THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

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

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

v.

Horry County, ... Appellant.

RECORD ON APPEAL
VOL III of IV

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AN ORDINANCE ENACTING IN CHAPTER 2, ARTICLE VI, A NEW DIVISION 7, LOCAL HOSPITALITY TAX, TO INSTITUTE A TWO PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENTATION TO BE EFFECTIVE JULY 1, 2019.

Applicant/Purpose: Staff/adopt 2% hospitality tax per SC Code §6-1-700 et. seq.

Brief:

- This ordinance adopts a local hospitality tax at the rate of 2.0%.
- Ordinance would be effective immediately; tax levy beginning July 1, 2019.
- In Council's discretion, local hospitality tax revenue may be used:
  - To provide local funding for highways, roads, streets, & bridges providing access to tourist destinations, such as I-73 project.
  - To finance certain operations & maintenance costs, including police, fire service, emergency medical & emergency preparedness operations attendant to facilities for which funds may be spent.
- South Carolina Code §6-1-530, also provides for certain other uses:
  - Tourism-related buildings such as civic centers, coliseums, & aquariums.
  - Tourism-related cultural, recreational, or historic facilities.
  - Beach access, renourishment, & other tourism lands & water access.
  - Advertisements & promotions related to tourism development.
  - Water & sewer infrastructure to serve tourism-related demand.

Issues:

- Under §6-1-720, a local governing body may adopt, by positive majority vote (in City Council's case, at least 4 votes), a local hospitality tax not to exceed 2%.
- A county may not impose a local hospitality tax in excess of 1% within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.
- Cumulative rate of county & municipal local hospitality taxes is limited to 20%.
- Horry County has no local hospitality tax.
- County's uniform service charge ("hospitality fee" of 1.5%) adopted in 1996 with the consent of the municipalities for a period 20 years, expired in 2017.

Public Notification: Normal meeting notification.

Alternatives: Do not adopt the amendment.

Financial Impact: When taken together with companion ordinance 2019-024 providing a credit for City hospitality fee payers, this tax is expected to yield about $5.4 million in new revenue to the City.

Manager's Recommendation: The previous agreement, by which County collects its 1.5% hospitality fee inside the MB corporate limits, expired in 2017. Together with approval of the credit in proposed Ordinance 2019-24, this tax does not increase the total amount of the tax burden on any given taxpayer, just the distribution between the City and the County. I recommend 1st reading.

Attachment(s): Proposed ordinance.

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Ordinance 2019-23

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE ENACTING IN CHAPTER 2, ARTICLE VI, A NEW DIVISION 7, LOCAL HOSPITALITY TAX, TO INSTITUTE A TWO PERCENT TAX, EFFECTIVE IMMEDIATELY WITH IMPLEMENATION TO BE EFFECTIVE JULY 1, 2019.

IT IS HEREBY ORDAINED THAT Chapter 2, Article VI of the Code of Ordinances of the City of Myrtle Beach is hereby amended by enacting Division 7, Local Hospitality Tax, in Sections 2-315 through 2-321.

Sec. 2.315. - Municipal local hospitality tax pursuant to South Carolina Code 6-1-700 through 6-1-770.
There is hereby imposed a uniform tax of two (2) percent on the gross proceeds derived from the sales of prepared meals, food, and beverages sold in or by establishments, or sales of prepared meals, food and beverages sold in or by establishments licensed for on-premises consumption of alcoholic beverages, beer or wine.

Sec. 2.316. - Payment of municipal hospitality tax.
The tax imposed by this section shall be collected from any patron when he tenders payment for his meal, food, or beverage and shall be held in trust for the benefit of the city until the same is paid to the director of the revenue collections division as hereinafter provided. Every establishment subject to this section shall, on the date or within the time period hereinafter prescribed, make a return to the revenue collections division of the city on forms provided by the office delineating gross proceeds of sales of prepared meals, food, and beverages for the previous month, and the amount of any tax due by virtue of this section. At the time the return is filed, the full amount of any tax due hereunder shall be remitted. Taxes and required reports shall be submitted to the Revenue Collections Division by the twentieth (20) day of the month and shall cover sales of the previous month. If the due date for reporting and payment falls on a Saturday or Sunday, or a federal, state, or City of Myrtle Beach observed holiday then reporting and payment are considered timely on the following business day. Furthermore, if the due date for reporting and payment falls during the period of a natural disaster which directly precluded the responsible party from timely submitting the reports and payments, an additional ten (10) day extension may be granted upon written request by the taxpayer to the director of the revenue collections division. A natural disaster is defined as a hurricane,

earthquake, flood, or tornado. The responsible party is considered directly precluded from timely submitting reports and payments if their offices are deemed by emergency officials to be damaged to the extent of being unsafe or unavailable for use due to the disaster or postal service to the immediate area is suspended during the due date. Any taxes not timely remitted shall be subject to a penalty of twenty-five (25) percent. The failure to collect from patrons the tax imposed by this section shall not relieve any establishment subject to this section from making the required remittance.

Sec. 2-317. - Hospitality tax account.
There is hereby established a special account, to be known as the hospitality tax account, into which all monies remitted to the city under this section shall be deposited. Any and all funds in the hospitality tax account, including any interest as may accrue thereon, shall be used only for the purposes as set forth in S.C. Code Ann. Sec. 6-1-730, as the same may from time to time be amended.

Sec. 2-318. - Inspections, audits and administration.
For the purpose of enforcing this section, the director of the revenue collections division or other authorized agent of the city is empowered to enter upon the premises of any person or entity subject to this section and to make inspections, and examine and audit books and records. It shall be unlawful for any person or entity to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours' written notice. In the event an audit reveals that false information has been filed by the remitter, the cost of the audit shall be added to the correct amount of taxes determined to be due. The director of the revenue collections division or other authorized agent may make systematic inspections of all establishments within the city to ensure compliance with this section. The director of the revenue collections division shall administer the provisions of this section and make reasonable regulations relating to its administration.

Sec. 2-319. - Violations. It shall be a violation of this section to:
1. Fail to collect the municipal hospitality tax in connection with the sale of meals, food, and beverages;
2. Fail to remit to the city the taxes collected pursuant to this section on a monthly basis;
3. Provide false information on the form of return submitted to the city;
4. Fail to provide or make available books and records to the director of revenue or other authorized agent for the purpose of an audit upon twenty-four (24) hours' written notice; or,
5. Fail to comply with any other specific provision/requirement of this section.

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Sec. 2-320. - Violations a misdemeanor.
The failure of an establishment subject to this section to remit to the city the taxes required by this section, as and when due, shall constitute a misdemeanor, punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for up to thirty (30) days, or both. Notwithstanding the foregoing, any misrepresentation of the information required by return(s) as set forth in subsection (b) hereof or the failure to collect or timely remit to the city the taxes imposed by this section shall result in the suspension and/or revocation of the business license of the offending establishment, or the business license of the offending establishment shall not be renewed, as may be determined, after a hearing by the business license committee. At least ten (10) days' notice of such hearing shall be provided to the owner of the applicable establishment.

Sec. 2-321. - Severability.
If any section, phrase, sentence or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions herein.

_____
BRENDA BETHUNE, MAYOR

ATTEST:

_____
Jennifer Stanford, City Clerk

1st Reading_____
2nd Reading_____

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EXHIBIT C

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

Personally appeared before me, Michael W. Shelton, 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 Chief Financial Officer of the City of Myrtle Beach and have served as such since February 15, 2015. Immediately prior to serving as Chief Financial Officer, I served as the City's Director of Budget and Evaluation for twenty-six years. Prior to that, I served as the City's Director of Budget and Financial Management. In various roles, all involving the City's finances, I have worked for the City for more than thirty-three years.

3. In my position as Chief Financial Officer of the City, I communicate regularly with my counterparts in other municipalities in Horry County ("County") and with the County itself regarding the collection of taxes and fees within municipal limits. This includes the 1.5% uniform service charge imposed under Horry County Ordinance 105-96, as amended ("Hospitality Fee"). I also review information published by the County regarding its fee collections. Furthermore, I am familiar with the criteria used to rate bonds issued by local governments and am familiar with

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the various revenue-generation options available to local governments to fund public services and projects.

4. I have reviewed the May 10, 2019, affidavit of Barry Spivey attached as "Exhibit L" to the County's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction and in Support of Defendant's Motion for Preliminary Injunction ("Spivey Aff."). Furthermore, I have reviewed the relevant portions of the County's Comprehensive Annual Financial Report ("CAFR") for the fiscal year ended June 30, 2018,[1] discussed below, Horry County Councilman Harold Worley's March 27, 2019, E-mail and Revenue Stream Analysis to Horry County Council Chairman Johnny Gardner, and Attachment A to Mr. Gardner's April 3, 2019, Letter to the Mayors of Horry County Municipalities. Copies of Mr. Worley's E-mail and Analysis and Attachment A to Mr. Gardner's letter are attached hereto as Exhibits 1 and 2.

5. In Paragraph 5 of his affidavit, Mr. Spivey asserts that the County has collected and will collect $51,165,252.32 in revenues from Ordinance 105-96, as amended. This total has four constituent parts: (1) a 2.5% uniform service charge imposed in the unincorporated areas of Horry County[2]; (2) a 0.5% accommodations tax imposed in the unincorporated areas of Horry County[3]; (3) a 2.5% county-wide (i.e., in both incorporated and unincorporated areas of Horry County) uniform service charge imposed upon rental car charges; and (4) a 1.5% uniform service charge imposed within the corporate limits of each municipality within the County. Based on the information contained in

---

[1] The County's 2018 CAFR is available online at: https://www.horrycounty.org/portals/0/docs/finance/CAFR2018final.pdf. Based on the permissions imposed by the County on the publicly available PDF version of the CAFR, it is not possible to either print or excerpt relevant pages for attachment to this affidavit.

[2] This is the combination of the 1.0% uniform service charge imposed only in the unincorporated portions of Horry County plus the portion of the 1.5% uniform service charge imposed in the County (unincorporated) area only.

[3] Contrary to Mr. Spivey's affidavit, this collection is not under Ordinance 105-96 or its amendments. Rather, it is collected pursuant to a different County ordinance which is not at issue in this case.

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the 2018 CAFR and Exhibits 1 and 2, I have determined the portion of the total collections attributable to each of these individual parts. For simplicity, I have confined my review to the Fiscal Year ending June 30, 2018.

6. The $51,165,252.32 total for 2018 is broken down among these parts as follows:

2.5% Uniform Service Charge:	$19,551,551.50
0.5% Accommodations Tax:	$1,254,523.74
2.5% Rental Car Fee:	$1,473,717.00
1.5% Uniform Service Charge:	$28,266,614.67

The total collections reported by Mr. Spivey also include $596,415.08 in differences between audited and unaudited statements that I believe are primarily attributable to the one percent charge that the County transfers from these sources to its general fund to cover administrative costs. The County's collection also includes a difference of $22,430.32 that I am unable to identify. These figures are reflected in the table attached as Exhibit 3 to this affidavit.

7. The lawsuit brought by the City, individually and on behalf of all other similarly situated plaintiffs, against Horry County concerns only the 1.5% Uniform Service Charge revenues generated from incorporated areas. If the Court were to enjoin the County's collection of the 1.5% Hospitality Fee generated within the corporate limits of Horry County municipalities, the County will continue collecting over $22 Million annually, based on 2018 figures, in revenues from the remaining fees and taxes Mr. Spivey references in his affidavit.

8. Mr. Spivey states in his affidavit that of the $51.165 Million total, "approximately $9 Million, on an annual basis, is utilized in normal reoccurring [sic] critical public safety expenditures of Horry County." Spivey Aff. ¶ 5. This approximately $9 Million expenditure is not paid for with any funds subject to this lawsuit. According to the County's 2018 CAFR, all

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revenues derived from the county-wide 1.5% Hospitality Fee and the 2.5% rental car fee (less County's "administrative fee") are restricted and used only for repayment of the County's loan with the State Transportation Infrastructure Bank for the RIDE Program. 2018 CAFR at pp. 34-35 (showing $41,667,715 in expenditures on RIDE Project debt service payments), p. 83 n.12 (reflecting restricted RIDE project fund balances), pp. 103-105 n.17 (stating, among other things, that "the [State Transportation Infrastructure Bank] established with the state treasurer a separate account known as the "Loan Servicing Account". **Horry County will thereafter deposit all future receipts of the 1.5% portion of its Hospitality Fee (net of administrative takedown as described in ordinances #105–96 and #9–97) into this account** (subject to the establishment of the loan reserve account). SIB will make transfers from this account to make loan payments under this Agreement and payments under [Intergovernmental Loan Agreements] #1 and #2") (emphasis added).

9. Moreover, a County official, acting in his official capacity, has stated that revenues from the 1.5% Hospitality Fee, whether generated within the corporate limits of any municipality or in the unincorporated areas of the County, can be used only for road projects. Ex. 4 hereto, July 19, 2018 Memorandum, at p. 1. Specifically, this County official asserted that these revenues cannot be used for public safety expenditures absent a duly-passed ordinance so providing. *Id.* Although the County has passed a resolution stating its intent to use the 1.5% Hospitality Fee funds for public safety and other non-RIDE Program expenditures, *see* Exs. 5-6 hereto, Horry County Resolutions R-82-18 and R-84-18, respectively, to my knowledge it has not passed an ordinance permitting these uses. The County therefore cannot use, and has not used, any of the collections at issue in this litigation to fund these public safety expenditures. The balance of the County's $51.165 Million collection is sufficient to cover the approximately $9 Million recurring expense.

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10. Mr. Spivey is of the opinion that "this lawsuit, and the relief the City of Myrtle Beach seeks, could negatively effect [sic] the bond ratings and capacity of the County." Spivey Aff. ¶ 6. This is incorrect. The question is which ratings might be affected. The credit rating is not a single monolithic label attached to the issuer's general credit-worthiness, but separate ratings, evaluated according to different criteria depending upon the specific pledge of revenues that secure the debt. The County has several ratings by the various rating agencies, Moody's, Standard & Poor's and Fitch. These agencies' respective ratings on outstanding Horry County General Obligation debt are "Aa1", "AA+", and "AA+". The County also has outstanding Airport Revenue Bonds to which Moody's has assigned a rating of "A2." There is no County rating on debt issued under the RIDE program or using the RIDE revenues, the 1.5% Hospitality Fee, because that debt was issued by the State Transportation Infrastructure Bank ("STIB") and the County's repayment with 1.5% Hospitality Fee revenues has been governed by a series Intergovernmental Agreements between the County and the STIB. [2018 CAFR at pp. 103-105 n.17.] The Hospitality Fee ordinance requires the 1.5% Hospitality Fee funds be deposited in a "special road revenue fund" and used only for specified purposes. Ex. 7, Horry County Ordinance 19-6(h). They are not deposited into the County's General Fund. I am also informed that these revenues currently are not pledged as security for any outstanding bond issuance. Mr. Spivey identified no existing expenditures currently funded by the Hospitality Fee that the County will be unable to fund from continued collections pursuant to the unaffected portions of the Hospitality Fee and accommodations tax.

The only impairment of County revenue to its governmental funds would be the roughly $400,000 per year that the County has collected as an administrative charge during the life of the 1.5% hospitality fee. Given the size of the County's budget, that is an immaterial amount and would hardly threaten the County's GO credit ratings. In conclusion on this point, based upon my review of the

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ratings criteria of Standard & Poor's and Moody's credit rating agencies in view of the above, I find no basis for concluding that the County's inability to collect the 1.5% hospitality fee from within municipalities could reasonably be expected to have any impact on the County's general obligation bond rating.

11. As to the County's General Obligation debt capacity, that is determined by the state Constitution to be 8.0% of the County's taxable assessed value, or by special authority of public referendum. The granting of the relief sought by the City in this action would affect neither. It is true that the County would not gain the capacity to use the 1.5% hospitality fee revenue generated within municipalities for the purpose of issuing new debt outside the scope of the original purpose of funding a portion of costs of the RIDE program for a period of up to 20 years, but that is debt capacity that the County has never had anyway.

12. In my position as the City's Chief Financial Officer, I am familiar with the various functions the City performs and the services it provides residents and visitors. The City currently designs, constructs, maintains, and operates roads and provides public safety services within its corporate limits, and it has done so during the entire time I have worked for the City. I am informed that the City has performed these services and functions since its incorporation.

13. In my position as the City's Chief Financial Officer, I am familiar with the funding sources available to local governments, such as the City and the County, for projects and operating expenses, such as roads and public safety. Local governments in South Carolina have a variety of available options to fund projects and services within their respective jurisdictions. For example, these governments can increase their millage rates for property taxes, impose other taxes, impose uniform service charges, and issue bonds, so long as the government acts in accordance with State law. Both the City and the County historically have used a combination of these sources.

14. Based upon its public pronouncements, including its resolutions, one project the County intends to fund with the 1.5% Hospitality Fee if its collection is not enjoined is the proposed Interstate Highway 73 ("I-73"). I am familiar with the planned route for this highway. As the plans exist currently, I-73 will not pass through the City or any other municipality within Horry County. Although the City has publicly stated that it is willing to participate in the funding of I-73, it is not a project identified in the plan set out in the RIDE Report nor one which City has consented or agreed to be funded by a County uniform service charge imposed within the City's corporate limits.

FURTHER THE AFFIANT SAYETH NAUGHT.

Michael W. Shelton

Sworn to and subscribed before me this
24th day of May, 2019.

Notary Public for South Carolina

My Commission Expires: April 1, 2023
[NOTARIAL SEAL]

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Exhibit 1

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From: Harold Worley <hworley@odresort.com>
Date: March 27, 2019 at 11:00:41 AM EDT
To: "'Vaught, Johnny'" <jvaught@horrycounty.org>, "'Hardee, Danny'" <hardeedan@horrycounty.org>
Cc: "'Hartley, Pat'" <HartleyP@HorryCounty.org>, "'Allen, Al'" <allena@HorryCounty.org>, "'Howard, Bill'" <howardb@horrycounty.org>, "'Crawford, Cam'" <crawfordc@horrycounty.org>, "'DiSabato, Dennis'" <disabatod@horrycounty.org>, "'Loftus, Gary'" <loftusg@HorryCounty.org>, "'Gardner, Johnny'" <Gardner.Johnny@horrycounty.org>, "'Bellamy, Orton'" <Bellamy.Orton@horrycounty.org>, "'Prince, Paul'" <PrinceP@HorryCounty.org>, "'Servant, Tyler'" <servantt@horrycounty.org>, "'Eldridge, Chris'" <CEldridge@HorryCounty.org>, "Carotti, Arrigo" <CarottiA@HorryCounty.org>, "'Powell, Justin'" <powellj@horrycounty.org>, <hworley@odresort.com>
Subject: RE: Hospitality fees

Mr. Chairman please don't sign that ridiculous agreement. it's a joke...who do they think they are?.... Peterson and his lawyers are wanting to kill I-73 and put the blame on YOU, Horry County Council and other municipalities. Please review the attached hospitality fee income stream. A third grader can see they are better off with the deal you offered Monday night. Politicians and Lawyers lie, numbers and facts don't. Remember Myrtle Beach has already offered 7.5 million of their 1% for I-73 construction... What has changed? Hello

---

From: Vaught, Johnny [mailto:jvaught@horrycounty.org]
Sent: Wednesday, March 27, 2019 8:34 AM
To: Hardee, Danny
Cc: Hartley, Pat; Allen, Al; Howard, Bill; Crawford, Cam; DiSabato, Dennis; Loftus, Gary; Harold Worley; Gardner, Johnny; Bellamy, Orton; Prince, Paul; Servant, Tyler
Subject: Re: Hospitality fees

I agree, mr chairman. Lets get the word out.
Johnny

Johnny Vaught
Chairman, Administrative Committee

On Mar 27, 2019, at 8:28 AM, Hardee, Danny <hardeedan@horrycounty.org> wrote:

I agree Mr. Chairman, it's a bad day when they say your word not good enough!!

Sent from my iPad

On Mar 27, 2019, at 8:19 AM, Hartley, Pat <HartleyP@HorryCounty.org> wrote:

Please see message below from Chairman Gardner ...

Pat Hartley | Clerk to Council
Horry County Government
Horry County Council
1301 Second Ave., Conway, SC 29526
Tel 843-915-5120 | Fax 843-915-6120 | hartleyp@horrycounty.org
www.horrycounty.org

From: Johnny Gardner [mailto:johnny@johnnygardnerlawgroup.com]
Sent: Wednesday, March 27, 2019 8:17 AM
To: Hartley, Pat <HartleyP@HorryCounty.org>
Subject: Hospitality fees

Pat, please send to members of council.
Thank you, Johnny

Gentlemen,
Pursuant to our discussions at the council meeting Monday night, I have started the process of reaching out to the mayors to set up a meeting to negotiate hospitality fees. Unfortunately it appears the mayors are not willing to sit down unless I sign the confidentiality agreement.
I am not comfortable with the idea of negotiating the distribution of public funds in private. As your chairman , I do not think it is good for the citizens of our county and I personally have a problem with the idea of dealing behind closed doors.
This is an important issue and I wanted to keep you informed.
Please let me know your thoughts on this matter.
Sincerely,
Johnny Gardner

Sent from my iPad

****

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Note!

