County Fees:		
Accommodations – Short Term Rentals	1.5% County Hospitality Fee*	No change in the 1.5% amount the consumer pays
Prepared Food & Beverages	1.5% County Hospitality Fee*	No change in the 1.5% amount the consumer pays
Places of Admissions	1.5% County Hospitality Fee*	No change in the 1.5% amount the consumer pays
Rental Car Fee	2.5% County Fee	No change in the 2.5% amount the consumer pays

* Municipal Local Hospitality Fees and Local Accommodations Fees are due and will be remitted to each individual Municipality. Check with each Municipality for their current rates. For Additional information, please refer to the County Website at www.horrycounty.org.

-END-

Kelly Moore | Director of Public Information
 Kelly Lee Brosky | Administrative Assistant
Horry County Government
 Public Information
 1301 Second Avenue, Conway, South Carolina 29526
 Tel 843-915-5390 | Fax 843-915-6390 |
moore.kelly@horrycounty.org
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www.horrycounty.org

Follow us on [Twitter](#), [Instagram](#), and [Facebook](#). You can also download our [HCCconnect](#) app for Apple and Android.

All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF
	)	DENNIS P. PIEPER
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Personally appeared before me, Dennis P. Pieper, 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 Town Administrator of the Town of Surfside Beach and have served as such since July 2018.
3. In my position as Town Administrator, I am aware that the Town of Surfside Beach is in receipt of a public statement issued by Horry County ("County") indicating that the County intends to continue imposing within the Town of Surfside Beach, and all other municipalities situated within Horry County other than the City of Myrtle Beach, the 1.5% uniform service charge ("Hospitality Fee") provided for in County Ordinance 105-96. A copy of this public statement by the County is attached hereto and incorporated herein by reference as Exhibit "A" to this affidavit.
4. In that same capacity, I am also aware that the Town of Surfside Beach has adopted ordinances providing for the imposition of a 3% accommodations tax under S.C. Code Ann. §§ 6-1-500, et seq. and a 2% hospitality tax under S.C. Code Ann. §§ 6-1-700, et seq., effective July 1, 2019.

5. The Town of Surfside Beach has not consented or agreed to the imposition and collection of the Hospitality Fee on any retail transaction within the Town's corporate limits for any period of time on or after January 1, 2017. It is the Town of Surfside Beach's understanding that the County has been enjoined from imposing the Hospitality Fee within the corporate limits of every municipality situated within Horry County effective June 21, 2019.

6. The Town of Surfside Beach has instructed that I provide this affidavit in support of the efforts of the City of Myrtle Beach to enforce the Court's June 21, 2019, order in the above-captioned action and thereby require the County to comply with same.

FURTHER THE AFFIANT SAYETH NAUGHT.

Dennis P. Peepes, Town Administrator

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

W. Mattungly
Notary Public for South Carolina

My Commission Expires: 3-12-23
[NOTARIAL SEAL]

**Exhibit “A” to the
Affidavit of Dennis P. Pieper
Civil Action No. 2019-CP-26-01732**

----- Original message -----

From: Public Information <PIO@horrycounty.org<mailto:PIO@horrycounty.org>>

Date: 6/25/19 4:31 PM (GMT-05:00)

To: apcolumbia@ap.org<mailto:apcolumbia@ap.org>, tina@iconway.com<mailto:tina@iconway.com>, sneditors@thesunnews.com<mailto:sneditors@thesunnews.com>, cricket.alcorn@htcinc.net<mailto:cricket.alcorn@htcinc.net>, salbright43@gmail.com<mailto:salbright43@gmail.com>, aljordan44@gmail.com<mailto:aljordan44@gmail.com>, salbright@wfxb.com<mailto:salbright@wfxb.com>, editor@coastalobserver.com<mailto:editor@coastalobserver.com>, nicole.aiello@santeecooper.com<mailto:nicole.aiello@santeecooper.com>, news@scnow.com<mailto:news@scnow.com>, jsneeves@gmail.com<mailto:jsneeves@gmail.com>, smorgan@scac.sc<mailto:smorgan@scac.sc>, mmiller@wbtw.com<mailto:mmiller@wbtw.com>, cmedeiros@coastal.edu<mailto:cmedeiros@coastal.edu>, jlamson@wpde.com<mailto:jlamson@wpde.com>, megan.kuhn@flightglobal.com<mailto:megan.kuhn@flightglobal.com>, Mark Kruea <MKruea@cityofmyrtlebeach.com<mailto:MKruea@cityofmyrtlebeach.com>>, David Knipes <DKnipes@cityofmyrtlebeach.com<mailto:DKnipes@cityofmyrtlebeach.com>>, dknight@solidwasteauthority.org<mailto:dknight@solidwasteauthority.org>, chiefknight@migcfd.org<mailto:chiefknight@migcfd.org>, akinseth@wpde.com<mailto:akinseth@wpde.com>, kimlewis@aohardee-son.com<mailto:kimlewis@aohardee-son.com>, mskahn@aol.com<mailto:mskahn@aol.com>, cojohnson@hearst.com<mailto:cojohnson@hearst.com>, nicole.hyman@htcinc.net<mailto:nicole.hyman@htcinc.net>, mhunn@coastal.edu<mailto:mhunn@coastal.edu>, neighbors@thesunnews.com<mailto:neighbors@thesunnews.com>, thomaskherron@gmail.com<mailto:thomaskherron@gmail.com>, vhensley@coastal.edu<mailto:vhensley@coastal.edu>, maryvip@juno.com<mailto:maryvip@juno.com>, hgale@wpde.com<mailto:hgale@wpde.com>, adobepalm@aol.com<mailto:adobepalm@aol.com>, rharrisinc@aol.com<mailto:rharrisinc@aol.com>, harperstuff@gmail.com<mailto:harperstuff@gmail.com>, kjhardee@sccoast.net<mailto:kjhardee@sccoast.net>, stephen.greene@mbhospitality.org<mailto:stephen.greene@mbhospitality.org>, gaopaoma@gmail.com<mailto:gaopaoma@gmail.com>, bgolden@golffoliday.com<mailto:bgolden@golffoliday.com>, lizgilland2011@yahoo.com<mailto:lizgilland2011@yahoo.com>, news@gtowntimes.com<mailto:news@gtowntimes.com>, cindy.finnery@twccable.com<mailto:cindy.finnery@twccable.com>, editor@palmettomorning.com<mailto:editor@palmettomorning.com>, luckydogtelevision@yahoo.com<mailto:luckydogtelevision@yahoo.com>, ddawson@scprt.com<mailto:ddawson@scprt.com>, acooper@midlandsbiz.com<mailto:acooper@midlandsbiz.com>, greta@sccoast.net<mailto:greta@sccoast.net>, tbritton@horrycountyschools.net<mailto:tbritton@horrycountyschools.net>, Rob Blomquist <rblomquist@wmbfnews.com<mailto:rblomquist@wmbfnews.com>>, dbell@coastal.edu<mailto:dbell@coastal.edu>, wendy.baruch@gmail.com<mailto:wendy.baruch@gmail.com>, wpde <feedback@wpde.com<mailto:feedback@wpde.com>>,>

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 janice.wideman@weoc.org<mailto:janice.wideman@weoc.org>,
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 lweppler@wmbfnews.com<mailto:lweppler@wmbfnews.com>,
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 tracy@unitedwayhorry.org<mailto:tracy@unitedwayhorry.org>,
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 countonwis@wistv.com<mailto:countonwis@wistv.com>,
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 Sedota@wezv.com<mailto:Sedota@wezv.com>,
 smiles@wmbfnews.com<mailto:smiles@wmbfnews.com>,
 sallyphoward@aol.com<mailto:sallyphoward@aol.com>,
 kathy.ropp@myhorrynews.com<mailto:kathy.ropp@myhorrynews.com>,
 cnews@florencenews.com<mailto:cnews@florencenews.com>,
 robertdshelley@gmail.com<mailto:robertdshelley@gmail.com>,
 paul.reynolds@thedigitel.com<mailto:paul.reynolds@thedigitel.com>,
 mprufer@coastal.edu<mailto:mprufer@coastal.edu>, spds@sccoast.net<mailto:spds@sccoast.net>,
 pcdowling@nmb.us<mailto:pcdowling@nmb.us>,
 tygerpaw77@hotmail.com<mailto:tygerpaw77@hotmail.com>, "James, Kelli"
 <kjames@conwayscchamber.com<mailto:kjames@conwayscchamber.com>>, "Leann Hill
 (lhill@horrycountyschools.net<mailto:lhill@horrycountyschools.net>)"
 <lhill@horrycountyschools.net<mailto:lhill@horrycountyschools.net>>, SC Radio Network
 <news@southcarolinaradionetwork.com<mailto:news@southcarolinaradionetwork.com>>, "Sipe, Alan"
 <alanandjanesipe@sccoast.net<mailto:alanandjanesipe@sccoast.net>>,
 norahembreebattle@gmail.com<mailto:norahembreebattle@gmail.com>,
 tdannelly@haveanicebank.com<mailto:tdannelly@haveanicebank.com>,
 atalley@wmbfnews.com<mailto:atalley@wmbfnews.com>,
 brandon.hickman@cumulus.com<mailto:brandon.hickman@cumulus.com>; Kaycey Vrettos
 <kvrettos@cityofmyrtlebeach.com<mailto:kvrettos@cityofmyrtlebeach.com>>,
 lnobles@coastrta.com<mailto:lnobles@coastrta.com>,
 johnrees007@gmail.com<mailto:johnrees007@gmail.com>,
 info@conwayscchamber.com<mailto:info@conwayscchamber.com>,
 telvis@conwayscchamber.com<mailto:telvis@conwayscchamber.com>, Chasity Pendergrass
 <cpendergrass@cityofmyrtlebeach.com<mailto:cpendergrass@cityofmyrtlebeach.com>>,
 diana.greene@visitmyrtlebeach.com<mailto:diana.greene@visitmyrtlebeach.com>,
 kimhardee.rhc@gmail.com<mailto:kimhardee.rhc@gmail.com>,
 Djh@sccoast.net<mailto:Djh@sccoast.net>, pio@w4gs.org<mailto:pio@w4gs.org>,
 charles.perry@myhorrynews.com<mailto:charles.perry@myhorrynews.com>,

robingauseforddistrict4@outlook.com<mailto:robingauseforddistrict4@outlook.com>,
 monikanewman@mac.com<mailto:monikanewman@mac.com>,
 spedersen@thesunnews.com<mailto:spedersen@thesunnews.com>,
 russellwilliamfry@gmail.com<mailto:russellwilliamfry@gmail.com>,
 mhigdon@live5news.com<mailto:mhigdon@live5news.com>,
 jhulen@sc.rr.com<mailto:jhulen@sc.rr.com>,
 Jill.Lee@FSResidential.com<mailto:Jill.Lee@FSResidential.com>,
 Amanda.Lewis@FSResidential.com<mailto:Amanda.Lewis@FSResidential.com>,
 mary@marygilliamllc.com<mailto:mary@marygilliamllc.com>,
 jcox@mcleodhealth.org<mailto:jcox@mcleodhealth.org>,
 jmcgowan43@optonline.net<mailto:jmcgowan43@optonline.net>,
 jskrajc@outlook.com<mailto:jskrajc@outlook.com>, Sherrie Glensky
 <sglensky@gmail.com<mailto:sglensky@gmail.com>>, Andy Shain
 <ashain@postandcourier.com<mailto:ashain@postandcourier.com>>, Jamie Steele
 <Jamie@g3engineering.org<mailto:Jamie@g3engineering.org>>,
 news@southstrandnews.com<mailto:news@southstrandnews.com>, Anita Crone
 <aecrone134@gmail.com<mailto:aecrone134@gmail.com>>,
 gjackson@scetv.org<mailto:gjackson@scetv.org>,
 iklein@wmbfnews.com<mailto:iklein@wmbfnews.com>,
 Felix@g3engineering.org<mailto:Felix@g3engineering.org>,
 emurphy@solidwasteauthority.org<mailto:emurphy@solidwasteauthority.org>,
 cjohnson@postandcourier.com<mailto:cjohnson@postandcourier.com>,
 lbourcier@horrycountyschools.net<mailto:lbourcier@horrycountyschools.net>,
 jgotz@g3engineering.org<mailto:jgotz@g3engineering.org>,
 allwmbfnews@wmbfnews.com<mailto:allwmbfnews@wmbfnews.com>,
 ablondin@thesunnews.com<mailto:ablondin@thesunnews.com>, "Moore, Kelly"
 <Moore.Kelly@horrycounty.org<mailto:Moore.Kelly@horrycounty.org>>, vkolb-
 lugo@scpublicradio.org<mailto:vkolb-lugo@scpublicradio.org>,
 janet.morgan@myhorrynews.com<mailto:janet.morgan@myhorrynews.com>,
 CWhite@oceanlakes.com<mailto:CWhite@oceanlakes.com>, Barb Krumm
 <bkrumm@oceanlakes.com<mailto:bkrumm@oceanlakes.com>>,
 mbeachpost@gmail.com<mailto:mbeachpost@gmail.com>, djones@scfc.gov<mailto:djones@scfc.gov>,
 ettie.newlands@myhorrynews.com<mailto:ettie.newlands@myhorrynews.com>, "Holden, Brooke"
 <holdenb@horrycounty.org<mailto:holdenb@horrycounty.org>>,
 pete@northmyrtlebeachchamber.com<mailto:pete@northmyrtlebeachchamber.com>,
 indigowebmmorin@gmail.com<mailto:indigowebmmorin@gmail.com>, Deuce Niven
 <tribdeuce@tabor-loris.com<mailto:tribdeuce@tabor-loris.com>>, "Julia R. Billington"
 <JBillington@cmc-sc.com<mailto:JBillington@cmc-sc.com>>,
 trish.ragsdale@weathergroup.com<mailto:trish.ragsdale@weathergroup.com>,
 ronblome@msn.com<mailto:ronblome@msn.com>,
 southnewsdesk@nbcuni.com<mailto:southnewsdesk@nbcuni.com>, "Collins, Jeffrey S."
 <jscollins@ap.org<mailto:jscollins@ap.org>>, rfodera@wral.com<mailto:rfodera@wral.com>,
 hcahill@lex-co.com<mailto:hcahill@lex-co.com>, "Root, Tonya"
 <roott@horrycounty.org<mailto:roott@horrycounty.org>>, "Vreeland, Tracy"
 <TRACY.VREELAND@santeecooper.com<mailto:TRACY.VREELAND@santeecooper.com>>,
 mollie.gore@santeecooper.com<mailto:mollie.gore@santeecooper.com>,
 erinp@scccl.org<mailto:erinp@scccl.org>,
 dbryant@tidelandshealth.org<mailto:dbryant@tidelandshealth.org>,

david@myrtlebeachsc.com<mailto:david@myrtlebeachsc.com>, Liz Cooper
<lcooper@wpde.com<mailto:lcooper@wpde.com>>, Gina Vasselli
<gvasselli@sbgvtv.com<mailto:gvasselli@sbgvtv.com>>,
rbergeron@g3engineering.org<mailto:rbergeron@g3engineering.org>,
editor@grandstrandbusiness.com<mailto:editor@grandstrandbusiness.com>, David Thomas
<dthomas@g3engineering.org<mailto:dthomas@g3engineering.org>>,
jellisonkathy@gmail.com<mailto:jellisonkathy@gmail.com>,
lexi507@sbcglobal.net<mailto:lexi507@sbcglobal.net>,
pgrisham@ccarsc.org<mailto:pgrisham@ccarsc.org>,
cribbpaula@yahoo.com<mailto:cribbpaula@yahoo.com>,
Katherine.Maclay@hcahealthcare.com<mailto:Katherine.Maclay@hcahealthcare.com>,
mschwartz@wbtw.com<mailto:mschwartz@wbtw.com>,
tnewell@cityofconway.com<mailto:tnewell@cityofconway.com>,
jarohner@outlook.com<mailto:jarohner@outlook.com>, Katie Powell
<katie.powell@myhorrynews.com<mailto:katie.powell@myhorrynews.com>>
Subject: Revised Hospitality Fees in Horry County

For Immediate Release

Revised Hospitality Fees effective Monday, July 1, 2019 in Horry County

Pursuant to South Carolina Circuit Court Order dated June 21, 2019, there will be a temporary change in fee collection due solely to the temporary injunction obtained by the City of Myrtle Beach. The County's "Hospitality Fee" collection within the City of Myrtle Beach is being temporarily suspended, but may be re-activated in the future as a result of pending litigation.

Horry County will continue charging its 1.5% Hospitality Fee, 1.0% Local Hospitality Fee, 0.5% Local Accommodations Tax, and 2.5% Rental Car Fee in all unincorporated areas of Horry County and charging its 1.5% Hospitality Fee and 2.5% Rental Car Fee within all municipalities except the City of Myrtle Beach. Refer to guidance from the City of Myrtle Beach for transactions within the City of Myrtle Beach.

Businesses situated or completing sales subject to these fees within the unincorporated areas of the county and all municipalities except the City of Myrtle Beach are required to continue to collect and remit to Horry County as outlined in the chart below. These revised taxes and fees will be reportable to the County by merchants/retailers no later than August 20, 2019, for July sales activity.

This is not a change to the current rates in the unincorporated areas of the county.

Type of Levy you pay

Previously you paid...

As of July 1, 2019...

Unincorporated Areas of Horry County

Accommodations – Short Term Rentals

3.0% total fee –

1.5% County Hospitality Fee,

1.0% County Local Hospitality Fee, and

0.5% County Local Accommodations Fee

No change in the 3.0% amount the consumer pays.

Prepared Food & Beverages

2.5% total fee –

1.5% County Hospitality Fee and

1.0% County Local Hospitality Fee

No change in the 2.5% amount the consumer pays

Places of Admissions

2.5% total fee –

1.5% County Hospitality Fee and

1.0% County Local Hospitality Fee

No change in the 2.5% amount the consumer pays

Rental Car Fee

2.5% County Fee

No change in the 2.5% amount the consumer pays

Municipalities (Except City of Myrtle Beach)

Businesses and merchants situated in Municipalities except the City of Myrtle Beach are required to continue to collect and remit the following County Fees:

Accommodations – Short Term Rentals

1.5% County Hospitality Fee*

No change in the 1.5% amount the consumer pays

Prepared Food & Beverages

1.5% County Hospitality Fee*

No change in the 1.5% amount the consumer pays

Places of Admissions

1.5% County Hospitality Fee*

No change in the 1.5% amount the consumer pays

Rental Car Fee

2.5% County Fee

No change in the 2.5% amount the consumer pays

* Municipal Local Hospitality Fees and Local Accommodations Fees are due and will be remitted to each individual Municipality. Check with each Municipality for their current rates. For Additional information, please refer to the County Website at www.horrycounty.org<<http://www.horrycounty.org>>.

-END-

Kelly Moore | Director of Public Information Kelly Lee Brosky | Administrative Assistant Horry County
Government Public Information
1301 Second Avenue, Conway, South Carolina 29526 Tel 843-915-5390 | Fax 843-915-6390 |
moore.kelly@horrycounty.org<<mailto:moore.kelly@horrycounty.org>>
broskyk@horrycounty.org<<mailto:broskyk@horrycounty.org>>
www.horrycounty.org<<http://www.horrycounty.org>>

Follow us on Twitter<https://twitter.com/HorryCounty_Gov>,
Instagram<https://www.instagram.com/horrycounty_gov/>, and
Facebook<<https://www.facebook.com/horrycountygov/>>. You can also download our
HCCConnect<<https://www.horrycounty.org/hccconnect>> app for Apple and Android.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	SUPPLEMENTAL MEMORANDUM IN
Plaintiff,	)	SUPPORT OF PLAINTIFF'S MOTION
vs.	)	FOR RULE TO SHOW CAUSE WHY
	)	DEFENDANT SHOULD NOT BE HELD
Horry County,	)	IN CONTEMPT
	)	
Defendant.	)	

Plaintiff City of Myrtle Beach ("City"), on behalf of itself and all others similarly situated, submits the within Supplemental Memorandum in Support of its Motion for a Rule to Show Cause and order holding Defendant Horry County ("County") in contempt of this Court's June 21, 2019, Order preliminarily enjoining the County from enforcing its Ordinance 105-96 within the corporate limits of any municipality within Horry County.

The City is mindful of the communication from Chambers on Friday, June 28, 2019, in which the Court indicated that contempt proceedings were premature so long as the County was simply talking about violating the Court's Order. The purpose of this supplemental memorandum is to dispel any misconception that the County is, by instructing vendors within the corporate limits of all municipalities within Horry County except the City to continue to collect the 1.5% Hospitality Fee indefinitely, simply talking about violating the Court's Order and to bring to the Court's attention that, since June 21, 2019, Horry County's 1.5% Hospitality Fee has been collected, and is continuing to be collected, within at least two municipalities which are members of the proposed class of plaintiffs, in violation of the Order. Attached hereto and incorporated herein by reference as Supplement Memorandum Exhibits "A" and "B" are affidavits of Michael G. Mahaney and Dennis P. Pieper, the City Managers of the municipalities

of North Myrtle Beach and Surfside Beach, respectively. Attached to these affidavits as exhibits are receipts from merchants within these respective municipalities demonstrating the facts asserted in the affidavits of Messrs. Mahaney and Pieper. *See* Mem. Ex. "A" (Mahaney Aff., Ex's 1 and 2) and Mem. Ex. B (Pieper Aff., Ex's 1 and 2).

The City also, by this supplemental memorandum, wishes to draw to the Court's attention the June 30, 2019, statement made to Messrs. Mahaney and Pieper by counsel for the County in this litigation indicating the County's (a) position that the Court's June 21, 2019, order enjoining the enforcement of the County's 1.5% Hospitality Fee to sales of prepared food and beverage and accommodations only applies to such sales within the City of Myrtle Beach and no other municipality in Horry County and (b) intent to continue collecting the 1.5% Hospitality Fee in every municipality other than the City of Myrtle Beach. *See* Mem. Ex. A (Mahaney Aff. Ex. 3) and Mem. Ex. "B" (Pieper Aff. Ex. 3).

Finally, by this supplemental memorandum, the City wishes to draw to this Court's attention that the Horry County Treasurer has stated to Messrs. Mahaney and Pieper her intent to collect from merchants the County's 1.5% Hospitality Fee for sales occurring within the municipalities of Horry County for the period June 21, 2019, through June 30, 2019, and to seek judicial guidance regarding the imposition of the County's 1.5% Hospitality Fee for such sales on and after July 1, 2019. *See id.*

For the reasons set forth herein, in its Motion, and its earlier memorandum in support of same, the City respectfully requests that the Court grant the rule to show cause, issue an order holding the County in civil contempt, and require that the County immediately issue a public statement informing the Horry County treasurer, the municipalities within Horry County other than the City, the public, and the media that the 1.5% uniform service charge under Ordinance

105-96 will not continue to be collected during the pendency of this litigation within the limits of any municipality, and awarding the City its costs and reasonable attorneys' fees for this motion in an amount to be determined by the Court following submission of an appropriate affidavit of counsel for the City. Should the Court be disposed to grant this relief, and the County fail to comply with this Court's order awarding same, the County should be fined by this Court.

Respectfully submitted,

s/ John M. S. Hoefer

John M.S. Hoefer, SC Bar # 2549

Chad N. Johnston, SC Bar # 73752

R. Walker Humphrey, II, SC Bar # 79426

Willoughby & Hoefer, P.A.

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Columbia, South Carolina 29202

jhoefer@willoughbyhoefer.com

cjohnston@willoughbyhoefer.com

whumphrey@willoughbyhoefer.com

(803) 252-3300 (office)

(803) 256-8062 (facsimile)

*Attorneys for Plaintiff City of Myrtle Beach and All
Others Similarly Situated*

Columbia, South Carolina
July 1, 2019

EXHIBIT A TO
SUPPLEMENTAL
MEMORANDUM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF
vs.	)	MICHAEL G. MAHANEY
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Personally appeared before me, Michael G. Mahaney, 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 Manager of the City of North Myrtle Beach and have served as such since July 6, 2010.
3. I am the same Michael G. Mahaney who has given an affidavit to this Court at the instruction of the City of North Myrtle Beach to support the efforts of the City of Myrtle Beach to enforce the Court's June 21, 2019, order in the above-captioned action and thereby require the County to comply with same. This affidavit is given for the same reason and to support the City of Myrtle Beach's supplemental memorandum in support of its June 26, 2019, motion for the issuance of a rule to show cause as to why Horry County should not be held in contempt of this Court's order enjoining the collection of the County's 1.5% Hospitality Fee within the municipalities situated within Horry County.
4. On June 30, 2019, I purchased prepared food and beverage at a business establishment within the City of North Myrtle Beach. I was charged a total of 10.5% in "tax" on

this purchase which, based on my personal knowledge of state and local taxes and fees which have been heretofore collected within the corporate limits of the City of North Myrtle Beach, consisted of the following:

■ SC Sales Tax	6.0%
■ Horry School District Tax	1.0%
■ County Sales Tax	1.0%
■ City Hospitality Fee	1.0%
■ County Hospitality Fee	1.5%

A copy of the receipt provided to me by this establishment for this June 30, 2019, purchase is attached hereto and incorporated by reference as Exhibit 1 to this affidavit.

5. On July 1, 2019, I purchased prepared food and beverage at a business establishment within the City of North Myrtle Beach. I was charged a total of 10.5% in taxes and fees on this purchase which, based on my personal knowledge of state and local taxes and fees which have been heretofore collected within the corporate limits of the City of North Myrtle Beach, consisted of the following:

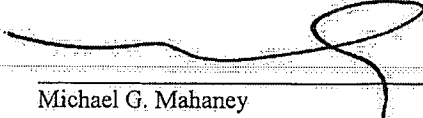
■ SC Sales Tax	6.0%
■ Horry School District Tax	1.0%
■ County Sales Tax	1.0%
■ City Hospitality Fee	1.0%
■ County Hospitality Fee	1.5%

A copy of the receipt provided to me by this establishment for this July 1, 2019, purchase is attached hereto and incorporated by reference as Exhibit 2 to this affidavit.

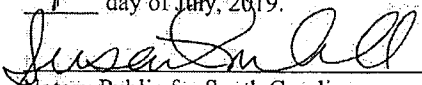
6. On July 1, 2019, I spoke with Horry County Treasurer Angie Jones, who informed me that her office will collect the County's 1.5% Hospitality Fee from merchants within the corporate limits of the City of North Myrtle Beach, same to be shown on such merchants' monthly tax returns that are due to be filed with Ms. Jones' office on or before the twentieth day of July for sales occurring in the monthly sales period that ended June 30, 2019. Ms. Jones indicated to me in that conversation her intent to retain counsel for the purpose of taking such steps as may be necessary to obtain guidance from this Court with respect to her obligations regarding the collection of the County's 1.5% Hospitality Fee for sales of prepared food, beverages, and accommodations occurring on and after July 1, 2019, within the City of North Myrtle Beach and every other municipality within Horry County.

7. On June 30, 2019, I received an unsolicited email from counsel for Horry County in this matter asserting that the Court's June 21, 2019, order enjoining the enforcement of the County's ordinance providing for imposition of its 1.5% Hospitality Fee only applies within the corporate limits of the City of Myrtle Beach and does not apply within the City of North Myrtle Beach. A copy of that email is attached hereto and incorporated herein by reference as Exhibit 3 to this affidavit.

FURTHER THE AFFIANT SAYETH NAUGHT.


Michael G. Mahaney

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


Notary Public for South Carolina

my commission Expires 01/10/2027

EXHIBIT 1 TO MAHANEY AFFIDAVIT

Panera Bread Cafe 4964
North Myrtle Beach, SC 29582
Phone: (843)663-0221

Accuracy matters. If your order is not
right, please let a manager know.

6/30/2019

7:25:15 PM

Check Number: 180249 Cashier: TAYLOR

1 Asian Sesame Chx Sal 9.49

1 French Baguette

SubTotal 9.49

Tax 1.00

Total 10.49

Cash 20.55

Cash 20.55

Change 10.06

If you didn't use your MyPanera card,
keep this receipt and enter the code below
at www.mypanera.com/missedvisit

Not a member yet? Ask an Associate for
your own card and join today!

ELECTRONICALLY FILED: 2019 JUL 01 2:46 PM Horry County Common Pleas Case#2019CP2601732

EXHIBIT 2 TO MAHANEY AFFIDAVIT

STARBUCKS Store #10756

549 Hwy 17 N

North Myrtle Beach, SC (843) 280-4356

CHK 714025

07/01/2019 09:33 AM

2663959 Drawer: 2 Reg: 1

T1 Pike Place 2.15

Personal Cup

CUP DISCOUNT -0.10

Cash 2.30

Subtotal \$2.05

Tax 10.5% \$0.22

Total \$2.27

Change Due \$0.03

----- Check Closed -----

07/01/2019 09:33 AM

Your Savings Today is: \$0.10

EXHIBIT 3 TO MAHANEY AFFIDAVIT

From: "Golding, Henrietta" <HGolding@burr.com>
Date: June 30, 2019 at 2:44:12 PM EDT
To: "Vaught, Johnny" <jvaught@horrycounty.org>
Cc: Mark Lazarus <mlazarus@lazarusentertainment.com>, "Carotti, Arrigo" <CarottiA@horrycounty.org>, "Gosnell, Steve" <gosnells@horrycounty.org>, "tyler@surfsiderealty.com" <tyler@surfsiderealty.com>, "hworley@odresort.com" <hworley@odresort.com>, "DiSabato, Dennis" <disabatod@horrycounty.org>, "mayorhatley@nmb.us" <mayorhatley@nmb.us>, Dennis Pieper <dpieper@surfsidebeach.org>, "mgmahaney@nmb.us" <mgmahaney@nmb.us>
Subject: Re: Tax collection.

Mark- no City other than MB are parties to the lawsuit. Also Judge Seals order does not order anything regarding the other municipalities. There are many errors with the order and hope to get straightened out when we appeal this order- which we will start as soon as Judge Seals rules on our outstanding motion to reconsider. He will deny this motion of course and then we try to get a supersedeas. . This is solely the fault of MB. If the County took steps to suspend the ordinance, then probably create legal issues detrimental to the County. Really sorry for this chaos Henri

Sent from my iPhone

Henrietta Golding - Partner
Burr Forman McNair
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

EXHIBIT B TO
SUPPLEMENTAL
MEMORANDUM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF
vs.	)	DENNIS P. PIEPER
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Personally appeared before me, Dennis P. Pieper, 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 Town Administrator of the Town of Surfside Beach and have served as such since July 2018.
3. I am the same Dennis P. Pieper who has given an affidavit to this Court at the instruction of the Town of Surfside Beach to support the efforts of the City of Myrtle Beach to enforce the Court's June 21, 2019, order in the above-captioned action and thereby require the County to comply with same. This affidavit is given for the same reason and to support the City of Myrtle Beach's supplemental memorandum in support of its June 26, 2019, motion for the issuance of a rule to show cause as to why Horry County should not be held in contempt of this Court's order enjoining the collection of the County's 1.5% Hospitality Fee within the municipalities situated within Horry County.
4. On June 30, 2019, I purchased prepared food and beverage at a business establishment within the Town of Surfside Beach. I was charged a total of 10.5% in "tax" on this

purchase which, based on my personal knowledge of state and local taxes and fees which have been heretofore collected within the corporate limits of the Town of Surfside Beach, consisted of the following:

■ SC Sales Tax	6.0%
■ Horry School District Tax	1.0%
■ County Sales Tax	1.0%
■ Town Hospitality Fee	1.0%
■ County Hospitality Fee	1.5%

A copy of the receipt provided to me by this establishment for this June 30, 2019, purchase is attached hereto and incorporated by reference as Exhibit 1 to this affidavit.

5. On July 1, 2019, I purchased prepared food and beverage at a business establishment within the Town of Surfside Beach. I was charged a total of 10.5% in taxes and fees on this purchase which, based on my personal knowledge of state and local taxes and fees which have been heretofore collected within the corporate limits of the Town of Surfside Beach, consisted of the following:

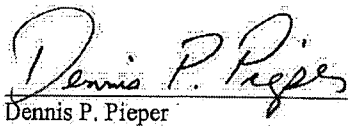
■ SC Sales Tax	6.0%
■ Horry School District Tax	1.0%
■ County Sales Tax	1.0%
■ Town Hospitality Fee	1.0%
■ County Hospitality Fee	1.5%

A copy of the receipt provided to me by this establishment for this July 1, 2019, purchase is attached hereto and incorporated by reference as Exhibit 2 to this affidavit.

6. On July 1, 2019, I spoke with Horry County Treasurer Angie Jones, who informed me that her office will collect the County's 1.5% Hospitality Fee from merchants within the corporate limits of the Town of Surfside Beach, same to be shown on such merchants' monthly tax returns that are due to be filed with Ms. Jones' office on or before the twentieth day of July for sales occurring in the monthly sales period that ended June 30, 2019. Ms. Jones indicated to me in that conversation her intent to retain counsel for the purpose of taking such steps as may be necessary to obtain guidance from this Court with respect to her obligations regarding the collection of the County's 1.5% Hospitality Fee for sales of prepared food, beverages, and accommodations occurring on and after July 1, 2019, within the City of North Myrtle Beach and every other municipality within Horry County.

7. On June 30, 2019, I received an unsolicited email from counsel for Horry County in this matter asserting that the Court's June 21, 2019, order enjoining the enforcement of the County's ordinance providing for imposition of its 1.5% Hospitality Fee only applies within the corporate limits of the City of Myrtle Beach and does not apply within the Town of Surfside Beach. A copy of that email is attached hereto and incorporated herein by reference as Exhibit 3 to this affidavit.

FURTHER THE AFFIANT SAYETH NAUGHT.


Dennis P. Pieper

Sworn to and subscribed before me this
1st day of July, 2019.