	MUNICIPAL COLLECTIONS					UNINCORPORATED COLLECTIONS					
	FOOD AND BEVERAGE	ACCOMMO-DATIONS	ADMISSIONS	SUBTOTAL	% OF TOTAL	FOOD AND BEVERAGE	ACCOMMO-DATIONS	ADMISSIONS	SUBTOTAL	% OF TOTAL	TOTAL
Actual 1.5%	$13,990,899.14	$12,121,601.55	$2,154,113.98	$28,266,614.67	70.67%	$6,848,840.10	$3,763,571.20	$1,118,874.34	$11,731,285.64	29.33%	$39,997,900.31 ✓
At 1.0%	$9,327,266.09	$8,081,067.70	$1,436,075.99	$18,844,409.78	70.67%	$4,565,893.40	$2,509,047.47	$745,916.23	$7,820,857.09	29.33%	$26,665,266.87 ✓

13,332,634

ESTIMATED BY JURISDICTION

1-73 only 17 mil →

Myrtle Beach	Actual 1.5%	$16,039,053.04
	At 1.0%	$12,026,035.36
Horry	Actual 1.5%	$12,039,367.99
	At 1.0%	$8,026,245.33
North Myrtle Beach	Actual 1.5%	$7,279,617.86
	At 1.0%	$4,853,078.57
Conway	Actual 1.5%	$1,279,932.81
	At 1.0%	$853,288.54
Surfside	Actual 1.5%	$1,239,934.91
	At 1.0%	$826,623.27
Others	Actual 1.5%	$119,993.70
	At 1.0%	$79,995.80

Myrtle Beach is 9 Others

Numbers are Rounded

17m for 30 yrs. Bond = 272

172m — 17m 30 yrs.

272m → 25m 20 yrs.

40
17
23

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Exhibit 2

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Attachment A

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

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

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

[1] Current is based on County 1.5% Hospitality & 2.5% Rental Car Collections by Municipality and Analysis of Municipal Financial Reports.
[2] No 1.5% is calculated at 2% Food/Beverage, 3% Accommodations, 0% Admissions and 0% Car Rental.

Prepared by Horry County Finance, March 28, 2019

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Exhibit 3

Analysis of Collections Data and Comparison with County's 2018 CAFR

Prepared by Michael Shelton, Chief Financial Officer, City of Myrtle Beach
May 24, 2019

Fees levied (Spivey Affidavit ¶3)	Column A Collected in Unincorporated Areas	Column B Collected in Municipalities	Column C--Totals Totals Collected FY2018	Compare totals with County 2018 CAFR pp. 34-35
County Non-RIDE-related fees				
County 1.0% Uniform Service Charge[1]	-	-	-	$ 8,224,949
Admissions	$ 745,325.00	$ -	$ 745,325.00	-
Prepared Foods & Beverages	4,565,893.40	-	4,565,893.40	-
Accommodations	2,509,047.47	-	2,509,047.47	-
County 0.5% Accommodations Fee	1,254,523.74	-	1,254,523.74	1,272,589
County administrative charges, other misc. [3]	422,148.39	-	422,148.39	-
Sub-total non-RIDE County collections	**$ 9,496,938.00**	**$ -**	**$ 9,496,938.00**	**$ 9,497,538**
1.5% Uniform Service Charge (RIDE funds)	-	-	-	$ 41,667,715
Prepared Foods & Beverages	6,848,840.10	13,990,899.14	20,839,739.24	-
Accommodations	3,763,571.20	12,121,601.55	15,885,172.75	-
Admissions	1,118,874.34	2,154,113.98	3,272,988.32	-
County administrative charges, other misc. [3]	174,266.69	-	174,266.69	-
Total 1.5% (RIDE) uniform service charges[1]	$ 11,905,552.33	$ 28,266,614.67	$ 40,172,167.00	-
2.5% collections on Rental of Cars[2]	1,473,717.00	?	1,473,717.00	-
Sub-total 1.5% Uniform Svc Charge	**13,379,269.33**	**28,266,614.67**	**41,645,884.00**	**41,667,715**
Grand Total of funds accounted for	22,876,207.33	28,266,614.67	51,142,822.00	51,165,253.00
Unaccounted for differences	22,430.32	-	22,430.32	-
	$ 22,898,637.65	**$ 28,266,614.67**	**$ 51,165,252.32**	**$ 51,165,253.00**

1. From table attached to Harold Worley's memo to Johnny Gardner dated March 27, 2019.
2. From Attachment A to Chairman Gardner's letter to all Mayors of Horry County municipalities dated April 3, 2019. Rental car revenues are not broken down as to point of collection, but the total is shown here to account for the composition of the $41,645,884 classified in Attachment A as "1.5% Hospitality & 2.5% Rental Car."
3. According to my reading of the County's Code, 1% of revenue collected under the various provisions on hospitality and accommodations related revenues, 1% of all collections are transferred to the County's General Fund to cover administrative costs.

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Exhibit 4

County Council Decision Memorandum
Horry County, South Carolina

Date:	July 19, 2018
From:	Justin Powell, Assistant County Administrator
Cleared By:	Chris Eldridge, County Administrator
	Steve Gosnell, Assistant County Administrator
	Arrigo Carotti, County Attorney
	Barry Spivey, Finance Director
Re:	Resolutions Pertaining to the Use of 1.5% Hospitality Fee

ISSUE

By the end of FY 2019, it is anticipated that the County will have paid off its outstanding loans from the State Transportation Infrastructure Bank Board (SIB). With the anticipated pay-off, funding from the 1.5% hospitality fee will be available to be allocated to other projects.

BACKGROUND

In 1996, Horry County Council adopted a 1.5% hospitality fee on prepared meals, admissions, and accommodations on the entirety of the County. Within the enabling language of the fee, funds were to be dedicated to the implementation of a comprehensive road program. This became known as RIDE I and was used to borrow funds from the SIB to construct several major roads such as SC-22, SC-31, and SC-544 widening. The loans were scheduled to be paid in full in FY 2022 when the 1.5% fee was scheduled to lapse, as originally written.

There have been several revisions to the hospitality fee ordinance since adoption including two recent revisions in 2016 and 2017. Ordinance 93-16 modernized the fee's administration for current practice and a new collection system that was being implemented. In addition, it conformed the eligible uses to state law to allow the County to borrow against the funds, rather than using a conduit borrower like the SIB. Ordinance 32-17 removed the sunset provisions and allowed for its continued imposition after the SIB loans are paid off.

Current Finance Department projections indicate that the County will place on deposit all funds necessary to repay the SIB loans in full sometime in FY 2019. Staff anticipates that the County will need to receive a written release from the State Transportation Infrastructure Bank Board in order to officially be released from its loan obligations. With that in mind, funding should begin to be available in FY 2020 for other eligible uses.

How Can the 1.5% Hospitality Fee Be Spent? When revisions were made to the authorizing language in 2016, the ordinance was conformed to the state's hospitality tax law which provides for the following uses:

- Tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums
- Tourism-related cultural, recreational, or historic facilities
- Beach access and renourishment
- Highways, roads, streets, and bridges providing access to tourist destinations
- Advertisements and promotions related to tourism development
- Water and sewer infrastructure to serve tourism-related demand
- Operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the above

In addition, Section 19-6(h) of the Code of Ordinances further restricts the 1.5% hospitality's fees use to road construction:

> *"Funds shall be deposited into a road special revenue fund which will be used to implement a comprehensive road plan adopted by the county in concert with the municipalities of the county. Interest generated by this road special revenue fund shall accrue to the fund."*

Can the 1.5% Hospitality Fee Spent on Public Safety? Yes, if it is directly attributable to tourism and upon repealing the restriction in Section 19-6(h) in the Code of Ordinances.

As noted above, the County is presently restricted to spending the 1.5% on roads. If the County Council desires spending the 1.5% on items other than roads, it will need to adopt an ordinance repealing the restriction in Section 19-6(h) in the Code of Ordinances.

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If County Council elected to spend a portion of the 1.5% on public safety upon adoption an ordinance repealing the road restriction, it would be limited to the Police, Fire, Emergency Medical Services, and Emergency Management expenses directly attributable to public safety. The County presently allocates part of its 1.0% hospitality fee in the unincorporated area and the 0.5% local accommodations in the unincorporated area to public safety expenses in the General Fund. At present, the Finance Department estimates $7.8 million of public safety costs attributable to tourism are not recovered by those fees that could be paid with the 1.5% hospitality fee. The 1.5% hospitality fee could also be applied to additional personnel. However, there needs to be a clear and justifiable nexus to tourism and used in areas where there is a high tourism concentration such as the beachfront or high tourism traffic corridors like US-17 in Restaurant Row.

It should be noted that 71% of the 1.5% hospitality fee is generated in municipalities. Concern could arise about the level of County public safety services being rendered within the municipalities if the 1.5% is used for County public safety services.

PROPOSED RESOLUTIONS

There are three resolutions for the County Council's consideration. The first would dedicate $30 million of the approximately $41.5 million collected annually to the construction of I-73 within the limits of Horry County. The second resolution it would direct staff to take action in developing a road plan for the remaining balance. The third resolution would direct staff to draft an ordinance repealing the road plan restriction and directing the County Administrator to submit a plan in the FY 2020 budget to utilize part of the 1.5% hospitality fee for eligible public safety expenses and the balance for roads.

Resolution #1 (I-73 in Horry County): The South Carolina Department of Transportation (SCDOT) has received a permit for the construction of I-73. That permit is being presently litigated in federal court. Through federal earmark funds, SCDOT has completed the environmental impact study, acquired some right-of-way and is designing the segment between I-95 and US-501 in Dillon County. SCDOT's most recent cost estimate for constructing the entire corridor between I-95 and SC-22 is between $1.19 billion and $1.56 billion with a central estimate of $1.37 billion.

Based on the most recent cost estimate provided by SCDOT, staff estimates the cost to construct I-73 between SC-22 and the Little Pee Dee River to be between $373.3 million and $507.4 million with a central estimate of $440.4 million. If $30 million per year were dedicated to I-73, staff would initiate discussions with SCDOT on potential agreements to acquire right-of-way in Horry County, design the Horry County section of the interstate, and potentially supplement state funds on widening the shoulders on SC-22 to interstate standards. In addition, efforts would commence to identify state and federal funding to construct the entire interstate corridor from SC-22 to I-95, with a particular emphasis on getting the section of I-73 built from SC-22 to US-76 in Marion County. This would provide more direct access to Horry County and provide a new evacuation route in the event of a hurricane. The County envisions borrowing against that $30 million dollars and use the amount borrowed as a local match as state and federal funding sources are identified for construction.

Resolution 2 (Road Plan): The resolution would direct staff to develop a set of recommendations for other road projects that could be built with the 1.5% hospitality fee. After the allocation for I-73, approximately $11.5 million per year could be available for other road projects. Potential projects could include closing the $65 million funding gap on the extension of SC-31 to the North Carolina border, the $67 million Augusta Plantation interchange in SC-31, and funding for the Southern Evacuation Life Line. Other potential projects could be identified in the process, as long as the roads proposed provide access to tourist destinations.

Resolution 3 (Public Safety and Roads): The resolution would direct staff to draft an ordinance repealing the restriction in Section 19-6(h) of the Code of Ordinances that restricts the 1.5% to road projects. It would also direct the County Administrator submit a plan in the FY 2020 budget to submit a plan for using funds for tourism-eligible public safety expenses and the remainder be dedicated to road construction. This would significantly reduce the funds available for additional road construction to approximately $3.7 million per year.

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Exhibit 5

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION R-82-18

A RESOLUTION DEDICATING $30,000,000 OF THE HOSPITALITY FEE ANNUALLY TO CONSTRUCT THE HORRY COUNTY SECTION OF I-73.

WHEREAS, in 1996, Horry County Council established a 1.5% hospitality fee on prepared food, admissions, and rentals in the entirety of Horry County for the purpose of implementing a comprehensive road management plan as codified in Section 19-6 of the Horry County Code of Ordinances; and

WHEREAS, the 1.5% hospitality fee was scheduled to lapse upon the repayment of all outstanding loans due to the State Transportation Infrastructure Bank; and

WHEREAS, Horry County Council passed Ordinance 93-16 and Ordinance 32-17 to modernize the administration of the 1.5% hospitality fee and to extend its imposition following the repayment of loans due to the State Transportation Infrastructure Bank; and

WHEREAS, it is anticipated all funds necessary to repay the outstanding State Transportation Infrastructure Bank loans will be on deposit in the State Treasurer's Office by the end of Fiscal Year 2019; and

WHEREAS, upon repayment of the outstanding State Transportation Infrastructure Bank loans, Horry County Council seeks to dedicate the 1.5% hospitality fee for the continued development of major road projects within Horry County consistent with Section 19-6(h) of the Horry County Code of Ordinances; and

WHEREAS, Horry County Council seeks the development of interstate connections to the Grand Strand and the construction of I-73. I-73 is anticipated to provide significant economic benefit, as well as a faster evacuation route in the event of a catastrophic hurricane affecting the Myrtle Beach area; and

WHEREAS, Horry County Council seeks to dedicate a portion of the 1.5% hospitality fee to facilitate the construction of the Horry County portion of I-73.

NOW, THEREFORE, BE IT RESOLVED, that the Horry County Council dedicates $30,000,000 annually of the 1.5% Hospitality Fee to construct the Horry County segments of I-73.

AND IT IS SO RESOLVED this ___ day of _____, 2018.

HORRY COUNTY COUNCIL

_____
Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

_____
Patricia S. Hartley, Clerk to Council

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Exhibit 6

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COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION R-84-18

A RESOLUTION DIRECTING STAFF TO CREATE A PLAN FOR PUBLIC SAFETY AND ROADS IN THE FY 2020 BUDGET USING UNCOMMITTED 1.5% HOSPITALITY FEE REVENUE.

WHEREAS, in 1996, Horry County Council established a 1.5% hospitality fee on prepared food, admissions, and rentals in the entirety of Horry County for the purpose of implementing a comprehensive road management plan as codified in Section 19-6 of the Horry County Code of Ordinances; and

WHEREAS, the 1.5% hospitality fee was scheduled to lapse upon the repayment of all outstanding loans due to the State Transportation Infrastructure Bank; and

WHEREAS, Horry County Council passed Ordinance 93-16 and Ordinance 32-17 to modernize the administration of the 1.5% hospitality fee and to extend its imposition following the repayment of loans due to the State Transportation Infrastructure Bank; and

WHEREAS, it is anticipated all funds necessary to repay the outstanding State Transportation Infrastructure Bank loans will be on deposit in the State Treasurer's Office by the end of Fiscal Year 2019; and

WHEREAS, Horry County Council intends to dedicate a portion of the 1.5% hospitality fee to facilitate the construction of the Horry County portion of I-73; and

WHEREAS, the Hospitality Fee can be used on other tourism-related purposes besides roads including, but not limited to, civic centers and coliseums, tourism-relate parks and cultural facilities, beach renourishment, tourism promotion, and tourism-related public safety costs; and

WHEREAS, staff has calculated the unrecovered cost of public safety from tourism to be approximately $7,800,000; and

WHEREAS, County Council seeks to dedicate a portion of the 1.5% hospitality fee for tourism-related hospitality costs beyond road construction.

NOW, THEREFORE, BE IT RESOLVED, directs staff to draft an ordinance amending Section 19-6(h) of the Horry County Code of Ordinances to allow the 1.5% hospitality fee for all eligible uses under state law. In addition, the County Administrator shall include a proposal in the FY 2020 budget a plan to utilize the uncommitted balance of the 1.5% hospitality fee for eligible tourism-related public safety expenditures and additional road projects that lead to tourist destinations.

AND IT IS SO RESOLVED this ___ day of _____, 2018.

HORRY COUNTY COUNCIL

_____
Mark Lazarus, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant., District 5
Cam Crawford, District 6
Harold Phillips, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

_____
Patricia S. Hartley, Clerk to Council

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Exhibit 7

Sec. 19-6. - Hospitality fee.

(a) *Establishment and imposition of hospitality fee.* There is established a uniform service charge, hereinafter referred to as the "hospitality fee," equal to one and one-half (1.5) percent within the geographic confines of the county, and an additional imposition equal to one (1) percent within the unincorporated areas of the county only; such rates shall apply to and be imposed on:

(1) The gross proceeds derived from the rental or charges for any rooms, camp ground spaces, lodgings, or sleeping accommodations furnished to transients by any motel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration within the county to which the sales tax imposed by the State of South Carolina pursuant to S.C. Code § 12-36-920 applies;

(2) Those paid admissions to places of amusement within the county to which the admissions tax imposed by the State of South Carolina pursuant to S.C. Code § 12-21-2420 et seq. applies; and

(3) The gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine.

The hospitality fee shall be imposed at a rate equal to two and one-half (2.5) percent within the geographic confines of the county solely with regard to:

(1) The gross proceeds derived from rental companies engaged in the business of renting private passenger motor vehicles to a renter for a consideration within the county. The proceeds derived from the lease or rental of a private passenger motor vehicle supplied to the same person for a period of ninety (90) continuous days are not considered proceeds. "Rental company" means any individual, firm, partnership or corporation in the business of providing private passenger automobiles to the public under the terms of a rental agreement. "Private passenger motor vehicle" means any private passenger motor vehicle, including passenger vans and mini-vans, that is intended primarily for the transport of persons on public roads and highways.

(b) *Payment of the hospitality fee.* Payment of the hospitality fee shall be the liability of the consumer of the services. The hospitality fee shall be paid at that time of the delivery of the services to which the hospitality fee applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided for herein.

(c) *Collection of fees.*

(1) *Requirement to make filing and payment.* Each person liable for any fee shall (a) make a true and correct return to the county in such form as it may prescribe and (b) remit

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such fee therewith.

(2) *When due.* Any hospitality fee imposed herein is due and payable:

a. In monthly installments on or before the twentieth day of each month; or

b. In thirteen (13) installments payable on or before the twentieth day following the period covered by the return on sales for the previous reporting period. This payment option requires thirteen (13) payments in each calendar year. For those persons electing to pay in thirteen installments (every four (4) weeks), payments for each period are due on or before the twentieth day after the conclusion of the four-calendar-week period for which payment is due.

The return shall be due at the same time the fee is due and payable.

c. When the twentieth day is a Saturday, Sunday or other day, the county is not open for regular business, the fee is due on the following day the county is open for regular business.

(3) *Manner and location of payment*. Fee payments shall be made by mail, in-person at facilities designated by the county administrator, or electronically. County council, by resolution, may establish mandatory electronic filing for certain classes of payers.

(4) *Timely filing and payment*. A return and the payment due therewith are considered to be timely if (i) the return and payment are mailed and such mailing has a postmark dated on or before the date the return is required to be filed, or (ii) the county actually receives the return and payment (a) at a physical location designated by the county administrator, or (b) electronically in a manner selected by the county administrator. The burden of demonstrating the timeliness of the filing and payment and presentation of a corroborating proof of mailing or receipt demonstrating the same is the responsibility of the person making payment.

(5) *Failure to file return.* In the case of a failure to file the return, the county shall make a return upon such information as it may be able to obtain, assess the fee due thereon, and assess a late filing penalty (the "failure to file penalty") upon the entire fee then due, whereupon the county shall mail such notice to the person liable for the fee. Such payment shall be due within ten (10) days of the postmark of such return.

The failure to file penalty shall be calculated as:

(A x B) x C = the Failure to File Penalty

Where "A" represents the amount of the entire then due fee, "B" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "C" represents the number of

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calendar days from the date the filing was due to the date of the filing and payment of the failure to file penalty. The amount of the failure to file penalty for any period shall not exceed twenty (20) percent of the fee due for that period.

(6) *Failure to timely file return.* In the case of late filing of the return, the county shall assess a late filing penalty (the "late filing penalty") upon the entire fee then due.

The late filing penalty shall be calculated as:

(D x E) x F = the Late Filing Penalty

Where "D" represents the amount of the entire then due fee, "E" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "F" represents the number of calendar days from the date the filing was due to the date of the payment of the fee, the late filing penalty, and any late payment penalty. The amount of the late filing penalty for any period shall not exceed twenty (20) percent of the fee due for that period.

(7) *Failure to pay.* In the case of failure to pay the entirety of any fee when due, the county shall add a late payment penalty (the "late payment penalty").

The late payment penalty shall be calculated as:

(X Y) x Z = the Late Payment Penalty

Where "X" represents the amount of the entire fee due for the period in question less any accepted partial payment, "Y" represents the daily penalty in percentage terms calculated on the basis of a ten (10) percent per month penalty assuming a thirty-day month (0.333%), and "Z" represents the number of calendar days from the date the payment was due to the date of the payment of such fee, and the late payment penalty. There shall be no limit on the amount of the late payment penalty unless fees found to be due under an audit. The failure to pay penalty on fees found to be due under audit shall not exceed twenty-five (25) percent if paid within ten (10) days of the county's assessment, then the failure to pay penalty is not capped on the unpaid fee from the 11th day until the taxes are paid. An underpayment amount created by filing an amended return is subject to the failure to pay penalty for the underpayment amount.

(d) *Inspections and audit.* For the purpose of enforcing the provisions of this hospitality fee and local accommodations fee ordinance, the county administrator or other authorized agent of the county, is empowered to enter upon the premises of any person subject to this section and to make inspections, examinations and audits of books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours' written notice. In the event that an audit reveals that false information has been filed by the remitter, the costs of the audit

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shall be added to the correct amount of any fees determined to be due, in addition to the penalties provided in subsection (c) above. The county administrator or other authorized agent of the county may make systematic inspection of all businesses within the county, to ensure compliance with this section. Records of inspection shall not be deemed public records.

(e) *Violations.*

(1) It is a violation of this section to:

a. Fail to collect any fee;

b. Fail to remit to the county any fee collected;

c. Fail to file any fee return;

d. Knowingly provide false information on any fee return;

e. Fail to provide books and records to the county administrator or other authorized agent of the county for the purpose of in inspection, examination, or audit after twenty-four (24) hours' written notice.

(2) Each day this section is violated constitutes a separate offense.

(3) Upon conviction of this section, the violator is guilty of a misdemeanor and subject to a fine or forfeiture not exceeding five hundred dollars ($500.00) or imprisonment for not exceeding thirty (30) days, or both.

(f) *Administration of fees.* The county administrator is responsible for the implementation, collection, and enforcement of the fees through any legally available means as may be available to the county, including, without limitation, the Setoff Debt Collection Act, codified at Title 12, Chapter 56 of the South Carolina Code and Governmental Enterprise Accounts Receivable (GEAR), codified at S.C. Code § 12-4-580.

(g) *Administrative fee.* The costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1) percent.

(h) *Disposition of hospitality fee* . All revenues collected from the hospitality fee shall be deposited or allocated as follows:

(1) The funds derived from the one and one-half (1.5) percent hospitality fee shall be deposited into a road special revenue fund which will be used to implement a comprehensive road plan adopted by the county in concert with the municipalities of the county. Interest generated by this road special revenue fund shall accrue to the fund.

(2) The funds derived from the one (1) percent fee shall be specifically allocated within the county's budget to offset the cost of public safety and public works services and infrastructure directly impacted by tourism.

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In the case of disposition of funds, the costs of collecting the monies may be reimbursed by the fund monies, up to a maximum of one (1) percent.

(i) *Penalty waiver.*

(1) A penalty may be waived by the county administrator or his designee if the delay or failure to file or pay was caused by reliance on erroneous written or oral advice given by a county employee to the licensee or fee remitter, if accurate and complete facts were given to the employee, there is no change in law, and the licensee or fee remitter provides supporting documentation, such as a copy of the licensee or fee remitter's question to the employee and the advice provided by the employee. A penalty will not be waived if the advice was oral, unless the employee verifies that all the facts were provided and that he gave the advice.

(2) The county administrator or his designee may waive a penalty that is de minimis in nature.

(j) *Use of hospitality fee revenues*. Receipts of the hospitality fee shall be expended only for a purpose or purposes identified below:

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

(2) Tourism-related cultural, recreational, or historic facilities;

(3) Beach access and renourishment;

(4) Highways, roads, streets, and bridges providing access to tourist destinations;

(5) Advertisements and promotions related to tourism development;

(6) Water and sewer infrastructure to serve tourism-related demand; or

(7) Operation and maintenance of police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to the forgoing (1) through (6).

(k) *Amnesty period.*

(1) In order to encourage the voluntary disclosure and payment of fees owed to the county, the county council finds it desirable to allow the county to designate an amnesty period which has a beginning and ending date from time to time as determined by a resolution of county council. During the amnesty period, the county shall waive the penalties and interest or portion of them at its discretion imposed pursuant to Chapter 12.5—Licenses and Business Regulations and 19.6—Hospitality Fee for a licensee or fee remitter who voluntarily files delinquent returns and pays all fees owed. If the county establishes an amnesty period pursuant to this section, it must adopt a resolution of the amnesty period at least sixty (60) days before the commencement of the amnesty period.

(2) The county shall grant amnesty to a licensee or fee remitter who files a request for an

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amnesty form and:

a. Voluntarily files a current license or fee return and pays in full all fees due;

b. Voluntarily files an amended license or fee return to correct an incorrect or insufficient original return and pays all fees due; or

c. Voluntarily pays in full all previously assessed fee liabilities due within an extended amnesty period which begins at the close of the amnesty period and runs for a period of time as determined by the county. The administrator or his designee may set up installment agreements as long as all fees are paid within this period. An installment agreement must be agreed upon before the close of the amnesty period established.

(3) The county shall not waive penalties and interest attributable to any one filing period if the licensee or fee remitter has outstanding liabilities for other periods.

(4) A licensee or fee remitter that is currently under audit by the county is not eligible for amnesty for those periods being audited.

(5) The county may review all cases in which amnesty has been granted and may on the basis of mutual mistake of fact, fraud, or misrepresentation rescind the grant of amnesty. A licensee or fee remitter who files false or fraudulent returns or attempts in any manner to defeat or evade a fee under the amnesty program is subject to applicable civil penalties, interest, and criminal prosecution.

(Ord. No. 105-96, § 1, 10-15-96; Ord. No. 7-97, §§ 1—4, 2-4-97; Ord. No. 76-97, §§ 1, 2, 8-5-97; Ord. No. 80-01, § 1, 6-19-01; Ord. No. 93-16, §§ I, IV, 12-6-16; Ord. No. 24-18, §§ 1—3, 5, 4-3-18)

Editor's note— Ord. No. 105-96, adopted Oct. 15, 1996, did not specifically amend the Code; hence, codification of § 1 of said ordinance as § 19-6 was at the discretion of the editor.

Cross reference— Roads and bridges, Ch. 16.

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EXHIBIT D

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MINUTES
HORRY COUNTY COUNCIL
Special Council Meeting and Workshop
On Budget-Related Items
County Council Chambers
July 24, 2018
2:00 p.m.

MEMBERS PRESENT: Mark Lazarus, Chairman; Tyler Servant; Bill Howard; Gary Loftus; Paul Prince; Dennis DiSabato; Danny Hardee; Johnny Vaught; Al Allen; Harold Worley; Harold Phillips; and Cam Crawford.

MEMBERS ABSENT:

OTHERS PRESENT: Pat Hartley; Chris Eldridge; Steve Gosnell; Joe Huffman; Arrigo Carotti; Barry Spivey; Kelly Moore; Justin Powell; and David Schwerd.

In accordance with the FOIA, notices of the meeting were provided to the press stating the time, date, and place of the meeting.

CALL TO ORDER: Chairman Lazarus called the meeting to order at approximately 2:00 p.m.

INVOCATION: Mr. Loftus gave the invocation.

PLEDGE: Mr. Servant led in the pledge.

Chairman Lazarus said that they had several items of business. Council had voted to extend the 1.5% hospitality fee tax that was collected on prepared meals, accommodations, and admissions. This money was used originally for the original Ride I program that built SC-31, SC-22, and some other various roads. Council, through three readings, passed to extend that into perpetuity. The reasoning behind it was specifically for road projects. The ordinance was specific and that was how it read. They would have discussion of possible other uses within the hospitality law that potentially could be used. Staff would report on the justification within the law that had to be used within hospitality reasons considering where and how those monies were derived.

APPROVAL OF AGENDA CONTENTS: Mr. Howard moved to approve, seconded by Mr. Loftus. The motion was unanimously passed.

Chairman Lazarus said Mr. Powell would be giving an extensive overview of what the 1.5% tax was, how it could be used, and then they would move on to the prepared resolutions. This was one of the reason he specifically asked for this to be in a workshop and not in a Council meeting to where it wouldn't be rushed through. He wanted to be very specific and for them to be able to hear all of the facts laid out on the table by staff.

Staff Presentation on the Use of 1.5% Hospitality Tax (Justin Powell):

Mr. Powell said that when they were talking about 1.5% it was important to note that there were actually four different revenue streams that constitute what he considered tourism taxes and fees that the County used in its operations. Those were the state accommodations tax, the local accommodations tax, and then the two hospitality fees, 1% imposed on the unincorporated areas and a 1.5% imposed on the entirety of the County, including the municipalities. It was important to note that they operated within a framework that had been set by the General Assembly that said that those funds were generally created and derived from the tourists and the benefit went back to the tourists. There were a lot of restrictions on how they used the funds that were narrower than they would normally do on a property tax or other source of revenue. He wanted to cover, just for context, because he thought it was important to see the whole picture of the other streams.

The first and oldest one was the state accommodations tax. It was imposed in 1984 and was a state tax that was imposed at the state level, 2% on all transient accommodations. It was basically collected by the Department of Revenue. It was subject to the review of the Tourism Expenditure Review Committee which was a state body that would deem whether or not a city or a county had spent it appropriately. There were a variety of collections. Once they collected it, they deducted revenues for the Department of Revenue for their collection expense. They also did what he called the Robin Hood provision. We

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were a donor County relative to other places and it states that every small city, all 270 cities and all 46 counties, had at least one minimum distribution of funds. The law was pretty explicative on how it got spent. The first $25,000 goes to the general fund. After that point the next 5% goes to the general fund. 30% goes to the designated marketing organizations. They did an RFP process and the current contract was being held by the Myrtle Beach Area Chamber of Commerce to do marketing for the County. The remainder 65%, which was subject to the review and recommendation of the accommodations tax committee, was restricted to tourism related expenditures. He presented a list from state law. In general it was for advertising and promotion, construction and maintenance of tourist related facilities, some public safety costs that were attributable to the shuttles, and beachfront. We basically spend the bulk of that 65% of money on maintaining and securing the beaches. The bulk of the money was going towards the police patrol in Garden City at the campgrounds, the Arcadian Shores area, and it also went towards the maintenance of the beachfront. They put a significant amount of the money towards managing the biker events. It was very much restricted and limited to clear tourist related expenditures.

The local accommodations tax was .5% tax imposed in 2002 by County Council. It was collected locally by the revenue office and its uses were similar but slightly different than the state accommodations tax list but was primarily tourism related buildings, tourism related parks and historic facilities, beaches, highways leading to tourist destinations, adverting and promotion, and operations and maintenance related to police, fire, EMS, and emergency management. It was $1.3 million per year. The County put about $1 million into it for beach renourishment at Arcadian Shores and the Garden City area to match state and federal funding and basically accumulated that money. They used $300,000 of it for the recovery of costs of public safety already related to police and EMS services in the unincorporated area related to tourism.

He thought the one they were most interested in discussing that day was the hospitality fee. The hospitality fee was enacted in 1996 by County Council. It was collected locally and was collected on all prepared meals, transient rentals, and admissions. The County's hospitality fee ordinance went into effect before the state law was passed for hospitality and accommodations taxes. As such, we were able to grandfather in both the rate, which was in excess of what state law required and there was a specific grandfather provision as well as have a higher base of items that can be subject to this fee. There were two separate rates collected. A 1.5% that was imposed countywide and to all cities and all areas of the county. In addition, the County also imposed a 1% fee on the unincorporated areas for a total rate of 2.5%. Most of the municipalities, but not all, charge their own 1% so in most places within the County the total rate was 2.5%.

In the past two years Council had made two substantive changes to the hospitality fee ordinance. In 2016 there was some modernization for current administration. They changed the financial system that required them to look at changing how they collected and administered those fees. They also conformed it to the eligible uses in state law that would allow them to borrow against it if they so desired in the future. In 2017 they enacted Ordinance 32-17 which removed the sunset provision. Previously the tax or fee was supposed to lapse when the loans were done for Ride 1. In Ordinance 93-16 they conformed the use of the hospitality fee to those that were state law. It was very similar to the local list allowed for the local accommodations tax, tourism related buildings, tourism related parks and historical facilities, beach accesses, highways, roads, advertising promotion, operations, maintenance, police, fire, and EMS/EMD services. They would see that the state law had been written very much that the uses be restricted to those things that were related to tourism.

Council had put on two additional restrictions on the use of these fees. Under the 1.5% hospitality fee imposed countywide those shall be deposited into a road special revenue fund which would be used to implement a comprehensive road plan adopted by the County. Currently, on the books was a restriction that the 1.5% that was being discussed that day only be used for road projects. The 1% accommodations hospitality fee in the unincorporated area shall be used to offset the cost of public safety, public works, and other infrastructure.

The 1.5% countywide hospitality fee was generating just over $41 million per year. There was an allocation of the administrative costs that was put into the general fund for the cost of collection. The rest of that money was basically sent to Columbia to repay the loans that the County took out in the late 1990s and early 2000 for what was known as Ride I today. Those projects built Highways 22 and 31, and the widening of Highway 544 among other major road projects done. They were originally anticipating that they would have those loans paid off in FY2022. Currently based on a better than anticipated collections from when those loans were entered into, they anticipated that some time by the end of this fiscal year they would have enough funds on deposit to pay all remaining principal and interest payments to pay those loans in full. That meant that they would anticipate having to go to the State Infrastructure Bank Board and request a release from our loan obligations as a result of that. However, that would take some time and we didn't have all the money on deposit yet.

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On the 1% hospitality fee which was imposed only on the unincorporated area, they would see the bulk of the money was going to public safety currently. Beach patrol, cleanup to supplement what they were already incurring on the state accommodations tax and then about $7.2 million on public safety. The finance department does a calculation that would allocate the cost of our responses to tourist related expenses and they had allocated based on that.

The question had been posed asking if they could spend the 1.5% on public safety. Yes, but there were several caveats that went along with it. The first was that they would have to repeal the existing ordinance on the books that said that this money shall be dedicated to road projects. That was the first issue. The second, it still needed to be attributable and have a nexus to tourism at the end of the day. The finance department had calculated that between the expenses of police, fire, EMS, and emergency management and E911, there was approximately $7.8 million that had not been recovered through other forms of use of those funds such as state accommodations tax, the local accommodations fee, or the 1% hospitality fee. The majority of that was in the fire fund. Approximately $4.9 million which they did not allocate any hospitality into that fund now. Within the general fund it would be $2.9 million. You could use that to offset the cost of tourism. You could add additional personnel above and beyond that, however there needed to be a demonstrable nexus to tourism at the end of the day that the officers were going to be on the beach or going to be on a high traffic corridor like a US-501 or a US-17. The other point that was important for Council to note was that 71% of this money was generated within the municipalities. Concern could arise about the use of revenue generated within the cities for county public safety services. One point of discussion on the use of these funds was to further the construction of I-73. The initial leg of I-73 was SC-22. That section was built with the 1.5% hospitality fee. The corridor went from north of Latta past Mullins and then would connect up at SC-22 between the interchanges with US-701 and SC-319. The South Carolina Department of Transportation had been working on receiving a permit. They had received that permit though it was being litigated at the time. They had been paying for a lot of the environmental impact work for that. They had bought some right-of-way and done the design. They had been paying for the design between I-95 and US-501 in Dillon County. There was about $29 million left of those state funds. SCDOT just submitted an application for a BUILD grant and requested those funds. The current estimate of construction for the entire corridor basically from I-95 to SC-22 was between $1.2 and $1.6 billion. The working estimate was $1.3 billion. They estimated that just to build the section within Horry County was between $373 and $507 million with a working estimate of $540 million. Estimates provided by SCDOT as we get closer to construction would be subject to revision. Every cost estimate aged as time went on and those were created last year.

When you looked at what $30 million would buy, you had to consider the following. The population of Horry County was on track to reach 400,000 people by the next 20 – 30 years and there is a need for a viable evacuation route during a major storm. Currently, if there was a full occupancy weekend and a need to evacuate, emergency management estimated it would take 34 hours to empty out all zones A, B, and C. Current projections look like that would be over 40 hours by 2030. The lack of interstate access hampers our efforts in diversifying the local economy beyond retirees and tourism. We are also one of the largest major tourist destinations in the nation without interstate access. While our air travel had been increasing, this was still a "drive market". Our tourists come in basically by their cars. I-73 was cost effective. There had been a lot of alternatives put out there like turning SC-38/US-501 into a freeway and similarly doing that to SC-9. They asked SCDOT if that was more cost effective and the answer was no. According to SCDOT SC-38 to US-501 would be $150 million more than I-73. Turning SC-9 into a freeway would be $360 million more than the current estimate.

The resolution that they had before them would basically begin committing $30 million of that $41.5 million per year towards the construction of building I-73 with the potential emphasis of getting the Horry County section built between US-76 in Mullins and SC-22. If approved, staff would engage SCDOT in discussions about entering into agreements about acquiring right-of-way, designing and improving the shoulders on Highway 22 to be at interstate standards. It would also likely be used as a solid match for federal and state grant opportunities to construct the entire corridor. On the federal level, we saw opportunities with BUILD grants, INFER grants, and the House introduced their version of the Trump infrastructure bill which would include a fairly substantial increase in the federal gas tax as well as a requirement to allocate 30% of these projects to rural areas which this project fits that definition. The federal government was moving away from an 80% funded model and were moving more emphasis to a 20% federal money model. He thought they would be able to demonstrate a fairly substantial commitment to this project in being out there and generating interest. He thought there was also money available on the SIB as well as direct appropriation at the state legislative level.

The first resolution would dedicate $30 million per year for the construction of I-73. The second and third resolutions were an either/or resolution. The second resolution would direct staff to develop a comprehensive road construction plan consistent with the existing ordinance. They estimated around $146 - $147 million could be available for additional road construction projects. The third resolution would direct staff to do the following: Develop an ordinance for Council's consideration that would take three readings to repeal the existing restriction on using the 1.5% only for roads. They would be directed to develop a plan for the 2020 budget. The money was not currently available to spend. It was a next year issue. Using approximately $7.8 million that could be recovered from existing cost that they were bearing in the general fund for public safety and the fire fund for public safety and put the remainder to roads. That estimate would be approximately $57 - $58 million for road projects from there.

Mr. Prince asked if they could use any of the 1% for the parks and recreation and fire station.

Mr. Powell said you could use the 1.5%. Currently they were spending the entire amount of the 1%. If you shifted some of that money over to recreation, you would be creating a hole elsewhere. You could put the 1.5% to parks and recreation if there was an ordinance repealing the requirement that it be used only on roads.

Mr. Prince asked if that was only if it was open for the tourists to use.

Mr. Powell said it would have to be a project like a large scale ballfield that would bring in a sports tourism project.

Mr. Prince asked if there would be any money left over in 2019 after the payout.

Mr. Powell said they anticipated having all the funds that they needed to have on deposit sometime in the January/February time frame. There would be a balance at the end of this year between that point and June, but they could propose that for appropriation in budget FY2020.

Mr. Prince said they had been working on extending SC-9 into I-95 for 30 or more years. Where were they on that?

Mr. Powell said he couldn't speak for where SCDOT was on that project.

Mr. Prince said he would like to know what part this played in it. It had been going on for 30 some years. It just kept getting put to the side. He would like to have an answer to that.

Mr. Powell said they could find that out.

Mr. Vaught said he had a couple of questions. First, if Resolution R-82-18 failed, were R-83-18 and R-84-18 moot?

Mr. Powell said no. The language as written was that it would be for the uncommitted balance of the hospitality fee.

Mr. Vaught said if they didn't commit that $30 million to I-73, then there wouldn't be an uncommitted balance.

Mr. Powell said it would be the entire amount.

Mr. Vaught said the $30 million in question could not be used for anything else according to the numbers and what they could do with the rest of it. The $30 million had to be used for a highway project or something tourism related.

Mr. Powell said that as the ordinance was currently written, it had to go to a road project. They could repeal that ordinance and use it for tourism related projects.

Chairman Lazarus said it had to be a tourism related road.

Mr. Vaught said he understood that part of it. He was saying $30 million became a magic number somehow and he was wondering how it became a magic number. Why wasn't it $25 or $35 million or whatever?

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Mr. Powell said when the question was posed to staff about potentially borrowing against these revenues, $30 million was where they felt comfortable while still having a hedge, a cushion, above and beyond that that they would still be able to make the payments.

Mr. Vaught said that it would service the bond basically out of the $30 million.

Mr. Powell said yes.

Chairman Lazarus said that number also got the county enough money to build the Horry County portion of I-73.

Mr. Vaught said that was going to be his next question. The $30 million, should they send it this way, would only be applicable to the Horry County portion, correct.

Mr. Powell said yes.

Chairman Lazarus said that was correct. It would get us to I-76 in Mullins.

Mr. Vaught asked how long it would be before they knew about the rest of the funding. They would be banking the $30 million and it would be sitting there. Did they have any idea how long it would be before they knew they needed to spend the money. He hated to have it sitting there doing nothing when they had all kind of things that they needed to do with the money when they didn't know how long. He knew that currently they had litigation and they knew from International Drive how long that kind of mess could go on. He thought they already had the mitigation done. All they needed to do was the right-of-way, the planning and all that.

Mr. Powell said that most of the right-of-way was in Dillon and Marion Counties. They would still have to acquire the Horry County section of the right-of-way. In terms of the positioning for the Trump Infrastructure Bill, from their consultations with the delegation that was probably not until the beginning of next year. They didn't see them. There was only 14 legislative days before the end of the federal fiscal year. It was unlikely and then they were going into election season so he thought it positions us well for being really well considered in that bill when it started next year.

Mr. Vaught said this was a hedge to say that when they were ready we were ready.

Mr. Powell said yes.

Mr. Vaught asked how long the $30 million commitment would last.

Mr. Powell said the 1.5% was in perpetuity now. The upper limit of what they would be seeking to pay for at current cost estimate was $440 million for the Horry County section of the road. We would try to seek grants and other options that would lower that cost down long term, but for them to have that revenue available sent a strong message to both the state and federal governments that we were serious about the project.

Mr. Eldridge said it was a resolution. All it took was another resolution of Council to change it. It was only obligated once you bonded it and you started having it dedicated for debt service. Unless Council chose as part of a resolution to say they had to revisit it at a certain time. Council could introduce a resolution at any time.

Mr. Vaught said they had not set a time limit. They were saying they would use it as long as they had to use it for this project.

Mr. Eldridge said it opened the eyes at the state and federal level to hear a local community come up with $440 million to go towards an interstate project. He didn't know many communities around the country that could say that. When you were able to bring that forward for any legislation that might come up, it definitely put us towards the front of the list for projects. Again, it was the federal government so there were no guarantees.

Mr. Vaught said he understood. His concern with this was in the perception of the public that they were just putting the money out there. Putting it for I-73 with all the other needs, the question that seemed to be arising from the public was why

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were they setting aside all of this money on something that may or may not happen. They didn't know how much of it they would actually need or anything like that. They had very pressing needs for public safety. That was the concern that he was hearing expressed and that was the concern that he had to think about when he considered this.

Mr. Eldridge referred back to the slide and said that of that only $7.8 million could go towards public safety. That was the challenge. The rest would have to be used on something else. It couldn't all go to public safety because Council would like for it to. You had to have that nexus and that was why they asked finance to say what they could legally justify towards that. It was a surprise to them that the bulk of it was towards the fire fund because of our greatest needs in the general fund. They were talking about police, EMS and those uses and the most of it would go towards the fire fund. Yes, the other uses were there. Other roads and areas, but you had to keep that nexus tied to it.

Mr. Vaught said he knew they had the restriction on it. One of the things that needed to be flexible on this as they went through the discussion was did that $30 million need to be a locked in number or could they use more of it for other things that they needed that could maybe take some strain of the police and fire budgets.