Notary Public for South Carolina

My Commission Expires: 01-07-2024
[NOTARIAL SEAL]

ELECTRONICALLY FILED - 2019 Jul 01 2:46 PM - HARRY - COMMON PLEAS - CASE#2019CP2601732

EXHIBIT 1 TO PIEPER AFFIDAVIT

HARDEE'S 1500863
 (843) 238-3398
 10 HWY 17 N
 SURFSIDE BEACH, SC
 Register 1 Order Is Tendered
 6/30/2019 7:04:44 PM

DriveThru #2172 / 2158

1 1/3 Chsbgr
 1 Med Sweet Tea
 1 Med Fry

M Cbo 1/3 Chsbgr	\$7.48
1/3 Chsbgr	
Med Fry	
Med Sweet Tea	
Sub Total	\$7.48
Discounts	\$0.00
Tax	\$0.79
Total	\$8.27
Credit	\$8.27
Change	\$0.00

EXHIBIT 2 TO PIEPER AFFIDAVIT

HARDEE'S 1500863
 (843) 238-3398
 10 HWY 17 N
 SURFSIDE BEACH, SC
 Register 1 Order is Tendered
 7/1/2019 7:45:23 AM
 DriveThru #2030 / 2214

1 Frisco Hamegcz
 1 Med Ice Tea
 1 MD Hash Round

M Cbo Frs Hec	\$5.99
Frisco Hamegcz	
MD Hash Round	
Med Ice Tea	
Sub Total	\$5.99
Discounts	\$0.00
Tax	\$0.63
Total	\$6.62
Credit	\$6.62
Change	\$0.00

EXHIBIT 3 TO PIEPER AFFIDAVIT

From: "Golding, Henrietta" <HGolding@burr.com>
Date: June 30, 2019 at 2:44:12 PM EDT
To: "Vaught, Johnny" <jvaught@horrycounty.org>
Cc: Mark Lazarus <mlazarus@lazarusentertainment.com>, "Carotti, Arrigo" <CarottiA@horrycounty.org>, "Gosnell, Steve" <gosnells@horrycounty.org>, "tyler@surfsiderealty.com" <tyler@surfsiderealty.com>, "hworley@odresort.com" <hworley@odresort.com>, "DiSabato, Dennis" <disabatod@horrycounty.org>, "mayorhatley@nmb.us" <mayorhatley@nmb.us>, Dennis Pieper <dpieper@surfsidebeach.org>, "mgmahaney@nmb.us" <mgmahaney@nmb.us>
Subject: Re: Tax collection.

Mark- no City other than MB are parties to the lawsuit. Also Judge Seals order does not order anything regarding the other municipalities. There are many errors with the order and hope to get straightened out when we appeal this order- which we will start as soon as Judge Seals rules on our outstanding motion to reconsider. He will deny this motion of course and then we try to get a supersedeas. This is solely the fault of MB. If the County took steps to suspend the ordinance, then probably create legal issues detrimental to the County. Really sorry for this chaos Henri

Sent from my iPhone

Henrietta Golding - Partner
Burr Forman McNair
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hgolding@burr.com - www.burr.com

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,)

**HORRY COUNTY'S
RESPONSE TO
MOTION FOR RULE TO SHOW CAUSE**

Plaintiff,)

vs.)

Horry County,)

Defendant.)

Horry County respectfully submits this Response to the City's Motion for a Rule to Show Cause.

Introduction

In dramatic language about the County's supposed "unapologetic and callous disregard" for and "defiance" of this Court, the City asks the Court to hold the County in contempt for collecting the Hospitality Fee in municipalities other than Myrtle Beach. Despite the City's characterization, the County has great respect for this Court. That is why, notwithstanding its disagreement with the Court's decision on the preliminary injunction motions, the County has suspended collection of the Hospitality Fee in Myrtle Beach.

The City's theory of contempt is fatally flawed for at least four reasons. *First*, the City wrongly asks this Court to interpret its injunction apply to non-parties, which this Court does not have the authority to issue. *Second*, the City seeks the

countywide injunction based on its status as a putative class representative, but state law clearly forbids a class action in a dispute over a fee collected by the government. *Third*, if the injunction applies countywide, the County has no security for the fees that will not have been collected from other municipalities, if the injunction is ultimately held to have been improperly entered. *Fourth*, as entered, the Injunction Order enjoining the County violates Rule 65(d), which seeks to avoid disputes exactly like this one about what precisely an injunction prohibits.

Argument

I. The injunction cannot apply to other municipalities at this stage.

Courts in this State have the “power to hear and decide *cases*.” *Williams v. Bordon’s, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (emphasis added). A “case” is, of course, a proceeding involving particular parties. *Cf.* Rule 2, SCRPC (defining a “civil action,” which requires a plaintiff to file a complaint against a defendant). Having the power only to “hear and decide cases” is why courts’ authority to grant injunctive relief historically has been limited to injunctions affecting the parties in a particular case. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2427 (2018) (Thomas, J., concurring) (“Moreover, as a general rule, American courts of equity did not provide relief beyond the parties to the case.”).

Despite this longstanding legal principle, the City seeks to have this Court enter a sweeping countywide injunction. Such an injunction would violate Rule 65(d). Rule 65(d) provides that “[e]very order granting an injunction and every restraining order . . . is binding only upon the *parties* to the action.” Rule 65(d), SCRPC (emphasis

added). Rule 65(d) gives effect to the traditional limitation of the power of courts to issue injunctions. That power extends only as far as the Court's *in personam* jurisdiction—or, as Rule 65(d) puts it, to “parties.” See *Hatahley v. United States*, 351 U.S. 173, 182 (1956) (Court could not enjoin individual federal agents over whom it had not acquired *in personam* jurisdiction).

Perhaps one day (if the City could have a class certified (which it cannot, as explained in Part II) and the City really does succeed on the merits), the City could obtain a countywide injunction. But that day is not today. The City has not even moved to be certified as a class representative for every municipality, nor has it proven its case. Cf. *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (explaining that a preliminary injunction should have no impact on the decision on the merits).

Here, no one other than the City of Myrtle Beach and the County have been brought under the power of this Court in this lawsuit. Until other municipalities are actually brought within the jurisdiction of this Court, this Court cannot reach them via an injunction.

II. The City's class claims cannot prevail, so the City cannot obtain a countywide injunction.

The basis of the City's contention that it is entitled to a countywide injunction is the fact that the City has brought its class in a putative class action. State law precludes the City from having any class certified.

Section 12-60-80 prohibits any class remedy for the “refund of taxes” (which includes fees, see S.C. Code § 12-60-30(27)) or for “declaratory relief where the sole

issue is whether a statute is constitutional,” *id.* § 12-60-80(B), (C). Moreover, this statute specifically prohibits a political subdivision from being named as a defendant in a class action. *Id.* § 12-60-80(C).

The language of this statute is clear. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). A plaintiff cannot bring a class claim for declaratory relief. S.C. Code § 12-60-80(B). Nor can a plaintiff bring a class claim for a refund. *Id.* § 12-60-80(C); *see also Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 368, 798 S.E.2d 555, 560 (2017) (“The plain language of the statute prohibits a claim for a tax refund from being brought as a class action in any court of law in this state.”).

If the City cannot possibly represent other municipalities in a class action, the City likewise cannot obtain an injunction for the benefit of those would-be class members. In other words, the injunction must be limited only to the City.

III. Applying the injunction countywide leaves no security for the County.

Extending the injunction to nonparties also raises a problem under Rule 65(c). That rule (as the County explained in its Motion to Reconsider) does not exempt political subdivisions from the security requirement that accompanies a preliminary injunction. The requirement that the City post some security is therefore raised in the Motion to Reconsider.

The City’s Motion for a Rule to Show Cause raises the security issue in a different context: security for the Hospitality Fee not collected in the other municipalities, if the injunction does in fact apply countywide. None of those municipalities is subject to this Court’s jurisdiction at this point, so this Court has no authority to compel these municipalities to provide any security. Therefore, sufficient

security for a countywide injunction can come only from the City. That means the City must provide security sufficient to make the County whole for every cent of the Hospitality Fee that the County cannot collect while this injunction is in place, if the injunction is ultimately held to be improper. *See Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (reversing an order granting an injunction but requiring only “nominal” security based on Rule 65(c), SCRCP, and the fact that requiring nominal security “erroneously assumes the injunction is proper”).

IV. The City’s Motion for Rule to Show Cause demonstrates that the Injunction Order does not comply with Rule 65(d).

Rule 65(d) is entitled “Form and Scope of Injunction or Restraining Order.” It requires that every order granting an injunction “*shall* be specific in terms” and “*shall* describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Rule 65(d), SCRCP (emphasis added).

As the County argued in its Motion to Reconsider, the Injunction Order (which was drafted by the City) violates Rule 65(d), as it is neither specific in its terms, nor does it describe in reasonable detail what the County is prohibited from doing. The County cannot be held in contempt for allegedly violating an Order that fails to follow the mandates of Rule 65—to identify the definitive terms required for compliance.

In accord with this rule (as well as due process), a party “may not be convicted of contempt for violating a court order which fails to tell him in definite terms what he must do.” *Cty. of Greenville v. Mann*, 347 S.C. 427, 435, 556 S.E.2d 383, 387 (2001); *see also Phillips v. Phillips*, 288 S.C. 185, 188, 341 S.E.2d 132, 133 (1986) (“The

language of the commands must be clear and certain rather than implied.”). Indeed, a “court need go no further in reviewing the evidence in a contempt action when there is uncertainty in the commands of an order.” *Phillips*, 288 S.C. at 188, 341 S.E.2d at 133 (1986). Thus, in both *Mann* and *Phillips*, the supreme court held that a party could not be held in contempt when an order was ambiguous. *Mann*, 347 S.C. at 435, 556 S.E.2d at 387; *Phillips*, 288 S.C. at 188, 341 S.E.2d at 133.

Based on this case law and Rule 65(d), only the language in the Injunction Order itself matters—nothing else. In this sense, Rule 65(d) is like a merger or integration clause in a contract, requiring a court and the parties to look no further than the document itself to ascertain its scope and meaning. *See Wilson v. Landstrom*, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984) (explaining that the “terms of a completely integrated agreement cannot be varied or contradicted by parol evidence”).

Here, the Injunction Order does not specifically prohibit the County from collecting the Hospitality Fee in municipalities other than the City. Indeed, the City points to no language in the Injunction Order itself that contains any such prohibition.

The insufficiency of the Injunction Order on this front is highlighted further by the City’s reliance on its own motion for an injunction and its memorandum to explain the scope of the Injunction Order.¹ *See* Mot. for Rule to Show Cause 1–2. Referring to any other document in arguing about the scope of the injunction is

¹ By relying on other documents in its Motion for a Rule to Show Cause, the City is implicitly acknowledging the merit of the County’s Motion to Reconsider, at least on this point.

improper. *See* Rule 65(d), SCRCP. The Court should not (and cannot) accept that the City's invitation to look beyond the Injunction Order to determine its scope.

Conclusion

The City's motion should be denied.

Respectfully submitted:

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Myrtle Beach, South Carolina
Dated: July 2, 2019

Attorneys for Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
City of Myrtle Beach,)
For Itself and a Class of Similarly)
Situating Plaintiffs,)
Plaintiff,)
vs.)
Horry County,)
Defendant.)

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

**HORRY COUNTY'S
RULE 12(c) MOTION FOR JUDGMENT
ON THE PLEADINGS REGARDING
CLASS-ACTION ALLEGATIONS**

Horry County respectfully moves, pursuant to Rule 12(c), SCRCP, for judgment on the pleadings on the City of Myrtle Beach's allegations about this case being a class action.

Introduction

This motion is simple: The City pled its claims as a class action. State law specifically prohibits a class action. Therefore, the City's case cannot proceed as a class action, and the court should dispose of those allegations now.

Factual Allegations

This Court is already familiar with this case, in which the City challenges the validity of the County's Hospitality Fee. As relevant to this motion, the City has pled its claims as a class. It seeks to represent "[a]ll individuals, corporations, companies, associations, firms, partnerships, joint stock companies, political subdivisions, counties, municipalities, state agencies, and instrumentalities of the State" who have

paid the Hospitality Fee since January 1, 2017. Compl. ¶ 7. The City then alleges that common questions of law and fact exist and that the City is the right entity to represent the class members. Compl. ¶¶ 8–13.

The County denied that a class action is appropriate. Answer & Countercls. ¶¶ 8–4

Legal Standard

Rule 12(c) allows a party, “[a]fter the pleadings are closed,” to “move for judgment on the pleadings.” Rule 12(c), SCRCF. This motion should be granted whenever “no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff’s favor.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009). “A motion for judgment on the pleadings under Rule 12(c) is considered under a similar standard as Rule 12(b)(6), with the key difference being that on a 12(c) motion, the court considers the answer as well as the complaint.” *Billioni v. Bryant*, No. 0:14-CV-03060-JMC, 2015 WL 4928999, at *1 (D.S.C. Aug. 18, 2015).

The note to Rule 12(c) observes that this rule “is more important than the Federal Rule, because of the requirement for fact pleading” in South Carolina. Rule 12(c), Note, SCRCF; *see also* Rule 8(a), SCRCF.

Argument

This case cannot proceed as a class action.

Section 12-60-80 prohibits any class remedy for the “refund of taxes” (which includes fees, *see* S.C. Code § 12-60-30(27)) or for “declaratory relief where the sole

issue is whether a statute is constitutional,” *id.* § 12-60-80(B), (C). Moreover, this statute specifically prohibits a political subdivision from being named as a defendant in a class action. *Id.* § 12-60-80(C).

The language of this statute is clear. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). A plaintiff cannot bring a class claim for declaratory relief. S.C. Code § 12-60-80(B). Nor can a plaintiff bring a class claim for a refund. *Id.* § 12-60-80(C); *see also Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 368, 798 S.E.2d 555, 560 (2017) (“The plain language of the statute prohibits a claim for a tax refund from being brought as a class action in any court of law in this state.”).

In light of this statute, the City’s attempt to pursue class certification here must fail. Therefore, the Court should grant the County’s motion for judgment on the pleadings about the class-action allegations in the Complaint.

Conclusion

The County is entitled to judgment on the pleadings on City’s the class-action allegations in its Complaint.

Respectfully submitted:

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Attorneys for Defendant

Myrtle Beach, South Carolina
Dated: July 2, 2019

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

City of Myrtle Beach,)
)
For Itself and a Class of Similarly Situated)
Plaintiffs,)
)
Plaintiff,)
)
vs.)
)
Horry County,)
)
Defendant.)
)

**NOTICE OF MOTION
AND MOTION TO INTERVENE AND
TO STRIKE CLASS CLAIMS IN THE
PLAINTIFF'S COMPLAINT**

TO: ATTORNEYS FOR THE ABOVE-NAMED PARTIES

YOU WILL PLEASE TAKE NOTICE that the undersigned will, on the tenth (10th) day or as soon hereafter as counsel may be heard, move before this court to intervene on behalf of Angie Jones, Individually ("Jones"), and in her official capacity as the Horry County Treasurer. Further, Jones seeks an Order of this Court clarifying her duties and responsibilities as to the Order of this Court dated June 21, 2019. Finally, Jones seeks an order of this Court striking all allegations of a class action as alleged by the City of Myrtle Beach.

The basis of this motion is SCRCP 24(a)(2) which provides intervention of right when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest. In this case, Jones as the official and elected Horry County Treasurer has a vital interest in being involved in how the hospitality fees are collected. Jones is the only official who collects fees and taxes for both the County and the municipalities.

Further, should the Court hold that Jones does not have the ability to intervene as a matter of right, Angie Jones moves pursuant to SCRCP 24(b) entitled "Permissive Intervention" for an Order of this Court allowing such intervention. The basis for permissive intervention is that an applicant's claim or defense and the main action have a question of law or fact in common. In this case, as has been stated above, Jones is the County Treasurer and the issues raised in this lawsuit affect her ability to do her official job and to advise the taxpaying public.

Angie Jones would further show that there is a disagreement between various municipalities and Horry County as to the collection of the hospitality fee which was adopted through Horry County Ordinance 105-96. Jones and her 43 employees and five offices are intricately involved in the collection of the hospitality fees. This Court's Order of June 21, 2019 has raised numerous questions of the taxpaying public as to the payment of the hospitality fee. Various municipalities have implemented their own ordinances charging a hospitality fee as of July 1, 2019. Many taxpayers do not know whether to pay the hospitality fee to the city or the County. Jones, as the official Treasurer is in an impossible situation in that she cannot advise the taxpaying public as to who these fees should be paid to.

Jones has further reviewed the allegations of the Complaint and notes that the City of Myrtle Beach seeks to certify a class. Jones seeks an Order of this Court striking the class action allegations. Her basis is as follows:

1. The hospitality fee is a fee which is charged mainly to vacationers and tourists. Millions of vacationers and tourists visit the beaches of Horry County each year and it is absolutely impossible to identify those individuals. As an example, the hospitality fee is paid when an individual buys a meal at a local restaurant or rents a room. The names and addresses of those individuals cannot be ascertained.

2. South Carolina's class action Rule (SCRCP 23(a)(5)) provides that each class member must have \$100 or more in order for a class to be certified. The vacationers and tourists who generally pay these fees would not reach that threshold. Thus, a class is not only impractical or impossible.
3. The monies collected from the hospitality fee were paid to the State Infrastructure Bank as previously agreed by the County and the cities. Those monies were properly paid pursuant to that agreement and a copy of the ledger of those payments is attached hereto. If a class were certified against Horry County, Horry County would then have a claim against the various cities for reimbursement of those monies. In effect, Plaintiff would be liable for those funds in the same manner as which Horry County would be liable. This would be a catastrophic financial liability for both the cities and the County, a result not contemplated by the Plaintiff's Complaint.
4. As for the absent class members, if a class was certified there would be few individuals who would qualify and meet the \$100 rule as required under SCRCP 23(a)(5). The case should be more properly styled as one for declaratory relief between the parties and not as a class action for damages. The potential financial upheaval for not only the County by the cities would cause a reduction in services and would affect the ability of the cities and County to borrow monies to pay their bills and to provide public services. Such a result would put all governmental entities in Horry County in serious financial jeopardy.

WHEREFORE, for the reasons set forth in her Affidavit, Jones requests an evidentiary hearing to be held to clarify the Court's Order and to clarify her responsibilities and duties regarding

these hospitality taxes and/or fees and to protect the public. Jones seeks to end the uncertainty for the taxpaying public as to the Court's Order and for an Order striking the class action allegations regarding potential refunds. Jones further seeks clarification as to whether unnamed cities are subject to the Order.

WHEREFORE, applicant requests this Court set a hearing as soon as possible to address the issues set forth in Jones's Affidavit and to take testimony and hear evidence on the predicament the Horry County Treasurer finds herself in based on this litigation.

KELAHHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)

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Attorney for Angie Jones, Individually and

In her capacity as Horry County Treasurer

July 3, 2019

Surfside Beach, South Carolina.

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- _____ A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- X B. Such consultation would serve no useful purpose, or could not be timely held; or
- _____ C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
- _____ a. To Dismiss
- _____ b. For Summary Judgment
- _____ c. For New Trial
- _____ d. For Judgment NOV

KELAHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.

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**Attorney for Angie Jones, Individually and
In her capacity as Horry County Treasurer**

July 3, 2019
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

City of Myrtle Beach,)
)
For Itself and a class of Similarly Situated)
Plaintiffs,)
)
Plaintiff,)
)
vs.)
)
Horry County,)
)
Defendant.)

**AFFIDAVIT OF
ANGELA JONES**

PERSONALLY APPEARED BEFORE ME, Angela Jones, who swears and states as follows:

1. My name is Angela Jones and I am the duly elected Treasurer for Horry County. I further have been the elected Treasurer for Horry County since 2017 and prior to that served as Deputy Treasurer in Horry County from 2005 to date. I am intimately involved with the financial issues in this case as I have been a Treasurer's office employee since 2001 (18 years). I can speak to all of the financial issues involving the collection of taxes and fees, since that has been a great portion of my job since 2001. I have attached hereto a copy of my resume which is Exhibit 1.

2. I have no position in regard to this litigation between the City of Myrtle Beach and other cities and Horry County. My only concern is for the taxpaying public and how they are to pay the hospitality fees and to whom. My duty is to the citizens of this County. This includes all citizens whether they are located in a municipality or other unincorporated areas of the County. Horry County has alleged in their Answer that this Court Order dated June 21, 2019 only includes

the City of Myrtle Beach and that no other municipalities are affected. Horry County Council has advised me to continue to collect the hospitality fees in all other cities besides Myrtle Beach.

A. MASS CONFUSION

3. The other municipalities, specifically North Myrtle Beach, Conway, Loris, Surfside and Aynor take the position that the June 21, 2019 Order applies to them and that they are to be included in the Court Order. As Treasurer of Horry County, I request clarification from the Court as to whether this Order applies to those municipalities.

4. Currently there is mass confusion about whether or not this Order applies to those municipalities. I and my staff have received numerous calls from various businessowners and the new media about who the hospitality fee is to be paid to. I, myself, have also received calls from the City of North Myrtle Beach Administrator and from the Town of Surfside Beach Manager. Each of those municipalities believe that this Court Order applies to them despite the fact that they are not named as Plaintiffs in this action.

5. Our office has also been inundated with phone calls from various businesses inquiring how they should proceed. Since this is essentially a tax the businessowners must have ample time to make preparations including programming their cash registers. Some of these businesses are multimillion-dollar corporations such as fast food restaurants and hotels. The new fees suggested by municipalities are less than what the County currently collects. New rates are set to begin July 1, 2019 which are in fact lower than previously charged by the County. See Exhibit 2, Myrtle Beach's new tax rates. If these businesses located in those municipalities do not abide by the City's request it could result in revocation of their business license should the City so choose. Further, if this Court or another court finds that Horry County was justified in its collection of these fees many of the businessowners who will have paid the City will have paid less monies than what

was charged under Horry County Ordinance 105-96. These positions put the Treasurer and Treasurer's staff in an untenable position. I along with my staff cannot advise anyone as to how to proceed.

6. Further, Horry County, should they prevail in this Court in their interpretation of Ordinance 105-96, may also require fees and penalties for failure to collect the hospitality fees, for failure to remit to the County the hospitality fees collected, for failure to file the hospitality fee return and for failing to provide books and records to the Horry County Treasurer for the purpose of inspection, examination and/or audit.

7. I point out to the Court that each day of violation constitutes a separate offense. Upon conviction of a violation, the violator may be found guilty of a misdemeanor and subject to a fine and/or forfeiture not exceeding \$500 or imprisonment not exceeding 30 days or both.

8. It is unfair and completely unreasonable to have various businesses in the municipalities be subject to this penalty. The Court's Order has created concern, upsettedness and a wave of hysteria. I, as Treasurer, do not know how to advise the taxpaying public nor can I advise my 43 employees in their 5 offices throughout the County as how to comply with this Order.

B. COLLECTION OF THE HOSPITALITY FEE

9. I now direct the Court's attention to my understanding as to how these fees are generated:

A. The Hospitality Fee. Under Horry County Ordinance 105-96 a hospitality fee is imposed as follows: (1) on accommodations to transients such as vacationers; (2) to collect admissions to places of amusement; (3) the sale of prepared or modified food or beverages (including alcoholic beverages); (4) to provide short term rental of private passenger motor vehicles. Further, according to the Ordinance, a business is subject to the collection remittance of the Horry

County hospitality fee if it meets one or more of the conditions set forth above. The fee is the liability of the vacationer or consumer of the services and due to the service provider upon delivery of the service. The service provider (the business) simply remits those fees collected to the Horry County Hospitality Fee Department. If the fee is not collected by the business, the business is liable for the fee.

All businessowners must establish an account and an informational packet is mailed to the business. This packet explains when and how to report the fees collected. The due date for the fees is the 20th of the month following the reporting period. If the payment is postmarked to the County after the 20th of the month a penalty will be assessed pursuant to the Ordinance. Further, the failure to file a return may result in action by the Treasurer's Office including the calculation of a penalty.

Violations can be issued by the Treasurer's Office in the event that business does not do any of the following: (1) fails to collect the hospitality fee; (2) fails to remit to the County the hospitality fee collected; (3) fails to file a hospitality fee return; (4) knowingly files a false hospitality fee return. As you can see, this puts the businessowners and the Treasurer's Office in a predicament as to how to collect these fees. Further, I, as the Treasurer, can only waive the penalties for good cause.

C. CLASS CLAIMS

10. It has come to my attention that this lawsuit is a class action and that the City of Myrtle Beach seeks class certification. I would like to make the following observations based on my experience as a long-time member of the Treasurer's Office:

1. First, the hospitality fees are generally collected from vacationers and tourists, although residents also pay those fees. It would be absolutely impossible to determine the names and addresses of those residents, vacationers and tourists who

pays those fees. As an example, if you were you go to the local Chick-Fil-A restaurant and buy a sandwich, the hospitality fee would be added on to the price of the sandwich but it would be impossible to determine the name of the person who paid that fee. Thus, there is no identifiable class.

2. I am also aware that South Carolina's class action rule SCRCP 23(a)(5) provides no class action can be maintained unless each class member has more than \$100 at stake. In this case, there is no way to prove that the vast majority of any class member has \$100 at stake. Most of the hospitality fees are paid by vacationers and transients as the intent of the Ordinance was to largely have those vacationers pay those fees and help the County and the cities with various infrastructure projects such as roads.
3. I would also point out as the elected Treasurer that if a class action were to be certified, the cities would be liable for those refunds also. All of the monies collected from the hospitality fees was used pursuant to an agreement with the cities to pay the State Infrastructure Bank for road projects. Thus, if the County were liable to make those payments, it would have a claim against the various cities who also agreed that the funds be used to pay the State Infrastructure Bank debt. I have attached hereto a document, Exhibit 3, which shows that the hospitality fees have properly and legally been paid to the State Infrastructure Bank since the implementation of the Hospitality Fee Ordinance. The State Infrastructure Bank debt has been paid off and there are monies that I am holding pending further order of this Court as to who the owners of those funds are. Currently, I believe that sum to be \$18,554,938.89.

D. MEDIATION

11. I further request as County Treasurer and custodian of all taxpayer funds, including taxpayer funds for cities and the County, that the Court order an immediate confidential mediation to be attended by the decisionmakers of the cities and County within thirty (30) days. The reason I am making this request at this early stage in the litigation is to save and protect the millions of dollars and numerous appeals which would be spent on this case. I feel it is incumbent upon me to request a mediation as it is my legal and ethical duty to protect taxpayer funds. I am willing to attend such mediation and to provide all records and other financial information to try to resolve this matter among the parties.

CONCLUSION

In sum, I request the Court clarify the following issues so that I, as Horry County Treasurer, can fulfill my statutory duties:

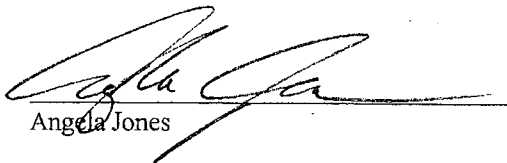
1. Does the Order in the case dated and filed June 21, 2019 apply to any other municipality or governmental entity except for the City of Myrtle Beach?
2. Does the Order require the Treasurer's Office and its employees to pay any hospitality fees to any municipality?
3. Is any municipality, including the City of Myrtle Beach, entitled to receive the hospitality fees pursuant to the Court's Order when in fact the class members who paid those fees are unidentifiable?
4. What will happen to the various businesses and individuals who pay the hospitality fee to the City of Myrtle Beach if this Court finds that Horry County's hospitality ordinance is valid (the City of Myrtle Beach's hospitality fee is less than what Horry County is currently charging)? Will the businesses be liable for that difference?

5. Should the Court stay its decision and order that the hospitality fees be paid at the higher rate as charged by Horry County Council and that those funds be placed into an interest-bearing trust account until such time as these legal issues are decided by this Court or by an Appellate Court? (It should be noted that the cities' hospitality fees are capped by state law at a lesser amount.)

6. Should the businesses be subject to inconsistent hospitality fee ordinances as set forth by Horry County and the City of Myrtle Beach and should the businesses be put in the position of trying to decide whether or not Horry County or any of the municipality's ordinances are correct in deciding who to pay the hospitality fee to.

Finally, I want to make absolutely clear that I am not taking side in this litigation. My only and sole interest is representing fairly and honestly all of the taxpayers and businesses in Horry County, whether they be located in the city or in the County. This Affidavit is my attempt to point out to the Court the confusion and severe harm that may occur without some direction by the Court.

FURTHER AFFIANT SAYETH NOT.


Angela Jones

SWORN AND SUBSCRIBED before me,
this 3rd day of July 2019

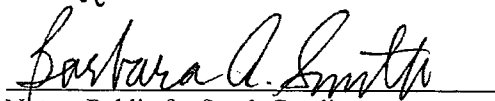

Notary Public for South Carolina
My Commission Expires: 3-12-24

Exhibit 1

ELECTRONICALLY FILED - 2019 Jul 03 11:28 AM - Horry - COMMON PLEAS - CASE#2019CP2601732

Angela Jones, DBA

Summary

A successful leader in directing and overseeing the operations of the Horry County Treasurer's office and its various departments. Excels in the ability to make sound strategic decisions that improve the overall performance of the organization.

Qualification Highlights

- Over ten years of leadership and management
- Strong successful problem solving abilities
- Excellent change management and team leadership skills
- Goal oriented and works collaboratively with various administrators and officials
- Strong financial, quantitative, and analytical skills.
- Highly motivated with strong work ethic; able to prioritize tasks and meet deadlines.

Experience

Horry County Treasurer

2017-Present

www.horrycounty.org

Elected Treasurer for Horry County

- Performs all duties of the office of the Treasurer as mandated by the State of South Carolina.

National American University

www.national.edu

Adjunct Faculty

2016-Present

- Statistical Analysis (Online MBA Program)
- Leadership and Quality (Online MBA Program)
- Strategy and Policy (Online MBA Program)
- Quantitative Methods for Management (Online MBA Program)
- Organizational Behavior (Online MBA Program)

Horry County Treasurer (Myrtle Beach, South Carolina)

2001- Present

www.horrycounty.org

Deputy/Assistant/Vice Treasurer

2005 - 2016

- Directs the operations of the Horry County Treasurer's office and Horry County Hospitality Fee/Business License departments including 41 employees and 5 locations.
- Directs placement of funds for investments totaling over \$600 million a year including Horry

Angela Jones • [REDACTED]

County School District, Airport, Solid Waste Authority, Library, Planning, and Capital Project Funds.

- Oversees all Horry County and its various departments' bank accounts and banking services/fees.
- Develops operational functions to improve organization's performance and productivity.
- Researches and develops the formulation and implementation of policies, procedures and directives in the areas of human resources and team building programs.
- Oversees the implementation of new services, such as technology, for the benefit of the taxpayers.
- Prepares the Horry County Treasurer's office and Horry County Hospitality Fee/Business License department's annual budget.

Manager of Horry County Hospitality/Business License

2005 - 2005

- Directly supervised a staff of eleven.
- Directed the daily operations of the department, which generates over \$45 million in revenues each year.
- Prosecuted court cases for delinquency.
- Enforced Horry County Ordinances as well as South Carolina Code of Laws.
- Responsible for preparation of department's annual budget.

2001-2005

Revenue Collector Horry County Hospitality/Business License

- Responsible for the enforcement of Horry County Ordinances as well as South Carolina Code of Laws.
- Conducted field audits.
- Enforced collection of Hospitality Fees and Business License Fees.

Other Relevant Experience

Adjunct Faculty Horry-Georgetown Technical College

Office Systems Technology

2004 to 2005

Education and Training

Argosy University, Phoenix, Arizona

Department of Business Administration

Doctorate Degree in Business Administration, 2013

GPA 3.84

Webster University, St. Louis, Missouri

Master of Business Administration, 2004

GPA 3.72

Liberty University, Lynchburg, Virginia

Bachelor of Science- Accounting, 2003

Horry-Georgetown Technical College, Conway, South Carolina

Associate in Business, 2000

Research / Projects

Jones, A.(2013) *Employee Resistance and the Effects on Change Outcomes*. (Doctoral dissertation).

Relevant Coursework

Intermediate Accounting I, II, III; Managerial & Cost Accounting; Business Finance; Business Law; Financial & Management Policies; Global Challenges; Strategic Planning and Implementation; Organizational Behavior; Corporate Social Responsibility; Ethics in Business and Management; Leadership in Global & Multicultural Organizations; Organizational Development & Change Management; Solutions Leadership; Leading Innovation and Change.



Revised taxes effective Monday, July 1, in the City of Myrtle Beach

Pursuant to the South Carolina Circuit Court Order of June 21, 2019, the City of Myrtle Beach will begin charging its Local Accommodations Tax, Hospitality Tax and Hospitality Fee as outlined in the chart below on Monday, July 1, 2019. These revised taxes and fees will be reportable to the city by merchants/retailers no later than August 20, 2019, for July sales activity.

We recognize that this is relatively short notice for retailers and merchants to adjust cash registers and point-of-sale devices. Again, retailers and merchants have until August 20 to make payments for July sales activity. Prior to July 1, merchants and retailers should continue to pay the 1.0% City Hospitality Fee and the .05% Accommodations Tax.

A copy of the Court Order is available at <https://www.cityofmyrtlebeach.com/2019-06-21%20Order%20re%20Preliminary%20Injunctions.pdf>. Of interest to retailers and merchants, the order also addresses the Uniform Service Charge ("1.5% Hospitality Fee") previously collected by Horry County within the city's corporate limits.

The changes in the city's rates have been adopted by ordinance under authority of Title 6, Chapter 1, Articles 5 and 7, of the South Carolina Code of Laws. The following table shows the amounts that merchants/retailers currently collect and pay, versus amounts they will collect and pay as of Monday, July 1, 2019. Note that rates will decrease in two instances.

Type of Levy you pay	Previously you paid...	As of July 1, 2019...
Accommodations – Short Term Rentals	1.5% to City; 1.5% to County	3.0% Local Accommodations Tax to City, the maximum allowed by state law. No change in the amount the consumer pays.
Prepared Food & Beverages	1% to City; 1.5% to County	2.0% City Hospitality Tax, the maximum allowed by state law. Reduction of 0.5% to the consumer.
Places of Admissions	1% to City; 1.5% to County	1.0% City Hospitality Fee; state law does not provide for any additional local admissions tax. Reduction of 1.5% to the consumer.