Mr. Eldridge said he discussed this last time. It was hard for them to sit up there and look in a crystal ball because he didn't know what Council would say if Eula came back and said I-73 was a done deal, but they needed $33 million a year in debt service from Horry County to make it happen. He didn't know that Council wouldn't say yes to $3 million more. They didn't know. Maybe they ended up with $25 million. You didn't know but they tied this to what it would take to get to the Horry County line and pay for the Horry County portion and for our delegation to be able to go to Columbia and say they had a local community willing to step up and make this happen. The same with our congressmen and senators to be able to say that in D.C. as well. Here, they have a team and are willing to make this happen.

Mr. Vaught asked to clarify how long they projected that they would need to make the $30 million payments.

Mr. Powell said they were mulling a debt payment of approximately 20 years long.

Mr. Loftus referred to Resolution R-84-18, when it came to public safety, specifically on police, that could only be used for beach patrol and things of that nature. Was he correct?

Mr. Powell said they could recover the current cost that they were already incurring in the general fund for tourism and that would be approximately $2.9 million in the general fund and $4.9 in the fire fund. If they wanted to go above that and add more police officers or more whatever, they had to have a clear tie to tourism.

Mr. Eldridge said they looked at call volume to get the $2.9 million. It wasn't looking at an individual position. It was looking at when tourism spikes, the number of calls spike, so it was not the clearest of nexus. He asked Mr. Spivey to try and justify what they could and they felt confident they could justify it but it was going back to just calls. It was not pointing out to a specific beach patrol officer or anything else. It was showing how the amount of work spikes during the summer months.

Mr. Loftus said the point he was making was that there were restrictions. It couldn't just be general public safety. There were restrictions and ways they had to use it.

Mr. Eldridge said they were trying to be as aggressive as they could.

Mr. Loftus said he understood how it all worked. He just wanted to point out that it was not an unlimited thing they could do with whatever they wanted.

Mr. DiSabato asked if they could talk a little about what the $2.9 million would be used for when it came to police enhancements and then correspondingly what the $4.9 million would be used for when it came to the fire fund enhancements.

Mr. Eldridge said it would be an opportunity for them to lessen that millage amount. It was 9.5 mils in the general fund because that was what they were capped out at and they could see what it tied to.

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Mr. DiSabato said the answer was that they didn't know what it would be. They would just know it would go towards public safety but not specifics.

Mr. Eldridge said they would have to come up with what they wanted to do. It would not be able to do the presented list of projects. It was nowhere close.

Mr. DiSabato said he understood that but it would offset that cost to a certain extent.

Mr. Eldridge said by 1.5 mils instead of 9.5 mils it would be 8 mils.

Mr. DiSabato said maybe the conversation should be tabled until after they heard the presentation because he wanted to know what the departments were telling them that they needed before he made a decision on how to allocate these funds.

Mr. Eldridge said they would hear it. You couldn't go beyond that amount. You have two decisions. They had a decision on the $30 million and then separate decisions on the balance.

Mr. DiSabato said that from the beginning when they started talking about the sunset provision, he wanted to go on record and say that he would not have voted for it to be extended if it was only going to be used for one thing. From the beginning they were told that it could be used for a number of different items. He understood the importance of I-73 and he was 100% in support of the first resolution that they were talking about there today allocating the majority of that money to that project because they had to and because it was an important project. His question was, the roughly $11 million remaining balance that they would have above and beyond that $30 million that they were collecting, he wanted to know how it would be used and he would like to know what they could use it for.

Chairman Lazarus said the reason he had this in a particular order was they would take the vote on the first resolution first and then before they took the second and third together, they would give a full presentation of what the allocation of that money could be so they could decide which use it would be.

Mr. DiSabato said he was comfortable with that.

Mr. Worley said he had given them warning at the last Council meeting when they were discussing this that they were going to have a debate, a discussion on how they were going to use this $40 million. He agreed that the Grand Strand could use an interstate road. No question about that. But for the people of Horry County to have to pay a dis-proportionate share of the cost of that road was ridiculous. When you looked at the $400 million that Mr. Powell just proposed that they put on the table for a $30 million (inaudible) that would build the Horry side. Marion and Dillon Counties didn't have a hospitality fee. So that meant we would build our Horry County side and then the feds would come in and build the Marion and Dillon side. Therefore, we would get absolutely nothing. That was one of the issues he had with it. Again, he thought I-73 was a good idea when its time comes, and we probably need to be working on that. He thought they had more urgent need in Horry County. Horry County needed more public safety, not just police, EMS, fire, but mainly on the police side. He thought it should be what was collected from the tourists. He asked them to go ahead and do the presentation.

Chairman Lazarus said they were going to present it. 65% of the collections came from the tourists. 71% of it came from the municipalities who would benefit from the road. Did he not think that the road built in Marion and Dillon Counties would benefit Horry County? We had to get them here. We had to get to I-95. It did benefit us. It would stop on Ocean Drive and was the biggest economic infrastructure public safety legislation that we could have before them to benefit the Grand Strand to bring in jobs, tourists, and to get people out of here. We had to alleviate traffic on US-501. That was what this would do.

Mr. Worley said the need that we had in Horry County was in public safety. He had been saying this all along. He again asked if they could get the presentation put on the board.

Chairman Lazarus said they had just showed him that they could use $7.8 million of it so when they put it on the board they would discuss how to use that $7.8 million. The point was that if they didn't do anything with the $30 million, they would put it towards roads. They couldn't put it towards public safety because they couldn't justify using it there. He didn't understand the logic.

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Mr. Worley said he wanted to have this debate and he thought the people deserved to hear them debate this issue. They couldn't vote on Resolution R-82-18 until they talked about the public safety issues and the two referendums they had introduced to add 10 mils in one referendum and 9.5 mils in another referendum when they had the money available that they could possibly use, at least some of it, for public safety. If they couldn't get it put on the board, he would read it.

Chairman Lazarus said he didn't have a problem putting it on the board.

Mr. Worley said he agreed that they needed to vote on the $30 million but they needed to talk about the other things so other Council members could chime in as to what they believed was the most pressing issue. He thought public safety was.

Chairman Lazarus said nobody was disagreeing with that. They were just disagreeing on how much money. He instructed them to put the presentation up.

Mr. Eldridge said this was two issue. They were becoming tied together but they were instructed by Council to come up with the referendum question to address public safety issues. That was why they were going to see the two referendum questions that they did for general fund, police, fire, EMS, E911 and then a second one addressing the fire fund.

Mr. Worley said he understood that but before they voted on the $30 million to allocate to I-73, did Council believe there were other pressing needs out there. He for one thought there were pressing needs other than I-73. I-73 was important and he wanted to fund some of it but not all of it.

Mr. Eldridge said the needs went beyond what they were able to present to them because they were presenting what the state law restricted them to even dream about doing. The 9.5 mils was capped out based upon state law. The other issues being talked about on the usages of the hospitality taxes and ATAXs were restricted by state law as well. It was where the state legislature did not allow County Councils to run their Counties to a certain extent.

Mr. Worley said he understood home rule.

Mr. Prince asked where the 9.5 mils came in.

Mr. Eldridge presented a PowerPoint presentation. He had pushed the departments hard on turnover, getting positions filled the best that they could. He thought the Chiefs had done a good job addressing this. Turnover rates were trending lower so far this year. Actual openings were less. The police department had 12 openings but were hiring four certified the next week and five were going to the academy. Fire/EMS had 32 going to class in August. It would more or less fill up every one of those position and of those 32, 10 were paramedics. There had been a lot of work put into this. When Council asked them about this they went to work, especially the police chief, fire chief, finance and it spilled over into planning. They asked the planning staff to look at future growth trends where stations would be needed. They would need to address those needs. The police department would need 80 positions, a new East Precinct, and 9.3% increase for Class 1 - 3 officers. Fire and Rescue would need 150 positions with salary increases of 7.4% for line personnel. The Chief wanted another stratification of positions with engineers and that would be 7.1% additional increase for engineer positions. With the new enhancements, they would need more dispatchers and they estimated they would need 16 new positions. The sheriff's department would need a 9.3% increase for Class 1 - 3 officers and 4.6% for Class 2 officers. The total recurring cost would be $20,950,000 in the general fund, $10,640,000 in the fire fund, $990,000 in the debt fund with a continuing cost of $32,790,000. To step up the fifth precinct (East Precinct) would be 45 positions.

Mr. Prince asked where the East Precinct would be located.

Mr. Eldridge said it would be somewhere around the International Drive/31 area. The other staff positions recommended were 21 positions for precinct staff expansion, 5 positions for support expansions, and 8 positions for CID expansion. There would also be a salary increase. The East precinct would need a new building with an estimated cost of $3,000,000. The 45 positions would break out to 40 Class 1, 3 Class 3, and 2 civilians. When you started looking at the precincts, there were four shifts and it took a lot of officers to have a tangible sense that you were making a difference on the street. If they just wanted four more on the road per precinct with the four current ones it was 64 officers. That was the magnitude that we had in a

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County our size and what we are trying to cover. He presented a slide with the current four precinct map and then a slide with the proposed five precinct map to show the difference in the coverage areas. The fifth precinct would help spread the load in all the precincts, especially the West precinct. This would help address some of the issues. He then presented slides on the other precinct staff expansions, support staff expansion, and CID expansion. The detectives do an amazing job. It was unbelievable what they were able to accomplish with the officers that they had. They worked hard and worked an unbelievable amount of overtime. When a homicide happened, they worked it until they had someone in jail. CID expansion was a part of the equation as well with 2 homicide detectives, 2 special victims' detectives, 2 narcotics detectives, 1 fingerprint database operator, and 1 chemist assistant. Human resources looked around on salaries and they came up with proposed police salary increases which he presented a slide on. It put the County in the same range. It was hard to match apples to apples. We provide some benefits that others don't. It was always tough to get it purely apples to apples so they were just looking at salaries. The proposed increase would be on top of the $1 that Council approved in the current budget coming in October. This would be above and beyond that as well as the 3% merit.

He then presented the Fire/Rescue department's recommendation. The chief went back and looked at scenarios with four person per apparatus, addressing ISO 10 through the whole county, and it got ridiculous cost wise. They tried to look at something that was reasonable and it had a nexus timed back to trying to get three person apparatus staffing, looking at growth, looking at what was most efficient on rural fire coverage and help with ambulance crews. The county was growing and the ambulance crews were running non-stop. To do this, they would need 18 positions to convert staffed stations to 3 person staffing. It did not do the 4 person staffing as recommended by NFPA which had an estimated cost of $12,070,000 annually. Other recommendations that the chief had were converting the volunteer stations, Carolina Bays, Nixonville/Wampee with a new consolidated building and Longs into career stations, adding ladder truck staffing at Little River and Scipio, it would add for additions to Socastee and rebuild the Longs and Forestbrook stations. To enhance the rural fire coverage, they would look at making some of the rural stations have daytime coverage, add a tanker at Reeves Ferry due to water supply, construct new Shell station and expand Goretown and Cherry Hill. This would help with ISO coverage. To get it to ISO 3 at 99% of the county would be over $20 million annually. It would double the millage that we had now. It would help 3,000 or so homes. He presented a slide with the current ISO 10 territories. For a county our size, it was still very good. To be providing the coverage Council did, it was amazing for a county our size. He presented a slide with increased ambulance crews. He thought it was well justified. They continued to see growth in all the calls. They were trying to provide the best service and coverage that they could with what they had now. He presented maps with the current 4-Minute BLS coverage, the proposed 4-Minute coverage, current 8-Minute ALS coverage, and proposed 8-Minute ALS coverage. When you staffed up, there were other needs and he presented a list of ancillary positions that they recommend. On the fire salary increases, they went back and looked at our market. We were not too far off. He presented the proposed increases. He presented slides on E911 and sheriff/detention. The entrance for Class 2 detention officers would be 4.6% and then Class 1 would be 9.3% the same as the police department. When you went back to the 9.5 mils that was where they were capped out. The state would allow local governments, municipalities and counties to do a millage increase tied to growth plus CPI. That was all you could do. They changed it a few years ago and would let you do a look back provision. Council had not done a tax increase in the last 3 – 4 years. They could grab 3 years' worth and that was how you got the aggregate of 9.5 mils. That was what the legislature capped County Council's ability to do. That was why they tried to work the most that they could within that 9.5 mils. They tried to present something that would make a difference and make financial sense as well. There were counties and cities in the state that had no growth and they were only dealing with CPI. He presented the taxpayer impact and the proposed referendum questions.

Chairman Lazarus asked him to go back to Resolution 84-18 and what those funds would be directly used for. The $7.8 million that they had stated would be applicable from the hospitality fee, the 1.5% fee, what would they use or what was the recommendation for public safety to use those funds for.

Mr. Eldridge said they would be looking for direction from Council. They could actually add things to that list or reduce the 10 mils down to 8.5 mils. That would be a part of the referendum question and they would still get the laundry list of what he just showed them but you would get it for 1.5 mil less tax increase. Or, if Council wanted to do so, they would add to it and keep it at a 10 mil question and they would go back in and have other items that they would spend out of public safety. They could add more boots on the ground.

Chairman Lazarus asked if the Referendum question put out to the public didn't pass, and Council said they wanted to use the $7.8 million that was justified under the hospitality fee, what specifically could that be used for. What would the plan be

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for that? They didn't know if the public would vote for or against it so what they were holding on to was the 7.8 mils that they knew they could justify using out of the hospitality fee. No matter what the rest of it was used for $7.8 million could be used for public safety justified by staff. That would be how many mils towards. Go back to his plan.

Mr. Eldridge said they would have 1.5 that could go towards the general fund and then he thought the debate among Council would be boots on the ground or salaries.

Chairman Lazarus said if it passed that day as using the $7.8 million towards public safety, then two things would have to happen. One, they would have to undo the ordinance that was in place that directed the money just to roads. They would have to accomplish that first. Then they would come back with a definitive plan to be voted on by Council at that time what to use it for. By Mr. Powell's statements, only $2.8 million could be used for police because it came out of the general fund and $5 million to the fire.

Mr. Eldridge said correct.

Chairman Lazarus said he wanted to make sure that everybody understood what they were dealing with. Council had an opportunity to use $7.8 million to put towards public safety under the perimeters he had just talked about and pass a referendum question to put out to the public. If the public voted yes for that, then that would reduce the amount presented because they had the $7.8 million allocated towards it. That was the way it worked and he asked Mr. Eldridge if he was correct.

Mr. Eldridge said yes. They could see the recurring cost was about $32 million so they would only be covering $7.8 million of the $32 million that he had just shown them. It was frustrating but it got more complicated for them to get in there because the fire department was a combined department, Fire/Ems, and it was funded by both. So they funded a portion of a program.

Chairman Lazarus said in the general fund, the mils needed would drop only 1 mil probably and the fire fund would drop 4 mils on the referendum question.

Mr. Eldridge said that a mil was only worth half as much so if you threw in the $4.8 million.

Mr. Powell referred to the referendum question on the general fund you could reduce it by 1.4 mils and the fire fund 4.7 mils.

Chairman Lazarus said that what they were saying was if Council voted for the $7.8 million to go towards the public safety then that was what the reduction of the referendum question could be if they wanted more monies to go towards public safety.

Mr. Worley referred to the referendum question and said the Mr. Servant might be in a position to make a motion to, he didn't want to put words in his mouth…

Mr. Servant said he wanted to listen to the rest of the discussion.

Chairman Lazarus said they would wait until they got there because they didn't know what Council would decide to do with the $7.8 million or the $30 million. Once they got there then they could get to the referendum. He thought that would be the proper order.

Mr. Worley said depending on that, certainly they would have financials…

Mr. Prince said they didn't know if there would be a referendum yet.

Chairman Lazarus said correct, they didn't know yet.

Mr. Worley told Mr. Eldridge that he had done a good job putting this together as to the needs of police, fire, E911, and others. On the $32 million, they wouldn't be able to get that much but he was and he understood the votes may not be there but he would say that he believed that public safety was their number one job. Carolina Forest and areas like Little River needed more police, ambulance workers, firemen, and the only way they were going to attract them was to pay them. Nobody

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wanted to work 75 – 80 hours per week to make a living. They had an opportunity there to take this referendum off the people so that they didn't have to make that decision. They could make the decision for them, and they could take some of this money. He told Chairman Lazarus that it might not give him the $400 million that he wanted but based on his amortization, they could allocate $300 million and he was giving in a little but he wanted $20 million plus he wanted the growth to go to public safety. Over the years it would grow 5% so if they allocated $300 million which would be Horry County's share and broke it down that was our fair share. If you amortized that $300 million over 20 years you were looking at about $20 million so they could take $20 million and add to police. Give them a fair wage. They deserved a living wage. Why was it okay for the men in the county to have to work for six or seven thousand dollars below Myrtle Beach and North Myrtle Beach? E911 was the same way. It was time they did the right thing and took this money that was there that they could use. The debate about where it was collected and who paid it, they could argue about that. He thought with this and hopefully they could work with the delegation and get an impact fee statute that they could work with. With that they could get some of this growth paid for without raising the millage on the people, 10 mils on one and 9.5 mils on the other. They were not going to vote for that. That was absurd.

Chairman Lazarus told Mr. Worley that he didn't think there was anybody up there that disagreed with him. What he did disagree with him about was the $20 million. They had just heard a presentation from staff. They had dug in as hard as they could. What he was telling them was he didn't have a problem usurping the law, what the law said. He was very diligent about the law. He knew the hospitality law better than anybody and the municipalities. When 71% of these dollars were collected by the municipalities and they were going to tell them that they were going to put it into a service that they didn't use. He thought that would be another conversation they would probably have across the hall as he always said. He wanted to be very careful on how they did this and that was why he hoped they presented this thing to pull $7.8 million out of the 1.5% tax. He didn't disagree with him that they had been talking about it for a long time about an impact fee that would be usable to be able to go towards salaries. Now they couldn't use the impact fee for salaries so that was another discussion that they would have and certainly take forward to the legislature as they had talked about. If he wanted to usurp the law that was fine. Let's go change the law first before they break the law. He thought that was the thing they needed to look at. He didn't disagree and he didn't think the eleven other people up there disagreed with him on what they needed to do and what they would like to do for public safety. They had done it. This Council had stepped up and raised millage. They cut $4 million out of the budget this year to bring more money back over into the general fund to fund public safety. They had added millage in the fire fund, and added millage in the general fund for police over the five years that he and Mr. Worley had been there together. They had done a good job doing that but he was right, they needed more and where do they find it without breaking the law.

Mr. Worley said the problem with that position was that the employees basically got nothing. Nothing from nothing was nothing. The reason for it was the referendum that they were proposing to pass was nothing. It wouldn't pass so they would get zero. They had an opportunity there to fund I-73 $300 million and he didn't mean what he was going to say to brow beat the staff, but in all fairness they had been told on Council that they couldn't use a nickel of this money.

Chairman Lazarus said they couldn't because Council passed a resolution that said it could only be used for roads.

Mr. Worley said what he was saying was they had an opportunity. They couldn't fix it completely but he could tell them he believed they could go through the list of enhancements and come up with something that they could give the public safety employees a pay raise to where they needed to be so that they were competitive. So that they could retain high quality people. So that when his mother called for an ambulance there was one going that hadn't worked 80 hours that week or a police officer. If somebody was breaking in on her and the response time was 25 – 30 minutes. They had an opportunity there to fix this. They could fund I-73. He wasn't against I-73. He just didn't want to pay more than their fair share. The $300 million was their fair share for the whole road all the way from SC-22 to I-95 so why not let these other people put a hospitality fee on themselves in Marion and Dillon. Those were good and fair people and would understand. Then with the state and federal money they would have a road. They had $20 million plus to pay the employees a fair wage and hire more people so that they could have good service.

Chairman Lazarus told him what he wanted Council to do was vote on something that would be, as staff had told them, against the law.

Mr. Worley said no. He was just saying they told them for the last two years that they couldn't use a quarter of it but now they were telling them they could use this.

Mr. DiSabato asked if they could use more than that. What did the law allow them to do?

Mr. Eldridge said they had looked in the public safety departments and that was what Mr. Spivey looked at to come up with the $7.8 million.

Mr. Worley asked where.

Mr. Prince said it was because it was tourist related.

Mr. Eldridge said it was because they were able to look at call volumes and everything else. When you were looking at police calls. This was not beach front or anything. They were looking at call volume.

Mr. DiSabato asked if they could allocate a penny more than that dollar towards public safety. Legally. That was his question.

Mr. Eldridge said that we were the only county in the State of South Carolina with the 1.5% tax. There were a lot of counties that would love to have it and were envious of it.

Mr. Spivey said that the analysis that they completed was trying to measure the impact that tourism had on the general fund. The impact that they had tried to measure was what was the impact of tourism on our general fund because they recognized that it affected us in multiple ways. This analysis had been limited specifically to those elements that were included in state statute as well as the County ordinance that we had limiting those things to police, EMS, fire, and the related support service. They included E911 and communications which were directly feeding those operations. They had burdened it with the full overhead cost. They had allocated a portion of finance, procurement, human resources, and the treasurer's office where she collected money. They had included all costs that they felt they could possibly include in those categories. They recognized that there were impacts of tourism beyond that. At the detention center, in the court system which drives our solicitor, sheriff, and clerk of court. They could list multiple things where they thought there were impacts but state law did not allow them to include that in this calculation. So from the standpoint of what they had included, they thought it was in accordance with our ordinance as well as state law and what was permissible for them to be able to recapture out of that 1.5%.

Mr. DiSabato said in plain English we could only take $7.8 million and put it towards the general fund of this hospitality fee.

Mr. Eldridge said only $2.8 towards the general fund.

Mr. DiSabato said yea. The $4.9 million for the fire fund and $2.9 million.

Mr. Spivey said that was of the existing expense base that we had today. As Mr. Powell indicated, if you added a particular service that only benefited tourism, you could fund this out of this funding as well.

Mr. DiSabato said sure. So they couldn't just take $20 million of this money and say that we were putting it to the public safety fund.

Mr. Eldridge said he wanted to. They were just giving them their honest opinion as their staff and what they asked them to do. They were trying to tell them what they knew or felt. They wanted them to tell the truth and this was what they felt they could justify. The legislature could make this go away.

Chairman Lazarus told Mr. Worley what he was proposing, they would have to get to the vote and someone would have to ask for an amendment to it as they had it laid out. They would get to that and he would have an opportunity to make that suggestion again and then they would have more discussion. On any of the discussion related to the use of the hospitality, he asked they keep it to the 1.5% hospitality tax and not the referendum question then.

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Mr. Prince wanted to point out that over 65% of this tax that they were talking about came from outside of Horry County that came in and paid.

Mr. Eldridge said that was usually the number.

Mr. Prince said he said 71% of it was collected from the cities municipalities, but of that 71% that was collected from the municipalities most of it came from outside of Horry County also.

Mr. Eldridge said probably so. You couldn't tie it down. There were plenty of people that lived in the city that were buying things.

Mr. Prince said that just because it was in the city didn't make it city money.

Mr. Eldridge said correct. That was where most of the commercial buildings were. That was where it takes place.

Mr. Prince said he agreed with Mr. Worley. He would like to have a lot more money to put in for Horry County. We had to do things for ourselves in Horry County. If we didn't, who would do it for us?

Mr. Crawford said basically they were capped at $7.8 million when they were talking about the 1.5%. They could use that for public safety.

Mr. Eldridge said correct and divide it out among those two funds.

Mr. Crawford said they couldn't utilize impact fees to pay for more officers and that sort of thing, correct?

Mr. Eldridge said no. He would never recommend that. He probably got accused of being too conservative but they were budgeting $14 million a year that was really based upon the growth that they were experiencing. When they go into another downturn that faucet got turned back and they had a $7.8 million hole. He didn't want to be Mr. Negative but we would not boom like this all the time and that was a concern he had as well with the budgets moving forward.

Mr. Crawford said there was another argument out there that somehow we could find the $32 million that would be generated from the referendum inside the current budget. He sympathized with the thinking behind that but that would lead to all sorts of... I guess the expectation there would be that there would be no consequence to that.

Mr. Eldridge said they had actually ran a little bit of stuff. They had a slide that said how many layoffs it would take.

Mr. Crawford said basically any way they turned we were left with that $7.8 million for public safety and we had the referendum, or we could just arbitrarily come up and raise taxes without the referendum, without giving the people a say in an increase that large.

Mr. Eldridge said correct. He knew Council was aware because they had pushed them to do this to look hard at expenditures and revenues and that was when they tightened budgets. He heard departments scream a little bit and they held departments accountable with their budgets by line. It was all up on a dashboard and they all looked at it. They had looked on the revenue side. If they remembered, they had put the EMS billing out and no longer did that in-house. They had tried to look at each way to work within what they already had. He didn't think there was a bunch of money laying around within the budgets. He knew the department heads would agree with him.

Mr. Crawford said the only recourse would be to ignore state law and nothing negative would happen if they did that, right?

Mr. DiSabato said he had ran over rough numbers prior to the meeting with some people on staff. To add a fifth precinct would cost $5 million annually for the capital and the labor associated with that fifth precinct. Then if they wanted to get the pay increases for First and Third Class officers in line with Myrtle Beach, the highest paying municipality, that was an additional $4.5 million. Correct? So you were looking at $9.5 - $10 million annually that they would need to find in order

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to do everything that they wanted to do. There was not that kind of fat laying in the general fund. So, what they were looking at was using hospitality fee money and a potential millage increase to fund these needs.

Mr. Eldridge said yes and he had seen the hospitality was just a small part of that. It didn't even cover the raise he just mentioned.

Mr. DiSabato said that as far as state law went, if there was a $38 million pot, they couldn't just say they wanted to take $20 million out of that pot and use it for public safety. They had to use it for certain designated uses because of the way it had been collected. Was that correct?

Mr. Eldridge said that was correct.

Mr. DiSabato said he wanted the public to understand that. He would love to take $20 million out of that pot and use it for public safety. He didn't think they were allowed by law to do that and if they did it, they were going to end up on the other side of this building in court by doing that. So they needed to find ways to serve both masters. It was difficult to do. They were finding how difficult it was. When they first started talking about the hospitality fee he suggested taking $5 million out of the hospitality fee and start putting it towards public safety. They were already beyond that number. They were talking about $8 million. He would love to take $20 million but he didn't think they were allowed to.

Mr. Worley said 65% was collected from the tourists. Common sense told you that if you were going to take 65% from them, you could use 65% for services.

Mr. Prince said he liked that.

Chairman Lazarus said you could see where it was collected, but you would have to see where it was spent.

Mr. Loftus said state law currently handcuffed them with the allowed uses of the hospitality fee and left them with the $7.8 million. He was all for putting it on public safety. They needed it.

Mr. Eldridge said they were fortunate to have the 1.5%.

Mr. Loftus said 1996 was a good year when they got all that done.

Mr. Eldridge said they had a window of vulnerability between bonds being paid off and money obligated.

Mr. Loftus said he would agree with the impact fee. He had been with Mr. Worley on that from the beginning but impact fees were only a one time only money. So using impact fees to pay for recurring expenses was a dangerous thing to do.

Mr. Worley said that was not what he was talking about.

Mr. Vaught said the question on the 1.5% got down to the legalities of it. He was with Mr. DiSabato on that in that if state law did not allow them to spend that on what they needed to spend it on which was public safety then that was a moot point. The only other option they had if they were not going to spend it on that and should they decide not to spend it on I-73 was to stop the tax. That was really the only choice because they had to spend $30 million on roads and on tourist related stuff which basically was I-73. If the law said they couldn't spend but $7.8 million of that on public safety, then they didn't have a lot of choice about that. That was what they had to do. He didn't see how without a law change or something that would enable them to pull something out of their hat and justify something that would prove they could use $20 million for some kind of tourist related thing, he thought their hands were tied.

Mr. Howard said he was confident he had clarified it very well. Unless they came up with other tourist related projects, and there were others listed, the best use for the money on roads was I-73. There were other roads that were needed and they did need to address that down the road. They could always amend this if things changed. If the road never got built they would have that money sitting in the bank. They had a time to see if the road would be funded or built. They were at the point

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where the $30 million was the best use. He didn't know why they said $7.8 million when there was $41 million collected. It was basically $11 million that they could put towards public safety he was assuming.

Mr. Eldridge said not public safety. They could use the balance for other road projects as long as it stayed within that category. That was the gap in there.

Mr. Howard said the public safety was also considered any tourist highway. So if I-73 was a tourist highway they could put more public safety on that road or US-501 that was considered a tourist highway. They could increase public safety he thought from what they said. Why were they stuck at $7.8 million?

Mr. Eldridge said that was what Mr. Spivey could justify currently. That was why they were clear in saying that if they wanted to look at adding something in the future as a Council, it would be a whole different program or whatever, and they would need that clear connection to tourism.

Mr. Howard asked if they committed to the $30 million, they could figure out how to use the whole $11 million for public safety if they were going to use it in areas where there were tourist highways going through the County.

Mr. Eldridge said if you found a way. It didn't address Mr. Worley's concern.

Mr. Howard said they weren't saying it was a dead end. They were saying this was where they were recommending. They could amend these things. They could change these things. They had done a great job clarifying this money and the needs. He appreciated the hard work. Thank you.

Chairman Lazarus said he was correct. The growth that went above it could be allocated towards that because as that grew the justification of more money towards could be justified too in the future so there would be more money available in the future too for that.

Mr. Allen said they were tasked with the very difficult choice so they had a pie. They had to decide how to cut that pie. It would be nice to have a bigger pie but unfortunately they didn't. He had a question for staff regarding where they pulled the information as far as call volume to justify the spending on the public safety. Where did they pull the call volume from and on what time of the year?

Mr. Spivey said they looked over a 12 month period of time from the E911 records. They looked at 3 months that they felt represented a non-tourist season, December, January, and February, and they looked at a season that was definitely tourist related, June, July, and August. They could see a pronounced measurable increase in the volume of calls during those periods of time. They correlated that and referenced that back to the other indicators that they had been tracking over several years. They had had these discussions from time to time and they had looked at how many billings they did from EMS in terms of people who did not have zip codes that reside in Horry County. They knew that was not a complete indicator in terms of the services they were providing to the tourists because some of those calls were not billed. When they went to a wreck and somebody refused a transport or did not need a transport that was not a record that they had that they could use in that calculation. That was a driver in terms of both EMS and fire side. They had looked at the bookings that the police do, the actual arrests that they make as one of their measurements to try to validate that. That was not a complete measure either because of the same issue. They may go to a call and be a call for service but there was not an arrest associated with it. They also looked at the number of room nights at J. Reuben Long. They tracked where people come from and how long they stay. That was a direct indicator for the costs that were incurred there and perhaps on the court system as well. However, they couldn't include that there. They also compared that to other counties similar to themselves and tried to benchmark that from the standpoint of Charleston County, Beaufort County, and Horry County being the ones that receive the highest level of tourism in the state. They compared that to counties like Richland, Lexington, Greenville, and Florence in terms of benchmarking to see what the difference was. All those things gave them a clear indicator that the numbers they were using were appropriate.

Mr. Allen asked if there would be any way to go back and pull and check with the State Highway Patrol how many accidents or citations that they had issued over the last 12 months within Horry County on the major highways, US-501, US-378, US-9 and then go back and check with our fire rescue and look at how many accidents they had responded to on these major

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highways. He thought what they would find would surprise them because where we used to having an off-season, we didn't have an off-season anymore. Because of the tourism, it was taxing our public safety. A statement was made earlier that the Council had done an amazing job. He thought that the people, the public safety employees had done an amazing job with the way they had been stretched out. Often times, we forget that they were the ones out there that make us look good. He thought if they went back and looked at that and checked these areas, he honestly believed it would give us a little more ammunition to reach and pull some more of that funding to justify because those tourists can't get to the beach without traversing these major corridors. It cost us to cover these with our public safety. Also, he wanted to not forget the other county employees. For example, you couldn't forget about that public works employee out there running a backhoe 24 hours to clear the highways to where public safety could respond after a hurricane. In order for us to get the tourists to the beach, we had to clear the highways. He thought they needed to go back and look further into this because he was all for it because they needed to beef up all the services that they possibly could. They asked public safety, including dispatch, to put their necks out there on the line for us and we needed to make sure that they were paid appropriately, that they have the best equipment we can afford for them, and that they have a good working environment because it takes a team. As was stated in a movie, he was with them. A house divided would not stand. They needed to find an answer.

Mr. Hardee said he agreed that we need I-73. If they didn't agree that they needed SC-22 and SC-31 how would they travel in this county today? He supported I-73 but at the same time he wished they could put $20 million towards public safety and help them. He didn't want to put the burden totally on the taxpayer's backs but what could parks and recreation get out of this that was legal.

Mr. Eldridge said he thought there was an opportunity to go back and look at that. Definitely we were hosting tournaments on our fields so we could look at that. You had wiggle room in there. When you looked at the $7.8 you had $3 - $4 million over that and he thought that was a good plan. They didn't know which way Council wanted to go. He didn't know if they would get in the room and Council wanted to say no, they were sticking with roads. Ride I was all about roads and that was where we were staying. They could look at recreation as the easier one to make that connection, especially South Strand and North Strand. We were hosting tournaments that did impact tourism.

Mr. Hardee said parks and recreation was looking at being in the red.

Mr. Eldridge said they had talked about that several times. This year was it.

Mr. Hardee said while they had the opportunity now, let's not put it on the backs of the taxpayers. Water and drainage, our public works, somewhere he thought he saw that the hospitality tax could be used for water and sewer drainage for…

Mr. Eldridge said if you could tie it to tourism related. That was the challenge.

Mr. Hardee said like the project that the public works had to get to stop the water from crossing Highway 9. If that was not tourist related… They couldn't get there if the water was crossing like it was last year.

Mr. Eldridge said what they were looking at a lot of it had been what they had seen North Myrtle and others doing it with running stormwater offshore. That was what they had used it for.

Mr. Hardee said there were certain things that they might could tie this to and again, he was not trying to take the money from I-73 because he thought it was a much needed project, but they also needed to look at the taxpayers of Horry County.

Mr. Eldridge said they were there to do whatever Council wanted to do.

Mr. Prince said if they collected the money for a few years and no progress was made on I-73, since it was a Resolution they could divert some of the monies to help some of the services they had been talking about.

Mr. Eldridge said sure. If he remembered they just did Ride III and had over $2 billion worth of projects identified. In excess of $2 billion. So there were plenty of road projects too. He would never foresee a lack of needs in Horry County.

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Mr. Prince said they had a lot of two lane roads that needed some egress and ingress to help make them safer. He hoped they could use some of that for them.

Mr. Eldridge said there were a lot of intersection improvements. There was a laundry list that Mr. Gosnell identified and we were funding less than half.

Mr. Vaught said one of the things he had noticed in their discussion up and down the panel was that people had been coming up with ideas and thoughts and alternatives to what had been presented to them. He didn't see the need for them to rush into making this particular decision that day. He thought, given all the ideas that had been expressed and the questions that had been raised, he thought they could go back to staff and tell them to consider all the things presented. He didn't think this was something they needed to jump into and he didn't see the need to be hasty about this. He thought they needed to, especially in light of the advisory referendums that they would be talking about, he didn't think this was something they needed to jump into. It was not a decision that had to be made then and he thought they had heard enough alternatives and enough possible solutions, different ways to raise some money by the recreation or having Mr. Spivey reconsider some linkages to tourism and that kind of thing. **He would move that they table this if that would be in order.**

Chairman Lazarus asked table what?

Mr. Vaught said this discussion. Defer the discussions.

Chairman Lazarus said the problem with that was first, for I-73 the stars had lined up pretty good. They had a letter in front of them from the governor to Secretary Chao in support of I-73 and for our grant application that had been submitted to the SCDOT. That was high on the list currently. They were trying to go into the federal legislation. It was supported by President Trump. They already had the permits in hand to proceed with I-73. They had a lawsuit they would deal with but they would deal with that. Not necessarily on the Horry County portion as much as other portions of it was related by Mr. Eldridge. Currently, for them to be able to put their money where their mouth was and go forward and say they were not only shovel ready, they needed the percentage out of the infrastructure bill that Congressman Rice and Senator Graham and others were working hard on. They had made headway. They had already bought the mitigation bank for $6 million of Gunter's Island that goes with this project. If they continue to let it lie then they were probably going to miss the opportunity to make it happen. With the other referendum questions and the where you would direct the $7.8 million was something that could be discussed. That could be changed too because they were only resolutions. All that did was tell staff to go put it together to bring back to Council at some future date for that to happen. He thought the imperativeness of this was what they were going to do. Whether Mr. Worley's presentation passed on basically $23 million instead of $30 million or if the $30 million passed and they left the $7.8 million or if they did a combination thereof of the $7.8 million for public safety and another amount for the road plan that had been presented. There was always various ways to do that. He thought the imperative thing that they had and he had people in the audience from SCDOT and from the federal level that could speak to that for them if they wanted to hear from them on what action was being taken in the federal government and how they were sitting back waiting to see what would happen. This would put us way behind if we didn't do something, at least funding I-73 at this point and time. As he said earlier, for them legislatively this was probably the biggest infrastructure economic development and public safety legislation they could put forward that would benefit this entire county from all those reasons. He thought they needed to move resolution R-82-18 forward.

Mr. Worley seconded Mr. Vaught's motion.

Mr. Carotti said that would be out of order. There was no motion to table.

Chairman Lazarus said Mr. Vaught made a motion to table.

Mr. Carotti said there was no motion to table.

There was a discussion on the dais about there not being anything to table.

Chairman Lazarus told Mr. Vaught to hold that and they would go back in just a second.

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Mr. Vaught said the reason he raised this was because it was his impression from what Mr. Powell said was that there was no possibility for them getting on to a transportation bill this year. He asked Mr. Powell if that was correct. Did he misunderstand? That that was already pretty much done for this year. That they were looking towards next year as to when they could actually do something under that bill.

Mr. Powell said anything could happen in Congress.

Chairman Lazarus said to ask Mr. Napier. He had worked with them on the federal level. He had been working on this project for a long time and was in close contact with all the federal delegation. He asked him to give them his take on this.

Mr. Napier said he didn't think they would have a bill this year. That did not mean things were not happening week by week and month by month on putting together something to be introduced next year. He told Chairman Lazarus that he thought he stated things pretty well and that was that the more Council could give to this project, the stronger the application could be.

Chairman Lazarus told Mr. Cox that he represented them on the SCDOT and was in close communication with Ms. Christy Hall, the head of SCDOT. Could he tell them about her actions and what was taking place in the state government side to help move this along and what this would mean for her actions to be able to get the grants that we were looking for to make this road happen.

Mr. Cox said as Mr. Powell indicated the Secretary had applied for the BUILD grant. That was in the process and working. Hence the letter that he had just read from the governor and if Horry County made this commitment it would make us stand tall and he thought it would put us above... He thought we were the only project of this magnitude that was shovel ready in the nation. Hopefully we would be a poster child for the infrastructure bill but it also would give the Secretary an opportunity to seek funding either through the state infrastructure bank and direct sources within the state to let them know that we had made this commitment. It would be a strong commitment.

Chairman Lazarus said that if this was passed and nothing progressed in the federal government next year as they moved forward with the infrastructure bill, by resolution Council could certainly undo it and move the money somewhere else.

Mr. Cox said certainly and it wouldn't prohibit the construction of the portion within this county either. They could move forward with that. They had done that before and it had worked well for them and he thought that would show an even stronger commitment.

Chairman Lazarus asked Mr. Eldridge if the money was allocated and it allowed them to start negotiations with SCDOT and looking for right-of-way acquisitions enhancing SC-22 to interstate standards and things of that nature, we could build Horry County's portion of it which would basically be the northern piece that would take you to basically US-76 in Mullins just at the river. That piece could be built which would actually give them a true bypass for Hurricane evacuations, tourists in and out of here, and others to travel without having... And take a lot of traffic off of Highway 501 which was the biggest complaint that they get. That could all be in process whether or not the federal government allocated the monies to get you through from US-76 to I-95.

Mr. Eldridge said correct. A lot of the right-of-way had already been purchased.

Chairman Lazarus told the Council that they had heard all of this and they would move into discussion. He would entertain a motion for approval of Resolution -82-18.

Discussion Items:

Resolution R-82-18 dedicating $30 million of the hospitality fee annually to construct the Horry County section of I-73. **Mr. Howard moved to approve, seconded by Mr. Loftus.**

Mr. Worley said that with having Congressman Napier tell them that they were not going to have a bill this year he didn't see the need to rush into this. Give staff an opportunity. He thought that several of them had spoken of their concerns. Council would change in January and they would have a new chairman coming on board. The new chairman should have

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some say in this discussion since it was not a rush. If it was something that they needed to vote on that day, they would just have to vote on it. He was saying it was not something they had to do that day. **He moved to defer until after the first of the year, seconded by Mr. Vaught.**

Chairman Lazarus said that all the stars were lined up to move this forward. They were going to be debating this this coming year and they were debating it that day in the federal delegation. Our governor must have thought it was pretty important for him to go ahead and send a letter to Secretary Elaine Chao. It was an important piece for them to move forward and put their money where their mouth was and to show that they were in favor of I-73 and that they were ready to move forward with it. He disagreed with them respectfully that he believed this was the time to make that happen.

Mr. Loftus said regarding the timing, he did know how many people there remembered the bridge to nowhere. Billy Alford went out on a limb and got the bridge to nowhere built and look where it had led them that day. If they didn't get started they would never get moving. It had to start.

Mr. DiSabato said he was wondering if there was a compromise to be made somewhere.

Mr. Worley said give him $20 million and he would withdraw his motion.

Mr. Vaught said he would then withdraw his second.

Mr. DiSabato said his question for staff would be did $25 million a year get it done. What would get it done?

Mr. Prince said they could do more later on.

Mr. Eldridge said they tied that look into the cost to get it to the Horry County line based upon the current projections.

Mr. DiSabato asked if that number was solid at $30 million. They couldn't get by with doing $27.5 or $25 million and using the rest ...

Mr. Eldridge said he couldn't sit there and honestly tell them that. That was why he told them earlier what if they came up and had the whole project done and it took $33 million a year in debt service to get it done. It takes $32 million. Then that was a decision that they had to come back to Council to discuss. When you looked at cost for a project, they look a third, a third and a third. Maybe a way to make this happen was to be able to say the local government was coming up with a third at $400 million, the state could come up with $400 million, and the federal would come up with $400 million. You had $1.2 billion and you were there. There was no magic. There was logic but no magic to it. That had been his hesitation all along to not say this was what it takes, but as Mr. Napier would tell them and they heard, it meant a whole lot to be able to go up on the hill and say this local government in Horry County had made this kind of commitment to build an interstate. There was nowhere else you could find that in this country.

Mr. DiSabato said in regards to that comment, what would it say to the hill if they said they were giving $25 million to the project as opposed to $30 million.

Mr. Eldridge said it was just less of a commitment. Mr. Napier could tell them we had one third of the money from what they had on the current thing. So it was less. It went back to how you were going to spend it. You could spend it on other road projects. They had heard their recommendation on what they thought it could go towards public safety and there were plenty of local road needs. They could spend it tons of times over. He just wanted to be honest with Council. He didn't want to say $30 million and then the next thing debt service had to be more. Interest rates go up. All that effects your bonding capacity. They were looking at that. It depended on bond ratings and how they were rated and who was willing to secure them on how much we could borrow.

Mr. DiSabato said they had been doing a good job in that department so that helped.

Mr. Eldridge said yes. That was why they had looked. People even talked about tolling. Tolling was very expensive money because it was not a reliable source of revenue so you didn't get good rates. That was the danger with tolling. That was why

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they would like to get it done without that. It was not a good source of revenue for this road because you didn't have the local traffic.