3 Horry County Hospitality fee transfers to SIB

Exhibit

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
7/1/98	15,000,000.00		(15,000,000.00)		-	-	
10/1/98	3,750,000.00		(3,750,000.00)		-	-	
1/1/99	3,750,000.00	(3,750,000.00)	-		-	-	F99006
4/1/99	3,750,000.00	(3,750,000.00)	-		-	-	F99008
6/15/99		(9,732,251.00)	9,732,251.00		-	-	F99011
FY Total:	26,250,000.00	(17,232,251.00)	(9,017,749.00)		-	-	
7/1/99	3,750,000.00	(3,750,000.00)					F00001
7/14/99			9,017,749.00			9,017,749.00	F00002
7/20/99	3,028,681.00				3,028,681.00		S/B deposited to LRA (see F00007)
7/21/99	1,000,000.00				1,000,000.00		S/B deposited to LRA (see F00007)
7/28/99	(1,621,000.00)					(1,621,000.00)	Ambac - Financial guaranty insurance
8/2/99	4,000,000.00				4,000,000.00		S/B deposited to LRA (see F00007)
8/12/99	2,000,000.00				2,000,000.00		S/B deposited to LRA (see F00007)
8/16/99	4,541,703.53				4,541,703.53		Hosp. Fee from June, July '99
8/24/99	3,000,000.00					3,000,000.00	
9/17/99	3,551,838.07				3,551,838.07		Hosp. Fee from Aug '99
9/17/99	838,354.42					838,354.42	Final amount due from Rd. Spec. Rev. Fund
9/22/99			(9,017,749.00)			(9,017,749.00)	F00009 - Reverse F00002
9/22/99					(10,028,681.00)	10,028,681.00	F00007 - correct subfund
9/23/99		(1,514,340.50)			(1,514,340.50)		F00008 - Loan II - qtrly repayment
10/11/99		(3,750,000.00)			(3,750,000.00)		F00010 - Loan I - qtrly repayment
10/18/99	2,604,941.62				2,604,941.62		Hosp. Fee from Sept '99
11/15/99	1,447,533.38				1,447,533.38		Hosp. Fee from Oct '99
12/15/99	894,640.16				894,640.16		Hosp. Fee from Nov '99
12/16/99		(3,750,000.00)			(3,750,000.00)		F00014 - Loan I - qtrly repayment
12/16/99		(485,659.50)			(485,659.50)		F00015 - Loan II - qtrly repayment (\$1m less adj. From Sept overprint)
1/18/00	1,386,167.83				1,386,167.83		Hosp. Fee from Dec '99
2/15/00	802,012.85				802,012.85		Hosp. Fee from Jan '00
3/15/00	679,654.86				679,654.86		Hosp. Fee from Feb '00
3/15/00		(3,750,000.00)			(3,750,000.00)		F00019 - Loan I - qtrly repayment
3/15/00		(1,000,000.00)			(1,000,000.00)		F00020 - Loan II - qtrly repayment
4/25/00	972,885.50				972,885.50		Hosp. Fee from Mar '00

State SIB Schedule as of 3-12-19 manually added from Tami's PDF (002)

Horry County Hospitality fee: transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in: Loan Servicing Account	4,362.00 Balance in: Loan Reserve Account	
5/15/00	1,369,437.95				1,369,437.95		Hosp. Fee from Apr '00
6/15/00	2,112,975.82				2,112,975.82		Hosp. Fee from May '00
6/30/00		(1,000,000.00)			(1,000,000.00)		F00028 - Loan II - qtrly repayment
7/1/99-6/30/00				828,377.68	240,375.42	588,002.26	FY1999-2000 interest earned
FY Total	36,359,826.99	(19,000,000.00)	-	828,377.68	5,354,166.99	12,834,037.68	
7/1/00		(3,750,000.00)			(3,750,000.00)		F00027 - Loan I - qtrly repayment
7/17/00	1,974,654.23				1,974,654.23		Hosp. Fee from June '00
8/15/00	2,850,395.72				2,850,395.72		Hosp. Fee from July '00
9/15/00	3,724,190.26				3,724,190.26		Hosp. Fee from Aug. '00
9/30/00		(1,100,000.00)			(1,100,000.00)		JV0003 - Loan II - qtrly repayment
10/1/00		(3,750,000.00)			(3,750,000.00)		JV0004 - Loan I - qtrly repayment
10/18/00	2,605,035.04				2,605,035.04		Hosp. Fee from Sept. '00
11/15/00	1,698,392.23				1,698,392.23		Hosp. Fee from Oct. '00
12/15/00	1,383,297.11				1,383,297.11		Hosp. Fee from Nov. '00
1/9/01		(1,100,000.00)			(1,100,000.00)		JV0007 - Loan II - qtrly repayment
1/9/01		(3,750,000.00)			(3,750,000.00)		JV0008 - Loan I - qtrly repayment
1/9/01			(2,057,362.00)		(2,057,362.00)		JV0009 - Transfer Loan II uninsured portion - FY2000
1/16/01	1,030,803.72				1,030,803.72		Hosp. Fee from Dec. '00
2/15/01	816,552.45				816,552.45		Hosp. Fee from Jan. '01
3/15/01	690,567.42				690,567.42		Hosp. Fee from Feb. '01
3/31/01		(1,100,000.00)			(1,100,000.00)		JV0017 - Loan II Insured portion
4/1/01		(3,750,000.00)			(3,750,000.00)		JV0018 - Loan I - qtrly repayment
4/16/01	975,619.90				975,619.90		Hosp. Fee from Mar. '01
5/15/01	1,525,655.66				1,525,655.66		Hosp. Fee from April '01
6/15/01	2,063,594.48				2,063,594.48		Hosp. Fee from May '01
6/29/01		(1,100,000.00)			(1,100,000.00)		JV0024 - Loan II insured portion
6/30/01 (FM13)					4,550,000.00	(4,550,000.00)	B0004 - Transfer to fund Loan I and II payments
6/30/01 (FM13)			(2,920,804.00)		(2,920,804.00)		B00004(A) Transfer Loan II uninsured pmt
7/1/01-6/30/01				1,361,301.18	506,760.60	854,540.58	FY2000-2001 Interest earned
FY Total	21,338,758.22	(19,400,000.00)	(4,978,166.00)	1,361,301.18	(3,621,519.81)	3,621,519.81	JV0202 (FM01, FY02) Adjust transfer amt on B0004.
					(1,604,166.99)	(73,939.61)	

State SIB Schedule as of 3-12-19 manually added from Tami's PDF (002)

Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
Total	83,948,585.21	(55,632,251.00)	(13,995,915.00)	2,189,678.86	3,750,000.00	12,760,098.07	16,510,098.07
7/1/01		(3,750,000.00)			(3,750,000.00)		JV0101 - Loan I - qtrly repayment
7/13/01	2,057,779.53				2,057,779.53		Hosp. Fee from June '01
8/14/01	3,011,801.36				3,011,801.36		Hosp. Fee from July '01
9/14/01	3,786,247.26				3,786,247.26		Hosp. Fee from Aug '01
9/28/01		(1,225,000.00)			(1,225,000.00)		AT02003 - Loan II insured - qtrly repayment
9/28/01			(940,013.00)		(940,013.00)		AT02004 - Loan II uninsured - qtrly repayment
10/1/01		(3,750,000.00)			(3,750,000.00)		AT02005 - Loan I - qtrly repayment
10/15/01	2,825,027.59				2,825,027.59		Hosp. Fee from Sept '01
11/15/01	1,710,501.96				1,710,501.96		Hosp. Fee from Oct '01
12/15/01	1,428,195.63				1,428,195.63		Hosp. Fee from Nov '01
12/30/01		(1,225,000.00)			(1,225,000.00)		AT02008 - Loan II insured - qtrly repayment
12/30/01			(940,013.00)		(940,013.00)		AT02009 - Loan II uninsured - qtrly repayment
1/1/02		(3,750,000.00)			(3,750,000.00)		AT02010 - Loan I - qtrly repayment
1/15/02	1,058,239.75				1,058,239.75		Hosp. Fee from Dec '01
2/15/02	836,957.67				836,957.67		Hosp. Fee from Jan '02
2/28/02				715,365.81	248,582.73	466,783.08	Interest earned July 2001 - February 2002
3/15/02	690,211.68				690,211.68		Hosp. Fee from Feb '02
3/15/02					340,076.57	(340,076.57)	AT02015 - Transfer funds to make qtrly payment
3/31/02		(1,225,000.00)			(1,225,000.00)		AT02016 - Loan II insured - qtrly repayment
3/31/02			(940,013.00)		(940,013.00)		AT02017 - Loan II uninsured - qtrly repayment
3/30/02				45,423.18	13,481.18	31,942.00	Interest earned March 2002
4/1/02		(3,750,000.00)			(3,750,000.00)		AT02018 - Loan I - qtrly repayment
4/15/02	1,082,803.77				1,082,803.77		Hosp. Fee from Mar '02
4/30/02				69,055.03	17,414.32	51,640.71	Interest earned April 2002
5/15/02	1,612,915.76				1,612,915.76		Hosp. Fee from Apr '02
5/31/02				75,993.24	16,653.32	59,339.92	Interest earned May 2002
6/15/02	1,988,473.70				1,988,473.70		Hosp. Fee from May '02
6/30/02		(3,750,000.00)			(3,750,000.00)		AT02028 - Loan I - qtrly repayment
6/30/02		(1,225,000.00)			(1,225,000.00)		AT02029 - Loan II insured - qtrly repayment
6/30/02			(940,013.00)		(940,013.00)		AT02030 - Loan II uninsured - qtrly repayment

State SIB Schedule as of 3-12-19 manually added from Tami's PDF (002)

Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
6/30/02				50,941.40	10,769.15	40,172.25	Interest earned June 2002
6/30/02					935,000.00	(935,000.00)	AT02031 - Transfer funds to make qtrly payment
FY Total	22,089,155.66	(23,650,000.00)	(3,760,052.00)	956,778.66	(3,738,919.07)	(625,198.61)	
Totals	106,037,740.87	(79,282,251.00)	(17,755,967.00)	3,146,457.52	11,080.93	12,134,899.46	12,145,980.39
7/15/02	2,095,572.76				2,095,572.76		Hosp. Fee from June '02
7/30/02				38,066.98	7,284.56	30,782.42	Interest earned July 2002
8/15/02	3,179,550.82				3,179,550.82		Hosp. Fee from July '02
8/30/02				61,843.56	11,361.98	50,481.58	Interest earned Aug 2002
9/16/02	3,851,873.95				3,851,873.95		Hosp. Fee from Aug '02
9/30/02		(3,750,000.00)			(3,750,000.00)		AT03006 - Loan I - qtrly repayment
9/30/02		(1,350,000.00)			(1,350,000.00)		AT03007 - Loan II insured - qtrly repayment
9/30/02			(1,169,913.75)		(1,169,913.75)		AT03008 - Loan II uninsured - qtrly repayment
9/30/02				52,550.68	11,260.33	41,290.35	Interest earned September 2002
10/15/02	3,042,335.12				3,042,335.12		Hosp. Fee from Sep '02
10/30/02				48,819.48	10,141.26	38,678.22	Interest earned October 2002
11/15/02	1,670,843.34				1,670,843.34		Hosp. Fee from Oct '02
11/30/02				79,138.87	17,223.56	61,915.31	Interest earned November 2002
12/15/02	1,472,445.42				1,472,445.42		Hosp. Fee from Nov '02
12/31/02		(3,750,000.00)			(3,750,000.00)		AT03013 - Loan I - qtrly repayment
12/31/02		(1,350,000.00)			(1,350,000.00)		AT03014 - Loan II insured - qtrly repayment
12/31/02			(1,169,913.75)		(1,169,913.75)		AT03015 - Loan II uninsured - qtrly repayment
12/31/02				84,266.82	22,858.48	61,408.34	Interest earned December 2002
1/15/03	1,041,985.90				1,041,985.90		Hosp. Fee from Dec '02
1/31/03				64,491.37	16,364.32	48,127.05	Interest earned January 2003
2/15/03	849,303.16				849,303.16		Hosp. Fee from Jan '03
2/28/03				69,291.41	16,771.18	52,520.23	Interest earned February 2003
3/15/03	704,210.17				704,210.17		Hosp. Fee from Feb '03
3/30/03					777,274.01	(777,274.01)	Transfer from Loan Reserve Acct to Loan Servicing Acct to make March 2003 payments
3/31/03		(3,750,000.00)			(3,750,000.00)		AT03013 - Loan I - qtrly repayment
3/31/03		(1,350,000.00)			(1,350,000.00)		AT03014 - Loan II insured - qtrly repayment
3/31/03			(1,169,913.75)		(1,169,913.75)		AT03015 - Loan II uninsured - qtrly repayment
3/31/03				69,587.30	17,405.56	52,181.74	Interest earned March 2003
4/15/03	947,269.39				947,269.39		Hosp. Fee from Mar '03

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
4/30/03				33,109.16	6,703.24	26,405.92	Interest earned April 2003
5/15/03	1,471,673.39				1,471,673.39		Hosp. Fee from Apr '03
5/30/03				80,832.26	13,500.24	67,332.02	Interest earned May 2003
6/15/03	2,065,566.30				2,065,566.30		Hosp. Fee from May '03
6/30/03					1,747,795.63	(1,747,795.63)	AT03034 - Transfer funds to make qtrly payment
6/30/03		(3,750,000.00)			(3,750,000.00)		AT03035 - Loan I - qtrly repayment
6/30/03		(1,350,000.00)			(1,350,000.00)		AT03036 - Loan II insured - qtrly repayment
6/30/03			(1,169,913.75)		(1,169,913.75)		AT03037 - Loan II uninsured - qtrly repayment
6/30/03				58,230.24	9,839.93	48,390.31	Interest earned June 2003
FY Total	22,392,629.72	(20,400,000.00)	(4,679,655.00)	740,228.13	(1,241.00)	(1,945,556.15)	
Total	128,430,370.59	(99,682,251.00)	(22,435,622.00)	3,886,685.65	9,839.93	10,189,343.31	10,199,183.24
7/15/03	2,115,862.06				2,115,862.06		Hosp. Fee from June '03
7/30/03				52,440.14	7,998.25	44,441.89	Interest earned July 2003
8/15/03	3,148,674.22				3,148,674.22		Hosp. Fee from July '03
8/30/03				65,246.75	10,801.23	54,445.52	Interest earned Aug 2003
9/15/03	3,980,143.22				3,980,143.22		Hosp. Fee from Aug '03
9/30/03		(3,750,000.00)			(3,750,000.00)		AT04004 - Loan I - qtrly repayment
9/30/03		(1,475,000.00)			(1,475,000.00)		AT04005 - Loan II insured - qtrly repayment
9/30/03			(1,421,108.75)		(1,421,108.75)		AT04006 - Loan II uninsured - qtrly repayment
9/30/03				40,392.63	9,245.69	31,146.94	Interest earned Sept 2003
10/15/03	3,321,032.19				3,321,032.19		Hosp. Fee from Sept '03
10/30/03				34,483.65	8,161.04	26,322.61	Interest earned Oct 2003
11/15/03	1,719,570.33				1,719,570.33		Hosp. Fee from Oct '03
11/30/03				74,161.06	19,742.02	54,419.04	Interest earned Nov 2003
12/15/03	1,513,855.54				1,513,855.54		Hosp. Fee from Nov '03
12/30/03		(3,750,000.00)			(3,750,000.00)		AT040014 - Loan I - qtrly repayment
12/30/03		(1,475,000.00)			(1,475,000.00)		AT040015 - Loan II insured - qtrly repayment
12/30/03			(1,421,108.75)		(1,421,108.75)		AT040016 - Loan II uninsured - qtrly repayment
12/30/03				67,916.25	21,882.00	46,034.25	Interest earned Dec 2003
1/15/04	1,176,029.85				1,176,029.85		Hosp. Fee from Dec '03
1/30/04				71,638.70	21,121.96	50,516.74	Interest earned Jan 2004
2/15/04	922,980.33				922,980.33		Hosp. Fee from Jan '04
2/29/04				56,828.46	15,508.48	41,319.98	Interest earned Feb 2004

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
3/15/04	818,965.73				818,965.73		Hosp. Fee from Feb '04
3/31/04				47,825.73	13,107.39	34,718.34	Interest earned Mar 2004
3/31/04					572,708.62	(572,708.62)	AT04023 - Transfer funds to make qtrly payment
3/31/04		(3,750,000.00)			(3,750,000.00)		AT04024 - Loan I - qtrly repayment
3/31/04		(1,475,000.00)			(1,475,000.00)		AT04025 - Loan II insured - qtrly repayment
3/31/04			(1,421,108.75)		(1,421,108.75)		AT04026 - Loan II uninsured - qtrly repayment
3/31/04	511,096.17				511,096.17		Receipt from Horry County
4/15/04	1,063,556.77				1,063,556.77		Hosp. Fee from Mar '04
4/30/04				24,050.93	5,624.83	18,426.10	Interest earned Apr 2004
5/15/04	1,646,231.25				1,646,231.25		Hosp. Fee from Apr '04
5/30/04				53,827.82	11,454.54	42,373.28	Interest earned May 2004
6/15/04	2,329,206.47				2,329,206.47		Hosp. Fee from May '04
6/30/04		(3,750,000.00)			(3,750,000.00)		AT04035 - Loan I - qtrly repayment
6/30/04		(1,475,000.00)			(1,475,000.00)		AT04036 - Loan II insured - qtrly repayment
6/30/04			2,098,917.25		2,098,917.25		AT04037 - Loan II uninsured overpayment - reimbursed from SIB
6/30/04					(1,929,991.11)	1,929,991.11	AT04038 - Transfer balance to Loan Reserve Acct
6/30/04				55,573.20	12,274.26	43,298.94	Interest earned June 2004
FY Total:	24,267,204.13	(20,900,000.00)	(2,164,409.00)	644,385.32	2,434.33	1,844,746.12	
Total:	152,697,574.72	(120,582,251.00)	(24,600,031.00)	4,531,070.97	12,274.26	12,034,089.43	
7/15/04	2,289,795.68				2,289,795.68		Hosp. Fee from June '04
7/30/04				42,977.21	7,654.36	35,322.85	Interest earned July 2004
8/15/04	3,275,741.60				3,275,741.60		Hosp. Fee from July '04
8/31/04				58,056.75	11,214.02	46,842.73	Interest earned Aug 2004
9/15/04	4,459,158.09				4,459,158.09		Hosp. Fee from Aug '04
9/30/04				41,496.89	10,781.24	30,715.65	Interest earned Sept 2004
9/30/04		(3,750,000.00)			(3,750,000.00)		AT05012 - Loan I - qtrly repayment
9/30/04		(1,625,000.00)			(1,625,000.00)		AT05013 - Loan II insured - qtrly repayment
9/30/04			(564,085.00)		(564,085.00)		AT05014 - Loan II uninsured - qtrly repayment
10/15/04	3,037,898.25				3,037,898.25		Hosp. Fee from Sept '04
10/31/04				44,317.57	12,693.69	31,623.88	Interest earned Oct 2004
11/15/04	1,905,176.49				1,905,176.49		Hosp. Fee from Oct '04
11/30/04				59,656.48	18,457.81	41,198.67	Interest earned Nov 2004

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
12/15/04	1,598,676.20				1,598,676.20		Hosp. Fee from Nov '04
12/31/04		(3,750,000.00)			(3,750,000.00)		AT05021 - Loan I - qtrly repayment
12/31/04		(1,625,000.00)			(1,625,000.00)		AT05022 - Loan II insured - qtrly repayment
12/31/04			(564,085.00)		(564,085.00)		AT05023 - Loan II uninsured - qtrly repayment
12/31/04				58,099.74	19,125.46	38,974.28	Interest earned Dec 2004
1/15/05	1,290,403.19				1,290,403.19		Hosp. Fee from Dec '04
1/31/05				57,580.96	17,616.07	39,964.89	Interest earned Jan 2005
2/15/05	1,007,193.37				1,007,193.37		Hosp. Fee from Jan '05
2/28/05				59,986.55	17,588.32	42,398.23	Interest earned Feb 2005
3/15/05	902,438.58				902,438.58		Hosp. Fee from Feb '05
3/28/05	1,147,819.68					1,147,819.68	Additional funds received from Horry County
3/31/05		(3,750,000.00)			(3,750,000.00)		AT05021 - Loan I - qtrly repayment
3/31/05		(1,625,000.00)			(1,625,000.00)		AT05022 - Loan II insured - qtrly repayment
3/31/05			(564,085.00)		(564,085.00)		AT05023 - Loan II uninsured - qtrly repayment
3/31/05				53,544.21	17,021.93	36,522.28	Interest earned Mar 2005
4/15/05	1,162,039.92				1,162,039.92		Hosp. Fee from Mar '05
4/30/05				36,510.31	9,994.91	26,515.40	Interest earned Apr 2005
5/15/05	1,943,929.46				1,943,929.46		Hosp. Fee from Apr '05
5/30/05				75,001.42	17,920.76	57,080.66	Interest earned May 2005
6/15/05	2,311,703.20				2,311,703.20		Hosp. Fee from May '05
6/30/05		(3,750,000.00)			(3,750,000.00)		AT05044 - Loan I - qtrly repayment
6/30/05		(1,625,000.00)			(1,625,000.00)		AT05045 - Loan II insured - qtrly repayment
6/30/05			(564,085.00)		(564,085.00)		AT05046 - Loan II uninsured - qtrly repayment
6/30/05			(1.00)		(1.00)		AT05048 - Final Loan II uninsured payment
6/30/05				30,575.62	7,828.09	22,747.53	Interest earned June 2005
6/30/05					(1,607,983.95)	1,607,983.95	AT05049 - Transfer balance to Loan Reserve Acct
FY Total	26,331,973.71	(21,500,000.00)	(2,256,341.00)	617,803.71	(12,274.26)	3,205,710.68	
Total	179,029,548.43	(142,082,251.00)	(26,856,372.00)	5,148,874.68	0.00	15,239,800.11	
7/15/05	2,447,781.78				2,447,781.78		Hosp. Fee from June '05
7/31/05				50,496.84	10,114.87	40,381.97	Interest earned July 2005
8/15/05	3,433,141.76				3,433,141.76		Hosp. Fee from July '05

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
8/15/05	1,464,918.42					1,464,918.42	Additional funds received from Horry County.
8/31/05							Interest earned Aug 2005
9/15/05							Hosp. Fee from Aug '05
9/30/05							Interest earned Sept 2005
9/30/05							AT05012 - Loan I - qtrly repayment
9/30/05							AT05013 - Loan II insured - qtrly repayment
9/30/05							AT05014 - Loan II uninsured - qtrly repayment
10/15/05							Hosp. Fee from Sept '05
10/31/05							Interest earned Oct 2005
11/15/05							Hosp. Fee from Oct '05
11/30/05							Interest earned Nov 2005
12/15/05							Hosp. Fee from Nov '05
12/31/05							AT05021 - Loan I - qtrly repayment
12/31/05							AT05022 - Loan II insured - qtrly repayment
12/31/05							AT05023 - Loan II uninsured - qtrly repayment
12/31/05							Interest earned Dec 2005
1/15/06							Hosp. Fee from Dec '05
1/31/06							Interest earned Jan 2006
2/15/06							Hosp. Fee from Jan '06
2/28/06							Interest earned Feb 2006
3/15/06							Hosp. Fee from Feb '06
3/28/06							Additional funds received from Horry County.
3/31/06							AT05021 - Loan I - qtrly repayment
3/31/06							AT05022 - Loan II insured - qtrly repayment
3/31/06							AT05023 - Loan II uninsured - qtrly repayment
4/15/06							Interest earned Mar 2006
4/30/06							Hosp. Fee from Mar '06
5/15/06							Interest earned Apr 2006
5/30/06							Hosp. Fee from Apr '06
6/15/06							Interest earned May 2006
6/30/06							Hosp. Fee from May '06
6/30/06							AT05044 - Loan I - qtrly repayment
6/30/06							AT05045 - Loan II insured - qtrly repayment
6/30/06							AT05046 - Loan II uninsured - qtrly repayment
6/30/06							Interest earned June 2006
6/30/06							AT05049 - Transfer balance to Loan Reserve Acct

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
8/31/05				69,668.19	13,632.33	56,035.86	Interest earned Aug 2005
9/15/05	5,108,273.44				5,108,273.44		Hosp. Fee from Aug '05
9/30/05		(3,750,000.00)			(3,750,000.00)		AT06008 - Loan I quarterly pmt
9/30/05		(1,775,000.00)			(1,775,000.00)		AT06009 - Loan II insured - qtrly repayment
9/30/05			(621,953.28)		(621,953.28)		AT06010 - Loan II uninsured - qtrly repayment
9/30/05				45,596.71	10,694.98	34,901.73	Interest earned Sept 2005
10/14/05	3,673,701.45				3,673,701.45		Hosp. Fee from Sept '05
10/31/05				54,530.75	12,745.69	41,785.06	Interest
11/15/05	2,072,908.42				2,072,908.42		Hosp. Fee from Oct '05
11/30/05				108,220.05	28,530.20	79,689.85	Interest
12/15/05	1,756,855.10				1,756,855.10		Hosp. Fee from Nov '05
12/30/05				78,457.41	24,239.50	54,217.91	Interest
12/30/05		(3,750,000.00)			(3,750,000.00)		AT06021 - Loan I quarterly pmt
12/30/05		(1,775,000.00)			(1,775,000.00)		AT06022 - Loan II insured - qtrly repayment
12/30/05			(621,953.28)		(621,953.28)		AT06023 - Loan II uninsured - qtrly repayment
1/15/06	1,454,587.58				1,454,587.58		Hosp. Fee from Dec '05
1/30/06				99,367.49	30,122.38	69,245.11	Interest
2/15/06	1,127,521.90				1,127,521.90		Hosp. Fee from Jan '06
2/28/06				108,718.67	33,732.67	74,986.00	Interest
3/15/06	1,002,574.23				1,002,574.23		Hosp. Fee from Feb '06
3/31/06				74,866.52	24,353.60	50,512.92	Interest
3/31/06		(3,750,000.00)			(3,750,000.00)		AT06036 - Loan I quarterly pmt
3/31/06		(1,775,000.00)			(1,775,000.00)		AT06037 - Loan II insured - qtrly repayment
3/31/06			(621,953.28)		(621,953.28)		AT06038 - Loan II uninsured - qtrly repayment
4/15/06	1,224,675.17				1,224,675.17		Hosp. Fee from Mar '06
4/30/06				46,925.17	13,441.87	33,483.30	Interest
5/15/06	1,950,363.83				1,950,363.83		Hosp. Fee from Apr '06
5/30/06				131,856.20	36,452.92	95,403.28	Interest
6/15/06	2,637,255.41				2,637,255.41		Hosp. Fee from May '06
6/30/06		(3,750,000.00)			(3,750,000.00)		AT06036 - Loan I quarterly pmt
6/30/06		(1,775,000.00)			(1,775,000.00)		AT06037 - Loan II insured - qtrly repayment
6/30/06			(621,953.16)		(621,953.16)		AT06038 - Loan II uninsured - qtrly repayment
6/30/06				67,072.27	19,160.02	47,912.25	Interest earned June 2006
6/30/06					(3,559,048.10)	3,559,048.10	AT060054 - Transfer balance to Loan Reserve Acct
FY Total	29,354,558.49	(22,100,000.00)	(2,487,813.00)	935,776.27		5,702,521.76	

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
Total	208,384,106.92	(164,182,251.00)	(29,344,185.00)	6,084,650.95	0.00	20,942,321.87	
7/15/06	2,575,870.38				2,575,870.38		Hosp. Fee from June '06
7/31/06				51,684.22	11,295.00	40,389.22	Interest
8/15/06	3,839,101.05				3,839,101.05		Hosp. Fee from July '06
8/31/06				118,681.91	20,661.36	98,020.55	Interest
9/15/06	4,820,512.74				4,820,512.74		Hosp. Fee from Aug '06
9/15/06		(3,750,000.00)			(3,750,000.00)		AT07007 - Loan I quarterly pmt
9/15/06		(1,950,000.00)			(1,950,000.00)		AT07008 - Loan II insured - qtrly repayment
9/15/06			(662,096.00)		(662,096.00)		AT07009 - Loan II uninsured - qtrly repayment
9/30/06				98,741.80	19,796.60	78,945.20	Interest
10/15/06	3,728,336.01				3,728,336.01		Hosp. Fee from Sept '06
10/31/06				94,649.26	19,560.61	75,088.65	Interest
11/15/06	2,356,098.55				2,356,098.55		Hosp. Fee from Oct '06
11/30/06				127,776.82	30,696.38	97,080.44	Interest
12/15/06	1,916,537.75				1,916,537.75		Hosp. Fee from Nov '06
12/31/06		(3,750,000.00)			(3,750,000.00)		AT07022 - Loan I quarterly pmt
12/31/06		(1,950,000.00)			(1,950,000.00)		AT07023 - Loan II insured - qtrly repayment
12/31/06			(662,097.00)		(662,097.00)		AT07024 - Loan II uninsured - qtrly repayment
12/31/06				115,855.22	31,217.10	84,638.12	Interest
1/15/07	1,465,123.12				1,465,123.12		Hosp. Fee from Dec '06
1/31/07				101,566.10	26,674.43	74,891.67	Interest
2/15/07	1,228,199.92				1,228,199.92		Hosp. Fee from Jan '07
2/28/07				168,340.95	45,014.50	123,326.45	Interest
3/15/07	1,067,593.52				1,067,593.52		Hosp. Fee from Feb '07
3/31/07		(3,750,000.00)			(3,750,000.00)		AT07043 - Loan I quarterly pmt
3/31/07		(1,950,000.00)			(1,950,000.00)		AT07044 - Loan II insured - qtrly repayment
3/31/07			(662,097.00)		(662,097.00)		AT07045 - Loan II uninsured - qtrly repayment
3/31/07				153,661.21	42,596.42	111,064.79	Interest
4/15/07	1,265,896.58				1,265,896.58		Hosp. Fee from Mar '07
4/30/07				99,222.77	24,287.33	74,935.44	Interest
5/15/07	2,148,472.22				2,148,472.22		Hosp. Fee from Apr '07
5/31/07				157,216.48	37,561.76	119,654.72	Interest
6/15/07	2,711,212.77				2,711,212.77		Hosp. Fee from May '07

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
6/30/07		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
6/30/07		(1,950,000.00)			(1,950,000.00)		Loan II insured - qtrly repayment
6/30/07			(662,097.00)		(662,097.00)		Loan II uninsured - qtrly repayment
6/30/07				106,232.58	26,478.80	79,753.78	Interest
6/30/07					(4,010,407.90)	4,010,407.90	AT07068 - Transfer balance to Loan Reserve Acct
FY Total	29,122,954.61	(22,800,000.00)	(2,648,387.00)	1,393,629.32	-	5,068,196.93	
Total	237,507,061.53	(186,982,251.00)	(31,992,572.00)	7,478,280.27	0.00	26,010,518.80	
7/15/07	2,706,454.38				2,706,454.38		Hosp. Fee from June '07
7/30/07				95,520.60	19,018.44	76,502.16	Interest
8/15/07	4,081,259.36				4,081,259.36		Hosp. Fee from July '07
8/31/07				140,388.05	25,009.36	115,378.69	Interest
9/15/07	5,049,466.38				5,049,466.38		Hosp. Fee from Aug '07
9/30/07		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
9/30/07		(2,150,000.00)			(2,150,000.00)		Loan II insured - qtrly repayment
9/30/07			(684,770.00)		(684,770.00)		Loan II uninsured - qtrly repayment
9/30/07				160,625.06	31,244.11	129,380.95	Interest
10/15/07	4,085,910.35				4,085,910.35		Hosp. Fee from Sept '07
10/31/2007				148,954.35	29,791.42	119,162.93	Interest
11/30/2007				186,629.87	42,044.39	144,585.48	Interest
11/30/07	2,508,141.75				2,508,141.75		Hosp. Fee from Oct '07
12/17/07		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
12/17/07		(2,150,000.00)			(2,150,000.00)		Loan II insured - qtrly repayment
12/17/07			(684,770.00)		(684,770.00)		Loan II uninsured - qtrly repayment
12/30/07				119,715.70	28,942.72	90,772.98	Interest
12/30/07	1,883,023.89				1,883,023.89		Hosp. Fee from Nov '07
1/17/08	1,613,678.40				1,613,678.40		Hosp. Fee from Dec 07
01/31/08				139,810.32	33,307.87	106,502.45	Interest
2/29/08				165,271.13	40,154.51	125,116.62	Interest
2/21/08	1,230,747.97				1,230,747.97		Hosp. Fee from Jan 08
3/19/08	1,061,050.72				1,061,050.72		Hosp. Fee from Feb 08
3/28/08		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
3/28/08		(2,150,000.00)			(2,150,000.00)		Loan II insured - qtrly repayment
3/28/08			(684,770.00)		(684,770.00)		Loan II uninsured - qtrly repayment

State SIB Schedule as of 3-12-19 manually added from Tami's PDF (002)

Horry County: Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer-to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
04/01/08				113,871.03	28,893.81	84,977.22	Interest
4/14/08	1,346,291.33				1,346,291.33		Hosp. Fee from Mar 08
4/30/08				112,976.34	25,446.35	87,529.99	Interest
5/15/08	2,262,282.57				2,262,282.57		Hosp. Fee from April 08
5/30/08				134,523.19	29,582.28	104,940.91	Interest
6/19/08	2,430,690.94				2,430,690.94		Hosp. Fee from May 08
6/30/08				114,042.08	26,020.47	88,021.61	Interest
7/1/08		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
7/1/08		(2,150,000.00)			(2,150,000.00)		Loan II insured - qtrly repayment
7/1/08			(684,770.00)		(684,770.00)		Loan II uninsured - qtrly repayment
7/16/08					(4,279,373.77)	4,279,373.77	BS08012 - Transfer balance to Loan Reserve Acct
FY Total	30,258,998.04	(23,600,000.00)	(2,739,080.00)	1,632,327.72	-	5,552,245.76	
Total	267,766,059.57	(210,582,251.00)	(34,731,652.00)	9,110,607.99	0.00	31,562,764.56	
7/14/08	2,690,026.70				2,690,026.70		Hosp. Fee from June 08 - D090004 & D090005
7/31/08				96,088.23	18,919.94	77,168.29	Interest APE0089
8/15/08	4,073,112.86				4,073,112.86		Hosp. Fee from July 08 - D090010 & D090011
8/29/08				134,284.44	23,353.41	110,931.03	Interest APE0189
9/15/08	5,215,701.28				5,215,701.28		Hosp. Fee from Aug 08 - D090017 & D090018
9/30/08				145,047.10	27,203.39	117,843.71	Interest APE0295
10/14/08	4,304,268.90				4,304,268.90		Hosp. Fee from Sept 08 - D090026 & D090027
10/31/08				162,571.50	30,981.46	131,590.04	Interest APE0407
11/14/08	2,062,272.15				2,062,272.15		Hosp. Fee from Oct 08 -
11/26/08				116,884.31	23,910.83	92,973.48	Interest
10/1/08		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A090020
10/1/08		(2,150,000.00)			(2,150,000.00)		Loan II insured - qtrly repayment A090020
10/1/08			(684,770.00)		(684,770.00)		Loan II uninsured - qtrly repayment A090022
11/7/08			(5,467.00)		(5,467.00)		Correction - Loan II uninsured - qtrly repayment A090033
11/7/08		(225,000.00)			(225,000.00)		Correction - Loan II insured - qtrly repayment A090032
12/15/08	1,882,183.74				1,882,183.74		Hosp. Fee from Nov 08 -
12/31/08				114,493.02	26,506.79	87,986.23	Interest
1/5/2009		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A090051

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to: Pledged Revenue Fund	Deposits to: SIB Cash Account	Interest Deposits	4,363.00 Balance in: Loan Servicing Account	4,362.00 Balance in: Loan Reserve Account	
1/5/2009		(2,375,000.00)			(2,375,000.00)		Loan II insured - qtrly repayment A090051
1/5/2009			(690,237.00)		(690,237.00)		Loan II uninsured - qtrly repayment A090052
1/12/2009	1,358,828.25				1,358,828.25		Hosp. Fee from Dec 08 -
1/30/2009				113,249.93	25,831.27	87,418.66	Interest
2/12/2009	1,194,533.18				1,194,533.18		Hosp. Fee from Jan 09 - D090054,55
2/27/2009				119,675.38	26,827.68	92,847.70	Interest
3/16/2009	1,024,338.45				1,024,338.45		Hosp. Fee from Feb 09 D090060,61
4/1/2009		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A090072
4/1/2009		(2,375,000.00)			(2,375,000.00)		Loan II insured - qtrly repayment A090072
4/1/2009			(690,237.00)		(690,237.00)		Loan II uninsured - qtrly repayment A090073
4/17/2009	1,227,675.69				1,227,675.69		Hosp. Fee from Mar 09 D090065,66
3/31/2009				203,065.31	45,989.24	157,076.07	Interest
4/30/2009				117,909.25	23,420.53	94,488.72	Interest
5/15/2009	1,736,412.37				1,736,412.37		Hosp. Fee from April
5/29/2009				134,530.66	24,875.88	109,654.78	Interest
6/17/2009	2,495,652.77				2,495,652.77		Hosp. Fee from May
6/30/2009		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A090100
6/30/2009		(2,375,000.00)			(2,375,000.00)		Loan II insured - qtrly repayment A090100
6/30/2009			(690,237.00)		(690,237.00)		Loan II uninsured - qtrly repayment A090101
6/30/2009				107,684.21	19,987.92	87,696.29	Interest
FY Total	29,265,006.34	(24,500,000.00)	(2,760,948.00)	1,565,483.34	2,321,866.68	1,247,675.00	
	297,031,065.91	(235,082,251.00)	(37,492,600.00)	10,676,091.33	2,321,866.68	32,810,439.56	
7/16/2009					(2,321,866.68)	2,321,866.68	B100004 - Transfer balance to Loan Reserve Acct CG did not receive in prior year
7/21/2009	2,200,409.47				2,200,409.47		Hosp. Fee from June 09 D100002, 3
7/31/2009				92,162.76	14,757.13	77,405.63	Interest
8/18/2009	3,840,624.70				3,840,624.70		Hosp. Fee from July 09 D100006,7
8/31/2009				141,983.04	21,489.20	120,493.84	Interest
9/30/2009				171,272.16	27,476.44	143,795.72	Interest
9/16/09	4,896,816.92				4,896,816.92		Hosp. Fee from August 09 D100017,18
10/1/2009		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A100021
10/1/2009		(2,600,000.00)			(2,600,000.00)		Loan II insured - qtrly repayment A100021
10/1/2009			(703,770.25)		(703,770.25)		Loan II uninsured - qtrly repayment A100021
10/14/09	3,797,103.13				3,797,103.13		Hosp. Fee from Sept 09 D100024,25

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Horry County Hospitality fee transfers to SIB

Date:	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
10/30/2009				123,860.58	19,596.00	104,264.58	Interest
11/17/2010	2,306,858.65				2,306,858.65		Hosp. Fee from Oct 09 D100030,31
11/30/09				160,115.35	26,842.64	133,272.71	Interest
12/31/09				110,094.52	20,439.98	89,654.54	Interest
1/4/2010		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A100043
1/4/2010		(2,600,000.00)			(2,600,000.00)		Loan II insured - qtrly repayment A100043
1/4/2010			(703,770.25)		(703,770.25)		Loan II uninsured - qtrly repayment A100045
1/08/2010	1,757,395.17				1,757,395.17		Hosp. Fee from November D100038 & 39
1/20/2010	1,268,944.14				1,268,944.14		Hosp. Fee from December D100040 & 41
1/29/2010				110,023.83	19,331.48	90,692.35	Interest
2/26/10				116,477.58	19,876.01	96,601.57	Interest
2/12/2010	1,146,852.65				1,146,852.65		Hosp. Fee from Jan D100049 & 50
3/15/2010	967,150.76				967,150.76		Hosp. Fee from Feb D100056 & 57
3/31/2010				141,411.61	24,319.34	117,092.27	Interest
4/1/2010		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A100075
4/1/2010		(2,600,000.00)			(2,600,000.00)		Loan II insured - qtrly repayment A100075
4/1/2010			(703,770.25)		(703,770.25)		Loan II uninsured - qtrly repayment A100076
4/30/2010				99,727.18	14,802.58	84,924.60	Interest
4/20/2010	1,154,560.32				1,154,560.32		Hosp. Fee from Mar D100065 & D100066
05/28/2010				118,507.30	15,696.28	102,811.02	Interest
05/17/2010	1,823,362.83				1,823,362.83		Hosp. Fee from Apr D100071 & D100072
06/23/2010	2,437,925.23				2,437,925.23		Hosp. Fee from May D100076, 80, & 81 *ERROR \$2,204,083.53 corrected in FY11
06/30/2010				100,580.76	12,678.73	87,902.03	Interest
7/1/2010		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A100101
7/1/2010		(2,600,000.00)			(2,600,000.00)		Loan II insured - qtrly repayment A100101
7/1/2010			(703,770.25)		(703,770.25)		Loan II uninsured - qtrly repayment
7/2/2010					379,771.22	(379,771.22)	B100056 transfer to cover shortage
7/29/2010					(2,204,083.53)	2,204,083.53	B100064 to clear servicing account
FY Total	27,598,003.97	(25,400,000.00)	(2,815,081.00)	1,486,216.67	(4,525,950.21)	5,395,089.85	
	324,629,069.88	(260,482,251.00)	(40,307,681.00)	12,162,308.00	(2,204,083.53)	38,205,529.41	
7/1/2010					(2,204,083.53)		Beginning Balance
7/14/2010	2,401,122.44				2,401,122.44		Hosp. Fee from June D110003 & D110004

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Horry County Hospitality fee transfers to SIB

Date:	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
7/14/2010	5,458,207.24				5,458,207.24		Hosp. Fee from July D110013 & D110014
7/30/2010				100,837.80	10,854.95	89,982.85	Interest
8/13/2010	4,038,593.55				4,038,593.55		Hosp. Fee from Aug D110010 & D110011
8/31/2010				91,077.66	8,519.11	82,558.55	Interest
9/21/2010					2,204,083.53	(2,204,083.53)	CORRECTION FROM 7/29/2010
9/30/2010				127,435.67	14,116.18	113,319.49	Interest
10/12/2010		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A110031
10/12/2010		(2,875,000.00)			(2,875,000.00)		Loan II insured - qtrly repayment A110031
10/12/2010			(710,920.72)		(710,920.72)		Loan II uninsured - qtrly repayment A110033
10/15/2010	3,921,554.60				3,921,554.60		Hosp. Fee from Sept D110020 & D110021
10/29/2010				110,125.67	15,109.73	95,015.94	Interest
11/12/2010	2,697,039.67				2,697,039.67		Hosp. Fee from Oct D110029 & D110030
11/30/2010				101,840.17	16,235.26	85,604.91	Interest
12/21/2010	1,831,389.39				1,831,389.39		Hosp. Fee from Nov D110033 & D110034
12/31/2010				87,974.68	16,231.03	71,743.65	Interest
1/4/2011		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A110055
1/4/2011		(2,875,000.00)			(2,875,000.00)		Loan II insured - qtrly repayment A110055
1/4/2011			(710,921.00)		(710,921.00)		Loan II uninsured - qtrly repayment A110057
1/12/2011	1,407,245.07				1,407,245.07		Hosp. Fee from Dec D110040 & D110041
1/31/11				85,824.03	15,188.01	70,636.02	Interest
2/28/11				81,375.20	14,321.58	67,053.62	Interest
02/15/11	1,118,554.03				1,118,554.03		Hosp. Fee from Jan D110044 & D110045
03/31/11				127,460.27	23,032.45	104,427.82	Interest
3/11/11	924,761.40				924,761.40		Hosp. Fee from Feb D110047 & D110048
4/7/2011		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A110088
4/7/2011		(2,875,000.00)			(2,875,000.00)		Loan II insured - qtrly repayment A110088
4/7/2011			(710,921.08)		(710,921.08)		Loan II uninsured - qtrly repayment A110090
4/13/2011	1,221,585.78				1,221,585.78		Hosp. Fee from Mar D110051 & D110052
4/29/2011				79,909.76	13,070.96	66,838.80	Interest
5/16/2011	1,762,209.46				1,762,209.46		Hosp. Fee from Apr D110056 & D110057
5/31/2011				85,450.77	12,390.83	73,059.94	Interest
6/14/2011	2,740,280.02				2,740,280.02		Hosp. Fee from May D110061
6/30/2011				72,220.19	10,208.67	62,011.52	Interest
7/12/2011		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A110112
7/12/2011		(2,875,000.00)			(2,875,000.00)		Loan II insured - qtrly repayment A110112

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
7/12/2011			(710,921.20)		(710,921.20)		Loan II uninsured - qtrly repayment A110112
7/27/2011					(348,137.41)	348,137.41	Year End Clearing
FY Total	29,522,542.65	(26,500,000.00)	(2,843,684.00)	1,151,531.87	2,204,083.53	(873,693.01)	
	354,151,612.53	(286,982,251.00)	(43,151,365.00)	13,313,839.87	-	37,331,836.40	Verified to CG FM13 Balance 9/12/11
7/13/2011	2,625,981.36				2,625,981.36		Hosp. Fee from June D120002
7/29/2011				71,742.60	10,245.43	61,497.17	Interest
8/15/2011	4,202,455.14				4,202,455.14		Hosp. Fee from July D120006 & 7
8/31/11				65,505.34	8,048.60	57,456.74	Interest
9/20/2011	5,712,869.48				5,712,869.48		Hosp. Fee from August
09/30/2011				105,732.03	14,845.99	90,886.04	Interest
10/15/2011	4,081,576.59				4,081,576.59		Hosp. Fee from Sept.
10/31/2011				75,044.24	11,750.15	63,294.09	Interest
10/14/2011		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A120026
10/14/2011		(3,150,000.00)			(3,150,000.00)		Loan II insured - qtrly repayment A120026
10/14/2011			(729,357.92)		(729,357.92)		Loan II uninsured - qtrly repayment A120026
11/17/2011	2,669,698.06				2,669,698.06		Hosp. Fee from Oct.
11/30/2011				58,403.89	9,810.47	48,593.42	Interest
12/19/2011	1,974,897.06				1,974,897.06		Hosp. Fee from Nov.
12/30/11				70,931.73	13,699.31	57,232.43	Interest
1/3/11		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A120051
1/3/11		(3,150,000.00)			(3,150,000.00)		Loan II insured - qtrly repayment A120051
1/3/11			(729,357.92)		(729,357.92)		Loan II uninsured - qtrly repayment A120053
1/31/2012				62,132.85	11,822.83	50,310.02	Interest
1/11/2012	1,429,297.55				1,429,297.55		Hosp. Fee from Dec.
2/16/2012	1,255,481.85				1,255,481.85		Hosp. Fee from Jan
2/29/2012				78,497.40	14,616.40	63,881.00	Interest
3/15/2012	1,046,227.01				1,046,227.01		Hosp. Fee from Feb
3/30/12				107,619.38	20,298.44	87,320.94	Interest
4/3/12		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A120078
4/3/12		(3,150,000.00)			(3,150,000.00)		Loan II insured - qtrly repayment A120078

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
4/10/12			(729,357.92)		(729,357.92)		Loan II uninsured - qtrly repayment 10367278
4/30/12				81,903.96	13,561.42	68,342.54	Interest
4/17/12	1,322,927.51				1,322,927.51		Hosp. Fee from Mar
4/15/12	2,195,823.47				2,195,823.47		Hosp. Fee from Apr
5/31/12				77,675.14	11,611.00	66,064.14	Interest
6/18/12	2,885,816.45				2,885,816.45		Hosp. Fee from May
6/29/12				71,905.84	10,500.70	61,405.14	Interest
6/26/12		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A120103
6/26/12		(3,150,000.00)			(3,150,000.00)		Loan II insured - qtrly repayment A120103
6/26/12			(729,357.92)		(729,357.92)		Loan II uninsured - qtrly repayment 1045577
7/16/2012					(1,036,430.59)	1,036,430.59	Transfer balance to Reserve Account
FY Total	31,403,051.53	(27,600,000.00)	(2,917,431.68)	927,094.40	0.00	1,812,714.26	
	385,554,664.06	(314,582,251.00)	(46,068,796.68)	14,240,934.27	0.00	39,144,550.66	
07/31/12				64,853.21	7,804.73	57,048.48	Interest
07/16/12	2,735,169.15				2,735,169.15		Hosp. Fee from June
08/15/12	4,663,574.26				4,663,574.26		Hosp. Fee from July
08/31/12				61,488.72	7,203.49	54,285.23	Interest
09/17/12	5,538,062.71				5,538,062.71		Hosp. Fee from August
9/28/12				97,257.44	12,762.17	84,495.27	Interest
10/5/2012		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A130021
10/5/2012		(3,475,000.00)			(3,475,000.00)		Loan II insured - qtrly repayment A130021
10/5/2012			(709,532.24)		(709,532.24)		Loan II uninsured - qtrly repayment A130022
10/31/2012				70,604.38	9,704.74	60,899.64	Interest
10/15/2012	4,046,394.79				4,046,394.79		Hosp. Fee from September
11/15/2012	3,012,780.41				3,012,780.41		Hosp. Fee from October
11/30/2012				74,793.94	9,828.35	64,965.59	Interest
12/31/2012				67,801.90	8,947.79	58,854.11	Interest
12/14/2012	1,912,969.31				1,912,969.31		Hosp. Fee from November
1/4/2013		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A130064
1/4/2013		(3,475,000.00)			(3,475,000.00)		Loan II insured - qtrly repayment A130040
1/4/2013			(709,532.24)		(709,532.24)		Loan II uninsured - qtrly repayment A130040
1/15/2013	1,460,749.90				1,460,749.90		Hosp. Fee from December

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
1/31/2013				75,030.48	14,142.76	60,887.72	Interest
2/15/2013	1,312,778.13				1,312,778.13		Hosp. Fee from January
2/28/2013				56,303.78	11,772.88	44,530.90	Interest
3/15/2013	1,077,954.54				1,077,954.54		Hosp. Fee from February
3/29/13				95,434.66	18,382.04	77,052.62	Interest
04/03/13		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A130064
04/03/13		(3,475,000.00)			(3,475,000.00)		Loan II insured - qtrly repayment A130064
04/03/13			(709,532.24)		(709,532.24)		Loan II uninsured - qtrly repayment A130064
04/16/13	1,314,370.50				1,314,370.50		Hosp. Fee from March
04/30/13				67,122.82	10,766.01	56,356.81	Interest
05/16/13	2,417,500.76				2,417,500.76		Hosp. Fee April
05/31/13				60,563.31	8,489.52	52,073.79	Interest
6/27/13	2,583,053.01				2,583,053.01		Hosp. Fee May
6/28/2013				63,094.75	8,548.07	54,546.68	Interest
06/28/13		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A130091
06/28/13		(3,475,000.00)			(3,475,000.00)		Loan II insured - qtrly repayment A130091
06/28/13			(709,532.24)		(709,532.24)		Loan II uninsured - qtrly repayment
06/30/13					(465,581.06)	465,581.06	Transfer balance
FY Total	32,075,357.47	(28,900,000.00)	(2,838,128.96)	854,349.39	0.00	1,191,577.90	
	417,630,021.53	(343,482,251.00)	(48,906,925.64)	15,095,283.66	0.00	40,336,128.56	
7/15/13	2,900,231.51				2,900,231.51		Hosp. fee June
07/31/13				54,807.21	5,961.05	48,846.16	Interest
08/15/13	4,751,022.89				4,751,022.89		Hosp. fee July
09/06/13				47,295.96	5,164.13	42,101.83	Interest
09/17/13	5,761,844.66				5,761,844.66		Hosp. fee August
9/30/13				79,312.73	10,663.41	68,679.32	Interest
10/02/13		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A140020
10/02/13		(3,800,000.00)			(3,800,000.00)		Loan II insured - qtrly repayment A140020
10/02/13			(701,913.50)		(701,913.50)		Loan II uninsured - qtrly repayment
10/15/13	4,739,441.23				4,739,441.23		Hosp. fee for Sept
10/31/13				49,868.21	7,319.48	42,548.73	Interest
11/22/13	2,917,218.50				2,917,218.50		Hosp. fee for Oct

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan/Service Account	4,362.00 Balance in Loan Reserve Account	
11/27/13				47,157.01	7,750.66	39,406.35	Interest
12/13/13	2,094,115.90				2,094,115.90		Hosp. for Nov
01/06/14				66,750.98	13,319.71	53,431.28	Interest
01/10/14		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A140043
01/10/14		(3,800,000.00)			(3,800,000.00)		Loan II insured - qtrly repayment A140043
01/10/14			(701,913.50)		(701,913.50)		Loan II uninsured - qtrly repayment A140045
01/15/14	1,484,399.22				1,484,399.22		Hosp. for Dec
2/26/14	1,404,178.49				1,404,178.49		Hosp. for Jan
3/14/14	1,078,031.04				1,078,031.04		Hosp. for Feb
01/31/14				42,911.70	8,587.69	34,324.01	Interest
2/28/14				42,741.16	8,063.54	34,677.62	Interest
3/31/14				78,932.25	14,582.37	64,349.88	Interest
04/1/14		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt A140065
04/1/14		(3,800,000.00)			(3,800,000.00)		Loan II insured - qtrly repayment A140065
04/1/14			(701,913.50)		(701,913.50)		Loan II uninsured - qtrly repayment A140066
4/15/14	1,356,776.38				1,356,776.38		Hosp. for Mar
4/30/14				45,167.95	6,817.19	38,350.76	Interest
5/15/14	2,281,281.06				2,281,281.06		Hosp. for April
5/30/14				40,734.92	5,477.09	35,257.83	Interest
6/1/14	2,960,134.68				2,960,134.68		Hosp. for May
6/30/14				52,723.54	7,026.30	45,697.24	Interest
6/30/14		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
6/30/14		(3,800,000.00)			(3,800,000.00)		Loan II insured - qtrly repayment
6/30/14			(701,913.50)		(701,913.50)		Loan II uninsured - qtrly repayment
6/30/14					(821,754.18)	821,754.18	Transfer Balance J140003
FY Total	33,728,675.56	(30,200,000.00)	(2,807,654.00)	648,403.62	(0.00)	1,369,425.19	
	451,358,697.09	(373,682,251.00)	(51,714,579.64)	15,743,687.28	0.00	41,705,553.75	Verified to Comptroller General 7/10/14
7/15/14	3,131,580.76				3,131,580.76		Hosp. for June
7/31/14				38,492.83	3,894.57	34,598.26	Interest
8/15/14	4,881,503.30				4,881,503.30		Hosp. for July
8/30/14				39,813.46	3,970.95	35,842.51	Interest
9/16/14	6,139,448.50				6,139,448.50		Hosp. for August

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
09/30/14				61,132.55	8,228.64	52,903.91	Interest
10/10/14		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
10/10/14		(4,200,000.00)			(4,200,000.00)		Loan II insured - qtrly repayment
10/10/14			(631,990.00)		(631,990.00)		Loan II uninsured - qtrly repayment
10/16/14	5,048,097.95				5,048,097.95		Hosp. for Sept
10/31/14				42,870.75	6,971.80	35,898.95	Interest
11/17/2014	2,969,502.91				2,969,502.91		Hosp. for Oct
11/26/14				40,733.30	7,306.40	33,426.90	Interest
12/15/14	2,301,486.98				2,301,486.98		Hosp. for Nov
12/31/14				53,289.73	11,158.52	42,131.21	Interest
01/13/15		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
01/13/15		(4,200,000.00)			(4,200,000.00)		Loan II insured - qtrly repayment
01/13/15			(631,990.00)		(631,990.00)		Loan II uninsured - qtrly repayment
01/16/15	1,594,589.68				1,594,589.68		Hosp. for Dec
01/30/15				43,967.16	10,355.64	33,611.52	Interest
02/27/15				40,649.63	9,575.70	31,073.93	Interest
03/09/15	1,509,661.46				1,509,661.46		Hosp. for Jan (Payment was on-time)
03/16/15	1,337,720.11				1,337,720.11		Hosp. for Feb
03/31/15				68,860.92	15,442.52	53,418.40	Interest
04/02/15		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
04/02/15		(4,200,000.00)			(4,200,000.00)		Loan II insured - qtrly repayment
04/02/15			(631,990.00)		(631,990.00)		Loan II uninsured - qtrly repayment
04/15/15	1,517,659.84				1,517,659.84		Hosp. for Mar
04/30/15				45,957.29	8,263.36	37,693.93	Interest
04/15/15	2,465,135.94				2,465,135.94		Hosp. for Apr
05/29/15				40,241.05	5,926.55	34,314.50	Interest
06/22/15	3,103,531.77				3,103,531.77		Hosp. for May
06/30/15				52,042.10	6,715.50	45,326.60	Interest
06/30/15		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
06/30/15		(4,200,000.00)			(4,200,000.00)		Loan II insured - qtrly repayment
06/30/15			(631,990.00)		(631,990.00)		Loan II uninsured - qtrly repayment
	35,999,919.20	(31,800,000.00)	(2,527,960.00)	568,050.77	1,769,769.35	470,240.62	
	487,358,616.29	(405,482,251.00)	(54,242,539.64)	16,311,738.05	1,769,769.35	42,175,794.37	

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in: Loan Servicing Account	4,362.00 Balance in: Loan Reserve Account	
FY2016							
06/30/15					(1,769,769.35)	1,769,769.35	Transfer FM13 SCEIS Error Transfer in FY16
7/16/2015	3,279,034.63				3,279,034.63		Hosp. for June D160002
8/12/2015				37,855.74	6,190.49	31,665.25	Interest
8/20/2015	5,290,731.53				5,290,731.53		Hosp. for July D160006
8/31/2015				39,547.41	5,789.23	33,758.18	Interest
9/21/2015	6,545,797.90				6,545,797.90		Hosp. for Aug D160011
10/21/2015		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
10/21/2015		(4,400,000.00)			(4,400,000.00)		Loan II insured - qtrly repayment
10/21/2015			(818,180.00)		(818,180.00)		Loan II uninsured - qtrly repayment
10/12/2015				57,669.59	9,373.62	48,295.97	Interest
10/15/2015	5,013,045.52				5,013,045.52		Hosp. for Sep D160015
10/30/2015				40,471.51	7,819.94	32,651.57	Interest
11/15/2015	3,478,941.64				3,478,941.64		Hosp. for Oct D160027
11/30/2015				49,155.53	10,006.21	39,149.32	Interest
12/16/2015	2,189,150.12				2,189,150.12		Hosp. for Nov D160029
1/5/2016				56,846.74	13,127.74	43,719.00	Interest
1/27/2016		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
1/27/2016		(4,400,000.00)			(4,400,000.00)		Loan II insured - qtrly repayment
1/27/2016			(818,180.00)		(818,180.00)		Loan II uninsured - qtrly repayment
1/15/2016	1,698,720.21				1,698,720.21		Hosp. for Dec D160028
2/2/2016				51,562.80	11,236.49	40,326.31	Interest
2/12/2016	1,660,217.27				1,660,217.27		Hosp. for Jan D160042
2/29/2016				46,274.13	9,583.06	36,691.07	Interest
3/15/2016	1,401,861.88				1,401,861.88		Hosp. for Feb D160049
3/31/2016***				67,717.84	14,219.34	53,498.50	Interest
4/8/2016		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
4/8/2016		(4,400,000.00)			(4,400,000.00)		Loan II insured - qtrly repayment
4/8/2016			(818,180.00)		(818,180.00)		Loan II uninsured - qtrly repayment
4/15/2016	1,604,144.89				1,604,144.89		Hosp. for March D160055
5/4/2016				123,556.64	22,103.86	101,452.78	Interest
5/24/2016	2,987,823.14				2,987,823.14		Hosp. for April D160067
5/31/2016				52,121.79	7,989.67	44,132.12	Interest
6/15/2016	3,091,248.98				3,091,248.98		Hosp. for May D160069
6/30/2016		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
6/30/2016		(4,400,000.00)			(4,400,000.00)		Loan II insured - qtrly repayment

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
6/30/2016			(818,180.00)		(818,180.00)		Loan II uninsured - qtrly repayment
6/30/2016			2.00		2.00		Refund of billing error
6/30/2016				58,880.58	9,771.23	49,109.35	Interest
6/30/2016					(2,495,210.59)	2,495,210.59	Transfer balance to Reserve Account
	38,240,717.71	(32,600,000.00)	(3,272,718.00)	681,660.30	(1,769,769.35)	4,819,429.36	
	525,599,334.00	(438,082,251.00)	(57,515,257.64)	16,993,398.35	-	46,995,223.73	
FY2017							
7/15/2016	3,299,392.00				3,299,392.00		Hosp. for June #1200413940
7/31/2016				45,684.94	5,367.86	40,317.08	Interest
8/15/2016	5,285,150.23				5,285,150.23		Hosp. for July #1200418233
8/31/2016				42,585.98	4,581.56	38,004.42	Interest
9/15/2016	6,790,633.55				6,790,633.55		Hosp. for August #1200422912
9/30/2016				57,475.06	8,530.55	48,944.51	Interest
10/15/2016	4,976,873.13				4,976,873.13		Hosp. for September #1200427041
10/31/2016		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
10/31/2016			(4,448,378.75)		(4,448,378.75)		Loan II uninsured - qtrly repayment Not Pledged FY17
10/31/2016			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
10/31/2016				40,005.47	8,272.36	31,733.11	Interest
11/15/2016	3,653,792.08				3,653,792.08		Hosp. for October #1200431271
11/30/2016				102,545.52	21,677.23	80,868.29	Interest
12/31/2016				88,925.11	20,270.84	68,654.27	Interest
1/17/2017		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
1/17/2017			(4,448,378.75)		(4,448,378.75)		Loan II uninsured - qtrly repayment Not Pledged FY17
1/17/2017			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
1/5/2017	2,087,758.69				2,087,758.69		Hosp. for November #1200438265
1/31/2017				71,233.73	15,630.03	55,603.70	Interest
2/15/2017	1,826,959.83				1,826,959.83		Hosp. for December #1200444585
2/28/2017				73,331.82	14,281.56	59,050.26	Interest
3/8/2017	892,242.26				892,242.26		Hosp. #1200447706
4/4/2017		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
4/4/2017			(4,448,378.75)		(4,448,378.75)		Loan II uninsured - qtrly repayment Not Pledged FY17
4/4/2017			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment

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Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
4/6/2017				104,282.69	18,374.32	85,908.37	Interest
4/7/2017	1,683,522.56				1,683,522.56		Hosp. #1200452498
4/30/2017				48,961.84	6,383.46	42,578.38	Interest
5/8/2017	1,916,661.62				1,916,661.62		Hosp. #120456881 (Delayed Notification January Deposit))
5/18/2017	2,726,220.59				2,726,220.59		Hosp. #1200458631 Part 1
5/18/2017	133,459.05				133,459.05		Hosp. #1200458677 Part 2
5/31/2017				104,679.11	12,553.54	92,125.57	Interest
6/14/2017	3,721,949.45				3,721,949.45		Hosp #1200462818
6/16/2017		(3,750,000.00)			(3,750,000.00)		Loan I quarterly pmt
6/16/2017			(4,448,378.75)		(4,448,378.75)		Loan II uninsured - qtrly repayment Not Pledged FY17
6/16/2017			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
6/30/2017					(1,643,547.35)	1,643,547.35	#1003502232 Transfer Balance to Reserve
	38,994,615.04	(15,000,000.00)	(22,486,991.00)	779,711.27	(0.00)	2,287,335.31	
	564,593,949.04	(453,082,251.00)	(80,002,248.64)	17,773,109.62	(0.00)	49,282,559.04	
FY2018							
7/1/2017	3,417,985.19				3,417,985.19		Hosp #1200467000, D180002
8/9/2017				46,710.60	4,324.93	42,385.67	Interest
8/31/2017				74,988.79	6,478.89	68,509.90	Interest
9/8/2017	5,548,373.41				5,548,373.41		Hosp #1200475536, D180013 August Pmt Rcd Late
9/8/2017	6,580,266.47				6,580,266.47		Hosp #1200475539, D180014
10/6/2017		(4,794,414.57)			(4,794,414.57)		Loan II uninsured - qtrly repayment
10/6/2017			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
10/13/2017				79,542.96	9,592.87	69,950.09	Interest
10/16/2017	5,005,445.27				5,005,445.27		Hosp #1200480876, D180019
10/31/2017				51,151.69	7,503.81	43,647.88	Interest
11/22/2017	3,311,503.30				3,311,503.30		Hosp #1200486581, D180027
11/30/2017				108,608.42	18,558.59	90,049.83	Interest
12/14/2017	2,559,049.26				2,559,049.26		Hosp #1200490004, D180028
12/31/2017				68,155.61	13,789.69	54,365.92	Interest
1/8/2018		(4,794,414.57)			(4,794,414.57)		Loan II uninsured - qtrly repayment
1/8/2018			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
1/16/2018	1,834,669.04				1,834,669.04		Hosp #1200494281, D180032

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Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in Loan Servicing Account	4,362.00 Balance in Loan Reserve Account	
1/31/2018				48,777.66	10,403.35	38,374.31	Interest
2/13/2018	1,787,980.11				1,787,980.11		Hosp #1200498930, D180035
2/28/2018				88,452.71	19,743.02	68,709.69	Interest
3/19/2018	1,352,031.38				1,352,031.38		Hosp #1200503394, D180037
3/31/2018				97,969.62	23,093.41	74,876.21	Interest
4/6/2018		(4,794,414.57)			(4,794,414.57)		Loan II uninsured - qtrly repayment
4/8/2018			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
4/13/2018	1,701,114.11				1,701,114.11		Hosp #1200507455, D180039
4/30/2018				107,688.61	25,460.53	82,228.08	Interest
5/14/2018	3,003,127.35				3,003,127.35		Hosp #1200511876, D180041
5/31/2018				140,708.92	33,847.23	106,861.69	Interest
6/18/2018	3,419,151.17				3,419,151.17		Hosp #1200517569, D180045
6/19/2018		(4,794,414.57)			(4,794,414.57)		Loan II uninsured - qtrly repayment
6/19/2018			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
6/30/2018				40,471.16	9,817.75	30,653.41	Interest
6/30/2018					(15,832,175.85)	15,832,175.85	
	39,520,696.06	(19,177,658.28)	(4,693,476.00)	953,226.75	-	16,602,788.53	
	604,114,645.10	(472,259,909.28)	(84,695,724.64)	18,726,336.37	(0.00)	65,885,347.57	
	604,114,645.10	(472,259,909.28)	(84,695,724.64)	18,726,336.37	-	65,885,347.57	Tami's PDF
					(0.00)		
FY2019							
7/17/2018	3,409,909.22				3,409,909.22		Hosp #1200522384, D190000
7/31/2018				29,406.12	5,970.75	23,435.37	Interest
8/17/2018	5,806,197.57				5,806,197.57		Hosp #1200527183, D190002
9/10/2018				93,009.09	16,344.82	76,664.27	Interest
9/10/2018	6,650,720.69				6,650,720.69		Hosp #1200530334, D190004
9/30/2018				75,880.51	13,278.35	62,602.16	Interest
10/1/2018		(4,794,414.57)			(4,794,414.57)		Loan II uninsured - qtrly repayment
10/1/2018			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
10/15/2018	5,083,448.24				5,083,448.24		Hosp #1200535057, D190007
10/31/2018				145,965.97	25,177.60	120,788.37	Interest
11/15/2018	2,729,860.17				2,729,860.17		Hosp #1200539788, D190010
11/28/2018				214,790.58	38,414.70	176,375.88	Interest
12/13/2018	2,517,424.24				2,517,424.24		Hosp #1200544019
12/31/2018				106,684.40	20,364.76	86,319.64	

State SIB Schedule as of 3-12-19 manually added from Tami's PDF (002)

Horry County Hospitality fee transfers to SIB

Date	Hospitality Fee	Transfer to Pledged Revenue Fund	Deposits to SIB Cash Account	Interest Deposits	4,363.00 Balance in: Loan Servicing Account	4,362.00 Balance in: Loan Reserve Account	
1/3/2019		(4,794,414.57)			(4,794,414.57)		Loan II uninsured - qtrly repayment
1/3/2019			(1,173,369.00)		(1,173,369.00)		Loan II uninsured - qtrly repayment
1/14/2019	1,876,501.07				1,876,501.07		Hosp #1200547773, D190016
1/31/2019				118,266.34	22,627.11	95,659.23	Interest
2/20/2019					(16,280,672.00)		#3013782859 Defeasance by STO
2/20/2019						(63,861,721.10)	#3013782859 Defeasance by STO
2/20/2019						(2,241.00)	#3014037778 Robinson Gray Stepp & Laffitte
2/20/2019						(5,000.00)	#3013864982 US Bank
2/20/2019						(28,000.00)	#3014034099 Burr Forman McNair
2/20/2019						(2,500.00)	#3013864870 Bond Logistix
2/28/2019						(5,000.00)	#3014102481 First Tryon Advisors
3/4/2019						(9,750.00)	#3014171731 Parker Poe
3/6/2019						(2,500.00)	#3014215071 PFM
2/28/2019				120,267.94	22,979.48	97,288.46	Interest posted 3/5 for 2/28
	28,074,061.20	(9,588,829.14)	(2,346,738.00)	904,290.95	22,979.63	(63,177,578.72)	
	632,188,706.30	(481,848,738.42)	(87,042,462.64)	19,630,627.32	22,979.63	2,707,768.85	
	632,188,706.30	(481,848,738.42)	(87,042,462.64)	19,630,627.32	22,979.63	2,707,768.85	Tami's PDF
					0.00		
	Funds to be transferred to Horry County					2,730,748.48	

***Interest is in error in SCEIS System. Cash was deposited but not all reports are current.
Error in Billing of \$2.00

State SIB Schedule as of 3-12-19 manually added from Tami's PDF (002)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

City of Myrtle Beach,)
)
For Itself and a Class of Similarly Situated)
Plaintiffs,)
)
Plaintiff,)
)
vs.)
)
Horry County,)
)
Defendant.)