Mr. Worley suggested they take $25 million which was the $41 plus the growth and by the time the road was built you would have $25 million and that would give them $20 million to use for public safety if they could pull it off. They needed to look at everything that had anything to do with Horry County government. That way they wouldn't be building this road on the backs of these people. If they took all the money, they were not going to get the raise to where they needed to be competitive with Myrtle Beach and North Myrtle Beach. If staff could take a look at the $20 million and what they could do with the $20 million so far as employees were concerned. Number one being first line police officers. It was safety first. Second would be EMS. E-911 and all of them were important. He was saying there were areas that were in crisis. He had an EMS worker that told him she had worked 35 hours overtime. They had to fix that and this was a fund that they could use without raising taxes on the people of Horry County and they needed to do that. He was willing to make that motion if that was what they wanted him to do.

Chairman Lazarus told Mr. Worley if he would withdraw his deferral motion and Mr. Vaught would withdraw his second and make a motion to amend to $25 million on Resolution R-82-18, he could support it.

Mr. Worley said he was wanting $20 million.

Chairman Lazarus said that left him the balance to put down when they went to the next motion. They had to get to the next motion to do that.

Mr. Worley said he wanted $20 million and he could have the rest for I-73.

Mr. Vaught said that was basically what he was saying.

Mr. Worley said you would have growth the first four years and with 5% growth that would be $25 million.

Chairman Lazarus said what he was saying was they would take all the growth in the first five years which would take him to that number. That was fine. If they stuck with the $25 million he thought that was still a substantial allocation to I-73 for the public and if to amend it that was what they needed to do.

Mr. Worley asked if they were together.

Chairman Lazarus said they were together.

Mr. Worley withdrew his motion to defer, and Mr. Vaught withdrew his second.

Mr. Worley asked that they look at the fairness of the whole road, 37 miles, of that 37 miles approximately 16 miles of it was Horry County roads. He asked Mr. Powell how much the $25 million would bond.

Mr. Powell said $25 million would get them about $310 million in proceeds.

Chairman Lazarus asked if that was over 20 or 22 years.

Mr. Powell said 20 years.

Chairman Lazarus said they could go to 22 years.

Mr. Worley asked why they couldn't go to 25 years.

Chairman Lazarus said he thought the law allowed them to go to 22.

Mr. Powell said in the state law you could go to 40. In an ordinance they had a restriction of 20 years and not going beyond that. However, that was something that could be amended by Council.

Chairman Lazarus said they could fix that. He told Mr. Worley they could get to it.

Mr. Worley moved that they take $20 million of the $41 million that the 1.5% hospitality tax produced and use it for this presentation. Council would have an opportunity in the mean time to come up with how they wanted to use that $20 million versus the $32 million that they had. The balance of that $41 million plus growth for the next five years would go to I-73 and after that, the growth would come back to public safety. He wanted to leave enough money there to get them up to where they needed to be for $25 million and at that point and time the balance would come back to public safety.

Chairman Lazarus told Mr. Worley the math didn't work.

Mr. Worley said it did.

Chairman Lazarus said he was at $45 million.

Mr. Worley said no. They were talking about growth.

Chairman Lazarus said if you took $25 million, which went to I-73, and then you took the balance that was left today to public safety as he was asking and then you took the growth for the future towards public safety. It would take a long time to implement it.

Mr. Worley said he was close but not quite right. **He restated his motion as $20 million went to public safety to his program subject to their approval. That would leave $20 million for I-73 plus growth up to $25 million and after that then that growth would come back to public safety or to the Council in every budget year for them to use in the general fund.**

Mr. DiSabato asked that they tweak that and do $25 million to the road and $16 million to public safety and the growth to public safety.

Mr. Worley said they wanted to go ahead and give raises...

Chairman Lazarus said they couldn't implement that overnight. He was trying to negotiate with him and compromise.

Mr. Worley said that he and Chairman Lazarus had reached an agreement and now he was backing up on him.

Chairman Lazarus said no. He said $25 million and Mr. Worley said $20 million and he said it had to include the growth.

Mr. Worley said the growth was shown on the sheet that Mr. Eldridge had given him.

Mr. Loftus said they couldn't do that because state law didn't allow it.

Mr. Eldridge said they were talking about money that they wouldn't have until next budget year.

Mr. Worley said he understood that.

Mr. Eldridge said that the first issue was going into the congressional cycle and looking at that. This was a budget argument that Council would have next February – June as they went through three readings of budget.

Chairman Lazarus said that was why he was saying that if they passed the first resolution with the $25 million, that would leave staff to come back with how to spend and what to do with the balance because currently Council would be tough to even vote to allocate that much because they were being told you could only use $7.8 million. Based on what Mr. Allen

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presented and some other factors, you could probably get to that number. He was willing to leave that number out. All he was saying was they needed to pass the one that day. They still had all that money left over and growth to deal with once they could bring that back to them. They didn't need to put it all together.

Mr. Prince said that was the best way.

Mr. Eldridge clarified for the employees that they were talking about next year's budget. He didn't want employees thinking something would happen right now with this vote. This was this time next year.

Chairman Lazarus said they were talking over a 3 – 5 year period because it would take them that long to hire that many people.

Mr. Eldridge said that even working on the things that Mr. Worley asked them to work on, this revenue did not get freed up until February, March, and April of this year so it would be next budget year.

Mr. Worley said this was not what they had just agreed to. They agreed to give $20 million and the balance went to I-73. That was what they agreed to.

Chairman Lazarus said he agreed to $25 million and $20 million which would include growth was what he had agreed to.

Mr. Worley said no. He was taking the $20 million plus the growth because the road wouldn't even be built for the next 10 years. Why not go ahead and give them the money the next year. Building I-73 on the backs of these employees was absurd.

Mr. Prince said they were not doing that.

Mr. Worley said yes they were.

Chairman Lazarus said no they were not.

Mr. Worley said he would make his motion to defer again. **If they couldn't get the $20 million for the employees he moved that they defer it until after the first of the year, seconded by Mr. Vaught.**

Chairman Lazarus said first he had to withdraw his motion.

Mr. Worley said he was still giving I-73 $300 million plus for a project… That was a third of the entire project to I-95. We were paying a disproportionate share even at the $325 or $350 million.

Mr. DiSabato asked how would they send $20 million to employees without breaking state law.

Mr. Powell wanted to clarify one thing. The calculation he set at $310 million was based on $25 million per year. If they were to do it at $20 million per year over a 20 year term at 5% interest, it was approximately $250 million. He thought that was the delta that they had by changing that amount. He wanted to make sure that that was clear on the floor that that was how much (inaudible).

Chairman Lazarus said that was why he was asking Mr. Worley to look at it.

Mr. Worley asked what amortization schedule they were using. The number he got from the bank didn't match what they had just said. They were throwing something at him that he didn't understand because if you bond $300 million at 3% that was about $20 million per year.

Mr. Powell said he was running at 5% interest which was what they had been modeling this at. He put in $250 million, 20 year term, one payment per year, your scheduled annual payment would be $20,060,000 per year.

Mr. Worley said $20 million. He rested his case.

Chairman Lazarus asked Mr. Powell to repeat it.

Mr. Powell said if you wanted to borrow $250 million.

Chairman Lazarus said he wanted to borrow $300 million.

Mr. Powell said that would be $24 million. $300 million at 5% over 20 years would be $24 million per year.

Chairman Lazarus said Mr. Worley would give I-73 $24 million...

Mr. Worley said the growth they would get there, by the time they got ready to build the road they would have $24 million with growth.

Chairman Lazarus said they couldn't talk about growth because they couldn't go to Washington and say they thought it would grow. Here was what they had. They had $24 million a year which would get them $300 million. The balance of that would go to public safety plus the growth. So you start out with the differential and then you get the growth. I-73 didn't get any growth. I-73 just gets the $24 million. That works.

Mr. Prince asked if he could amend the motion.

Chairman Lazarus said they didn't have it yet.

Mr. Worley asked that they give public safety $18 million solid dollars and give the rest of it to I-73 until it gets up to $25 million and then after that the growth would go back to public safety.

Chairman Lazarus said that was $22.5 - $23 million. Was that correct?

Mr. Loftus said they couldn't do that unless they got the state law changed.

Chairman Lazarus said he understood. What he was saying was they would go ahead and put to bed the number they would allocate to I-73 and the balance would have to be determined later on how it could be used. Staff would have to bring that back. Whether you could use it or not.

Mr. Prince said he agreed with that. It made sense.

Mr. Loftus said okay.

Chairman Lazarus asked for a calculation of exactly what they were talking about. Public safety was at $18 million. $22 million plus growth to $25 million. Correct?

Mr. Worley said up to $25 million and then after that all growth would come back to public safety.

Chairman Lazarus said or whatever the Council decided to use it for.

Mr. Worley said or whatever but that was what they needed it for.

Mr. Powell said what they were asking him to do on the fly was a little challenging. However, you could do about $22.5 million per year, flat. Not counting absorbing any growth that would be $280 million over a 20 year period.

Mr. DiSabato asked what about over 22 years.

Chairman Lazarus said they were going to get up to $25 million as growth comes.

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Mr. DiSabato said he meant 22 years.

Chairman Lazarus said that was going to happen pretty quickly because of the way of our growth.

Mr. Worley said you would have $25 million so the $25 million was the number they needed to use because it would start next year. When did it start? January?

Chairman Lazarus told Mr. Worley that his motion was $18 million. There was a conversation of him having a second.

Mr. Worley said he did.

Chairman Lazarus asked him to withdraw his motion.

Mr. Worley withdrew his motion to defer, and Mr. Vaught withdrew his second.

Chairman Lazarus said he would give $18 million to public safety to be determined by staff and Council at a later date the appropriate use of that $18 million if it could be if not it would come back to be used for other road projects or whatever it may be. Then there would be $23 million for I-73. Was that correct?

Mr. Worley said he would go along with that.

Chairman Lazarus said that Mr. Worley had a motion to allocate $18 million to public safety to be determined by staff and then future Council on the appropriate use of that and $23 million to go to I-73.

Mr. Eldridge asked if they could modify that to state eligible projects.

Mr. Worley said yes. He would agree to that.

Chairman Lazarus said the way they needed to do it was first Resolution R-82-18 would be amended to dedicating $23 million of the hospitality fee annually to construct the Horry County section of I-73. The next motion after they finished that one if it passed, the next motion would be directing staff to create a plan for public safety and roads in FY2020 budget using $18 million. That would be Resolution R-84-18.

Mr. Carotti said the only addition would be $23 million for I-73 plus growth up to $25 million and the remainder to be considered for eligible uses public safety wise.

Mr. Worley said that was correct.

Chairman Lazarus said Mr. Worley had a motion, and instructed him to say yea if it was correct, they had an amendment to Resolution R-82-18 to amend R-82-18 to dedicate $23 million plus growth up to $25 million of the hospitality fee annually to construct the Horry County section of I-73. He asked Mr. Worley was that his motion. Mr. Worley said yes, and it was seconded by Mr. DiSabato.

Chairman Lazarus asked if there was any discussion on this particular motion and what they were doing.

Mr. Prince referred to the $18 million and asked if that was anything they could possibly use for services. Not just public safety.

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Chairman Lazarus said currently the motion on the floor was $23 million plus growth up to $25 million for the construction of I-73. That was what they were currently talking about. They had a motion and a second. **A vote was held.**

Yea	Nay
Vaught	Loftus
Hardee	Servant
Crawford	
Prince	
Lazarus	
Worley	
Howard	
Phillips	
DiSabato	
Allen	

The motion to amend passed ten to two.

Chairman Lazarus went back to the main motion as amended.

Mr. Prince asked him to state the main motion.

Chairman Lazarus stated Resolution R-82-18 dedicating $23 million plus growth up to $25 million of the hospitality fee annually to construct the Horry County section of I-73. **A vote was held.**

Yea	Nay
Vaught	Loftus
Hardee	Servant
Crawford	
Prince	
Lazarus	
Worley	
Howard	
Phillips	
DiSabato	
Allen	

The main motion as amended passed ten to two.

Resolution R-83-18 directing staff to create a comprehensive road plan using the uncommitted 1.5% hospitality fee revenue. **Mr. Vaught moved to approve, seconded by Mr. Hardee. A vote was held.**

Yea	Nay
	Vaught
	Hardee
	Crawford
	Prince
	Loftus
	Lazarus
	Servant
	Worley
	Howard
	Phillips
	DiSabato
	Allen

The motion failed twelve to zero.

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Resolution R-84-18 directing staff to create a plan for public safety and roads in the FY 2020 budget using uncommitted 1.5% hospitality fee revenue. **Mr. DiSabato moved to approve, seconded by Mr. Howard. Mr. DiSabato moved to amend to direct staff to create a plan for public safety utilizing $18 million of the uncommitted 1.5% hospitality fee revenue in accordance with existing law and future growth beyond the $25 million allocated in Resolution R-82-18, seconded by Mr. Vaught. A vote was held.**

Yea	Nay
Vaught	Loftus
Hardee	Servant
Crawford	
Prince	
Lazarus	
Worley	
Howard	
Phillips	
DiSabato	
Allen	

The motion to amend passed ten to two.

A vote was held on the main motion as amended.

Yea	Nay
Vaught	Loftus
Hardee	Servant
Crawford	
Prince	
Lazarus	
Worley	
Howard	
Phillips	
DiSabato	
Allen	

The main motion as amended passed ten to two.

A five minute break was held.

Chairman Lazarus called the meeting back to order.

Staff Presentation on Advisory Referendum Chris Eldridge

Discussion Items:

Resolution R-80-18 calling for the Horry County Election Commission to conduct a county-wide advisory referendum to be placed on the 2018 General Election ballot in November on the question of whether the electors of Horry County are in favor of increased *ad valorem* property taxes to pay for additional police, emergency medical services, Sheriff's Office and E-911 personnel, equipment and facilities, and increased salaries for such personnel (10 mill increase). **Mr. Servant moved to approve, seconded by Mr. Howard. Mr. Servant stated that with the events that had just unfolded he moved to table Resolution R-80-18, seconded by Mr. DiSabato. The motion was unanimously passed.**

Resolution R-81-18 calling for the Horry County Election Commission to conduct an advisory referendum within the unincorporated area of the county to be placed on the 2018 General Election ballot in November on the question of whether

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the electors of Horry County are in favor of increased *ad valorem* property taxes to pay for additional fire safety personnel and facilities, and increased salaries for such personnel (9.5 mill increase). **Mr. Servant moved to approve, seconded by Mr. DiSabato. Mr. Servant moved to table Resolution R-81-18, seconded by Mr. Loftus. The motion was unanimously passed.**

Ordinance 74-18 amending Ordinance 25-18 to provide for an amendment to the Treasurer and Clerk of Court budgets in the General Fund. **Mr. Vaught moved to approve, seconded by Mr. Phillips.** Mr. Powell stated that the ordinance before them would increase the head count in the county by two positions. One position in the Clerk of Court's office and one position in the Treasurer's office. In the Clerk of Court's office they normally set the personnel estimate in around January. There had been a number of senior employees who retired at the end of the TERI program, a deferred retirement program that the state had, that ended on June 30th. As a result of that there had been some pretty significant salary savings that had emerged in the Clerk of Court's budget. This would basically use her existing appropriation. There was approximately $45,000 they believed was available that would be able to afford one additional administrative assistant. She had requested three in the budget process. On the Treasurer's side they had had a change that related to the processing of Certified Mail. As a result of that they were anticipating savings. They had set the budget for the postage budget which was budgeted centrally at $856,000 and based on where they finished the past year they believed they could comfortably reduce that amount by $49,000 and fund one additional administrative assistant in the Treasurer's office.

Mr. Servant said that he wanted to make something very clear. Being a fiscal conservative and being for adding positions to the Treasurer's office, the Veteran's Affairs office, and the Clerk of Court's office was not an inconsistent position. You could be for both. Mr. Vaught made a proposal two meetings ago to use fund savings to pay for these extra positions. Instead of taking the easy way out they needed to start digging deeper and looking for creative ways to cut waste if they planned to add more to the budget. They had to stop kicking the can down the road. This was exactly why he proposed the following budget amendment that cut the budget while adding more to it in these departments without dipping into fund savings. He respectfully asked that his fellow Councilmen join him in supporting these two amendments because it did not affect fund savings and it did not affect the bottom line. It was a perfect example of finding ways to cut the budget and finding efficiencies in the budget and adding more positions to these much needed departments.

Mr. Howard moved to amend to separate the two so they could vote separate because they were two different entities. It was not apples for apples so he would like to amend that to vote separately.

Chairman Lazarus asked Mr. Carotti if that would create another ordinance. Mr. Carotti said the motion technically was to divide the question so that if it was voted up by a majority vote, then you would take the Treasurer on the one hand and vote it up or down and then you would take the Clerk of Court and vote it up or down. That would be in compliance with Robert's Rules of Order.

Mr. Phillips seconded Mr. Howard's motion.

Mr. Servant said he wanted to make clear that they were not using fund savings. They were reducing budget amounts in departments and it was a net impact of zero to the bottom line.

Mr. Howard said he understood that but the savings that they should have seen last year in the postage, they should have saved that anyhow and go forward looking for savings. Like Mr. Servant had always said, they needed to look in every department for savings.

Mr. Servant asked Mr. Spivey what the savings were in the postage budget for the Treasurer's office.

Mr. Spivey said the postage budget was collective. It was in the general area and was used by multiple departments. The Treasurer was a large user of that. It was $49,000 from FY17 spending to FY18 spending.

Mr. Servant asked him if in his opinion was that attributable to electronical filings that the Treasurer's office was currently doing.

Mr. Spivey said that was a major contributor to that savings. Yes.

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Mr. Servant asked in the current FY budget did they have the same postage amount budgeted as last year.

Mr. Spivey said we had the same amount budgeted as last year. Yes.

Mr. Servant said meaning they could reduce the postage budget by $49,000 to hire this position with no net impact to the bottom line of the budget.

Mr. Spivey said they felt comfortable in indicating that they could reduce that budget. It still gave them some amount over what last year's spending level was to deal with either increased volume or the possibility with higher gas prices that there could be a surcharge added at some point like they had two years ago. They felt like there was capacity there.

Mr. Vaught said he would like to hear the reasons why they were separating them out. They had been fully justified by Mr. Servant and he would like to understand the reasons why they would be splitting theses out because basically it was the same issue. Both savings had been justified in both departments and he saw no sense in splitting them out.

Mr. Howard said he would like to separate them because they were two different entities and the Treasurer was trying to add a position and the postage was in general fund not in the Treasurer's budget. The Clerk of Court was a no brainer basically. Their money was in their budget and they were adding a position so there was no conflict whatsoever with the budget. Again he was all for both of them but let's use monies that they had in-house. Let's not create new budgets or add to the budgets monies they didn't have. This would take nine votes and he wanted to make sure that each one of them had their respect to the votes that were cast.

Mr. Crawford said he thought this was a good way to fund these position. They didn't have to go into the fund balance which was something they would do in the event of a hurricane so with them going into hurricane season utilizing this method to fund these positions worked better. Also, when they talked about the reserve fund those dollars were not reoccurring so this way they avoided a potential tax increase in the future so he would encourage everybody to vote for it.

Mr. Vaught sked Mr. Spivey at whose insistence was it that they go to the new form of postage. Who requested that change?

Mr. Spivey said he thought it originated in the Treasurer's office.

Mr. Vaught asked if the Treasurer was the primary user of that function of the postage.

Mr. Spivey said that most of our postage was tax related. The Clerk of Court's office was a heavy user as well but indeed.

A vote was held on dividing the question.

Yea	Nay
Loftus	Vaught
Lazarus	Hardee
Worley	Crawford
Howard	Prince
Phillips	Servant
DiSabato	Allen

The motion failed six to six.

A vote was held on the main motion as presented.

Yea	Nay
Vaught	
Hardee	
Crawford	
Prince	
Loftus	
Lazarus	
Servant	
Worley	
Howard	
Phillips	
DiSabato	
Allen	

The motion passed twelve to zero.

Ordinance 75-18 amending Ordinance 25-18 to provide for an amendment to the County Council and Veterans Affairs budget in the General Fund. **Mr. Servant moved to approve, seconded by Mr. DiSabato.** Mr. Servant said this ordinance was for a much needed department in the Veteran's Affairs department of Horry County who serviced the veterans who fought in the military. The way he came up with the funding mechanism for this ordinance was to use their community benefit fund to fund a much needed position in the county and he couldn't think of a better community benefit than servicing the veterans of Horry County.

Mr. Worley said he agreed with Mr. Servant that they should do this. They should have done it in the budget but he disagreed with him in where it needed to come from. He was saying that it would come from the community benefit fund and he thought they should just take it out of fund balance. **Mr. Worley moved to take the funds out of the fund balance, seconded by Mr. Prince.**

Mr. Servant said this was exactly what they had been doing in the budgets year after year and they back themselves into a tax increase. That was the exact reason why Mr. Vaught's proposal failed two weeks prior because they had to get more creative in the way they were funding these positions and they had to find ways to cut out the waste, create efficiency, and get rid of reckless spending. He thought that he had always been opposed to the community benefit fund but in this case he was for it in that they were going to be able to provide a great community benefit with serving the veterans and servicing them in the Veteran's Affairs department.

Chairman Lazarus said why didn't someone move to move the $240,000 community benefit funds back into the general fund and then they would have the excess money to pay for this position and several others and do away with the community benefit fund. Mr. Servant said he would second that motion. Chairman Lazarus said he couldn't make the motion.

Mr. Servant moved to move the $250,000 community benefit funds back into the general fund. The motion failed for lack of a second.

Mr. Crawford said they were going into hurricane season and they use the reserve fund for hurricanes when there was an emergency so it was not a good idea to keep going back into that fund. Hurricane season was on the way. The funds were non-recurring.

Mr. DiSabato said he thought it was fiscally irresponsible for them to use fund balance in order to fund a recurring need so he would be against taking the money for this position from the fund balance. He was fully in support of using the community benefit funds to do that.

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Mr. Howard asked how they would continue to fund this position for the next year. Would that be something they would work into the new budget for the next cycle?