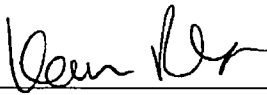
**AFFIDAVIT OF
KAREN POLHEMUS**

PERSONALLY APPEARED BEFORE ME, Karen Polhemus, who swears and states as follows:

1. My name is Karen Polhemus and I am a supervisor in the Hospitality and Business License Department which is a subdivision and/or sub office of the Horry County Treasurer.
2. I can verify that our office has received approximately 55 phone calls prior to July 1, 2019 questioning whether they should still collect the 1.5% Hospitality Fees from tourists and vacationers for their business which is inside the city limits.
3. Of those 55 phone calls, some of those are corporations that represent multiple businesses who have locations inside and outside the city limits.
4. As an example, Avalara has 204 accounts of which approximately one-half of those accounts are inside the City limits. The owners of those businesses are very concerned and need to find out exactly what they should collect so as to abide by the law. Our Department cannot properly inform them as to what action to take.

5. It is our goal to answer all members of the public as to how they should pay their Hospitality Fees. Under the current situation, there is mass confusion as to how to proceed, especially for those business which are in municipalities who are not listed in the Court's Order.

FURTHER AFFIANT SAYETH NOT.



Karen Polhemus

SWORN AND SUBSCRIBED before me,
this 3 day of July 2019



Notary Public for South Carolina
My Commission Expires: Oct 11, 2022

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

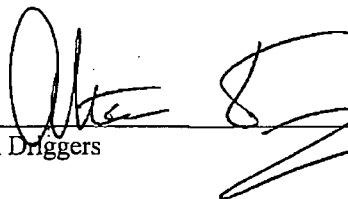
City of Myrtle Beach,)
)
For Itself and a Class of Similarly Situated)
Plaintiffs,)
)
Plaintiff,)
)
vs.)
)
Horry County,)
)
Defendant.)

**AFFIDAVIT OF
ALTEN DRIGGERS**

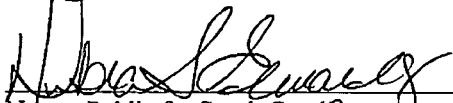
PERSONALLY APPEARED BEFORE ME, Alten Driggers, who swears and states as follows:

1. My name is Alten Driggers and I am a supervisor in the Business License Department which is a subdivision and/or sub office of the Horry County Treasurer.
2. I can verify that our office has received approximately 55 phone calls prior to July 1, 2019 questioning whether they should still collect the 1.5% Hospitality Fees from tourists and vacationers for their business which is inside the city limits.
3. Of those 55 phone calls, some of those are corporations that represent multiple businesses who have locations inside and outside the city limits.
4. It is our goal to answer all members of the public as to how they should pay their Hospitality Fees. Under the current situation, there is mass confusion as to how to proceed, especially for those business which are in municipalities who are not listed in the Court's Order.

FURTHER AFFIANT SAYETH NOT.


Alten Driggers

SWORN AND SUBSCRIBED before me,
this 13 day of July 2019


Notary Public for South Carolina
My Commission Expires: Oct 14 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	
Plaintiff,	)	MEMORANDUM OF LAW IN
vs.	)	OPPOSITION TO DEFENDANT HORRY
	)	COUNTY'S MOTION FOR
Horry County,	)	RECONSIDERATION
	)	
Defendant.	)	

Plaintiff, City of Myrtle Beach ("City"), on behalf of itself and all other similarly situated plaintiffs, submits this memorandum in opposition to Defendant Horry County's ("County") June 25, 2019 Motion for Reconsideration of the Court's June 21, 2019 order preliminarily enjoining the County from imposing a 1.5% uniform service charge on the sale of prepared food and beverages, accommodations, and amusements within the corporate limits of any municipality situated within Horry County.

INTRODUCTION

The County consciously refuses to acknowledge, respect, and abide by this Court's order. Before the ink on it was even dry, the County publicly announced that it would defy the order and continue collecting the Hospitality Fee within the corporate limits of all municipalities except for the City. It has since reiterated its contempt for the Court's authority as part of an ill-conceived litigation strategy which it publicly revealed. On top of this, its Motion for Reconsideration is a compendium of misrepresentations, unpreserved and meritless new arguments, and a repeat of previously rejected ones. The Court should deny the County's motion without delay and thereby—hopefully—put an end to its unlawful conduct that openly flouts the authority and clear direction of the Court and its Order enjoining same.

ARGUMENT

A. The County Is in Open Constructive Contempt of Court.

As explained more completely in the City's June 26, 2019 Motion for Rule to Show Cause Why Defendant Should Not Be Held in Contempt of Court, the accompanying memorandum of law and exhibits filed the same day, and the City's July 1, 2019 supplemental supporting memorandum and exhibits, all of which the City incorporates by reference as if fully set forth herein, the County's temerity knows no bounds and it is openly—if not proudly—defying this Court's order. Members of County Council and the County's Treasurer have all stated publicly—and quite correctly—that this Court's order applies within the limits of *all* Horry County municipalities. Exhibit A, Collection of News Articles re: Court's Order.

Yet the County still will not cease and heed the views of its own elected officials. Counsel for the County in this action have advanced an opinion that the County can keep collecting the Hospitality Fee within these other municipalities because “no City other than MB are parties to the lawsuit” and revealed that the County's actions in reality are driven by its amazing belief that complying with the order would “probably create legal issues detrimental to the County.” Exhibit B, Email of Henrietta Golding, June 30, 2019, addressed to, among other, municipal officials employed by two members of the proposed class. The County Attorney has stated his acceptance of this opinion and in so doing confirmed that the County's refusal to abide by the injunction issued is nothing more than a litigation tactic:

Council received strong advice from our litigation attorney . . . who is working with a team of attorneys . . . not to suspend collection from within municipalities other than Myrtle Beach *or else we would be jeopardizing our overall defense in the litigation. As I indicated, Council had no good alternatives to choose from. We, basically, are in damage control mode.* . . . But it seems the only alternative [the City] ha[s] given us *is to fight with everything we have in Court.*

Exhibit C, *Leaked Weekend Emails Reveal Lazarus, Carrotti's [sic], and County's Dilemma*, MyrtleBeachSC, July 1, 2019 (emphasis supplied). Thus, according to the County Attorney, a team of attorneys is working to assist the County in undermining, rather than following, the Court's order.

Notwithstanding the County Attorney's view, the County does have a "good alternative[]," which is to comply with this Court's order. It is not up to the County to determine whether or not to do so. The law commands respect for this Court's orders over and above the County's litigation strategy. The Court's order was clear and direct. Just as the City moved, the County is enjoined from collecting the Hospitality Fee within *all* Horry County municipalities.¹ The County's elected officials admitted they understand this basic point. The fact that just days after this Court issued the order the County nevertheless firmly stated it would do otherwise, and has since decided to "go for broke" in its defiance, shows the County only has an interest in sowing mayhem and confusion rather than respecting the rule of law. The Court should reject the County's request for reconsideration of this point.

B. The County Admitted That Its Motion for Preliminary Injunction Has No Merit but Now Asks This Court to Grant It.

On June 19, 2019, counsel for the County sent the Court an unsolicited email urging the Court to deny *both* injunction motions. Exhibit D, Email of Henrietta Golding, June 19, 2019. To support her request, counsel wrote: "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

¹ The City's motion and supporting memorandum unmistakably requested this relief, and the County never once argued (until now) that this Court somehow lacks the authority to enter such an injunction. To the contrary, as demonstrated by the affidavit of the County's finance director, Mr. Spivey, the County knew and understood that the injunction sought would bar the imposition of the Hospitality Fee in every municipality as he claimed that the loss of revenue arising out of an injunction would reduce revenues collected by the County from the uniform service charges being imposed in every such municipality.

statutes cited by the parties do not directly, nor indirectly, provide answers. I respectfully request that the motions for preliminary injunction be denied” *Id.* The proposed order she attached (which, again, was unsolicited) declared that “neither Party has established that it is likely to prevail in this matter.” *Id.* at Attachment. Counsel, by her own admission, conceded to this Court that the County cannot demonstrate a likelihood of success on the merits on its claims.²

Six days later, the County nevertheless asked that this Court “instead grant the County’s motion for a preliminary injunction.” County Mot. to Recons. (“County Mot.”) at 2. The County’s willingness to say one thing off the record and the opposite on the record, picking whichever side suits it best at a given point in time, underscores the arbitrary and capricious nature of the County’s actions to collect the Hospitality Fee within municipal limits. This Court should not tolerate such duplicity. The County’s motion was, and still is, without merit.

C. The County Has Not Preserved Its Argument to Impose a Bond and This Court Lacks Authority to Require One.

The County leads off its argument that the Court should reconsider its grant of the injunction by asserting that the Court erred in not requiring the City to obtain and post a bond. The County generically and in passing requested a bond in its opposition to the City’s motion. County Mem. in Opp. to Pl.’s Mot. for Prelim. Inj. & in Supp. of Def.’s Mot. for Prelim. Inj. (“County Inj. Opp. Mem.”) at 19-20. In reply, the City correctly noted that Rule 65(c), SCRCP, exempts the State from the bond requirement, and this limitation applies to the City as a political subdivision of the State. City Reply Mem. of Law in Supp. of Mot. for Prelim. Inj. (“City Inj. Reply Mem.”) at 28. At oral argument, the County never contended otherwise. Now, for the

² Counsel similarly admitted that she does not believe the County’s motion for reconsideration has any merit. In her June 30 email, counsel wrote that this Court “will deny this motion of course.” Ex. B.

first time, it argues that political subdivisions do not qualify for this exemption. It is axiomatic that new issues cannot be raised for the first time in a motion for reconsideration. *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009). This argument therefore is not preserved for review.³

Regardless, the County is wrong. As the City previously explained, “[m]unicipal corporations are not independent entities. They are political subdivisions of the state.” *Hibernian Soc’y v. Thomas*, 282 S.C. 465, 472, 319 S.E.2d 339, 343 (Ct. App. 1984). That other states may have different language in their bonding exemptions is of no moment to South Carolina’s governmental structure. The County cites no South Carolina authority to support its position, presumably because none exists.

If the Court is inclined to require some form of security, the City can agree to escrow the funds it collects under its local accommodations and hospitality taxes, which it began collecting on July 1, until the resolution of this matter. The County concedes such an escrow can provide adequate security. *See* County Mot. at 6. Whereas the County’s offer to escrow will not guard against the irreparable harm the City and all other class members will suffer, *see* discussion Part E, *infra*, having the City escrow the funds it collects will protect the County’s claimed interest.

³ The County’s motion for reconsideration is noticeably silent as to whether the County should be required to post a bond if successful in getting reconsideration of its own motion for injunctive relief. However, in its memorandum supporting its motion that the City be enjoined from collecting local accommodations and hospitality taxes and opposing the City’s motion to enjoin collection of the County’s Hospitality Fee, the County suggested to the Court that it would be unnecessary for the County to post a bond “[i]f the City is correct and it could have been collecting these taxes, it will have a way to recover them from the County which has already collected that money.” County Inj. Opp. Mem. at 20. Apparently, “what is good for the goose is not good for the gander” in the County’s eyes with respect to the posting of security when an injunction is sought. The City will be collecting its accommodations and hospitality taxes as a result of the denial of the County’s requested injunction and the funds derived from those taxes will be available to be recovered by the County in the unlikely event that it succeeds in its announced plan to have the injunction superseded after the Court, as predicted by counsel for the County, denies its motion for reconsideration.

The City may also raise revenue through various means should it be forced to pay any extra judgment. While the City maintains no bond can be required of it, the City offers the compromise in the event the Court is inclined to require some form of security.

D. This Court's Order Protects the True Status Quo.

According to the County, this Court "ignores the South Carolina Supreme Court's repeated instructions about preserving the *status quo ante*." County Mot. at 4. This is not true.

First, the County falsely claims that the order "never addresses, or even acknowledges, the effect it has on the status quo." *Id.* On Page 15 of the order, this Court directly addressed the County's status quo argument. And the Court correctly found that the general policy of preserving the status quo (which of course is not one of the elements to obtain an injunction) does not compel denial of the City's motion. If the County's argument were true, then courts would not be permitted to issue mandatory injunctions compelling the requested relief of the moving party; however, such authority is inherent in the courts of this state and the *status quo ante* is not required to be maintained in the face of illegal conduct. *See, e.g., Carter v. Lake City Baseball Club*, 218 S.C. 255, 269, 62 S.E.2d 470, 476 (1950).

Second, the Court correctly concluded that preserving the County's version of the status quo—that all parties carry on as they were at the time of the lawsuit, even if one of those actions is unlawful and illegal—is nonsensical. Preliminary injunctions would rarely, if ever, issue if that were the rule. The distinction lies in what "status quo" means. "The status quo to be preserved by a preliminary injunction, however, is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the 'last uncontested status between the parties which preceded the controversy.'" *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012) (quoting *Stemple v. Bd. of Ed. of Prince George's Cnty.*, 623 F.2d 893, 898 (4th

Cir. 1980)). Requiring a party who has “disturbed the status quo ante to reverse its actions” actually “restores, rather than upsets, the status quo ante.” *Id.* (quoting *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1013 (10th Cir. 2004)). The “last uncontested status” between the City and the County is Ordinance 105-96 expiring on January 1, 2017. That is the status quo the City, on behalf of all similarly situated plaintiffs, seeks to protect. And that is the status quo this Court protected in the order.

E. The County Continues to Misrepresent the Irreparable Harm Suffered in the Absence of an Injunction.

Just as it did during the hearing on the City’s motion, the County misrepresents the irreparable harm the City argues will result without an injunction. The County submits here that this Court “disregarded the more fundamental point that a loss of money is not an irreparable harm because money is fungible.”⁴ County Mot. at 5. But the “loss of money” is not what the City claimed as the irreparable harm. The irreparable harm is the payment of the Hospitality Fee without a meaningful way to recover it absent this class litigation. That is what the City argued in its original memorandum. City Mem. of Law in Supp. of Mot. for Prelim. Inj. (“City Inj. Mem.”) at 13-14. That is why the order “focuses on the County’s Board of Fee Appeals.” *See* County Mot. at 5. That is what this Court correctly recognized. Order at 10-12.

The County also suggests that this Court cannot consider the harm of any class members besides the City because the Court has not yet certified a class. *See* County Mot. at 6. The County’s inside and outside counsel each made similar statements in their recent emails. Exs. B & C. This too is an unpreserved argument improperly made for the first time at the

⁴ Unsurprisingly, the County’s own Motion for Preliminary Injunction took a different tack. The County wrote at the time: “Typically, a loss of money is not an irreparable harm; after all, money is fungible. But not always. This case is one of the unusual circumstances when the threat of monetary harm to the enjoined party is irreparable.” County Inj. Opp. Mem. at 19 (citations omitted).

reconsideration stage. *Johnson*, 381 S.C. at 177, 672 S.E.2d at 570. It also rests on a fundamental misunderstanding of class action practice and this Court's authority. This Court "may *at any time* impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended." Rule 23(d)(2), SCRPC (emphasis added). "The lack of formal class certification does not create an obstacle to classwide preliminary injunctive relief when activities of the defendant are directed generally against a class of persons." *Ill. League of Advocates for the Developmentally Disabled v. Ill. Dep't of Human Servs.*, No. 13 C 1300, 2013 WL 3287145, at *3 (N.D. Ill. June 28, 2013) (quoting 3 *Newberg on Class Actions* § 9:45 (4th ed. 2002); see also *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 433 (6th Cir. 2012) ("Simply put, there is nothing improper about a preliminary injunction preceding a ruling on class certification."); *Rodriguez v. Providence Cmty. Corrs., Inc.*, 155 F. Supp. 3d 758, 767 (M.D. Tenn. 2015) ("[A] district court may, in its discretion, award appropriate classwide injunctive relief prior to a formal ruling on the class certification issue based upon either a conditional certification of the class or its general equity powers.") (quoting *Thomas v. Johnston*, 557 F. Supp. 879, 917 (W.D. Tex. 1983)).

Suggesting this Court lacks the authority to preliminarily protect putative class members from on-going daily harm without granting a motion for class certification—which requires discovery, briefing, and argument—directly undermines this Court's equitable powers. Here, the City demonstrated all class members will suffer the same harm. This Court therefore is empowered to consider this pervasive and class-wide harm, and to protect the unified interest of the proposed class from the County's incursion without delay.

The County's argument also fundamentally misapprehends the declaratory and injunctive relief sought by the Complaint. The declaration sought in this case does not hinge upon the

certification of the class. It requests a declaration—along with concomitant temporary and permanent injunctive relief—invalidating Ordinance 105-96 based on the County’s unilateral extension of the duration and scope of the Hospitality Fee, which rendered it in violation of clear constitutional and statutory prohibitions against the imposition of a uniform service charge within the corporate limits of municipalities without their consent. The relief sought by such a declaration was that the City, and all those similarly situated, should not be forced to continue to pay an invalid uniform service charge. The suggestion that a complaint seeking to have an ordinance imposing a uniform service charge declared invalid, if successful, would only have the effect of invalidating the named plaintiff’s obligation to pay the uniform service charge, while leaving everyone else subject to the continued collection of an illegal fee is, to put it mildly, an absurd position borne out of desperation and admitted “damage control” on the part of the County. But that is precisely what the County is telling this Court, the other municipalities in Horry County, and their citizens (not to mention visitors) against whom the County seeks to impose its unlawful and invalid Hospitality Fee.

Furthermore, the County’s offer to escrow the Hospitality Fee collected within the City puts to rest any claim of irreparable harm *to the County* if an injunction is granted. If these funds can be quarantined and not touched during the pendency of this case, then Mr. Spivey’s affidavit and the County’s previous arguments of “fiscal catastrophe” and fired emergency personnel were nothing more than baseless fearmongering that this Court has correctly disregarded.

F. This Court Did Not Apply an Incorrect Standard.

Next, the City argues that the order “improperly makes findings of fact and draw[s] conclusions of law that go to the ultimate issues and result in a decision by the Court on the merits of the entire case” and “seems to unqualifiedly decide those issues in favor of the City and

against the County[] at this early stage of the litigation.” County Mot. at 7. The County provides no examples, and this is because none exist as the order is correct as written.

The court laid out the correct standard for likelihood of success on the merits, which is that the City need only present a “reasonable question as to the existence” of the right it seeks to enforce. Order at 5. Consistent with the posture of this case, the Court concluded only that “the City has demonstrated a likelihood of success on the merits of its argument that consent is required in these circumstances.” *Id.* at 6; *see also id.* (“First, the text of Ordinance 105-96 and the parties’ actions contemporaneous with its passage *tends to demonstrate* that municipal consent is required.”) (emphasis supplied); *id.* at 7 n. 4 (“Although these opinions are not binding upon this Court, the Court finds them persuasive in determining *whether the City has stated a reasonable question on the merits of its argument.*”) (emphasis supplied); *id.* at 7 (“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.”) (emphasis supplied); *id.* at 8 (“First, the City has *demonstrated a likelihood of success on the merits* that its consent is required to extend the duration or purpose of the Hospitality Fee.”) (emphasis supplied); *id.* at 13 (This evidence, at least at this point in time, *tends to show* the County knew municipal consent was required as it previously obtained municipal consent, but it nevertheless acted unilaterally to preserve a revenue source in perpetuity that it had no existing plans to use and, as it believes, to preclude the City from exercising its authority to collect tax revenues on sales of accommodations and hospitality services within its own borders.”) (emphasis supplied).

The Court did not finally determine these issues. The County’s request for such a disclaimer is wholly unnecessary and serves no purpose.

G. The County Largely Recycles Its Rejected Merits Arguments.

The County then goes on to repeat the very same arguments as to the City's likelihood of success on the merits, but it does not point to anything this court misapprehended, misunderstood, or failed to consider. There is no need for the City to re-hash its arguments, which already are laid out in the City's briefing and this Court's order. The City will only address just a few new points worthy of mention:

- The County asserts that the resolutions of the municipalities consenting to the Hospitality Fee are “essentially identical” to those adopted by the Department of Transportation and the Horry County Board of Education. County Mot. at 8. This is demonstrably false. The respective resolutions of those bodies say *nothing at all about the Hospitality Fee and its twenty-year imposition*. See County Opp. Mem. Ex. D-3 at pp. 2 & 7. This is because those bodies did not have to consent to it, unlike the City and all other municipalities.
- The City does not “claim[] that the various provisions of [Ordinance 105-96] must stand or fall together.” County Mot. at 8. The City argued only that ordinances must be *read as a whole* and not by examining their individual parts in isolation. City Inj. Reply Mem. at 8.
- The County correctly notes there is a difference between uniform service charges and taxes, and that (as this Court held and the City argued, despite the County's intimations to the contrary) the legislative designation for a revenue stream does not necessarily control. County Mot. at 10 n. 6. But at no point has the County argued the Hospitality Fee is anything but a uniform service charge (which is precisely what the Hospitality Fee is). It is unclear if the County does so now. To

the extent it makes this argument for the first time when seeking reconsideration, such argument has been waived and is not preserved. *Johnson*, 381 S.C. at 177, 672 S.E.2d at 570.

- The County's Exhibit A is of no consequence. But it is fundamental that new evidence cannot be used to urge reconsideration. The exhibit was not a part of the record before the Court. The County's inclusion of it reflects its continued flouting of the rules. This Court therefore should strike it.
- For all of its protestations, the County finally admits that "[t]he same fee is in place now as was in place in 1997. No substantive changes have been made." County Mot. at 10. The City agrees. Among others, the County's admission proves that the County's efforts to extend and then repeal the Sunset Provision and to expand the Fee Use Provision were invalid. Without substantive change, the Hospitality Fee expired on January 1, 2017.

The City submits that the County has not advanced any points this Court misapprehended, and indeed has conceded the City's arguments. Accordingly, this Court should deny reconsideration.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court deny the County's Motion for Reconsideration.

Respectfully submitted,

s/ R. Walker Humphrey, II

John M.S. Hoefer, SC Bar # 2549

Chad N. Johnston, SC Bar # 73752

R. Walker Humphrey, II, SC Bar # 79426

Willoughby & Hoefer, P.A.

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*Attorneys for Plaintiff City of Myrtle Beach and All
Others Similarly Situated*

Columbia, South Carolina
July 3, 2019

EXHIBIT A

https://www.myhorrynews.com/news/local/horry_county/horry-county-officials-backtracking-on-hospitality-fees/article_d3e14c6e-9929-11e9-8c1b-8b47b696a049.html

TOP STORY

Horry County officials backtracking on hospitality fees

By Charles D. Perry and Viraj Naik info@myhorrynews.com Jun 27, 2019 Updated Jun 27, 2019



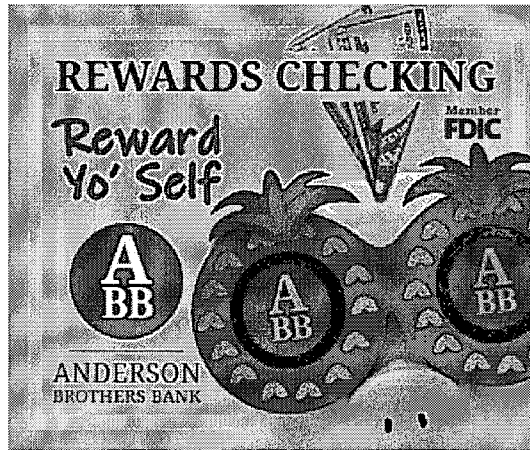
File photo info@myhorrynews.com

Horry County leaders backtracked Thursday on plans to continue collecting a hospitality fee inside local cities.

Two days after announcing they would still collect the 1.5 percent levy in all Grand Strand municipalities except Myrtle Beach, some officials said they misinterpreted a judge's ruling about where the fee could be collected. Now they're considering limiting the fee to the unincorporated areas.

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"It was a mistake," county councilman Johnny Vaught said of the county's original announcement, which was made Tuesday.



Council members plan to hold a special meeting at 5 p.m. Saturday to discuss the issue. Vaught expects the council to provide instructions to Treasurer Angie Jones about the fee collection.

Jones said she received calls from multiple municipal officials who insisted the judge's ruling on Friday meant that the county could not collect the fee in any local cities, not just Myrtle Beach, until the lawsuit between the county and the cities is resolved. She agrees with the cities' interpretation of the judge's order and said her concern is that her office could be forced to issue refunds if the court determines the fee collection inside city limits shouldn't have taken place.

"That's going to cause a nightmare for my staff," she said.

At issue is the 1.5 percent hospitality fee that is charged on all prepared food, hotel admissions and attraction tickets sold countywide. For more than 20 years, the county has collected this fee. The revenues were used to pay for major road projects, including S.C. 31 and S.C. 22. Once the debt for the highways was paid off, county officials planned to use some of the tax revenues to pay for building I-73. They also expected to use a portion for improving public safety services in unincorporated Horry.

But earlier this year, Myrtle Beach leaders opted to overhaul the hospitality fee structure and install their own tax and fee system. They said they didn't want to share these revenues with the county. North Myrtle Beach and Surfside Beach officials did the same thing.

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The new tax structure is scheduled to take effect July 1.

In March, Myrtle Beach sued the county, saying in court papers that the county was illegally collecting the hospitality fee because that program was supposed to expire in 2017. The lawsuit didn't name Surfside Beach or North Myrtle Beach, but it said the case was for "itself and a class of similarly situated plaintiffs."



"[That] clearly includes municipalities in Horry County," North Myrtle Beach officials said in a prepared statement Tuesday.

Earlier this year, Myrtle Beach officials asked a judge to issue a temporary injunction barring the county from collecting the hospitality fee in the city while the lawsuit went through the court system. The judge sided with the city and issued his ruling Friday.

But on Tuesday, the county filed a motion asking the court to reconsider the decision. The county also issued a news release saying it planned to continue collecting the fee everywhere except the city of Myrtle Beach.

"It was a screw up pure and simple," Vaught said of the release.

Surfside Beach Mayor Bob Childs said he wasn't confused about the judge's decision on the hospitality fee, but he was perplexed by the county's initial response.

"I thought the judge's ruling stated all that," he said. "How it got sidetracked I don't understand. ... Hopefully by Saturday, they'll get it straightened out."

Saturday's special meeting will take place in council chambers at the Horry County Government & Justice Center in Conway.

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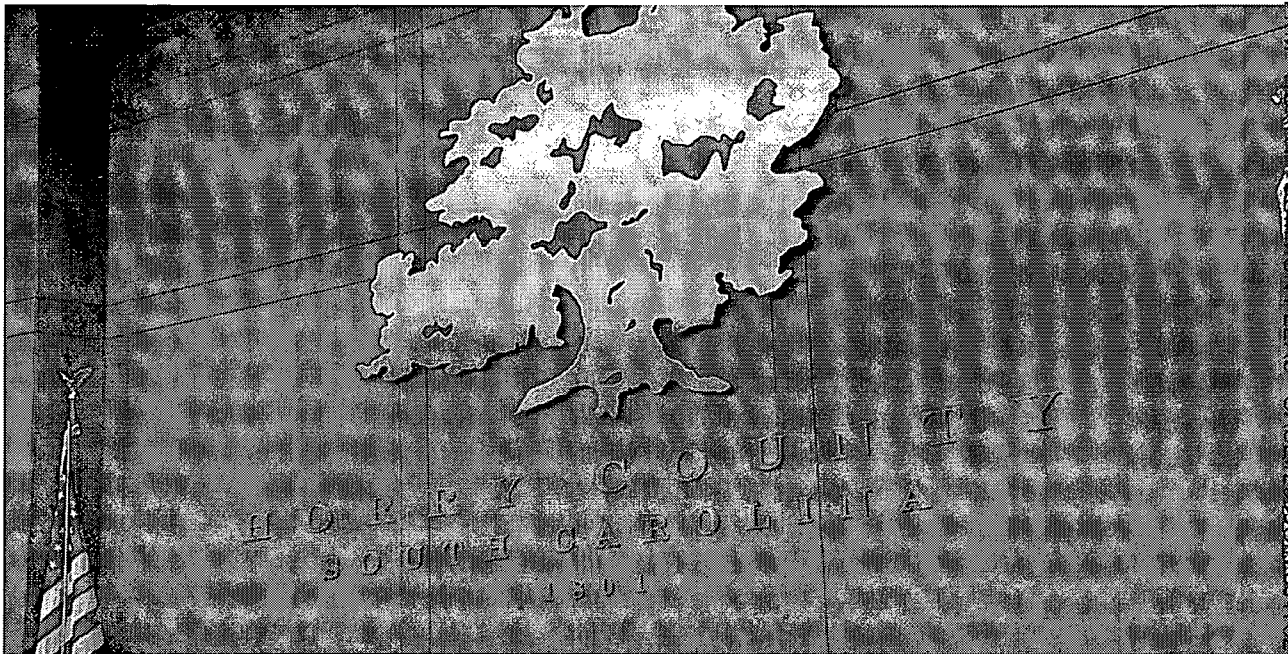
Contact Charles D. Perry at 843-488-7236

Charles Perry

I'm the editor of myhorrynews.com and the Carolina Forest Chronicle, a weekly newspaper in Horry County, South Carolina. I cover county government, the justice system and agriculture. Know of a story that needs to be covered? Call me at 843-488-7236.



Horry County councilman believes hospitality fee court order was misinterpreted



By Kristin Nelson | June 27, 2019 at 9:40 PM EDT - Updated June 27 at 9:40 PM

HORRY COUNTY, S.C. (WMBF) – One Horry County council member believes a judge's ruling surrounding hospitality fees was misinterpreted.

A judge ruled last week that Myrtle Beach could collect hospitality taxes and not pay a 1.5% hospitality fee to the county as a lawsuit moves through the court system.

Myrtle Beach claims in its lawsuit that Horry County illegally collected millions of dollars in hospitality fees.

PAST COVERAGE:

[Myrtle Beach sues Horry County to recover hospitality fees]

[Judge rules in favor of Myrtle Beach in dispute over hospitality tax with Horry County]

[Grand Strand mayors speak out against proposed hospitality fee bill]

It all stems from a resolution that was passed in 1996 that allowed the county to collect a 1.5% hospitality tax from municipalities to pay for the building of roads, but that resolution was set to expire in 2017. When that agreement expired, several cities and towns in Horry County voted to keep the money in their jurisdictions.

After the ruling, a memo was sent Tuesday to the public, municipalities and members of the media that stated the county intends to continue to collect hospitality fees and taxes from unincorporated areas of the county and all municipalities, except for the city of Myrtle Beach.

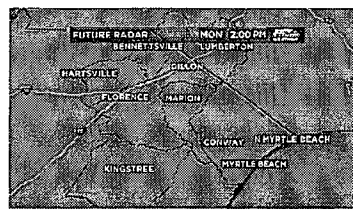
The City of North Myrtle Beach fired back and said that county has no authority to collect hospitality fees from municipalities because they are a part of the court order.

Horry County councilman Johnny Vaught said he believes someone in the county misinterpreted the court order and made an error when they announced the county would continue to collect fees from all municipalities, except Myrtle Beach.

Vaught added that there will be a meeting about the hospitality fees at 5 p.m. Saturday. Leaders will discuss the judge's ruling in the case.

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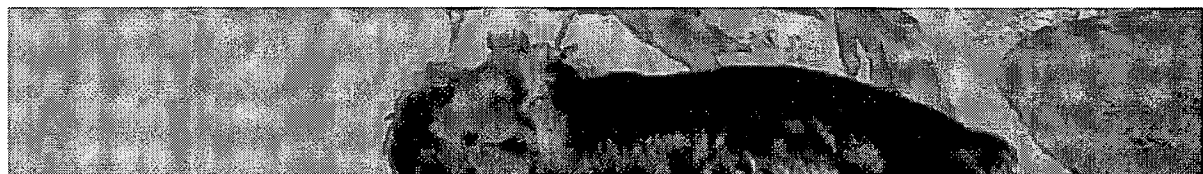
AUTHOR

Kristin Nelson

Digital Content Producer



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By WMBF News Staff



► **Four taken to hospital after boat crash on Intracoastal Waterway released**

The four people taken to the hospital Sunday night following a boat crash on the Intracoastal Waterway have been released

By WMBF News Staff

One injured, one in custody following stabbing at Longs Dollar General

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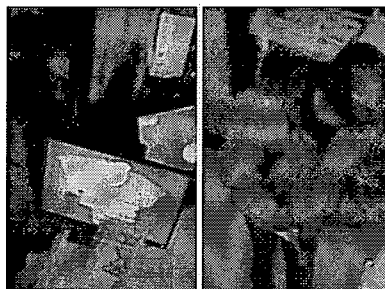
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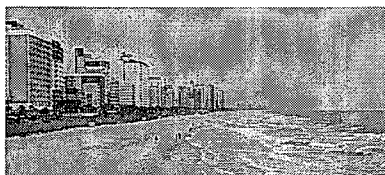
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📺 New Myrtle Beach hospitality fees go into effect

Published 7:26 AM at 7:26 AM



7/1/2019

Horry County councilman believes hospitality fee court order was misinterpreted



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LOCAL

'We ... misinterpreted the judge's intent': County to hold meeting on hospitality taxes

BY TYLER FLEMING

JUNE 27, 2019 09:18 PM, UPDATED JUNE 28, 2019 02:50 PM



Myrtle Beach City
jurisdictions direc

from

Horry County Government is going to work on a Saturday to clarify who will collect the 1.5 percent Hospitality Fee come July 1.

Council Member Johnny Vaught confirmed that a meeting will be held at 5 p.m. Saturday to discuss the matter and give direction to staff and Treasurer Angie Jones.

The meeting will be public and in Horry County Council Chambers in Conway.

Earlier this year, Myrtle Beach, North Myrtle Beach and Surfside passed ordinances to begin collecting their own hospitality fee on July 1. Horry County has collected the fee on hospitality services in all areas of the county including city limits for more than two decades.

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On March 20, Myrtle Beach sued Horry County and filed an injunction to keep Horry County from collecting the fee. Last week, ahead of those ordinances going into affect, a judge handed down a ruling saying Horry County could not collect the hospitality fee in Myrtle Beach and similar municipalities until a final decision was made in the lawsuit.

A few days later, Horry County sent out a news release stating it would not collect the fee in Myrtle Beach, but would continue doing so in other municipalities like North Myrtle Beach and Surfside Beach.

This sparked subsequent news releases and legal action from North Myrtle Beach and Surfside Beach, saying Horry County is acting outside of the judge's ruling.

The special meeting must be held Saturday before those ordinances go into affect, Vaught said.

While he doesn't like it, Vaught said he doesn't think the judge's ruling gives Horry County the authority to collect the fee until a final decision is made.

"We need to clarify that, because apparently there has been a misunderstanding between the attorneys and the judge," he said. "I think the judge's intent was to include all the municipalities and I think we, or someone, misinterpreted the judge's intent."

The decision to hold a special meeting happened after Jones called Vaught, saying she didn't think Horry County was authorized to collect this money. She said she called him since he was the chair of the administration committee.

Jones said she wants to do right by all the local governments, and added her staff is going through changes that will save the county money, but is keeping her folks busy as well.

"What I don't want to see is us get into a situation where we refund all these businesses and tie up my hospitality staff and my treasure staff while I'm trying to implement all these new programs," she said. "It will be a nightmare for me."

7/1/2019

Horry County steps back on hospitality fee collection stance | Myrtle Beach Sun News

The judge's ruling on the injunction is not the end of the lawsuit over who will collect this fee within cities' limits moving forward.

Hypothetically, Horry County could return to collecting the fee, or lose the ability to collect the fee in municipalities entirely, depending on a final verdict.

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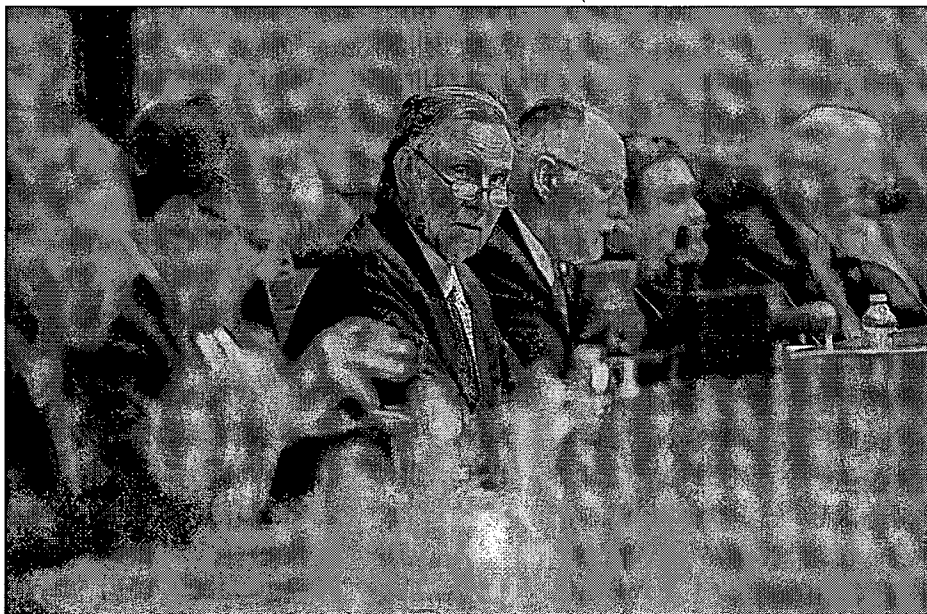
'The county is in contempt': Cities aim to stop Horry County from collecting taxes

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LOCAL

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Horry County Councilman Harold Worley speaks during a council meeting in April. JOSH BELL
JBELL@THESUNNEWS.COM

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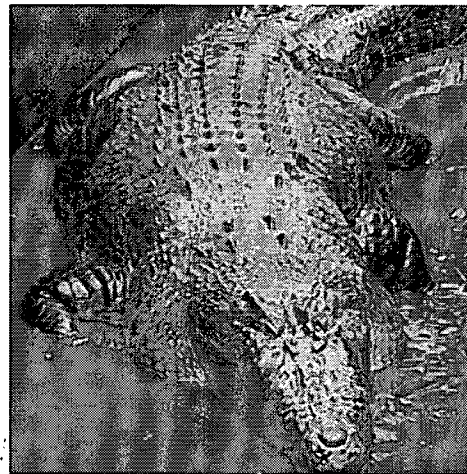
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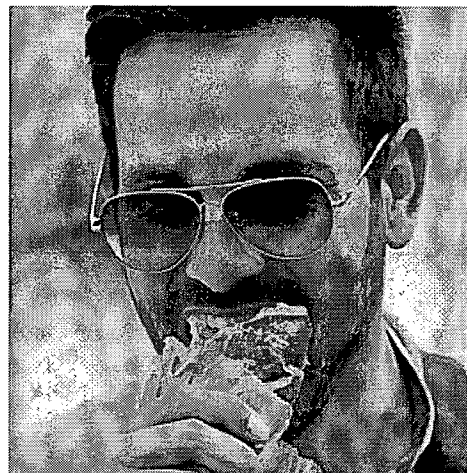
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JULY 01, 2019 11:58 AM

7/1/2019

Horry County steps back on hospitality fee collection stance | Myrtle Beach Sun News

He wore jewelry while being booked into MB jail. But, it tied him to a robbery, cops say

JUNE 29, 2019 03:01 PM

Horry County police: 15-year-old says a female forced him to have sex with her

JUNE 30, 2019 01:52 PM

2 dead after motorcycle hits SUV in Conway area, police investigating

JUNE 30, 2019 07:16 AM

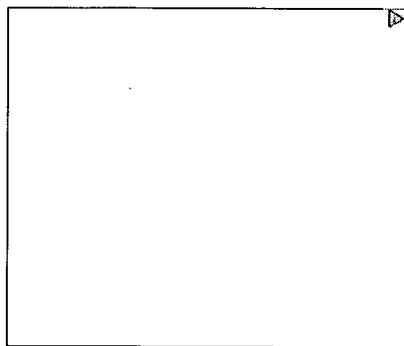
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Monday Night Fireworks at Barefoot Landing

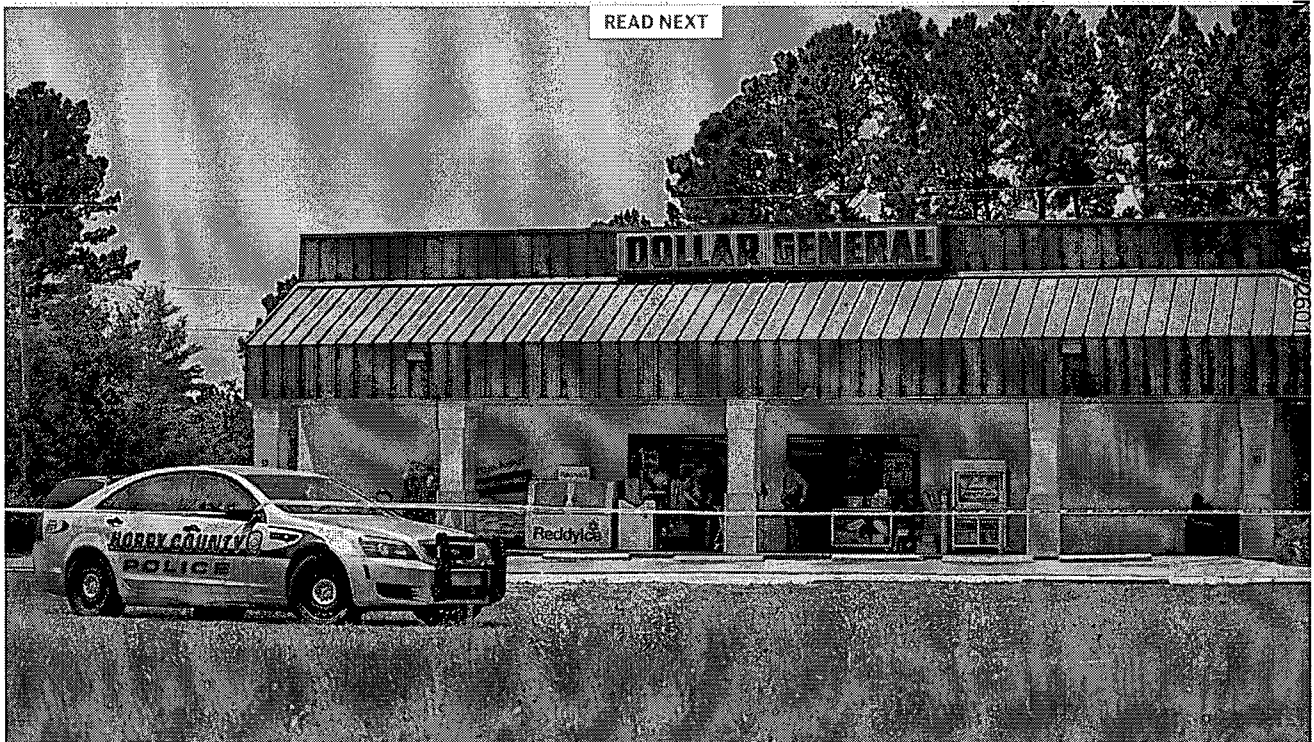
Barefoot Landing
North Myrtle Beach, SC

Mon 7/1/19 at 10pm

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CRIME

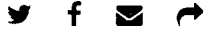
One stabbed at Dollar General in Horry County

BY ALEX LANG

JULY 01, 2019 11:58 AM.

<https://www.myrtlebeachonline.com/news/local/article232053612.html>

8/10



One person was stabbed at a Longs Dollar General on Monday morning, police say. One person was detained in connection to the incident off Highway 9, according to police radio traffic. No word on injuries.

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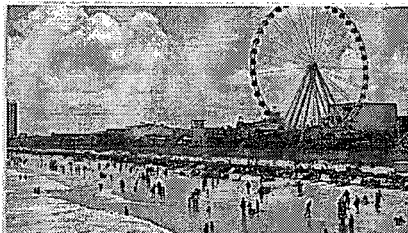
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2 charged in NC double murder during armed robbery of drugs and cash, cops say

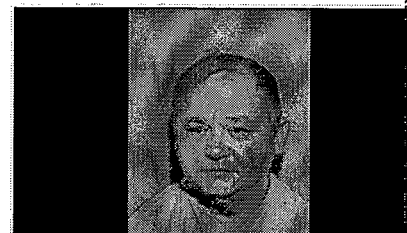
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Rain or shine? Here is the Myrtle Beach weather forecast for Fourth of July

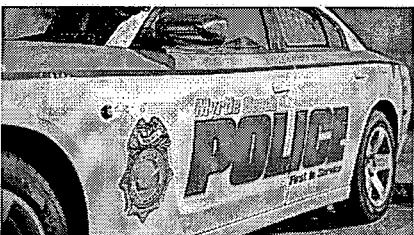
JULY 01, 2019 11:49 AM



CRIME

North Myrtle Beach businessman arrested stealing thousands in scam, police say

JULY 01, 2019 11:15 AM



CRIME

Ka-boom! Suspect takes off running with a cart full of fireworks from Myrtle Beach store

JULY 01, 2019 11:33 AM



LOCAL

'Stop pushing I-73 and move on': Emails question county's hospitality tax strategy

JUNE 30, 2019 08:26 PM



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EXHIBIT B

From: "Golding, Henrietta" <HGolding@burr.com>
Date: June 30, 2019 at 2:44:12 PM EDT
To: "Vaught, Johnny" <jvaught@horrycounty.org>
Cc: Mark Lazarus <mlazarus@lazarusentertainment.com>, "Carotti, Arrigo" <CarottiA@horrycounty.org>, "Gosnell, Steve" <gosnells@horrycounty.org>, "tyler@surfsiderealty.com" <tyler@surfsiderealty.com>, "hworley@odresort.com" <hworley@odresort.com>, "DiSabato, Dennis" <disabatod@horrycounty.org>, "mayorhatley@nmb.us" <mayorhatley@nmb.us>, Dennis Pieper <dpieper@surfsidebeach.org>, "mgmahaney@nmb.us" <mgmahaney@nmb.us>
Subject: Re: Tax collection.

Mark- no City other than MB are parties to the lawsuit. Also Judge Seals order does not order anything regarding the other municipalities. There are many errors with the order and hope to get straightened out when we appeal this order- which we will start as soon as Judge Seals rules on our outstanding motion to reconsider. He will deny this motion of course and then we try to get a supersedeas. . This is solely the fault of MB. If the County took steps to suspend the ordinance, then probably create legal issues detrimental to the County. Really sorry for this chaos Henri

Sent from my iPhone

Henrietta Golding - Partner
Burr Forman McNair
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

EXHIBIT C



LEAKED WEEKEND EMAILS REVEAL LAZARUS, CARROTTI'S, AND COUNTY'S DILEMMA

David Hucks 10 hours ago Featured, News, Politics

In a back and forth folly of sensational emails between former Horry County Council Chairman Mark Lazarus, select Horry County Councilmen, and County Attorney Arrigo Carotti, residents can now see firsthand what a dilemma Horry County is in concerning Judge William Seals ruling on a 1.5% hospitality fee tax the county hopes to continue collecting.

The volley of emails, leaked today to MyrtleBeachSC news, occurred on Sunday as follows.



Email sent by Mark Lazarus to Henrietta "Henri" Golding Sunday, June 30th

On Jun 30, 2019, at 1:48 PM, Mark Lazarus <mlazarus@> wrote:

Henri,

What are we in Surfside and NMB supposed to do now? Mass confusion for the business community. While you know I respect your direction and decision I think this adds burden to our business and flies in the face of the judges order.

HC should suspend the collection in the incorporated areas until an appeal is granted or denied and then until the entire matter is resolved by a higher court.

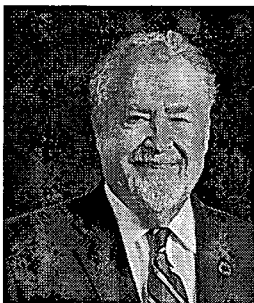
While I stand by HC extending the fee which I orchestrated and lead the charge. Understanding our actions were perfectly legal. I do blame MB for causing this mess, the judges order is clear to me for now. I look forward to our day in court to right this ship but until then lets do whats right for our citizens and business community.

Thank you for listening and if I can be of any assistance in

resolving his debacle please do not hesitate to call Mark Lazarus

Sent from my iPad

Mark Lazarus



Councilman Vaught response

On Jun 30, 2019, at 1:54 PM, Vaught, Johnny <jvaught@horrycounty.org> wrote:

I totally concur, mark!

Johnny Vaught

Chairman, Administrative Committee



Councilman Worely – I-73 is dead, move on

ELECTRONICALLY FILED - 2019 Jul 03 3:41 PM - Horry - COMMON PLEAS - CASE#2019CP2601732

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

From: Harold Worley [mailto:hworley]
 Sent: Sunday, June 30, 2019 4:34 PM
 To: Vaught, Johnny <jvaught@horrycounty.org>
 Cc: Mark Lazarus <mlazarus@horrycounty.org>; Henrietta
 Golding <H.Golding@burr.com>; Carotti, Arrigo
 <CarottiA@HorryCounty.org>; Gosnell, Steve <gosnells@HorryCounty.org>;
 Tyler@ <Disabato, Dennis
 <disabatod@horrycounty.org>; mayorhatley@nmb.us; Dennis Pieper
 <dpieper@surisidebeach.org>; mgmahaney@nmb.us; Gardner, Johnny
 <Gardner.Johnny@horrycounty.org>; Crawford, Cam
 <crawfordc@horrycounty.org>; Allen, Al <allena@HorryCounty.org>;
 Howard, Bill <howardb@horrycounty.org>; Loftus, Gary
 <loftusg@HorryCounty.org>; Hardee, Danny <hardeedan@horrycounty.org>;
 Prince, Paul <PrinceP@HorryCounty.org>; Hartley, Pat
 <HartleyP@HorryCounty.org>; Bellamy, Orton
 <Bellamy.Orton@horrycounty.org>
 Subject: Re: Tax collection.

All, now that I-73 is dead and off the table, what is there to argue about? County Council should stop pushing I-73 and move on. I believe our Municipalities should be allowed to collect their 1% and use as they think appropriate. The County like wise should be allowed to collect their 1-1/2% in the unincorporated areas and use as they think appropriate. Ride 1 bonds were paid off earlier this year. All funds collected by the County since then should be paid to those jurisdictions in which they were collected. We, as elected leaders, Fed, State, County and Cities, should stop this madness. It is hurting our business community and wasting taxpayers dollars. They are upset and rightly so.

Sent from my iPhone



Carotti – MB needs to waive \$60 million claim

ELECTRONICALLY FILED - 2019 Jul 03 3:41 PM - Horry - COMMON PLEAS - CASE#2019CP2601732

On Jun 30, 2019, at 6:26 PM, Carotti, Arrigo <CarottiA@horrycounty.org> wrote:

ATTORNEY-CLIENT PRIVILEGED

I have removed those not my client from my email to you now, so that what I am saying is privileged, and only Council may waive that privilege. For what it is worth, these are my observations:

Council received strong advice from our litigation attorney, Henri, who is working with a team of attorneys at Burr, Forman, McNair, not to suspend collection from within municipalities other than Myrtle Beach or else we would be jeopardizing our overall defense in the litigation. As I indicated, Council had no good alternatives to choose from. We, basically, are in damage control mode. I see the overriding problem as Myrtle Beach's claim for monies collected (and almost all already spent) between January 1, 2017 through February 15, 2019, approximately \$60M. If the City would waive that claim, for one, would recommend giving up the future revenue, and believe Council already is at that point. Then the remaining issue would be whether or not to continue to collect our Hospitality Fee, or impose our own Accommodations and Hospitality taxes under current State statute, within the unincorporated areas of the County. Unfortunately, I don't think Myrtle Beach is inclined to give up their \$60M claim. They have put us in an all or nothing situation, without any opportunity for compromise, and indeed that is

hurting all of us. But it seems the only alternative they have given us is to fight with everything we have in Court.

Arrigo

Arrigo P. Carotti / County Attorney

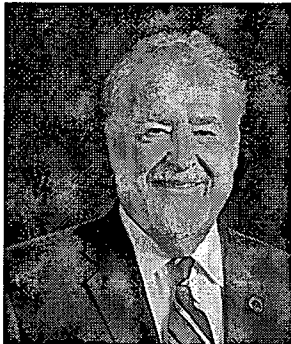
Horry County Government

Horry County Attorney's Office

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Vaught – Certify the funds were used appropriately

From: Vaught, Johnny
Sent: Sunday, June 30, 2019 6:42 PM
To: Carotti, Arrigo <CarottiA@HorryCounty.org>
Cc: Harold Worley <hworley@horrycounty.org>; Henrietta Golding <HGolding@burr.com>; Gosnell, Steve <gosnell@horrycounty.org>; DiSabato, Dennis <disabatod@horrycounty.org>; Tyler <tyler@horrycounty.org>; Gardner, Johnny <Gardner.Johnny@horrycounty.org>; Crawford, Cam <crawfordc@horrycounty.org>; Allen, Al <allena@horrycounty.org>; Howard, Bill <howardb@horrycounty.org>; Loftus, Gary <loftusg@horrycounty.org>; Hardee, Danny <hardeedan@horrycounty.org>; Prince, Paul <PrinceP@HorryCounty.org>; Hartley, Pat <HartleyP@HorryCounty.org>; Bellamy, Orton <Bellamy.Orton@horrycounty.org>
Subject: Re: Tax collection.

Arrigo, can we not certify that all funds collected between 2017 and feb 2019 were used to repay the sib debt that was incurred for the ride 1 project?

Johnny Vaught
Chairman, Administrative Committee

ELECTRONICALLY FILED - 2019 Jul 03 3:41 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

For readers who are not familiar with our news site's coverage of this ongoing narrative: The Hospitality fee wars began earlier this Spring when the city of Myrtle Beach sued Horry County stating that the hospitality fees were being collected illegally inside the city limits of Myrtle Beach.



Hospitality Fee extended to

pay for I 73

The Hospitality fee was established in 1997 and sun-setted in 2017. Horry County Council was chaired by Mark Lazarus at that time. Lazarus, working with county council, extended the sun-setted tax into perpetuity. His reasoning was to pay for the building of I-73.

Friday, June 21st, Judge William Seals of the 15th circuit ruled that Horry County could not collect the tax in the City of Myrtle Beach nor or among other plaintiffs in the case. These fees can not be collected as long as the lawsuit is in place and unless Horry County wins the current case.

Horry County's, outside legal council, Henri (Henrietta) Golding informed County Council this Saturday that there were no other plaintiffs in the case.

Patrick Dowling, Public Information Officer of North Myrtle Beach told our news team, *"There is no doubt in our mind that what the county is doing is illegal. We sent out a letter on Friday to all city of North Myrtle Beach businesses telling them to discontinue collecting the 1.5% hospitality tax as of Monday, July 1, 2019."*

Comments

1 comments

1 Comment

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Janet Rotelli Fusaro

Has anyone informed Mark Lazarus that he lost the vote of County Council Chairman? Why does he continue to involve himself in their affairs? I don't see an email to him from anyone telling him to back off. He need not involve himself in county affairs

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7/1/2019

Leaked weekend emails reveal Lazarus, Carrotti's, and county's dilemma - Myrtle Beach news

ELECTRONICALLY FILED - 2019 Jul 03 3:41 PM - Horry - COMMON PLEAS - CASE#2019CP2601732

EXHIBIT D

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 5:27:09 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

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

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	
For Itself and a Class of Similarly	)	Order Denying Motions for
Situated Plaintiffs,	)	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.]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	
For Itself and a Class of Similarly	)	HORRY COUNTY'S
Situated Plaintiffs,	)	REPLY IN SUPPORT OF
	)	MOTION TO RECONSIDER
Plaintiff,	)	
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Horry County respectfully submits this Reply in Support of its Motion to Reconsider.

Introduction

The City's opposition to the County's Motion to Reconsider focuses more on what has happened since the Court granted the City's Motion for Preliminary Injunction than on the merits of the County's arguments. That is because the City has no good response on the merits. Nothing the City argues saves the procedural or substantive defects in the Injunction Order.¹

Reconsidering the Injunction Order now is essential. As the parties have been discussing the proposed scheduling order that the Court requested, the City's timeline would drag this litigation out until the end of 2020, a year and a half from

¹ The County is not responding directly to the City's arguments that relate to the Motion for Rule to Show Cause here. That is a separate motion, and unnecessarily interweaving that motion with this motion serves only to complicate this litigation.

now, while the County's draft scheduling order would bring resolution in this Court by the end of this year. Leaving the Injunction Order, with all of its shortcomings, in place for one-and-a-half years is far too long and would be not only unfair to the County but also leave an unnecessary mess.

Argument

I. Rule 65(c) does require security from the City.

The City offers two reasons why it is not required to give any security for the injunction, but neither has any merit.

First, the City contends that the County has waived this argument. For one thing, Rule 65(c) is mandatory: "no restraining order or temporary injunction *shall* issue except upon the giving of security by the applicant." Rule 65(c), SCRCP; *see also Johnston v. S.C. Dep't of Labor, Licensing, & Regulation, S.C. Real Estate Appraisers Bd.*, 365 S.C. 293, 296–97, 617 S.E.2d 363, 364 (2005) ("The term 'shall' in a statute means that the action is mandatory."). In other words, the Court has no authority to enter an injunction without requiring security.

For another, the County did not waive this argument. The County's memorandum specifically invoked Rule 65(c) and argued that security was required. *See* Cty. Mem. 19–20. This was not a "generic" argument, as the City strains to characterize it. Rather, it was a direct invocation of a Rule of Civil Procedure, and it was raised in response to the City's request for an injunction. That this issue did not come up at oral argument is irrelevant. No rule requires a party to raise an issue at a hearing when that issue has already been briefed.

Second, the City asserts that a political subdivision is not required to provide any security. The City is incorrect. Rule 65(c) exempts only “the State or of an officer or agency thereof.” Rule 65(c), SCRCP. That is it.

The City is (obviously) not the State, nor is it an officer of the State. *Cf.* S.C. Const. art. VI (providing requirements for “officers” that apply to natural persons). Thus, the only thing the City could be to be exempt from Rule 65(c) is a State agency.

But State agencies are entities like the Department of Transportation, Department of Motor Vehicles, and Department of Health and Environmental Control. In other words, they are, as the court of appeals has explained, “executive or regulatory bod[ies]” of the State. *S.C. Pub. Interest Found. v. Courson*, 420 S.C. 120, 124, 801 S.E.2d 185, 187 (Ct. App. 2017) (quoting *State Agency*, Black’s Law Dictionary (10th ed. 2014)). These entities funded wholly by the State and various fees they may be allowed to collect, unlike municipalities and counties, which impose their own taxes and have their own budgets, with minimal (if any) money from the State. Moreover, our appellate courts have distinguished these agencies from political subdivisions. *See, e.g., Georgetown Cty. v. Davis & Floyd, Inc.*, 426 S.C. 52, 57, 824 S.E.2d 471, 473–74 (Ct. App. 2019). Finally, the State itself—quite tellingly—does not include municipalities when it lists all State departments, agencies, and boards online. *See SC State Government – Departments, Agencies, Boards*, SCIWAY, https://www.sciway.net/gov/state_ag.html.

The City was quick to claim that the County pointed to no South Carolina authority on this issue, but that is not true. The County relied on the plain language of Rule 65(c). In reality, the City is the one who can point the Court to nothing in South Carolina law to support its position that it is not required to provide any security for the injunction.

The City seems to recognize (at least implicitly) that it cannot credibly defend the lack of a security when it says it can escrow the revenue it collects until the litigation is pending. If the City did that, it would provide security for the fees the County would not be allowed to collect within the City.²

II. The City points to wrong date for the “last uncontested status.”

As is typical of its response, the City begins an argument by accusing the County of misstating the Court’s order. And as is typical of its response, the City gets it wrong. The County’s Motion to Reconsider said the Injunction Order does not address “the effect it has on the status quo.” In other words, the Injunction Order does not explicitly grapple with the fact that it is stopping the County from collecting a fee that has been in place for more than two decades.

The City casts the “true” *status quo ante* as the supposedly “last uncontested status” between the City and the County, which, the City says, was January 1, 2017, the original expiration date of the Hospitality Fee. That claim is plainly false.

² Two other brief points on Rule 65(c): *First*, the City’s proposed security does not provide security for a countywide injunction, as the County explained in its opposition to the Motion for Rule to Show Cause. *Second*, the County never contended that security would not be required for it to obtain an injunction. But now that the Court has denied the County’s motion for a preliminary injunction, discussing what security would be required of the County is a moot point, at least until the Court grants the Motion to Reconsider.

The very reason that this lawsuit exists is that on January 1, 2017, the County claimed that it could continue collecting that Hospitality Fee but the City claimed it could not.³

The actual “last uncontested status” was December 31, 2016. On that date, everyone agreed that the County could collect the Hospitality Fee. Thus, even if the City is correct that South Carolina law mirrors the federal law cited in its brief, the Court still should have denied the City’s motion because the last uncontested status (and hence the *status quo ante*, according to the City) was when the County could still collect the Hospitality Fee.

III. The City misrepresents its ability to rely on a class action.

The irreparable harm to the City is the payment of money. It cannot be anything else. After all, the only thing the Hospitality Fee requires is the payment of a fee.

Yet the City continues to look beyond its own harm to the supposed harm suffered by a putative class. The City, however, cannot bring these claims as a class action. See S.C. Code § 12-60-80. Throughout the focus on the preliminary injunctions, class issues have received relatively little attention. But now the County has moved for judgment on the pleadings on this case proceeding as class action, pursuant to § 12-60-80. Because the City cannot have a class certified, it

³ Technically, on January 1, 2017, the City had given no indication that it disagreed with the County on the Hospitality Fee. Only about two years later does the City appear to have taken this position. The City’s lack of any stated opposition to extending the Hospitality Fee is a theme in this case: When the County first extended the sunset provision in 2004, the City raised no objection for a decade and a half. Even if the City were correct that Ordinance 11-04 had no effect (and it is not), that the City still would say nothing about its opposition to extending the Hospitality Fee, if it opposed that idea, is unbelievable.

cannot use a putative class to justify the irreparable-harm requirement for a preliminary injunction.

IV. The City is not likely to prevail on the merits.

As a starting point, the City spends much of its response misreading (whether deliberately or not) certain emails by the County and accusing the County of misconduct. Such arguments are unfounded and show no respect for the good faith arguments that the County has asserted throughout this litigation.

First, as for the City's Exhibit A, that various County officials read the Injunction Order differently is not evidence that the County is violating that order. Rather, it is evidence that the Injunction Order lacks the specificity required by Rule 65(d), SCRCF. That point was briefed in substantial detail in the County's Motion to Reconsider and in response to the City's Motion for Rule to Show Cause. Yet the City's response to the Motion to Reconsider is deafeningly silent on this front.

Second, as for the City's Exhibits B and C, the City misinterprets the emails. Far from saying the County should disregard the Injunction Order, those emails simply state that interpreting the Injunction Order as applying countywide would undermine the County's position and the County is unfortunately now facing an Injunction Order that lacks sufficient specificity and that calls into question the validity of the Hospitality Fee. Nothing more.

On this point, the City's argument is once again revealing. The City relies on its motion to define the scope of the Injunction Order, rather than any specific

language from the Injunction Order itself, demonstrating how that order (which the City itself drafted) violates Rule 65(d).⁴

Third, as for the City's Exhibit D, the City asserts that the County's proposed order denying both motions for preliminary injunctions somehow implicitly admits that the County's position had no merit, despite having also asked the Court to grant its motion for a preliminary injunction. Hardly. Proposed orders cannot always reflect what a party believes the law is; they must account for what a court has indicated its view is. The County's proposed order was simply a request that the Court evaluate the merits when considering the City's proposed order, and if the Court was not willing to go so far as granting the County's motion, deny both motions instead. Even mentioning a proposed order, which was not acted upon by the Court, is blatantly improper and only amplifies the seriousness of the legal issues created by the Injunction Order prepared by the City.

Having disposed of the City's misrepresentation of various documents, the merits of the case warrant attention. Taking the City's bullet points in order:

- The resolutions from the Department of Transportation and the Horry County Board of Education are essentially the same. The *resolution* is the end of the document (the "BE IT RESOLVED" paragraph). The *recitals* that precede that paragraph are not the

⁴ The City tries to justify the scope of its desired countywide injunction by saying that the City asked for the same relief. The County actually asked simply that the City's new taxes (or fees, as they actually are under state law) be enjoined. See Cty.'s Mot. for Prelim. Inj.. But even if the County did ask for some countywide relief, that would be appropriate for the County, which is collecting the Hospitality Fee across the County, whereas the City has jurisdiction only within its own borders.

resolution. Both the Department of Transportation resolution and the Horry County Board of Education resolution use nonbinding language similar to “urge” from the municipal resolutions. These resolutions are, like the municipal resolutions, merely shows of political support.

- The rule about reading an ordinance as a whole is about giving effect to the legislative body’s “purpose, design, and policy” in adopting the ordinance. *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). The purpose of Ordinance 105-96 was to establish the Hospitality Fee to finance road projects. Section 1(A) established that the Hospitality Fee. Neither a specific timeframe for collecting the Hospitality Fee nor a specific road project was necessary for the County to establish the Hospitality Fee. That Ordinance 105-96 contained such provisions in no way limits the Hospitality Fee now.
- The purpose of drawing a distinction between uniform service charges and taxes is to make clear that the Injunction Order does not analyze what the City’s new revenue sources adopted by Ordinances 2019-22 and 2019-23 are. Simply calling them taxes and saying that §§ 6-1-540 and 6-1-740 do not apply is not analysis. This is not a new argument; indeed, this argument is the reason that the County invoked these two sections.

- The City's argument that Exhibit A to the Motion to Reconsider is new evidence that cannot be considered now is incredulous. That is not hyperbole. It is stunning that the City is arguing against black-letter law and claiming that a document that *did not exist* when the preliminary injunction motions were briefed cannot be considered now. See, e.g., *Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002) (explaining that new evidence not previously available may be the basis for a motion to reconsider).
- The City has twisted the County's argument that the same Hospitality Fee is in place now as was in place on January 1, 1997. The County's point here is that the sunset provision was not part of the Hospitality Fee itself. For the City to argue the County has said anything else is disingenuous.

One final point on the merits: Neither the Injunction Order nor the City's briefing has identified which specific constitutional or statutory provision the County violated by extending the Hospitality Fee. The penumbra approach pushed by the City and adopted by the Injunction Order has not been approved by our supreme court. This shortcoming (ignored by the City in its response) is fatal, and it illustrates why the City is not likely to succeed on the merits.

Conclusion

The Court should grant the motion to reconsider.

Respectfully submitted:

Burr & Forman LLP

s/Henrietta U. Golding

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Myrtle Beach, South Carolina

Dated: July 8, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	
Plaintiff,	)	CITY OF MYRTLE BEACH'S
vs.	)	MEMORANDUM IN OPPOSITION TO
	)	HORRY COUNTY'S MOTION FOR
Horry County,	)	JUDGMENT ON THE PLEADINGS
	)	
Defendant.	)	

Plaintiff City of Myrtle Beach ("City"), on behalf of itself and all others similarly situated, respectfully submits this memorandum in opposition to the July 2, 2019 motion of Defendant Horry County ("County") pursuant to Rule 12(c), of the South Carolina Rules of Civil Procedure ("SCRCP"), for judgment on the pleadings. For the reasons set forth below, the County's motion is not ripe based on the plain language of the Rule and the status of this litigation. In any event, the motion is meritless and demonstrates a gross misapprehension of the nature of the claims and the law applicable to same. The brevity of the County's argument underscores the absence of law supporting it. The motion should be denied forthwith.

ARGUMENT

I. Procedural Deficiencies Bar Consideration of the County's Motion.

- a. *The Pleadings are not closed; therefore, under the plain language of Rule 12(c), SCRCP, the County's motion is not ripe for review.*

Rule 12(c), SCRCP provides that, "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." To recap the current status of this litigation, the complaint was filed on March 20, 2019. The County answered and asserted two counterclaims against the City on April 19, 2019. On May 20, 2019, the City moved

to dismiss the County's counterclaims under Rule 12(b)(6), SCRCP, and thereafter replied to same. On May 29, 2019, the County moved to amend its answer and counterclaims. In doing so, the County sought to remove its previously-asserted first counterclaim for attorneys' fees, and to add two new counterclaims for declaratory and injunctive relief. On May 31, 2019, the City opposed the County's motion to amend, and on June 6, 2019, the County replied in support of its motion. In addition, on June 13, 2019, the County filed its response in opposition to the City's motion to dismiss the asserted counterclaims, and on June 24, 2019, the City replied in support of that motion to dismiss.

Both the City's motion to dismiss the County's counterclaims and the County's motion to amend its answer to add new counterclaims are still outstanding. Indeed, the County's motion to amend alone, if granted by the Court, would trigger the obligation of the City under the Rules to file a responsive pleading to the County's newly-asserted counterclaims. It is therefore a matter of fact that the pleadings in this case are not yet closed. Under the plain language of Rule 12(c), a motion for judgment on the pleadings is only ripe for a Court's consideration "[a]fter the pleadings are closed." As the County's motion is premature, it should be denied.

b. The County has failed to plead a defense based on the South Carolina Revenue Procedures Act, S.C. Code Ann. § 12-60-10 et seq.