Chairman Lazarus said they would work it into the new budget or take it out of the community benefit funds again. Growth may take care of it but that was unlikely.

Mr. Howard asked if they should amend it to say it came out continuously from the community benefit fund.

Mr. DiSabato said that was a motion that they could consider.

Chairman Lazarus said they couldn't bind future Council. As Mr. Worley let them know, there would be someone else sitting in his seat and he may not want to use that money for that so he couldn't bind him for that.

Mr. DiSabato asked if they could make a motion to reduce the community benefit fund by $3,400 annually and then allocate those funds to the general fund.

Chairman Lazarus said that was a three reading budget amendment ordinance.

Mr. Eldridge said it was budgeted every year.

Chairman Lazarus said the best thing to do… He went over and spent time at the Veteran's Affairs office and Mr. Elvis was doing an awesome job. The other thing was he was probably serving just as many people out of Marion County through the VA as he was Horry County citizens. They were doing a tremendous job. Their computers were not working properly. They got those working so they could at least get online and do the paperwork and the people didn't have to wait forever to do that. They needed this receptionist. They needed somebody to answer the phone. They had people that had other reasons why they were going to be out. It would limit their staff and their volume call was extremely high. If they were going to use it, it was a great use for it. He didn't particularly care for the way they were doing it out of community benefit fund but he was not going to vote against it because he knew how much it was needed. He would leave it to them to figure out the next year.

Mr. Crawford asked Mr. Eldridge if they went to the reserve funds in the event of a hurricane.

Mr. Eldridge said yes or in any kind of emergency.

Mr. Crawford said he just wanted to clarify that.

Chairman Lazarus said that if they had not had the reserve funds the previous year during the floods they would have had to borrow money to make payroll. Fortunately they had the reserves to pay for the disasters that they had on hand and didn't have to borrow money and pay more interest so point taken.

A vote was held on the amendment to take the money out of the fund balance.

Yea	Nay
Vaught	Crawford
Hardee	Lazarus
Prince	Servant
Loftus	DiSabato
Worley	
Howard	
Phillips	
Allen	

The motion to amend passed eight to four.

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A vote was held on the main motion as amended.

Yea	Nay
Vaught	Servant
Hardee	DiSabato
Crawford	
Prince	
Loftus	
Lazarus	
Worley	
Howard	
Phillips	
Allen	

The main motion as amended passed ten to two.

Council Comments

Mr. Worley moved to have staff prepare a resolution calling for the Horry County Election Commission to conduct a county wide advisory referendum to be placed on the 2018 general election ballot in November questioning whether the electors of Horry County were in favor of imposing an impact fee on new residential construction to pay for growth.

Chairman Lazarus told him it couldn't be a motion but he would need it on the August 14th agenda since it wasn't advertised. He would basically be asking staff to do that on his benefit. If he supplied that to him he would make sure that it was on the August 14th agenda. If it passed on August 14th, it could be walked over to Ms. Martin to be put on the ballot for the November referendum.

Mr. Worley asked if that gave them time.

Chairman Lazarus said that August 15th would be the deadline. He asked Mr. Carotti to prepare it.

Executive Session: The receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege. **Mr. DiSabato moved to enter into executive session, seconded by Mr. Vaught. Mr. Vaught moved to exit executive session, seconded by Mr. Loftus.** Mr. Carotti said that while in executive session Council received legal advice related to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege. While in executive session no decisions were made and no votes were taken.

EXECUTIVE SESSION:

ADJOURNMENT: With no further business, Mr. DiSabato moved to adjourn at approximately 5:09 p.m. and it was seconded. The motion was unanimously passed.

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HORRY COUNTY COUNCIL

Mark Lazarus, Chairman

Harold G. Worley, District 1
Dennis DiSabato, District 3
Tyler Servant, District 5
Harold Phillips, District 7
W. Paul Prince, District 9
Al Allen, District 11

Bill Howard, District 2
Gary Loftus, District 4
Cam Crawford, District 6
Johnny Vaught, District 8
Danny Hardee, District 10

Attest:

Patricia S. Hartley, Clerk to Council

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EXHIBIT E

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO.: 2019-CP-26-01732
City of Myrtle Beach)	
)	
For Itself and a Class of Similarly)	
Situated Plaintiffs,)	**DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIMS**
)	
Plaintiff,)	
)	
vs.)	
)	
Horry County,)	
)	
Defendant.)	
)	

The Defendant, answering the Complaint of the City of Myrtle Beach (referred hereinafter as the "City"), would respectfully show and allege unto this Honorable Court as follows:

FIRST DEFENSE

1. Each and every allegation in the Complaint which is not hereinafter admitted, modified or qualified is denied and strict proof demanded thereof.

2. To the extent Paragraph 1 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon the statutes which are not attached to the Complaint or other legal matters, Defendant craves reference to the statutes and applicable laws for their content, and denies any inconsistent allegations or characterizations. In addition, Paragraph 1 contains impertinent and scandalous matters which should be stricken. As a result, Defendant denies the allegations in Paragraph 1.

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3. Paragraph 2 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent that a response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 2.

4. The allegations of Paragraph 3 are admitted.

5. In answering Paragraph 4, it is admitted that the Defendant is a body politic and corporate and political subdivision of the State of South Carolina.

6. Paragraph 5 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent the City's allegations reference, describe or depend upon the statutes which are not attached to the Complaint or other legal matters, Defendant craves reference to the statutes and applicable laws statutes for their content, and denies any inconsistent allegations or characterizations.

7. Paragraph 6 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent the City's allegations reference, describe or depend upon the statutes which are not attached to the Complaint or other legal matters, Defendant craves reference to the statutes and applicable laws statutes for their content, and denies any inconsistent allegations or characterizations.

8. Paragraph 7 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent that a response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 7.

9. Paragraph 8 of the Complaint sets forth the City's legal conclusions to which no response is required. To the extent that a response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 8.

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10. The allegations contained in Paragraph 9 of the Complaint set forth the City's legal contentions, all of which are denied, including subparagraphs a - e. Paragraph 9 of the Complaint is based on a false premise in that it presumes, erroneously, that Defendant's actions were "illegal." To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations and implications in Paragraph 9, including subparagraphs a - e.

11. The allegations contained in Paragraph 10 of the Complaint set forth the City's legal contentions, all of which are denied, including subparagraphs a - c. Paragraph 10 of the Complaint is based on a false premise in that it presumes, erroneously, that Defendant's actions were "illegal." To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations and implications in Paragraph 10, including subparagraphs a - c.

12. Paragraph 11 of the Complaint sets forth legal conclusions to which no response is required. Paragraph 11 is based on a false premise in that it presumes, erroneously, that Defendant's actions were "illegal" and in that it asserts that the City, and others listed in Paragraph 7, "paid the illegal fee." To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 11.

13. Paragraph 12 of the Complaint sets forth legal conclusions to which no response is required. The City's allegations that it possesses sufficient knowledge and involvement in the matter to fairly and adequately protect the interests of each member of the Class are specifically denied. The City's legal action is solely in its own self-interest and is specifically contrary to and in conflict with the interests of the parties listed in Paragraph 7. Moreover, the Complaint demonstrates a fundamental lack of knowledge as to the facts, circumstances, and law. The City misunderstands, mischaracterizes, and misstates the facts and circumstances alleged in its

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Complaint. Furthermore, the City ignores South Carolina state law in all aspects of its allegations. To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 12.

14. Paragraph 13 of the Complaint sets forth legal conclusions to which no response is required. To the extent that a further response is required, Defendant denies that a class action is appropriate and denies the allegations in Paragraph 13.

15. To the extent Paragraph 14 of the Complaint contains factual allegations, they are generic and/or hypothetical, are irrelevant to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon the RIDE Report, Defendant craves reference to the RIDE Report's specific content, in full, and denies any inconsistent allegations or general characterizations of the RIDE Report. Moreover, Defendant asserts that the RIDE Report is irrelevant to the subsequent actions of Defendant and South Carolina's General Assembly. Defendant denies the allegations in Paragraph 14.

16. To the extent Paragraph 15 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon Ordinance No. 105-96, Defendant craves reference to the content of Ordinance No.

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105-96, and denies any inconsistent allegations, hypotheses, or characterizations. Defendant denies the allegations in Paragraph 15.

17. To the extent Paragraph 16 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon Ordinance No. 105-96, Defendant craves reference to the content of Ordinance No. 105-96, and denies any inconsistent allegations, hypotheses, or characterizations. Defendant denies the allegations in Paragraph 16.

18. To the extent Paragraph 17 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon Ordinance No. 105-96, Defendant craves reference to the content of Ordinance No. 105-96, and denies any inconsistent allegations, hypotheses, or characterizations. Defendant denies the allegations in Paragraph 17.

19. The Defendant admits to Paragraph 18.

20. To the extent Paragraph 19 of the Complaint contains factual allegations, they are generic and/or hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly

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referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon City of Myrtle Beach Resolution dated October 8, 1996 , Defendant craves reference to the content of said Resolution, and denies any inconsistent allegations, hypotheses, or characterizations, including any allegations as to what the City Council of Myrtle Beach "understood" at the time of the passage of said Resolution. Defendant denies the allegations in Paragraph 19.

21. To the extent that Ordinance No. 105-96 was properly enacted on October 15, 1996, following third and final reading, and recorded in the office of the Register of Mesne Conveyances in Book 1895, Page 838, the Defendant admits to Paragraph 20. All other allegations in Paragraph 20 are denied. To the extent the City's allegations reference, describe or depend upon Ordinance No. 105-96, Defendant craves reference to the content of Ordinance No. 105-96, and specifically denies any inconsistent allegations or characterizations. Defendant further states that the reference to Exhibit A is incorrect.

22. To the extent that Ordinance No. 7-97 was properly enacted on February 4, 1997, following third and final reading, and recorded in the office of the Register of Mesne Conveyances in Book 1922, Page 1463, the Defendant admits to Paragraph 21. All other allegations in Paragraph 21 are denied. To the extent the City's allegations reference, describe or depend upon Ordinance No. 7-97 and Ordinance 105-96, Defendant craves reference to the content of said ordinances, and specifically denies any inconsistent allegations or characterizations, including the allegations as to the purpose of Ordinance No. 7-97. Moreover, the Defendant specifically denies any implication that "the Fee Use Provision and the Sunset Provision" being retained in Ordinance No. 7-97 had any force or practical effect as to future actions of the Defendant.

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23. To the extent that an application was submitted to the South Carolina Transportation Infrastructure Bank on or about October 15, 1997, the Defendant admits to Paragraph. All other allegations in Paragraph 22 are denied. To the extent the City's allegations reference, describe or depend upon said application, Defendant craves reference to the content of said application, and specifically denies any inconsistent allegations or characterizations, including the characterizations and implications that recommendations had any force of law or practical effect as to future actions of the Defendant.

24. To the extent that Resolution Number 224-97 was properly enacted on November 18, 1997, the Defendant admits to Paragraph 23. All other allegations in Paragraph 23 are denied. To the extent the City's allegations reference, describe or depend upon Resolution Number 224-97, Defendant craves reference to the content of said Resolution, and specifically denies any inconsistent allegations or characterizations, including the allegations as to the recitals of said Resolution.

25. To the extent that an amended application was submitted to the South Carolina Transportation Infrastructure Bank on or about November 20, 1997, the Defendant admits to Paragraph 24. All other allegations in Paragraph 24 are denied. To the extent the City's allegations reference, describe or depend upon said amended application, Defendant craves reference to the content of said application, and specifically denies any inconsistent allegations or characterizations.

26. To the extent that the Defendant entered into a loan agreement with the South Carolina Transportation Infrastructure Bank on or about March 10, 1998, the Defendant admits to Paragraph 25. All other allegations in Paragraph 25 are denied. To the extent the City's allegations

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reference, describe or depend upon said loan agreement, Defendant craves reference to the content of said loan agreement, and specifically denies any inconsistent allegations or characterizations.

27. To the extent that the Defendant entered into a loan agreement with the South Carolina Transportation Infrastructure Bank on or about April 21, 1998, the Defendant admits to Paragraph 26. All other allegations in Paragraph 26 are denied, including, specifically, that the loan amount was in the approximate amount is $247.6 Million. To the extent the City's allegations reference, describe or depend upon said loan agreement, Defendant craves reference to the content of said loan agreement, and specifically denies any inconsistent allegations or characterizations.

28. To the extent that the Defendant properly enacted Ordinance No. 7-97, Ordinance No. 76-97, Ordinance No. 80-01, and Ordinance No. 11-04, the Defendant admits to Paragraph 27. All other allegations in Paragraph 27 are denied. To the extent the City's allegations reference, describe or depend upon said ordinances, Defendant craves reference to the content of said ordinances, and specifically denies any inconsistent allegations or characterizations. As to the City's specific allegation in Paragraph 27 that the provisions of Ordinance No. 105-96 "pertinent to the instant complaint" are not amended by Ordinance No. 11-04, Defendant craves reference to the following section of Ordinance No. 11-04, which states:

> The Hospitality Fee Ordinance, Number 105-96, as heretofore amended, including the one and one-half percent (1.5%) portion of the Hospitality Fee deposited into the Road Special Revenue Fund, hereby is extended for an additional period of not to exceed five (5) years, which extension expires January 1, 2022.

Thus, Horry County extended the sunset provision fifteen years ago, on April 20, 2004.

29. To the extent that the Defendant properly enacted Ordinance No. 93-16 on December 6, 2016, the Defendant admits to Paragraph 28. All other allegations in Paragraph 28 are denied. To the extent the City's allegations reference, describe or depend upon said Ordinance No. 93-16, Defendant craves reference to the content of Ordinance No. 93-16, and specifically

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denies any inconsistent allegations or characterizations. Defendant specifically denies any allegation or implication that Defendant was required by state law or its own ordinances that it obtain the City's approval or consent before enacting Ordinance No. 93-16. Moreover, Defendant specifically denies any allegation that the Defendant did not seek support of the City or other municipalities prior to enactment of Ordinance No. 11-04 or Ordinance No. 93-16.

30. To the extent that the Defendant properly enacted Ordinance No. 32-17 on May 2, 2017, the Defendant admits to Paragraph 29. All other allegations in Paragraph 29 are denied. To the extent the City's allegations reference, describe or depend upon said Ordinance No. 32-17, Defendant craves reference to the content of Ordinance No. 32-17, and specifically denies any inconsistent allegations or characterizations. Defendant specifically denies any allegation or implication that Defendant was required by state law or its own ordinances that it obtain the City's consent before enacting Ordinance No. 32-17. Moreover, Defendant specifically denies any allegation that the Defendant did not seek support of the City or other municipalities prior to enactment of Ordinance No. 32-17.

31. The Defendant admits Paragraph 30.

32. To the extent that Resolution Number R-82-18 was properly enacted on July 24, 2018, the Defendant admits to Paragraph 31. All other allegations in Paragraph 31 are denied. To the extent the City's allegations reference, describe or depend upon Resolution Number R-82-18, Defendant craves reference to the content of said resolution, and specifically denies any inconsistent allegations, characterizations, or alleged motivations of County Council.

33. To the extent that Resolution Number R-84-18 was properly enacted on July 24, 2018, the Defendant admits to Paragraph 32. All other allegations in Paragraph 32 are denied. To the extent the City's allegations reference, describe or depend upon Resolution Number R-84-18,

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Defendant craves reference to the content of said resolution, and specifically denies any inconsistent allegations, characterizations, or alleged motivations of County Council.

34. Defendant denies the allegations in Paragraph 33.

35. Defendant admits the allegations in Paragraph 34.

36. To the extent Paragraph 35 of the Complaint contains factual allegations, the stated estimates are irrelevant to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this action, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon the minutes of County Council, Defendant craves reference to the specific content of said minutes, in full, and denies any inconsistent allegations or general characterizations of the County Council minutes. Defendant denies the allegations in Paragraph 35.

37. Defendant denies the allegations in Paragraph 36. Defendant specifically denies any implied requirement that it obtain the City's consent before enacting or amending any of the county ordinances references in Complaint.

38. Upon information and belief, Defendant admits the allegations in Paragraph 37.

39. With respect to Paragraph 38, Defendant realleges and incorporates, by reference, its aforesaid responses to the Complaint.

40. The allegations contained in Paragraph 39 of the Complaint, including subparagraphs a., b., c. and d., are statements of the City's legal contentions. Defendant disputes those contentions. To the extent a response is required, Defendant craves reference to the provisions of Sections 15-53-10 to 140 , *et seq.* of the Code of Laws for the State of South Carolina, and denies all allegations of Paragraph 39 that are inconsistent therewith. To the extent Paragraph

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39, including subparagraphs a., b., c. and d., contains factual allegations, those allegations are denied. To the extent the City's allegations reference, describe or depend upon the contents of documents, ordinances, or statutes, Defendant craves reference to those documents for their contents, and denies any inconsistent allegations or characterizations.

41. The allegations contained in Paragraph 40 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. To the extent the City's allegations reference, describe or depend upon the contents of documents, ordinances, or statutes, Defendant craves reference to those documents, ordinances, or statutes, in full, for their contents, and denies any inconsistent allegations or characterizations. Defendant specifically denies that the City or alleged proposed class members are entitled to any relief for there is no legal basis for such.

42. With respect to Paragraph 41 of the Complaint, Defendant realleges and incorporates by reference Paragraphs 1 through 41 of this Answer as if fully restated.

43. The allegations contained in Paragraph 42 of the Complaint set forth the City's legal contentions, all of which are denied. To the extent Paragraph 42 contains factual allegations, Defendant denies the allegations of Paragraph 42.

44. The allegations contained in Paragraph 43 of the Complaint set forth the City's legal contentions, all of which are denied. To the extent Paragraph 43 contains factual allegations, Defendant denies the allegations of Paragraph 43.

45. The allegations contained in Paragraph 44 of the Complaint set forth the City's legal contentions, all of which are denied. To the extent Paragraph 44 contains factual allegations, Defendant denies the allegations of Paragraph 44.

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46. The allegations contained in Paragraph 45 of the Complaint, including subparagraphs a. and b., set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. To the extent the City's allegations reference, describe or depend upon the contents of documents, ordinances, or statutes, Defendant craves reference to those documents, ordinances, or statutes, in full, for their contents, and denies any inconsistent allegations or characterizations. Defendant specifically denies that the City or proposed class members are entitled to any relief for there is no legal basis for such.

47. With respect to Paragraph 46 of the Complaint, Defendant realleges and incorporates by reference Paragraphs 1 through 46 of this Answer as if fully restated

48. The allegations contained in Paragraph 47 of the Complaint set forth the City's legal contentions, all of which are denied, and any benefit to the Defendant, is, in equal measure, a benefit to the municipalities, including the City. To the extent Paragraph 47 contains factual allegations, Defendant denies the allegations of Paragraph 47.

49. The allegations contained in Paragraph 48 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied.

50. The allegations contained in Paragraph 49 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. To the extent Paragraph 49 contains factual allegations, they are hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this action, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response.

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51. The allegations contained in Paragraph 50 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied.

52. The allegations contained in Paragraph 51 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. Defendant specifically denies that the City, or proposed class members, are entitled to any relief for there is no legal basis for such.

53. With respect to Paragraph 52 of the Complaint, Defendant realleges and incorporates by reference Paragraphs 1 through 52 of this Answer as if fully restated

54. Defendant denies the allegations in Paragraph 53 of the Complaint.

55. The allegations contained in Paragraph 54 of the Complaint set forth the City's legal contentions to which no response is required. To the extent Paragraph 54 contains factual allegations, they are hypothetical, are not related to the City or the City's claims, improperly generalize complex and diverse statutory arrangements involving numerous entities not party to this case, and are so general that Defendant is unable to ascertain the factual circumstances purportedly referenced, or to formulate a response. To the extent the City's allegations reference, describe or depend upon the statutes which are not attached to the complaint or other legal matters, Defendant craves reference to the statutes and applicable laws for their content, and denies any inconsistent allegations or characterizations. Paragraph 54 contains impertinent and scandalous matters which should be stricken. Defendant denies the allegations in Paragraph 54 of the Complaint.

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56. The allegations contained in Paragraph 55 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied.

57. The allegations contained in Paragraph 56 of the Complaint set forth the City's legal contentions to which no response is required. To the extent a response is required, the allegations are denied. Defendant specifically denies that the City or proposed class members are entitled to any relief, including the creation of a constructive trust or "common fund."

58. The City implies, through its allegations in Paragraphs 16 and 19 of the Complaint, that a the comprehensive road plan adopted by the County was intended to be "in concert with the municipalities of the County" and that thus the Defendant is somehow bound to seek future consent from municipalities as to the length, amount or use of the Hospitality Fee put in place by and through Ordinance No. 105-96. This is a misreading and mischaracterization of said Ordinance and of the law.

59. As the City admits in Paragraph 19 of the Complaint, that several entities, including the South Carolina Department of Transportation, the Horry County Board of Education, and others passed resolutions in support of the RIDE Committee Report whereby the entities strongly encouraged and recommended that Horry County pass an ordinance implementing a Hospitality Fee.

60. Despite the allegations made in Paragraphs 28, 29, 36, 39, and 54, which are specifically denied, no requirement exists at law, nor did any requirement exist in 1996 or at any other time, whereby Horry County was required to obtain or maintain any approval or consent of any entity, including the Plaintiff, in order to impose and implement the Hospitality Fee or ordinances related to or amending the Hospitality Fee.

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61. The Defendant either fundamentally misunderstands or purposefully misconstrues any support provided in 1996 for Ordinance No. 105-06. Even if, at one time, the Defendant sought, and obtained support for Ordinance No. 105-06, the Plaintiff fails to adequately allege that there was, at any time, a requirement under state law, Ordinance No. 105-06, or otherwise, whereby the Defendant had to seek out or obtain any consent or approval of any entity, including the Defendant.