Neither the County's original answer nor the provisional amended answer submitted to the Court in support of its motion to amend its answer and counterclaims advanced a defense to the complaint—among the 15 defenses advanced—on the basis that the City's claim for declaratory relief and proposed class action are barred by the South Carolina Revenue Procedures Act. Because this defense does not appear in the County's answer, such defense fundamentally may not serve as the basis for a judgment on the pleadings. As the County has not advanced the defense on which it attempts to now rely, the motion should be denied.

c. *This Court has already addressed the likelihood of success on the merits of the City's claims in granting the City's motion for preliminary injunction; however, the County did not argue the applicability of the RPA in opposition to the motion.*

Even more egregious than its failure to plead a defense regarding the applicability of the RPA to the City's assertion of a proposed class, as the Court is fully aware, in considering and ultimately granting the City's motion for preliminary injunction as to the cessation of the County's collection of the Hospitality Fee within all of the respective municipalities in Horry County, the parties were required to address the likelihood of the City's success on the merits of its claims. *See Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018) (requiring, *inter alia*, a demonstration by the moving party of the likelihood of success on the merits in order to receive injunctive relief). However, in neither the extensive briefing submitted to the Court nor during the June 14, 2019 hearing did the County argue that the Hospitality Fee was a tax, or that provisions of the RPA would serve to bar the certification of the claim as a class action or prevent the issuance of declaratory relief.

Even though the County's argument is grossly incorrect on the merits, as discussed below, the County's failure to argue this ground to the Court at its first available opportunity constitutes a waiver of the County's right to do so now. It has been the longstanding position of the courts in this state that an issue or defense must be raised at the earliest opportunity in a case, or that issue will be deemed to have been waived. *See Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 546, 725 S.E.2d 698, 701 (2012) (citing *Hurst v. Sumter County*, 189 S.C. 376, 1 S.E.2d 238 (1939) (noting the general rule in civil cases that issues must be raised at the earliest opportunity, or they will be considered waived)); *see also Scott v. Porter*, 340 S.C. 158, 167, 530 S.E.2d 389, 393 (Ct. App. 2000) (holding that in order to be timely, an objection usually must be made at the earliest possible opportunity); *cf. Maybank v. BB&T Corporation*, 416 S.C. 541, 564-65, 787

S.E.2d 498, 510 (2016) (finding the defendant had waived the defense of personal jurisdiction notwithstanding it having been raised in the answer, based on the defendant's failure to raise the issue in a timely manner and its active participation in the case). The County did not raise the RPA defense in either its original or provisional amended answer, it failed to argue the applicability of the RPA in opposing the City's motion for preliminary injunction, and it failed to raise the issue in its motion for reconsideration of the Court's Order granting the injunction (nor could it, as it would have been, and is, unpreserved for the Court's review). Consequently, the County's argument in this regard has been waived and is not properly before the Court; the motion should be denied.

II. On the Merits, the County's Motion Misapprehends the Nature of the Claims and the Applicable Law.

"Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted." *Falk v. Sadler*, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000) (citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991)). In considering a motion for judgment on the pleadings, a court may not consider matters outside the pleadings. *Id.* (citing *Firemen's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990)).

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment.... When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties.

Russell, 305 S.C. at 89, 406 S.E.2d at 339 (citations omitted). Furthermore, "a judgment on the pleadings is considered to be a drastic procedure by our courts." *Id.*

a. The Hospitality Fee is not a tax.

The County's motion rises and falls on its apparent claim, asserted for the first time in this litigation, that the Hospitality Fee is a "tax" as that term is defined in RPA. The County is simply incorrect.

The County cites S.C. Code § 12-60-30(27), in a conclusory and misleading fashion, for the proposition that the Hospitality Fee qualifies as a tax under that definition when it plainly does not. *See, e.g., Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (finding an argument advanced through conclusory statements with no argument or supporting explanation is abandoned). The RPA defines "tax" or "taxes" as "taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, **imposed by this title, or subject to assessment or collection by the department.**" S.C. Code Ann. § 12-60-30(27) (emphasis supplied). The County conveniently ignores the emboldened language in this definition that is fatal to its argument. The Hospitality Fee is not imposed by Title 12 (it is imposed by Title 4) and it is not "subject to assessment or collection" by the Department of Revenue. Accordingly, and unequivocally, the Hospitality Fee is not a tax subject to the RPA.

b. The Revenue Procedures Act does not apply outside of disputes involving the Department of Revenue or property taxes.

Of course, it is firmly and well-established in South Carolina's jurisprudence that the cardinal rule of statutory interpretation is to ascertain and give effect to the intent of the General Assembly. *See, e.g., Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005). Unlike most statutes in South Carolina, the RPA actually informs the Court and the parties in this action what the legislative intent of the RPA is. S.C. Code Ann. § 12-60-20 provides that:

Legislative Intent. It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a **dispute with the Department of Revenue and a dispute concerning property taxes**. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

(emphasis supplied).

Accordingly, this Court is bound to construe the RPA consistent with the General Assembly's express intent, which unequivocally is that the RPA only applies to disputes with the Department of Revenue and disputes concerning property taxes. It is undisputed that this case does not involve a dispute with the Department of Revenue. It is also undisputed that this case does not involve a dispute concerning the imposition, collection, retention, or refund of property taxes imposed by the County. Concomitantly, by the General Assembly's clear, unambiguous statement of intent, the RPA has no application to the Hospitality Fee, its terms, conditions, or legality, or any claim for a refund of such uniform service charge illegally collected and retained by the County since January 1, 2017. *See Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 364, 798 S.E.2d 555, 559 (2017) ("[W]e clarify that the [Revenue Procedures] Act applies to disputes with the SCDOR, which may not concern property taxes, and to disputes concerning property taxes, which may involve the SCDOR or a county or municipality.").

c. The Revenue Procedures Act does not bar the City's class claims.

Having wholly ignored the General Assembly's clear statement of legislative intent, the County cites and grossly misrepresents several inapplicable provisions to support its misreading and the application of the RPA. The County argues that the only remedy available to the City, and all those similarly situated, for a "refund of taxes" is through the provisions of S.C. Code Ann. § 12-60-80, which bars declaratory and class actions. Here again, the County misapprehends and misrepresents the plain language of the RPA.

To begin, the types of cases to which § 12-60-80 applies are those “involving the illegal or wrongful collection of taxes, or attempt to collect taxes.” S.C. Code Ann. § 12-60-80(A). Because this matter does not involve taxes, as that term is defined in RPA, this section simply has no application. The County’s strained efforts to import this section into this case are reflective of the lengths to which County’s “damage control mode” will go.

Setting this inconvenient truth aside, the County argues that “Section 12-60-80 prohibits any class remedy ... for ‘declaratory relief where the sole issue is whether a statute is constitutional,’” citing Subsection (B). County Mot. at 2-3. However, a simple review of the entire subsection puts the County’s argument to bed. *See State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 650–51 (Ct. App. 2008), *aff’d as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010) (“A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.”).

In full, Subsection (B) provides:

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied *to a person or a limited class or classes of persons*.

(emphasis supplied). The County incorrectly infers from the second sentence that “[a] plaintiff cannot bring a class claim for declaratory relief.” County Mot. at 3. Once more, the County’s analysis misses the mark. The second sentence of Subsection (B) merely stands for the proposition that a constitutional challenge to a tax of general application cannot be intended to merely benefit a single person or a *limited* class of persons, but instead must have equal application to all impacted persons. Subsection (B), does not, as suggested by the County, prohibit a party from bringing a class claim for declaratory relief; the reference to a limited class or classes of persons does not imply a “class action” under Rule 23, SCRCP, as wrongfully interpreted by the County.

Next, the County asserts that Subsection (C) prohibits a plaintiff from bringing a class claim for a refund. Yet again the County is attempting to mislead the Court with the selective omission of the operative word from the Subsection. *See Sweat*, 379 S.C. at 377, 665 S.E.2d at 650–51. Once again, in full, Subsection (C) provides:

(C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

(Emphasis supplied). The plain language of Subsection (C) confirms that the bar against refund claims being brought as class actions is whether they are taxes, as defined and construed by the RPA. As discussed above, the Hospitality Fee is a uniform service charge, not a tax, and it is neither imposed under the RPA nor subject to the assessment or collection by the Department of Revenue.

Finally, the County then further misapprehends Subsection (C) as constituting a blanket prohibition against a political subdivision being named as a defendant in a class action. The County's apparent position is that the General Assembly, in a Chapter that is expressly limited by its terms and express legislative intent to providing procedures for claims directly against the Department of Revenue and for claims concerning property taxes collected by political subdivisions, and in a section expressly referring to the illegal or wrongful collection or attempted collection of taxes, intended by inference to limit *any* class action for *any* claim of *any* nature, whether in tort, contract, or otherwise, against political subdivisions. Thus, according to the County's logic, a local government utility which unlawfully spills or discharges pollutants that damages real properties downstream from its treatment facility, may not be subject to class liability but each property owner would be required to bring a separate action in order obtain declaratory,

injunctive, and monetary relief against the local government. Such a position is absurd on its face and contrary to the General Assembly's express intent.

The courts of this state have stated that "[t]he quintessence of statutory construction is legislative intent," *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 205, 544 S.E.2d 38, 44 (Ct. App. 2001), and that "[a]ll rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Jones*, 364 S.C. at 230, 612 S.E.2d at 723. Here, there is no question but that the General Assembly intended to provide its legislative intent with respect to the interpretation and implementation of the RPA. See S.C. Code Ann. § 12-60-20 ("Legislative Intent. It is the intent of the General Assembly to provide the people of this State"); see also *Lightner*, 419 S.C. at 363-65, 798 S.E.2d at 558-59 (construing the RPA in accordance with the General Assembly's clearly articulated legislative intent). Nowhere in the RPA did the General Assembly provide that it intended the RPA to be the source of a general prohibition governing the ability of political subdivisions to sue or be sued. The only reasonable interpretation of statute that gives effect to the entire Chapter of the RPA is that Subsection (C) only applies to limit class actions against cities and counties in property tax cases seeking relief other than a refund of such taxes.

And, as noted above, S.C. Code Ann. § 12-60-20 requires the Court to interpret and construe the RPA in accordance with the General Assembly's intent to limit the application of Subsection (C) to disputes concerning property taxes. *Id.* ("The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent [to provide a straightforward procedure to determine a dispute concerning property taxes]."); see also *Lightner*, 419 S.C. at 364, 798 S.E.2d at 559 ("[W]e clarify that the [Revenue

Procedures] Act applies to ... disputes concerning property taxes, which may involve the SCDOR or a county or municipality”). The Supreme Court has interpreted that intent strictly and, in doing so, has construed § 12-60-80 so narrowly that a taxpayer challenging the imposition of excess interest on the redemption of defaulted local property taxes may not bring an action before the administrative law court, but must pursue such a claim in circuit court. *See Buist v. Huggins*, 367 S.C. 268, 274, 625 S.E.2d 636, 639 (2006) (“[t]he circuit court in this case, as well as the Court of Appeals, found that Petitioners’ claims did not involve a challenge to a property tax assessment but, rather, a claim for a refund of interest paid to the Delinquent Tax Collector, and that the only provisions governing redemption of property sold at a delinquent tax sale were found in ... the Alternate Procedures Act, requiring suit to be brought in the circuit court. We agree”). Thus, even where a dispute arises out of the imposition of a tax which is within the ambit of the RPA, unless the dispute involves the tax itself, § 12-60-80 does not act as a bar to an action brought in this court.¹

CONCLUSION

Based on the foregoing, the County’s motion is not ripe for consideration, as the pleadings are not closed in this case, it advances arguments in support of a judgment “on the pleadings” that do not appear in the County’s pleadings and are waived in any event, and it is fundamentally incorrect on the merits, routinely misrepresenting the content of cited statutory sections in a conclusory fashion to advance misguided arguments and avoid the consequences of its extra-constitutional and -statutory acts in blatant disregard of the Home Rule provisions of the South

¹ The contention that political subdivisions are somehow exempt from the class claim procedures under Rule 23, SCRCP, has no more merit than the discredited argument that political subdivisions are only liable for attorney fees if they are plaintiffs in a case. *See Heath v. Cnty. of Aiken*, 302 S.C. 178, 181, 394 S.E.2d 709, 177 (1990); *Heath v. Cnty. of Aiken*, 295 S.C. 416, 420-21, 368 S.E.2d 904, 906 (1988).

Carolina Constitution and the statutes enacted by the General Assembly to implement same as discussed in the Court's June 21, 2019 order granting the City's and denying the County's motions for preliminary injunction. The Court would be justified in denying the motion for any of the procedural and substantive grounds asserted herein and the City respectfully requests the Court to do just that.

Respectfully submitted,

s/ R. Walker Humphrey, II

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Others Similarly Situated*

Columbia, South Carolina
July 8, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
City of Myrtle Beach,	)	CIVIL ACTION NO. 2019-CP-26-01732
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	REPLY MEMORANDUM OF LAW IN
Plaintiff,	)	SUPPORT OF MOTION FOR RULE TO
vs.	)	SHOW CAUSE AS TO WHY
	)	DEFENDANT SHOULD NOT BE HELD
Horry County,	)	IN CONTEMPT
	)	
Defendant.	)	

Plaintiff, City of Myrtle Beach (“City”), submits this reply memorandum in support of its motion for the issuance of a rule to show cause as to why Defendant Horry County (“County”) should not be held in contempt of this Court’s June 21, 2019 order granting the City’s motion for a preliminary injunction against the County’s collection of its 1.5% uniform service charge under (“Hospitality Fee”) within any of the municipalities situated in Horry County (“Motion”).

INTRODUCTION

Rather than refuting the contention that the County has defied this Court’s order granting the City’s motion for an injunction against the County’s collection of the Hospitality Fee within any municipality of Horry County, the County doubles-down on its disregard for the Court’s rulings by suggesting that it only “suspended collection of the Hospitality Fee in Myrtle Beach” out of “great respect for this Court ... notwithstanding its disagreement with the Court’s decision.” *See* County Response, July 2, 2019, at 1. The County’s obvious point is that it could have also refused to comply with the injunction even within the City of Myrtle Beach if it so desired and risked nothing more than the potential ire of this Court.

That incredible suggestion aside, the County’s response to the Motion bears the hallmarks of its prior litigation tactics – repeated misstatements of fact, mischaracterizations of

the City's legal positions and filings, and misapplication of the law – and is improperly designed to overcome flaws in the County's prior submissions to this Court, bolster its untenable arguments in support of its motion for reconsideration of the Court's June 21 order, and create new arguments as to why the Court should reconsider its injunction against the County. The City's motion for preliminary injunction plainly and unmistakably sought to enjoin the County from collecting the Hospitality Fee within the limits of *all* Horry County municipalities. This Court unequivocally and without qualification granted the City's motion, thereby fully enjoining the County from the acts it gratuitously engages in now. The County's slate of new arguments designed to undermine this Court's authority cannot and do not allow it to violate a clear order of this Court. For the reasons set out below, the Court should reject the County's efforts and find it to be in contempt.

ARGUMENT

The County makes four arguments in putative support of its contention that it should not be held in contempt. The City addresses these *seriatim*. The first three are recycled, unpreserved, and utterly meritless attacks on this Court's authority to issue the order in the first place. By thumbing its nose at the Court's order, the County proves that its preferred route is disobedience of the rule of law rather than challenging a lawful order through the proper channels. Only one argument facially concerns whether the County actually is in contempt, and it too cannot withstand even minimal scrutiny, particularly when the County's own finance director, Council members, and treasurer all correctly understood what this Court said. In the end, the County has not advanced any valid argument for why it should not be held in contempt of court.

I. The Injunction Can and Does Apply Within Every Municipality in Horry County.

The County asserts that no other municipality is a named party in this litigation and, thus, the County has a right to continue imposing in any municipality other than the City of Myrtle Beach a uniform service charge that the Court has found to be of sufficiently questionable validity as to warrant the imposition of a preliminary injunction. County Resp. at 2-3. In addition to being non-sensical, this argument is wrong as a matter of law.

First, as much as the County wishes it were otherwise, all municipalities in Horry County are within the proposed class of plaintiffs who seek to prevent the County from imposing an unlawful uniform service charge within their corporate limits. In its motion for reconsideration of the Court's June 21 order enjoining the imposition of the Hospitality Fee in all municipalities within Horry County, the County improperly asserts for the first time that the irreparable harm (*see* County Mot. Recons. at 6) suffered by the other municipalities was not properly considered by this Court because it has not yet certified a class. By its argument on the instant motion, the County essentially recycles that argument here. As the City argued in opposition to the County's motion for reconsideration, the fact that a class has not yet been certified does not in any way preclude this Court from issuing the injunction that it did – which applies to imposition of the Hospitality Fee in every municipality in Horry County. *See* City Mem. in Opp. Recons. at 8.¹

¹ As the City observed, “[t]his Court ‘may **at any time** impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended.’ Rule 23(d)(2), SCRCP (emphasis added). ‘The lack of formal class certification does not create an obstacle to classwide preliminary injunctive relief when activities of the defendant are directed generally against a class persons.’ *Ill. League of Advocates for the Developmentally Disabled v. Ill. Dep’t of Human Servs.*, No. 13 C 1300, 2013 WL 3287145, at *3 (N.D. Ill. June 28, 2013) (quoting 3 *Newberg on Class Actions* § 9:45 (4th ed. 2002); *see also* *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 433 (6th Cir. 2012) (‘Simply put, there is nothing improper about a preliminary injunction preceding a ruling on class certification.’); *Rodriguez v. Providence Cmty. Corrs., Inc.*, 155 F. Supp. 3d 758, 767 (M.D. Tenn. 2015) (‘[A] district court may, in its discretion, award appropriate classwide injunctive relief prior to a

Nor does it relieve the County from its obligation to comply with the Court's order enjoining the County from imposing the Hospitality Fee in every municipality of Horry County.

Similarly without merit is the County's assertion that Rule 65(d), SCRCF, does not allow the municipalities in Horry County other than the City the benefit of the Court's June 21 injunction. The County's argument that all persons benefitting from an injunction must be parties is absurd not only from a logical perspective,² but also from the perspective of the plain meaning of the language of Rule 65(d) which quite clearly provides that it is binding upon the County. *See id.* ("Every order granting an injunction ... is binding only upon the parties to the action"). No good-faith argument can be made that the injunction binds any person or entity other than the County.³ And no good faith argument can be made that the only party enjoined by the order—the County—is not subject to the jurisdiction of this Court. The order does not enjoin the conduct of anyone who is not a party to the case. Stated another way, the issue is not whether "other municipalities are actually brought within the jurisdiction of this Court" (County Resp. at 3), it is whether the County can avoid its duty to comply with the Court's injunction. The County is the party to this litigation, and the County is the party whose conduct was

formal ruling on the class certification issue based upon either a conditional certification of the class or its general equity powers.') (quoting *Thomas v. Johnston*, 557 F. Supp. 879, 917 (W.D. Tex. 1983))."

² *See* City Mem. in Opp. Recons. at 9 ("[t]he suggestion that a complaint seeking to have an ordinance imposing a uniform service charge declared invalid, if successful, would only have the effect of invalidating the named plaintiff's obligation to pay the uniform service charge, while leaving everyone else subject to the continued collection of an illegal fee is, to put it mildly, an absurd position borne out of desperation and admitted 'damage control' on the part of the County. But that is precisely what the County is telling this Court, the other municipalities in Horry County, and their citizens (not to mention visitors) against whom the County seeks to impose its unlawful and invalid Hospitality Fee.").

³ And, because the County is so bound, so are "its officers, agents, servants, employees, and attorneys ... and those persons in active concert or participation with them who receive actual notice of the [injunction] order." *See Grosshuesch v. Cramer*, 377 S.C. 12, 27, 659 S.E.2d 112, 120 (2008).

enjoined. It matters not that the other municipalities are not named plaintiffs in this action or that the class has not been certified.⁴ The County's assertion that Rule 65(d) precludes a person or entity from the benefit of that binding injunction is mere sophistry which this Court should summarily reject.

II. The Revenue Procedures Act is Inapplicable and Does not Bar the Class Claims.

In its familiar cursory fashion, the County asserts that provisions of the South Carolina Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10, *et seq.* ("RPA"), preclude a class action claim for declaratory relief or a refund of taxes. *See* County Resp. Mem. at 3-4. Accordingly, the County argues, this means that the scope of "the injunction must be limited only to the City [of Myrtle Beach]." *Id.* at 4. An examination of the plain language of RPA, which the County conspicuously omits, directly refutes the County's contention. Moreover, this argument is improperly advanced in this context because it was not raised previously (*see* City Resp. in Opp. Mot. for Judg. on Plead. at 2-4), and it grossly misstates the meaning and effect of the two subsections relied upon by the County to assert that it should be allowed to continue violating the Court's injunction against the imposition of the County's Hospitality Fee within Horry County municipalities.

⁴ Despite the fact that the City's motion clearly sought the enjoinder of the collection of the Hospitality Fee within all the municipalities in Horry County, the County did not assert in opposition to the motion that the City lacked standing to seek such injunctive relief on behalf of its fellow proposed class members. *See, e.g., Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (holding that arguments must be raised to the trial court in the underlying motion in order to be preserved for later review); *see also Georgetown Cty. League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 351, 713 S.E.2d 287, 288 (2011) (holding that the justiciability question of standing is subject to the Court's error preservation rules). Nor did the County assert that injunctive relief could not issue or was unripe for the Court's consideration in light of the fact that certification of the class had not been sought. *Id.* Neither of these arguments are properly advanced by the County in this context, but are instead merely part and parcel of the County's expressed "litigation strategy" to flout this Court's authority at all costs.

Initially, and contrary to the County's assertion at page 3 of its opposing memorandum, S.C. Code Ann. § 12-60-30(27) does not include **local government uniform service charges** such as the County's 1.5% Hospitality Fee within the definition of taxes which are subject to the procedures of RPA.⁵ In the context of the County's argument, the RPA only applies to fees imposed under Title 12 or which are subject to assessment or collection by the South Carolina Department of Revenue ("DOR"). S.C. Code Ann. § 12-60-30(27). As was made abundantly clear by the Court in its June 21 order, the Hospitality Fee is a uniform service charge imposed under Title 4. And, as the County's finance director has stated to this Court under oath, the Hospitality Fee is a uniform service charge assessed and collected by the County. *See Spivey Aff.*, May 14, 2019, para. 3. Nor is the Hospitality Fee subject to assessment or collection by DOR.

Further, the County's contention that S.C. Code Ann. §12-60-80(B) and (C) bar the pursuit of a claim for declaratory and injunctive relief as to the Hospitality Fee by way of a class action in this Court is flatly wrong. Conveniently absent from the County's argument is any discussion of the intent of the legislature with respect to the RPA. As noted in the City's opposition to the County's motion for judgment on the pleadings, the General Assembly declared what it intended by adopting the RPA in S.C. Code Ann. § 12-60-20 – and that intent pertains only to the provision of procedures⁶ to govern disputes with the DOR and disputes involving

⁵ As explained in the City's opposition to the County's premature motion for judgment on the pleadings under Rule 12(c), SCRCP), the term "Tax" or 'taxes' **means** taxes, licenses, permits, **fees**, or other amounts, including interest, regulatory and other penalties, and civil fines, **imposed by this title, or subject to assessment or collection by the department.**" S.C. Code Ann. § 12-60-30(27) (emphasis supplied); *see* City Resp. in Opp. Mot. for Judg. on Plead. at 5.

⁶ The Court should note that in opposing the City's motion for preliminary injunction, not only did the County *not* assert that the procedures of Title 12, Chapter 60 should apply to challenges of the imposition and collection of the Hospitality Fee, the County instead asserted

property taxes imposed by either the state or a local government, not uniform service charges. *See* City Resp. in Opp. Mot. for Judg. on Plead. at 5-6. The Supreme Court has not only recognized the effect of this intent on claims which have been brought that do involve taxes as defined by §12-60-30(27), *see, e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 364, 798 S.E.2d 555, 559 (2017),⁷ it has also recognized that this expression of legislative intent requires that claims which arise out of the collection of taxes, but do not involve the taxes themselves, be litigated only in this court. *See Buist v. Huggins*, 367 S.C. 268, 274, 625 S.E.2d 636, 639 (2006).⁸

Also wrong is the County's "analysis" of the circumstances where a declaratory judgment with respect to taxes may be brought under § 12-60-80(B). *See* County Mem. in Opp. at 3-4. As noted by the City in its opposition to the County's Rule 12(c) motion, the plain language of this section does not prohibit facial challenges to the constitutionality of a tax statute. *See* § 12-60-

that the County's Board of Fee Appeals created by County Ordinance 8-00 is the exclusive procedural remedy available to any person or entity that wishes to challenge the imposition of the Hospitality Fee. The County's about-face and current suggestion that the RPA procedures apply is simply the latest example of contradictory representations to the Court which appear to be dictated more by the litigation strategy borne out of the County's "damage control" mode, rather than obedience to the rule of law.

⁷ "[W]e clarify that the [Revenue Procedures] Act applies to disputes with the SCDOR, which may not concern property taxes, and to disputes concerning property taxes, which may involve the SCDOR or a county or municipality."

⁸ There, the court held that "the 'interest' due under S.C. Code Ann. § 12-51-90 is not a 'disputed revenue liability' so as to fall within the meaning of the section 12-60-20 of the Revenue Procedures Act" *id.* at 272, 625 S.E.2d at 638, and that § 12-60-80 was inapplicable to a "claim[] [that] did not involve a challenge to a property tax assessment but, rather, a claim for a refund of interest paid to the Delinquent Tax Collector" such that the taxpayer was required to pursue a remedy in this Court under an alternate provision of Title 12, *id.* at 274, 625 S.E.2d at 639. Although amended subsequent to the issuance of the circuit court's underlying order in *Buist*, to add current subsections (B) and (C), the operative language in current § 12-60-80(A) was in effect at that time and, notwithstanding its proscription against actions seeking a "remedy other than those provided for in [the RPA] in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes," the Supreme Court concluded that the interest refund sought in *Buist* could not be brought in a proceeding under the RPA because interest is not a tax. *Id.* at 274-75, 625 S.E.2d at 639.

80(B) (stating unequivocally that “an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court” and restricting only declarations regarding the constitutionality of a tax statute “as applied to a person or **limited class or classes** of persons,” not a class action under Rule 23, SCRPC) (emphasis supplied); City Mem. in Opp. to Mot. for Judg. on Plead. at 7. Regardless, neither the allowed nor disallowed constitutionally based claims under §12-60-80(B) are at issue here because the City’s claims do not involve a tax. The County’s further contention that the RPA, a specific statute directed at specific claims that are not implicated here, prohibits all class actions against political subdivisions suffers an identical fate. *Id.* at 8-10. This Court must reject the County’s “square peg in a round hole” distortion of the RPA designed to force its application in this case.

Given the foregoing, the RPA is only irrelevant to the analysis of whether the County is in violation of an injunction issued against it which does not arise from, much less involve, any tax as defined by the General Assembly.

III. Lack of Security Does Not Excuse County’s Refusal to Comply with the Injunction.

The County asserts that the injunction cannot apply to bar its collection of the Hospitality Fee in municipalities other than the City of Myrtle Beach because (1) there is no security to protect the County from the loss of revenue which would otherwise be generated in these municipalities and (2) the “this Court has no authority to compel these municipalities to provide any security.” *See* County Mem. in Opp. at 4. Therefore, the County asserts, “security for a countywide injunction can only come from the City” which in turn means that this Court should require “the City [to] provide security to make the County whole for every cent of the Hospitality Fee the County cannot collect while this injunction is in place.” *Id.* at 3-4.

In so arguing, the County asserts that the City's instant motion "raises the security issue in a different context." County Mem. in Opp. at 3. This is incorrect and disingenuous as the scope of the injunction sought in the City's Rule 65 motion clearly included every municipality in Horry County such that this "context" has been before the Court from the beginning. The assertion otherwise is wholly-contradicted by the affidavit of the County's finance director, Mr. Spivey, who included in his quantitative "analysis" of the harm which would befall the County if the injunction was granted "every cent of the Hospitality Fee the County cannot collect while this injunction is in place" – i.e., the revenues generated by the 1.5% uniform service charge in every municipality in Horry County. *See Spivey Aff.*, May 14, 2019, para. 5.⁹

Further, and as does its motion for reconsideration, the County's argument here fails to address the fact that Rule 65(c), SCRCP, exempts the City and the other municipalities in Horry County from the requirement that security be given because they "are not independent entities" but "only political subdivisions of the state." *See County Mem. in Opp. to Recons.* at 5 (citing *Hibernian Soc'y v. Thomas*, 282 S.C. 465, 472, 319 S.E.2d 339, 343 (Ct. App. 1984)).

Finally, even assuming that some form of security is required, it exists in the revenues collected by the City under the local accommodation taxes and hospitality taxes ordinances which the Court refused to enjoin. This is the same security suggested by the County as being adequate for its failed motion for injunctive relief (*see City Memo. in Opp. to Recons.* at 5-6), and is therefore obviously adequate to protect the County's putative interests with respect to the injunction that was granted.

⁹ It should be noted that Mr. Spivey recognizes that the vast majority of the Hospitality Fee is collected within the City of Myrtle Beach and not the other municipalities. *Id.* This, along with the fact that the County did not argue this point on the motions for injunction, greatly undercuts the County's present contention that the Court's inability to require security from the other municipalities is a real, legitimate concern and demonstrates that it is only a convenient argument designed to excuse its failure to comply with the injunction issued by this Court.

IV. The Instant Motion Does Not and Cannot Rescue the County from its Cursory, Incorrect Rule 65(d), SCRCF, Argument or Its Non-compliance with the Injunction.

The County contends that the Court's June 21 order fails to comply with Rule 65(d), SCRCF, because it "is neither specific in its terms, nor does it describe in reasonable detail what the County is prohibited from doing." *See* County Mem. in Opp. at 5. The County relies upon appellate court decisions pertaining to whether a party may be held in contempt of an ambiguous or indefinite court order (in an obvious attempt to bolster the paltry argument in its motion for reconsideration that the injunction is inadequate under Rule 65(d)) and asserts that this putative inadequacy excuses its refusal to cease imposing the Hospitality Fee in any municipality other than the City of Myrtle Beach. *Id.* at 5-6. That the County would rather first advance spurious challenges to this Court's authority to enter the order instead of trying to address the County's compliance with it underscores how meritless its Rule 65(d), SCRCF, argument is – which it is from a number of perspectives.

First, and contrary to the County's disrespectful assertion otherwise, the "Court's Injunction Order" was not "drafted by the City." *See* County Mem. in Opp. at 5. Although the City prepared a proposed order as directed by the Court, the Court made extensive and substantive revisions, modifications, and deletions to that proposed order and did not – as the County implies – simply adopt the City's proposed order wholesale.¹⁰ This raises a question as

¹⁰ The County conveniently forgets that (unsolicited) it informed the Court of its view that its own motion for injunctive relief should be denied and thereafter submitted a proposed order to the Court by which it expressly requested that the Court do so. *See* June 19, 2019, electronic mail message from H. Golding to the Court and June 20, 2019, Letter from H. Golding to the Court transmitting a proposed order, copies of which message, letter and proposed order are attached hereto and incorporated herein by reference as Reply Mem. Exhibits A and B. Yet, the County now has the temerity to not only wrongly suggest that the Court adopted the City's proposed order *in toto*, but to also seek reconsideration of the Court's denial of the County's own motion for injunctive relief which it *twice* advised the Court should be denied. *See* County Mem. in Supp. Mot. Recons. at 1. Although shop-worn by comedians and attorneys alike, the word

to whether the County even bothered to review the Court's order prior to submitting its opposition to the instant motion. *Cf.* Rule 11(a), SCRCP.

Second, the County's contention that the issuance of a rule to show cause based on the Court's order somehow deprives the County of "due process" because it does not comply with the requirements of Rule 65(d), SCRCP, is utterly without basis in law or fact. As to the latter, the affidavit given by the County's finance director, which expressly asserts that the County will suffer the loss of all revenue derived by the Hospitality Fee in every municipality in Horry County, and the public statements of its treasurer and Council members that the order included all Horry County municipalities (*see* City Memo. in Opp. to Recons. Ex A), gives lie to the present contention that the injunction granted is ambiguous. The County knows full well what this Court prohibited it from doing. The County would just rather employ drastic "damage control" measures to avoid, undermine, and discredit the order instead of comply with it.

As to the former, neither *County of Greenville v. Mann*, 347 S.C. 427, 556 S.E.2d 383 (2001), nor *Phillips v. Phillips*, 288 S.C. 185, 341 S.E.2d 132 (1986), support the County's argument. In *Mann*, the contempt order issued by the circuit court was reversed because the court's underlying order – which was not an order granting an injunction subject to Rule 65(d) following the exchange of written motions, memoranda, exhibits, and affidavits from the affected parties – directed the contemnor clerk of court to take a specific action with respect to the disposition of firearms used as evidence in criminal cases that was inconsistent with statutory provisions governing the disposition of such evidence. Unsurprisingly, the Supreme Court found that the underlying order was "ambiguous and contradictory" and required reversal. *Mann*, 347 S.C. at 435, 556 S.E.2d at 386. There is no such ambiguity or contradiction in the Court's June

"chutzpah" is clearly appropriate to describe the County's mischaracterization of the Court's order.

21 order. As explained in the City's memorandum in support of the instant motion, the Court's June 21 order clearly grants the City's motion for a preliminary injunction which applied to every municipality. *See* City Mem. in Supp. Mot. for Rule to Show Cause at 2-3. And, as explained in the City's opposition to the County's motion for reconsideration, the County readily understands that the June 21 order enjoins its imposition of the Hospitality Fee in every municipality and is defying that injunction solely as a litigation tactic borne out of its fear that compliance with the injunction will "jeopardize [its] overall defense in the litigation." *See* City Mem. in Opp. to Mot. Recons at 2-3. Unlike the order in *Mann*, there is no contradiction in the June 21 order as it does not suggest – much less provide – that the municipalities other than the City are not protected from the County's enjoined conduct.

Also inapt is the County's reliance upon *Phillips*, which involved the order of a family court to a grandparent to produce a minor child who was the subject of a custody dispute and not a previously litigated injunction under Rule 65. There, the Supreme Court found that the underlying order did not "state in definite terms that the grandmother must bring the minor child to future hearings," but only provided "written confirmation of [the family] court's oral rulings and orders" from a prior hearing in which such instruction had been given to the grandparent. *Phillips*, 288 S.C. at 188, 341 S.E.2d at 133. *Phillips* does not apply here as there is no question that the Court's June 21 order granted the injunction sought by the City, was issued for the express purpose of protecting *all* municipalities and their residents from the County's enjoined conduct, and that the County understood these facts in advance of and subsequent to the hearing conducted by the Court on June 14 which led to the issuance of the injunction. *See* June 21 Order at 12 ("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 ... input on whether the fee would be imposed on them”).

In sum, the specificity requirement of Rule 65(d) is clearly met by the Court’s June 21 order. The County is provided no excuse under *Mann* or *Phillips* for its refusal to abide by this Court’s order. Moreover, in view of the sworn statement given by the County’s finance director and filed by the County with this Court (*cf.* Rule 11(a), SCRCP), asserting that the preliminary injunction would deprive the County of revenue from the Hospitality Fee in every municipality, the County’s present contention that “due process” is implicated is a bridge too far. *See, e.g., Dismukes v. Hackathorn*, 802 F. Supp. 1442, 1445 (N.D. Miss. 1992) (“Oftentimes, alleged due process violations are of a dubious quality. [Parties] with weak constitutional claims invariably couch their complaints in the due process clause. The practice is so frequent that some in the federal judiciary, borrowing the words of Samuel Johnson, refer to due process as ‘the last refuge of scoundrels.’”).

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court issue its order holding the County in contempt.¹¹

Respectfully submitted,

s/ R. Walker Humphrey, II

John M.S. Hoefer, SC Bar # 2549

Chad N. Johnston, SC Bar # 73752

R. Walker Humphrey, II, SC Bar # 79426

Willoughby & Hoefer, P.A.

930 Richland Street

¹¹ The City reserves the right to reply to any response by the County to the Supplemental Memorandum and affidavits served by the City on July 1, 2019, with respect to this matter.

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*Attorneys for Plaintiff City of Myrtle Beach and All
Others Similarly Situated*

Columbia, South Carolina
July 8, 2019

EXHIBIT A

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 5:27:09 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

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 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.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732

City of Myrtle Beach,	)	
	)	
For Itself and a Class of Similarly	)	Order Denying Motions for
Situated Plaintiffs,	)	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.]

EXHIBIT B

BURR & FORMAN MCNAIR

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BURR.COM

June 20, 2019

Via Hand Delivery

The Honorable William H. Seals, Jr.
Circuit Court Judge
Marion County Courthouse

Re: **City of Myrtle Beach v. Horry County**
Civil Action No. 2019-CP-26-01732
Our Client Matter No. 2001969.0000101

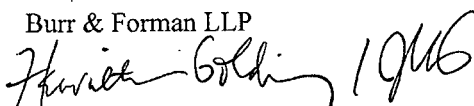
Dear Judge Seals:

Pursuant to my email of June 19, 2019, enclosed please find Horry County's proposed order denying both parties' Motions for Preliminary Injunction.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Burr & Forman LLP


Henrietta U. Golding

HUG:sae

cc: Client (via email)
John M.S. Hofer, Esquire (via email only)
Chad N. Johnston, Esquire (via email only)
R. Walker Humphrey, II, Esquire (via email only)

Enclosure

ELECTRONICALLY FILED - 2019 JUN 20 3:15 PM Horry - COMMON PLEAS - CASE#2019CP2601732

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	Order Denying Motions for
For Itself and a Class of Similarly	)	Preliminary Injunction
Situated Plaintiffs,	)	
	)	
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.

IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
Circuit Court Judge

Dated: _____, 2019

Marion, South Caroline

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-_____

Case No. 2019-CP-26-01732

RECEIVED

JUL 11 2019

SC Court of Appeals

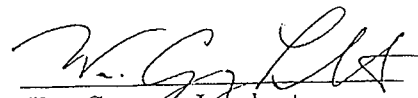
City of Myrtle Beach, ... Respondent,

v.

Horry County, ... Appellant.

NOTICE OF APPEAL

Horry County appeals from the Order of the Honorable William H. Seals, Jr. dated June 21, 2019 and from the Order of the Honorable William H. Seals, Jr. dated July 10, 2019. Horry County received written notice of these Orders on the dates they were electronically filed—on June 21, 2019 and July 10, 2019. A copy of these Orders are attached to this Notice of Appeal.


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Counsel for Appellant.

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 **RECEIVED**

vs.

)
)
)

Horry County,

)
)

JUL 11 2019

SC Court of Appeals

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

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

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

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

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

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

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

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

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

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

LAW/ANALYSIS

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

A. The City's Motion for Temporary Injunctive Relief

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

This Court examines the merits of the underlying claims "only to the extent necessary to determine whether [the City] has made a sufficient prima 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 tends to demonstrate that municipal consent is required. The ordinance allowed only for the collection of a fee "which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County." As the County acknowledged and represented to the SIB, this "comprehensive road plan" consisted of the projects set out in the RIDE Report. The Fee Use Provision thus allowed the County to collect the Hospitality Fee only to the extent the municipalities agreed to the RIDE Report. The RIDE Report incorporated the Hospitality Fee as a fundamental funding mechanism being available for twenty years. Without this fee, the RIDE Report could not be implemented. By way of their respective resolutions, the municipalities consented to the Hospitality Fee for that twenty-year period to implement the plan under the RIDE Report. The County then relied upon this consent in its SIB applications in order to obtain the complete funding for the projects within that plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The County’s Motion for Temporary Injunctive Relief

1. 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. The County’s sole argument is that the Local Tax Ordinances, when imposed in conjunction with the Hospitality Fee, exceed the

maximum cumulative tax rates in S.C. Code Ann. §§ 6-1-540 and 6-1-740.¹⁰ As the County has misapprehended the application of these sections to the Hospitality fee, it has not demonstrated a likelihood of success on the merits of this argument.

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

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

food and beverage in the unincorporated area in excess of the 2% cumulative hospitality tax cap in § 6-1-740.¹¹

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

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

CONCLUSION

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

IT IS SO ORDERED.

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

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

This ____ day of June, 2019
_____, South Carolina



Horry Common Pleas

Case Caption: Myrtle Beach City Of VS Horry County Of
Case Number: 2019CP2601732
Type: Order/Temporary Injunction

IT IS SO ORDERED

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

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August 10, 2019, for the pendency of this action. All of the reasons as outlined in the Court's Order for Preliminary Injunction dated June 21, 2019, are incorporated herein and made a part hereof by specific reference thereto. Additionally, this Court believes that a bond as required by Rule 65 is not necessary and/or required for these parties.

Furthermore, after careful and deliberate consideration, the Defendant's Motion to Reconsider is hereby denied. Lastly, the parties are hereby ordered to provide the Court with a Scheduling Order within fifteen days from the date of this Order. If the parties cannot agree on a Scheduling Order then this Court will issue its own Order.

IT IS SO ORDERED.

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

This ____ day of July, 2019
_____, South Carolina



Horry Common Pleas

Case Caption: Myrtle Beach City Of VS Horry County Of
Case Number: 2019CP2601732
Type: Order/Other

IT IS SO ORDERED

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

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

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

Plaintiff,

vs.

Horry County,

Defendant.

**HORRY COUNTY'S
MOTION TO STAY OR SUPERSEDEAS
DURING PENDENCY OF APPEAL**

Horry County, pursuant to Rule 241(c), SCACR, and Rule 62(c), SCRCP, moves to stay the injunction¹ preventing the County from collecting the 1.5 percent Hospitality Fee while the County's appeal is pending.

Introduction

When the Court granted the City's motion for preliminary injunction, the Court required the County to stop collecting the Hospitality Fee that the County had been collecting for over twenty-two years. Granting the City this drastic remedy upset the *status quo ante* that had been in effect for over two decades, in a case that the City admits presents a novel legal question. Equally as troublesome, the Court entered the

¹ The Court imposed the injunction on Horry County in its Orders dated June 21, 2019 and July 10, 2019, and the County appealed from the circuit court's Orders on July 11, 2019.

injunction without requiring the City to provide any security for the injunction if it is reversed on appeal.

The County sought immediate appellate review of the injunction, filing a notice of appeal on July 11, 2019. The County's notice of appeal does not automatically stay the injunction. This Court, however, has the power to stay the injunction while the appeal is pending. And the Court should do so to prevent irreparable harm to the County and to avoid a miscarriage of justice.

Factual Background

The County adopted the Hospitality Fee.

In March 1996, voters in Horry County rejected a referendum to adopt a local option sales tax to finance a proposed comprehensive road plan. Shortly after this vote, Governor David Beasley directed the chairman of the Department of Transportation to form a committee to propose a plan for the short-term and long-term transportation needs in the County. That committee issued its report, known as the RIDE Report, in September 1996.

To implement the recommendations in the RIDE Report, the County adopted a uniform service charge, known as the Hospitality Fee, on October 15, 1996. As relevant here, the Hospitality Fee imposed a 1.5 percent fee on lodging, admissions to places of amusement, and prepared food and beverage throughout the County, in both incorporated and unincorporated areas beginning on January 1, 1997.

In addition to adopting the Hospitality Fee, Ordinance 105-96 provided that the funds from this 1.5 percent fee would "be used to implement a comprehensive

road plan adopted by the County in concert with the municipalities of the County.” This ordinance also stated that the Hospitality Fee would expire after twenty years—on January 1, 2017.

Around the time the County was considering Ordinance 105-96, multiple municipalities—including the City—adopted resolutions supporting the Hospitality Fee. These ordinances “urge[d]” the County to adopt the Hospitality Fee.

Along with these municipalities, other governmental entities adopted similar resolutions. Both the Horry County Board of Education and the South Carolina Department of Transportation also expressed support for the County’s plan to implement the RIDE Report.

The County amended Ordinance 105-96.

Over the next two decades, the County amended Ordinance 105-96 on multiple occasions, three of which are relevant here.²

As initially enacted, Ordinance 105-96 contained a sunset provision, providing that the Hospitality Fee would expire on January 1, 2017. All three relevant amendments to Ordinance 105-96 extended the sunset provision beyond January 1, 2017. *First*, in April 2004, the County enacted Ordinance 11-04, which “extended [the Hospitality Fee] for an additional period not to exceed five (5) years,” until January 1, 2022. *Second*, in 2016, the County enacted Ordinance 93-16, which reaffirmed the

² Some amendments have changed the amount of the Hospitality Fee collected in unincorporated areas and added a fee on rental cars, but those changes are not pertinent to the City’s challenge to the Hospitality Fee.

five-year extension of the Hospitality Fee from Ordinance 11-04. *Third*, in 2017, the County removed the sunset provision from the Hospitality Fee altogether.

The City never voiced any objection to any of the three amendments to the sunset provision of the Hospitality Fee when they were adopted. The City said nothing when the County extended the sunset provision of the Hospitality Fee for the first time in 2004. The City said nothing when the County further extended the sunset provision in 2016, and the City again said nothing when the County eliminated the sunset provision completely in 2017. Ultimately, on March 20, 2019, with the filing of this lawsuit, the City alleged the County did not have the authority to extend the sunset provision of the Hospitality Fee without its consent, even though the County had done so on three occasions, years earlier.³

Not long after the last of the three amendments to the Hospitality Fee, the County adopted two resolutions declaring its intention for how part of the 1.5 percent part of the Hospitality Fee would be used: construction of I-73. The County pledged up to \$18 million annually (and then even more money, depending on the growth of that revenue) to build this new interstate. Other revenue from the Hospitality Fee would be used as permitted by S.C. Code §§ 6-1-530 and 6-1-730.

³ The lawsuit was filed only about one month after the County paid off the State Infrastructure Bank loans referenced in Ordinance 11-04. The County used the Hospitality Fee revenue from 2017 through early 2019 to pay off these loans—money that the City now asserts the County should not have been collecting, despite the fact that the City claims it consented to the road projects paid for by those loans.

The City adopted local accommodations and hospitality fees.

In March 2019, just prior to filing this lawsuit, the City adopted two new fees. The City adopted a 3 percent local accommodations fee, the maximum amount a county and a municipality may cumulatively collect under § 6-1-540. The City also adopted a 2 percent hospitality fee, again the maximum a county and a municipality may cumulatively collect under § 6-1-740.

Less than two weeks later, the City sued the County, claiming the County could not extend the sunset provision of the Hospitality Fee without its consent. As the backbone for its position, the City alleged its consent (as well as the consent of other municipalities in the County) was necessary for the County to collect the Hospitality Fee. The City takes this position, even though it cites to no legal proposition using the word “consent.” The City claims it provided its consent to the County’s enactment of the Hospitality Fee, when the City adopted its resolution “urg[ing]” the County to adopt the Hospitality Fee. The City argues that its consent to the Hospitality Fee expired with the initial sunset of the Hospitality Fee, which, pursuant to Ordinance 105-96, was on January 1, 2017.

The circuit court enjoins the County’s Hospitality Fee.

After it filed its proposed class complaint, the City moved for a preliminary injunction, as did the County. The parties filed multiple briefs and dozens of exhibits. At the circuit court’s direction, they also each submitted a confidential memorandum to the court ahead of the hearing on the preliminary injunction motions.

The court heard the motions on June 14, 2019. Later that day, the Court informed the parties via email that it would grant the City's motion and deny the County's. The circuit court entered its order on June 21. The County moved to reconsider on June 25.

While the motion to reconsider was pending, the City moved to hold the County in contempt. The City claimed the County was violating the injunction by continuing to collect the Hospitality Fee in municipalities other than the City.⁴

The circuit court denied both the motion to reconsider and the motion to hold the County in contempt. In denying both motions, the circuit court clarified that the injunction applied to Atlantic Beach, Aynor, Conway, Loris, North Myrtle Beach, and Surfside Beach. The order is set to take effect in those municipalities on August 10, 2019.

The County appealed the injunction order pursuant to S.C. Code § 14-3-330(4) on July 11, 2019. In addition to asking this Court to stay the injunction while the appeal is pending, the County is also asking the circuit court to stay the entire case, given that an appellate court's decision might effectively resolve the litigation.

Legal Standard

An order granting an injunction is not automatically stayed by noticing an appeal. Rule 241(b)(8), SCACR; *see also* Rule 62(a), SCRCP. Nevertheless, a "party

⁴ Other motions remain pending, but none of those are essential to deciding the legal issues on this appeal. These motions include the County's motion for leave to amend its counterclaims, the City's motion to dismiss the counterclaims, the County's motion for judgment on the pleadings regarding the class action allegations, and the County Treasurer's motion to intervene.

may move for an order imposing a supersedeas” to stay an injunction pending an appeal. Rule 241(c), SCACR; *see also* Rule 62(c), SCRCRCP. Unless “extraordinary circumstances make it impracticable,” this relief should be sought first from the court that entered the injunction. Rule 241(d)(1), SCACR.

To supersede an injunction pending an appeal, the party seeking to stay the injunction must clearly show that allowing the injunction to take effect would cause “an irreparable injury or the miscarriage of justice.” *Kuhn v. Elec. Mfg. & Power Co.*, 92 S.C. 488, 75 S.E. 791, 791 (1912) (emphasis added).

Argument

I. The County faces an irreparable injury and a miscarriage of justice from the lack of security.

Sometimes, a circuit court’s decision to grant a preliminary injunction is reversed. *See, e.g., Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882 (2007); *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004). To protect a party who was wrongly enjoined, Rule 65(c) requires a security from the party who obtains the injunction, unless that party is the State or an officer or agency of the State. The rule states that “no restraining order or temporary injunction *shall issue except upon the giving of security by the applicant*, in such sums as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Rule 65(c), SCRCRCP (emphasis added).

The Court has enjoined the County from collecting tens of millions of dollars annually by preventing it from collecting the Hospitality Fee. The Court has done so

without requiring the City to post any security. Despite the County's extensive arguments on this issue, the Court has not provided any legal reason for deviating from the security requirements of Rule 65(c). In its most recent order, the Court stated it "believes that a bond as required by Rule 65 is not necessary and/or required for these parties." July 10, 2019 Order, at 2.

Respectfully, the circuit court does not have the discretion to decide whether a bond is necessary. Rule 65(c) requires it, and to issue an injunction without requiring security, is to ignore the plain language of Rule 65(c). See *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) ("If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.").

The City is not exempt from the bond requirements of Rule 65(c). Rule 65(c) exempts the State, State officers, and State agencies from the bond requirement. The City has never—and for good reason—described itself as a State officer, who is a natural person, see S.C. Const. art. VI, or as a State agency, which is an "executive or regulatory body" of the State, see *S.C. Pub. Interest Found. v. Courson*, 420 S.C. 120, 124, 801 S.E.2d 185, 187 (Ct. App. 2017).

Thus, the only way the City could be exempt from the security requirement of Rule 65(c) would be if it fell within the first exemption and was "the State." Quite obviously, the City is not the State of South Carolina. As the City observed at the hearing on the motion to reconsider, the City, as a political subdivision, may not exist "independent" of the State. *Hibernian Soc. v. Thomas*, 282 S.C. 465, 472, 319 S.E.2d

339, 343 (Ct. App. 1984). While dependent entities, political subdivisions are still distinct entities. And they are not necessarily entitled to the same legal protections as the State. *Cf. Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280–81 (explaining that cities cannot claim a state’s sovereign immunity under the Eleventh Amendment).

Had the drafters of Rule 65(c) wanted to exclude political subdivisions from the security requirement, they could have easily done so by adding “political subdivisions” to the list of the State, its agencies, and its officers. But the drafters did not do that, and the Court must apply the rule as adopted.

The Court’s failure to adhere to the plain language of Rule 65(c) and to require security for the injunction leaves the County facing irreparable harm and a miscarriage of justice. With the injunction in place, the County will stop collecting tens of millions of dollars in revenue within the municipalities on an annual basis. That is, by virtually any measure, a substantial amount of money.

If the appellate court reverses the injunction, the County will be entitled to recover the revenue that it was prohibited from collecting while the injunction was in place. No one knows what the City (or any other municipality) may have done by that time with the revenue it (or they) had collected while the injunction was in place. The County should not be forced to hope that the municipalities will have money to pay damages, nor should it have to wait for the municipalities to impose new taxes to raise that money (assuming the municipalities could indeed raise the money in new taxes to pay damages). That is the reason for the security requirement of Rule 65(c),

and the Court's refusal to require the City to post security for the injunction leaves the County facing irreparable harm and a miscarriage of justice.

When money cannot be recouped and is lost forever, there is irreparable harm. *See Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) ("If expenditures cannot be recouped, the resulting loss may be irreparable."). Given the amount of money involved here and the unknowns regarding what may happen to the money the County would have collected had the injunction not been issued, this is a case in which the loss of money is irreparable. Furthermore, by ignoring the plain language of Rule 65(c), the injunction, as issued, has resulted in a miscarriage of justice, leaving the County with no certain means of being made whole, should an appellate court reverse the injunction.

The Court can ensure the County does not suffer irreparable harm and a miscarriage of justice by staying the injunction while the appeal is pending.

II. The injunction should be stayed to preserve the *status quo ante* while the appellate courts resolve the novel questions raised in this case.

Failing to follow established law is the ultimate miscarriage of justice. Unfortunately, that is what has happened here, as the injunction upends the *status quo ante* while this litigation is pending.

Our appellate courts have repeatedly instructed that a "preliminary injunction should issue *only* if necessary to preserve the status quo ante." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010) (emphasis added); *see also Allegro, Inc. v. Scully*, 400 S.C. 33, 45, 733 S.E.2d 114, 121

(Ct. App. 2012); *Hook Point, LLC v. Branch Banking & Tr. Co.*, 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012).

The injunction here does not protect the *status quo ante*. The injunction upsets it. Here, the injunction requires the County to stop collecting a fee that it has been collecting for over twenty-two years. In other words, the injunction changes the *status quo ante* and puts a new fee-collection regime in place, as the City began collecting its fees on July 1, 2019 and the County had to stop collecting the Hospitality Fee. Our appellate courts have reversed injunctions that “do the opposite” of preserving the *status quo ante*. *Consol. Tires, Inc. v. Hamlett*, No. 2011-UP-308, 2011 WL 11734681, at *1 (S.C. Ct. App. June 17, 2011).⁵ Further, our appellate courts have observed time and time again that the only purpose for granting a temporary injunction is to preserve the *status quo ante*. *See, e.g., Cty. Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964) (“The sole object of a temporary injunction is to preserve the subject of the controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during the litigation”).

The City has argued that the “true” *status quo ante* is the “last uncontested status” between the litigants. Accepting the City’s formulation as the law in this State, the result is still the same: The *status quo ante* should permit the County to

⁵ This opinion is admittedly unpublished, so it has no precedential value. *See* Rule 268(d), SCACR. Nevertheless, it demonstrates how appellate courts have approached injunctions that do not preserve the *status quo ante*, even if this particular decision is not binding on a future court.

continue collecting the Hospitality Fee while this appeal is resolved. That is because the last moment when the City and the County agreed on the status of the Hospitality Fee was December 31, 2016—the day before the Hospitality Fee was set to expire, based on the original sunset provision in Ordinance 105-96. On that date, both the City and the County agreed that the County could collect the Hospitality Fee.

Ever since the next day (January 1, 2017),⁶ the City and County have disagreed about whether the County could collect the Hospitality Fee. Indeed, that disagreement is the very reason this litigation exists.

The issue in this case requires particularly careful consideration. As the City acknowledged, *see* Reply Mem. in Supp. Of Mot. for Prelim. Inj. 16 n.11, no appellate court has addressed the central question raised in this lawsuit: whether a municipality's consent is required for a county to extend a fee imposed before Act 138 took effect. Rather than have the City and County both move forward with brand new fee-collection plans that might be in effect for only a limited time while this case is on appeal, the more reasoned approach is to stay the injunction while the appellate courts consider the appeal. Then, if the City wins, the injunction can go into effect. On the other hand, if the County prevails, no one will have wasted (any more) time, energy, or money on stopping and starting to collect any fees.

⁶ This assumes, of course, that the City actually always believed that the County could not extend the Hospitality Fee. Given that the City did not bring this lawsuit until March 2019, the City actually does not appear to have developed its current position on the County extending the Hospitality Fee until well after January 1, 2017.

All of this can be achieved without harm to the City. *Cf.* Rule 241(d)(3), SCACR (providing that the grant of a supersedeas may be conditioned on a bond or other undertaking that the court “may deem appropriate”). During the pendency of the appeal, the County can be required to put the 1.5 percent collected within the municipalities in a segregated account. If the City prevails in this litigation, then that money may be transferred to those municipalities that have enacted ordinances to collect local accommodations and hospitality fees, which will put them in the same position as if they had been collecting new fees since the injunction was originally set to take effect.

III. The injunction should be stayed because the law plainly does not require the City’s consent for County to enact the Hospitality Fee.

If the injunction is allowed to stand, there will be a miscarriage of justice because the law plainly does not require the City’s consent for the County to collect the Hospitality Fee.

The City generically refers to the State Constitution, to the Home Rule Doctrine, and to Title 4 of the South Carolina Code of Laws in support of its argument that its consent is necessary for the County to collect the Hospitality Fee. *See* June 14, 2019 Hr’g Tr. pp. 3, 7. The circuit court has accepted the City’s arguments at face value, without looking behind the curtain. To be clear, the position advanced by the City and accepted by the Court is found nowhere in the State Constitution, nowhere in the Home Rule Doctrine (which refers to the relationship between the State and local governments, *see Cty. of Florence v. W. Florence Fire Dist.*, 422 S.C. 316, 321, 811 S.E.2d 770, 773 (2018)), and nowhere in Title 4 of the South Carolina Code of

Laws. One has to do nothing more than look at the Court's order granting the preliminary injunction, which was prepared by the City. Nowhere in that order does the Court cite one legal authority for the proposition that the "consent" of a city is necessary for an ordinance enacted by a county. The City's theory in this case is a novel one. In more candid moments, the City has admitted the same. *See* Transcript of Record from June 14, 2019, p. 8; Reply Mem. in Supp. Of Mot. for Prelim. Inj. 16 n.11.

To attempt to bolster its position, the City has argued that the County's initial Ordinance (105-96) adopting the Hospitality Fee and the City's resolution urging the County to do so evidences that the City's consent is required. Again, nowhere do these documents say what the City argues.

The Court has ignored the plain language of the relevant legal authority and the enactments of the County and City in issuing the injunction. Because the Court has done so, the injunction, enjoining the County from collecting the Hospitality Fee that it has collected for over twenty years, is a miscarriage of justice and cannot stand.

Conclusion

The Court should stay in the injunction while the appeal is pending.

Respectfully submitted:

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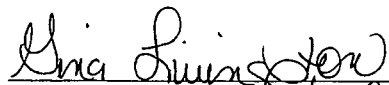
Myrtle Beach, South Carolina
Dated: July 12, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
	)	APPELLATE NO.: 2019-____
City of Myrtle Beach,	)	
	)	
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	
Plaintiff,	)	VERIFICATION OF HORRY COUNTY
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	

Arrigo Carotti, the County Attorney for Horry County, pursuant to Rule 241(d)(3), SCACR, who upon being duly sworn, does depose and state that he has reviewed Horry County's motion styled "Motion to Stay or Supersedeas During Pendency of Appeal" and that the matters set forth therein are true to the best of his knowledge. He specifically submits the verification in support of the factual assertions in the motion.


 Arrigo Carotti, County Attorney for Horry County

Sworn to and subscribed before me
 this 12th day of July, 2019.


 Notary Public for South Carolina (Seal)
 Commission Expires 1-11-29

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732

City of Myrtle Beach,	)
	)
For Itself and a Class of Similarly	)
Situated Plaintiffs,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Horry County,	)
	)
Defendant.	)

**HORRY COUNTY'S
MOTION TO STAY CASE
PENDING APPEAL**

Horry County moves to stay this case during the pendency of the County's appeal of the preliminary injunction.

Cases should be managed with an eye toward protecting the resources of both the court and the parties. As for judicial resources, our supreme court has been mindful that courts use their "limited" resources wisely. *City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 34, 800 S.E.2d 782, 785 (2017); *see also Goff v. Kroger Co.*, 647 F. Supp. 87, 88 (S.D. Ohio 1986) ("Every day of trial this Court can save, even every hour of trial it can save in one case permits the Court to hear the claim of another litigant. This is of paramount importance and it is the essence of judicial economy."). As for the parties, they are both public bodies, supported by tax dollars (just like the judicial system), so they should strive to be as efficient as possible with the public fisc.

Staying this case while the appeal is pending preserves all of these resources. If the appellate court addresses the merits of whether the City's consent was required for

the County to extend the Hospitality Fee, that court's decision may well resolve most, if not all, of this litigation. Staying the case therefore avoids what could ultimately be unnecessary pleadings, discovery, and motions. It also avoids the need for the Court to answer questions that might be resolved by the appellate court.

At the very least, even if significant issues are not resolved on this appeal, staying this case pending appeal allows the Court and the parties to prepare a scheduling order after a remand that is more focused on the remaining issues and more accurately reflects what time will be needed to prepare this case for trial.

Prior to filing this motion, the County consulted with the City, and the City did not consent to the stay.

Respectfully submitted:

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Myrtle Beach, South Carolina
Dated: July 15, 2019

Attorneys for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	
For Itself and a Class of Similarly	)	HORRY COUNTY'S
Situated Plaintiffs,	)	MEMORANDUM IN RESPONSE TO
	)	EMAIL FROM COUNSEL OF CITY
Plaintiff,	)	DATED JULY 12, 2019 & EMAIL FROM
	)	COURT DATED JULY 15, 2019
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
_____	)	

Horry County respectfully submits this memorandum of law in response to counsel for the City's email to the Court dated July 12, 2019 and the Court's email dated July 15, 2019. In this email exchange, the City implicitly acknowledged that the current injunction entered by this Court violates Rule 65(c) because it requires no security. The City offered to escrow the monies it collects pursuant to "its uniform service charge" as a form of security. In response, the Court directed the City to prepare a "short order" (which still has not been prepared) requiring the City to "escrow the monies collected" "in lieu of bond." In that same email, the Court indicated it would require the parties to mediate this case within twenty days.

Respectfully, the County offers the following points to the Court as it considers issuing a ruling on the County's pending Motion for Supersedeas.

I. Adequacy of Security

As the Court crafts this order, two issues are relevant to ensure the security is sufficient. *See* Rule 65(c), SCRCP. Both of these issues are supported by the affidavit of Barry Spivey, the County's Financial Director, which is attached to this memorandum.

First, escrowing monies collected by the City does not account for the Hospitality Fee revenue that the County will be prohibited from collecting in other municipalities. In fiscal year 2018, that was over \$10 million. Thus, the Court's stated plan for requiring a security will not cover more than eight figures in revenue.

Second, how "monies collected" is defined is important. Before the City adopted its new taxes and the County's Hospitality Fee was enjoined, the City and the County were both collecting revenue from the various sources that were part of the Hospitality Fee. The City's new local accommodations and hospitality taxes, however, do not increase the rates collected by the City alone (given that the County has been enjoined from collecting the Hospitality Fee) to the same level as the collective rates collected by the City and the County.

In other words, although the City's net increase on the accommodations tax of 1.5 percent matches the Hospitality Fee, the City's 1 percent net increase on prepared food and beverage (.5 percent lower than the Hospitality Fee) and its lack of any tax on admissions or rental cars (1.5 percent and 2.5 percent lower than the Hospitality Fee) do not match the Hospitality Fee. These lower rates will result in the City collecting over \$5 million less than what the County collected pursuant to the

Hospitality Fee. Accordingly, “monies collected” should be defined in a way that at least includes sufficient revenue to cover what the County collected within the City in the Fiscal Year 2018 pursuant to the Hospitality Fee.

In sum, the only way for this Court to require adequate security, as mandated by Rule 65(c), is to order the City to provide such security that will match the “costs and damages” the County will incur, if an appellate court deems that the injunction was improperly issued. As set forth in the affidavit of Mr. Spivey, such security, to be adequate, must be in the amount of \$28,290,302.81.

II. Mediation

In the Court’s July 15, 2019 email, it indicated that it would order the parties to mediate this case within twenty days.

Fundamentally, the County believes that mediation at this stage is inappropriate. The countywide injunction upsets the *status quo ante*, and the County has sought immediate appellate review of the injunction. Mediation is more likely to be productive after that appellate process is at least substantially underway, if not completed.

Nevertheless, if the Court believes that the parties should mediate sooner, the County respectfully requests that the Court require mediation in sixty days, rather than twenty. This case involves multiple lawyers on each side, public entities as parties, and complex legal issues. To prepare adequately for mediation and ensure that the necessary people can all attend, more than a few weeks is necessary.

Rushing to mediate in twenty days is far less likely to have a successful result than if the parties may prepare in a more intentional way.

Respectfully submitted:

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s/ James K. Gilliam

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Myrtle Beach, South Carolina

Dated: July 16, 2019

Attorneys for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
City of Myrtle Beach,	)	
	)	AFFIDAVIT OF BARRY SPIVEY
For Itself and a Class of Similarly	)	
Situated Plaintiffs,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	

PERSONALLY appeared before me, Barry R. Spivey, who, being duly sworn, deposes and says as follows:

1. I am the Finance Director for the County of Horry, State of South Carolina and have been in this position for the last eight (8) years. Additionally, I also serve currently as the Interim Assistant County Administrator.

2. My qualifications to serve as the Finance Director for the County of Horry include the following: I received a BS Degree from the University of South Carolina at Coastal and an MBA from Coastal Carolina University. I have also been a Certified Public Accountant, in good standing, with the South Carolina Accountancy Board for over thirty-three (33) years.

3. As the Finance Director for the County of Horry, I am familiar with the collection and use of monies received by the County as a result of County Ordinance 105-96 and its amendments.

4. In Fiscal Year 2018, the County collected the following amounts from within the municipalities pursuant to the County's Hospitality Fee:

- A. City of Myrtle Beach: \$17,887,406.76
- B. City of North Myrtle Beach: \$7,526,553.93
- C. Town of Surfside Beach: \$1,172,121.73
- D. City of Conway: \$1,336,450.38
- E. City of Loris: \$195,489.59
- F. Town of Aynor: \$123,341.95
- G. Town of Atlantic Beach: \$48,938.47

5. Collectively, from the municipalities other than the City of Myrtle Beach, the County collected \$10,402,896.05. The County collected \$17,887,406.76 from the City of Myrtle Beach, for a total of \$28,290,302.81.

6. The City of Myrtle Beach was already collecting a fee on local accommodations and prepared food and beverage before it adopted new local accommodations and hospitality taxes in City Ordinances 2019-22 and 2019-23.

7. The net increase of the rates imposed by the City of Myrtle Beach do not all match the rates imposed by the County's Hospitality Fee. Although the City of Myrtle Beach imposed a net increase of 1.5 percent on accommodations that matches the Hospitality Fee, the City of Myrtle Beach imposed only a 1 percent increase on prepared food and beverage (.5 percent lower than the Hospitality Fee) and no tax on admissions or rental cars (1.5 percent and 2.5 percent lower than the Hospitality Fee).

8. Because of these lower rates, the City of Myrtle Beach should collect approximately \$5,117,406.91 less under its new taxes than the County collected pursuant to its Hospitality Fee last year within the City of Myrtle Beach.

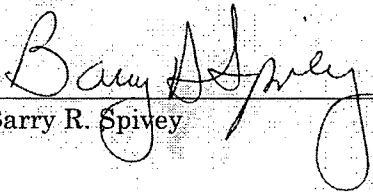
9. Similarly, the same lower rates in the City of North Myrtle Beach will result in that city collecting approximately \$1,707,839.98 less than the County collected pursuant to its Hospitality Fee last year within the City of North Myrtle Beach.

10. The Town of Surfside Beach imposed the same lower rates, and it will collect approximately \$284,910.57 less than the County collected pursuant to its Hospitality Fee last year within the Town of Surfside Beach.

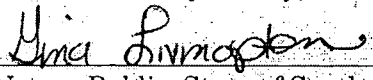
11. The City of Conway, the City of Loris, the Town of Aynor, and the Town of Atlantic Beach have not adopted any new taxes. These four municipalities will respectively collect \$1,336,450.38, \$195,489.59, \$123,341.95, and \$48,938.47 less than the County collected pursuant to its Hospitality Fee last year within their boundaries.

12. All of these municipalities, the City of Myrtle Beach, the City of North Myrtle Beach, the Town of Surfside Beach, the City of Conway, the City of Loris, the Town of Aynor, and the Town of Atlantic Beach, will collectively collect approximately \$8,814,377.75 less than the County collected pursuant to its Hospitality Fee last year within their boundaries.

FURTHER AFFIANT SAYETH NAUGHT.


Barry R. Spivey

SWORN to and subscribed before
me this 16th day of July, 2019


Notary Public, State of South Carolina
My Commission Expires: 1-11-29