62. Upon information and belief, at no time has the Plaintiff passed a resolution or ordinance referencing, repealing or removing its strong and unanimous support to Horry County to enact ordinances as stated in the October 8, 1996 resolution.

63. Even though the ordinance was amended on February 4, 1997, August 5, 1997, June 19, 2001, April 20, 2004, December 6, 2016, and May 2, 2017, until the time of this lawsuit, upon information and belief, the Plaintiff took no action to assert its alleged rights to consent to said amendments, or to challenge or otherwise claim that amendments to Ordinance No. 105-96 required the consent of the City.

64. In its allegations, the City's mischaracterization of validly enacted ordinances improperly calls into question the proper actions taken by the Defendant regarding the sunset provisions of Ordinance No. 105-06. The City ignores the maxim that ordinances may be amended by and through subsequent ordinances. Through such amendments, any and all provisions of an ordinance, including a sunset provision, may be repealed, replaced or extended.

65. Now, after the Defendant has fostered a program that benefits the entire county for twenty two years, the City is incorrectly attempting, through this legal action, to call into question all actions taken by the Defendant, including actions taken to extend the sunset provision, which were properly enacted by the Defendant fifteen years ago.

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66. Upon information and belief, the City has amended its own ordinances by and through subsequent ordinances, yet the City alleges that the Defendant is precluded by state law or otherwise from doing the same.

67. In its allegations, the City characterizes itself as a victim that will be the proper entity to protect the rights of others. Yet, upon information and belief, the City has made these allegations so that it may bar the Defendant to continue to properly and effectively utilize the funds raised by the Hospitality Fee for the benefit of the entire County. Instead, in its insatiable desire for more money, the City has decided to roll the dice so that it may raise fees and taxes within the municipal limits of the City.

68. The City admits that it gave full and unanimous support to the Defendant to enact and implement a Hospitality Fee which has been in place and validly collected for over twenty two years.

69. The Defendant has at all times acted in good faith with the entire County in mind in its implementation and maintenance of the ordinances cited in the Complaint and the fees generated by said ordinances.

70. The City's allegations assert and imply that the Defendant has obtained a "windfall" and that the Defendant has received unjust enrichment to the detriment of the City and other municipalities by and through the Hospitality Fee. This is patently false, and calls into question the City's understanding of public funds. The funds collected by and through the Hospitality Fee, as in 1996, are and will be used under the statutory scheme set forth under state law by the South Carolina General Assembly. Moreover, all funds received have benefited and will continue to benefit the citizens and visitors of the County and all of its municipalities.

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71. The Defendant sought, and continues to seek, the support of the City and the other municipalities within Horry County in its efforts to improve the lives of all of the citizens of Horry County, and specifically, to obtain the support of the City in its properly enacted extension of Ordinance 105-96 and the Hospitality Fee.

72. The City cannot pick and choose what aspects of an ordinance, properly enacted by another political subdivision of the State, that it likes or does not like, and thereby legally challenge such ordinance through some misconstrued theory of consent and approval, which does not exist at law.

73. The City cannot, in its own interests, seek to nullify those proper actions of the Defendant by and through a claim that there is some alleged requirement that a right of consent or approval exists.

74. Upon information and belief, only when the City saw that it may use funds exclusively for the City did the City decide to litigate to try and force the County to acquiesce to the City's desire for more and more money.

75. The City's primary goal is to raise its state-mandated cap on fees it may charge its citizens and guests to the City so that the City may retain and use those funds for its own use.

76. The City seeks to thwart the long-standing state law provisions that allow for a governmental entity, in this case, the Defendant, to collect public funds for public benefit. Instead, the City seeks to keep and use such funds for uses limited to within its municipal boundaries.

77. Upon information and belief, the City's budget has increased significantly over the past several years.

78. The City's budgetary matters have been a cause of concern to the City for some time.

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79. By and through this lawsuit, the City is attempting to wrongfully force the Defendant to acquiesce to the City's demands for more funds.

80. The South Carolina General Assembly has capped the City's ability to tax its visitors and citizens within the City limits.

81. Now that the City has reached that cap, and to the detriment of the entire County and its municipalities, the City is now trying to obtain more money for its own use.

82. While the Defendant has worked to better the entire community, the City has apparently mismanaged its own budget, and now the City seeks to circumvent state law to shore up its own finances.

83. Instead of trying to work with the Defendant through the normal, correct political process to seek a resolution to best serve all citizens of the mutual communities, the City has decided to litigate its claims, which are based on incorrect theories of consent and approval of a political subdivision's valid actions.

84. This legal action is an attempt by the City to force the Defendant to give up its independent ability to legislate by passing and amending its own ordinances.

85. By and through this spurious legal challenge, the City is creating uncertainty and delay in the proper management of government. Moreover, the City, through this legal action, has increased the time, energy and cost of governmental affairs for all involved.

86. The City simply desires to funnel as much funds as it can directly to the City's coffers at the expense of the rest of the County and the County's smaller municipalities.

87. In response to the City's Prayer for Relief, Defendant denies that the City or any putative class member is entitled to any relief whatsoever, including, without limitation, that set forth in subparagraphs a – c.

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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.

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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.

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106. Therefore, there is no justiciable question or 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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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;

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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.

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

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.

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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

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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

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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.

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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), SCRCP.

Respectfully submitted,

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Columbia, South Carolina
June 24, 2019

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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
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	**HORRY COUNTY'S MOTION TO RECONSIDER**

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

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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), SCRCP; *see also* Rule 52(b), SCRCP (allowing for an amendment of findings by a trial court); Rule 59(e), SCRCP (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).

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"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

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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.

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[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."

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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), SCRCP. 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 certified[4] 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.

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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.).

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[5] In fact, if the Court required the County to segregate all revenue from the 1.5 percent with 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.

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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.

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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.

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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,

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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]

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[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

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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

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.

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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.**

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

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), SCRCP, 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, SCRCP, 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**

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... 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.

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7. The undersigned certifies, pursuant to Rule 11, SCRCP, 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. Hoefer
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Attorneys for Plaintiff City of Myrtle Beach and All Others Similarly Situated

Columbia, South Carolina
June 26, 2019

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

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

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, SCRCP, 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

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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

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(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)).

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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.

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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,

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

Columbia, South Carolina
June 26, 2019

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EXHIBIT A

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

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]

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Exhibit "A" to the

Affidavit of Michael G. Mahaney

Civil Action No. 2019-CP-26-01732

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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; mkruea@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; lweppler@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; cpendergrass@cityofmyrtlebeach.com; diana.greene@visitmyrtlebeach.com; kimhardee.rhc@gmail.com; Djh@sccoast.net; pio@w4gs.org; charles.perry@myhorrynews.com; robingausefordistrict4@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;

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Subject: Revised Hospitality Fees in Horry County

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

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 temporally 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-

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EXHIBIT B

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

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.

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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. Pieper, Town Administrator

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

Notary Public for South Carolina

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

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Exhibit "A" to the

Affidavit of Dennis P. Pieper

Civil Action No. 2019-CP-26-01732

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------- Original message -------
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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 temporally 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

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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-

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

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

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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.
930 Richland Street
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

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EXHIBIT A TO SUPPLEMENTAL MEMORANDUM

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

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

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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:

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- 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.

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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

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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

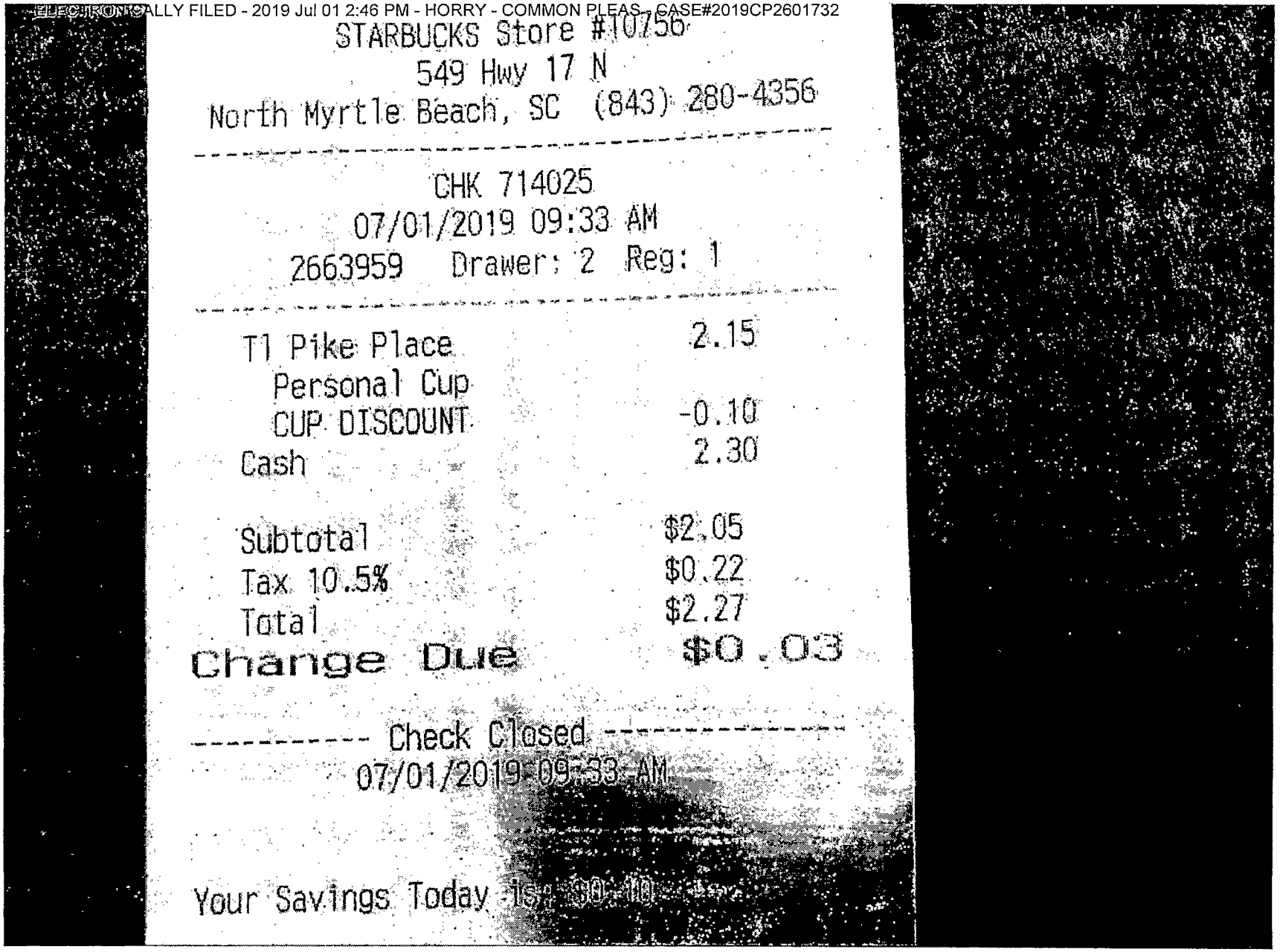
Not a member yet? Ask an Associate for your own card and join today!

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EXHIBIT 2 TO MAHANEY AFFIDAVIT

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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

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EXHIBIT 3 TO MAHANEY AFFIDAVIT

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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

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EXHIBIT B TO SUPPLEMENTAL MEMORANDUM

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

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

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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:

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- 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.

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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

Dennis P. Pieper

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

Debra E Herrmann

Notary Public for South Carolina

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

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EXHIBIT 1 TO PIEPER AFFIDAVIT

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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

DriveThrù #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

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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

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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" <dlsabatod@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 partles 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
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hgolding@burr.com - www.burr.com

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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,	)	
	)	**HORRY COUNTY'S**
For Itself and a Class of Similarly Situated Plaintiffs,	)	**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, SCRCP (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), SCRCP (emphasis

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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

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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

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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

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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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Attorneys for Defendant

Myrtle Beach, South Carolina
Dated: July 2, 2019

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

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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), SCRCP. 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, SCRCP; *see also* Rule 8(a), SCRCP.

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

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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

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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.

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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.

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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.

KELAHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.

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(843) 238-5050 facsimile
gconnell@classactlaw.net
Attorney for Angie Jones, Individually and In her capacity as Horry County Treasurer

July 3, 2019
Surfside Beach, South Carolina.

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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.

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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

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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

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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, upsetedness 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

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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

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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.

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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?

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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 of 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

Barbara A. Smith
Notary Public for South Carolina
My Commission Expires: 3-12-24

Exhibit 1

Angela Jones, DBA

[redacted]

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

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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

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Angela Jones • [redacted]

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.

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EXHIBIT

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

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 2

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 F0007)
7/21/99	1,000,000.00				1,000,000.00		S/B deposited to LRA (see F0007)
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 F0007)
8/12/99	2,000,000.00				2,000,000.00		S/B deposited to LRA (see F0007)
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 overpmt)
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

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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	
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
					(3,621,519.81)	3,621,519.81	JV0202 (FM01, FY02)Adjust transfer amt on B0004.
FY Total	21,338,756.22	(19,400,000.00)	(4,978,166.00)	1,361,301.18	(1,604,166.99)	(73,939.61)	

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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	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	

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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		
6/30/02				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
3/31/06							Interest earned Mar 2006
4/15/06							Hosp. Fee from Mar '06
4/30/06							Interest earned Apr 2006
5/15/06							Hosp. Fee from Apr '06
5/30/06							Interest earned May 2006
6/15/06							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				166,340.95	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

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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	
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 I 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/??/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 D120005 & 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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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	
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	8,226.64	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)	16,993,398.36	-	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							
7/11/2017	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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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	
1/31/2018				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	Taml'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	

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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	
1/3/2019		(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				118,286.34	22,627.11	95,659.23	Interest
2/20/2019					(16,280,672.00)		#3013782859 Defeasnace by STO
2/20/2019						(63,861,721.10)	#3013782859 Defeasnace 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	(9,586,629.14)	(2,846,738.00)	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

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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

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	**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 2 day of July 2019

Notary Public for South Carolina
My Commission Expires: Oct 1, 2020

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

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.

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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.***

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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.

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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.

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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 it 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.

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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

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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).

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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), 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 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

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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.

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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

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

Columbia, South Carolina
July 3, 2019

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EXHIBIT A

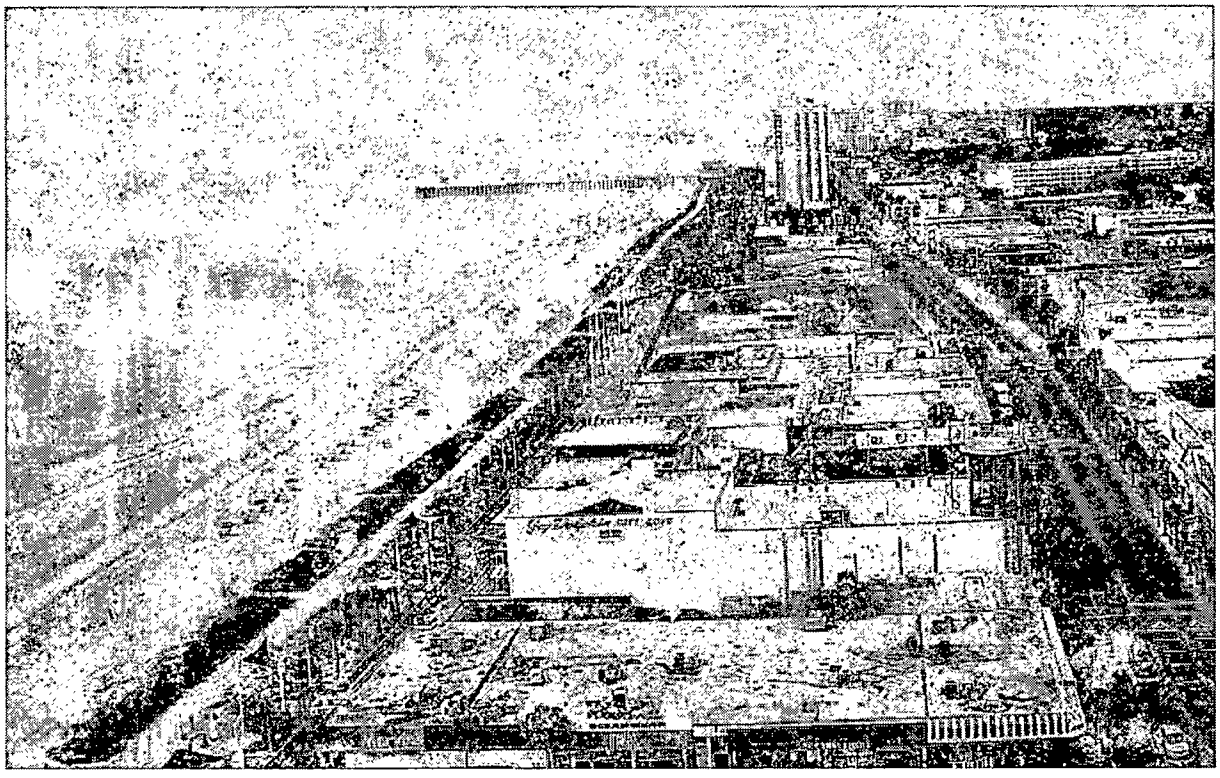
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https://www.myhorrynews.com/news/local/horry_county/horry-county-officials-backtracking-on-hospitality-fees/article_d3e14c6e-9929-11e9-8c1b-8b47b696a049.html

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

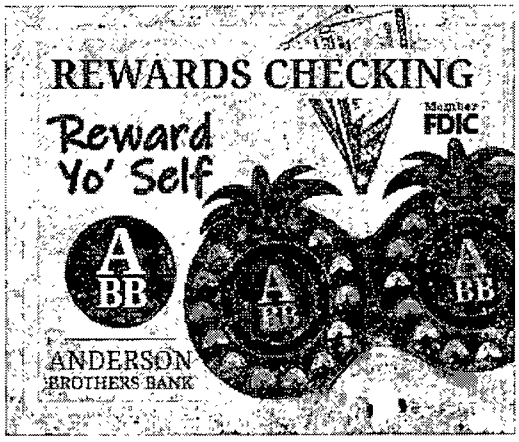


File photo info@myhorrynews.com

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.

"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.

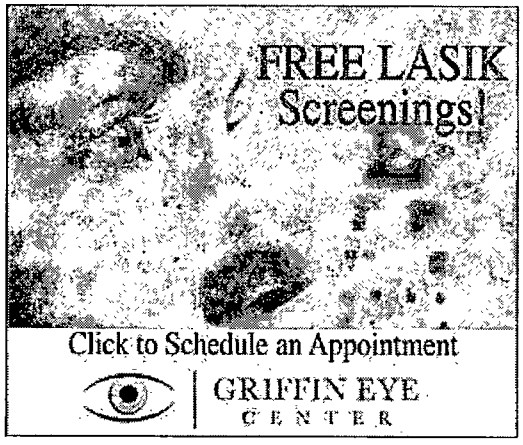
At issue is the 1.5 percent hospitality fee that is charged on all prepared food, hotel admissions and attraction tickets sold countywide. For more than 20 years, the county has collected this fee. The revenues were used to pay for major road projects, including S.C. 31 and S.C. 22. Once the debt for 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."

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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.

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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.

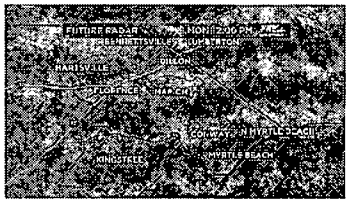
Horry County councilman Johnny Vaught said he believes someone in the county misinterpreted the court order and made an error when they announced the county would continue to collect fees from all municipalities, except Myrtle Beach.

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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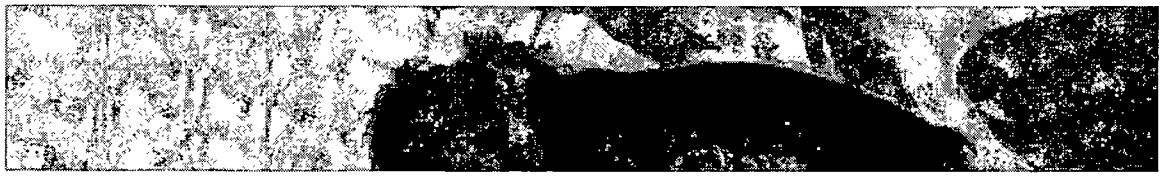
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By WMBF News Staff



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

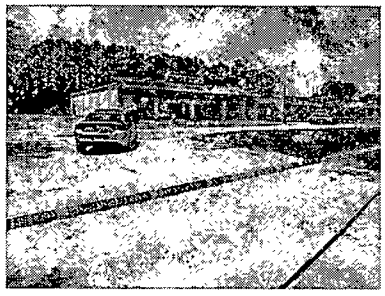
By WMBF News Staff

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

Published 2h at 12:18 PM



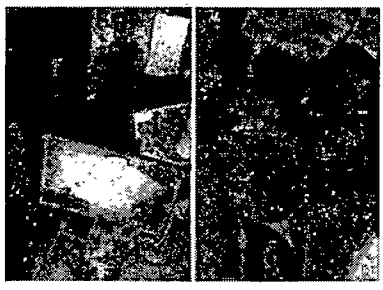
Autopsy: Cause of death undetermined for Robeson County woman who wandered from facility

Published 2h at 11:46 AM



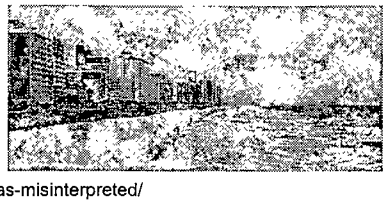
Florence police search for person wanted for questioning in pair of grocery store burglaries

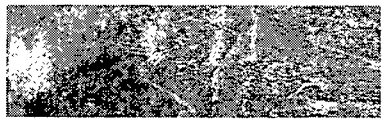
Published 4h at 10:27 AM



New Myrtle Beach hospitality fees go into effect

Published 7:26 AM at 7:26 AM





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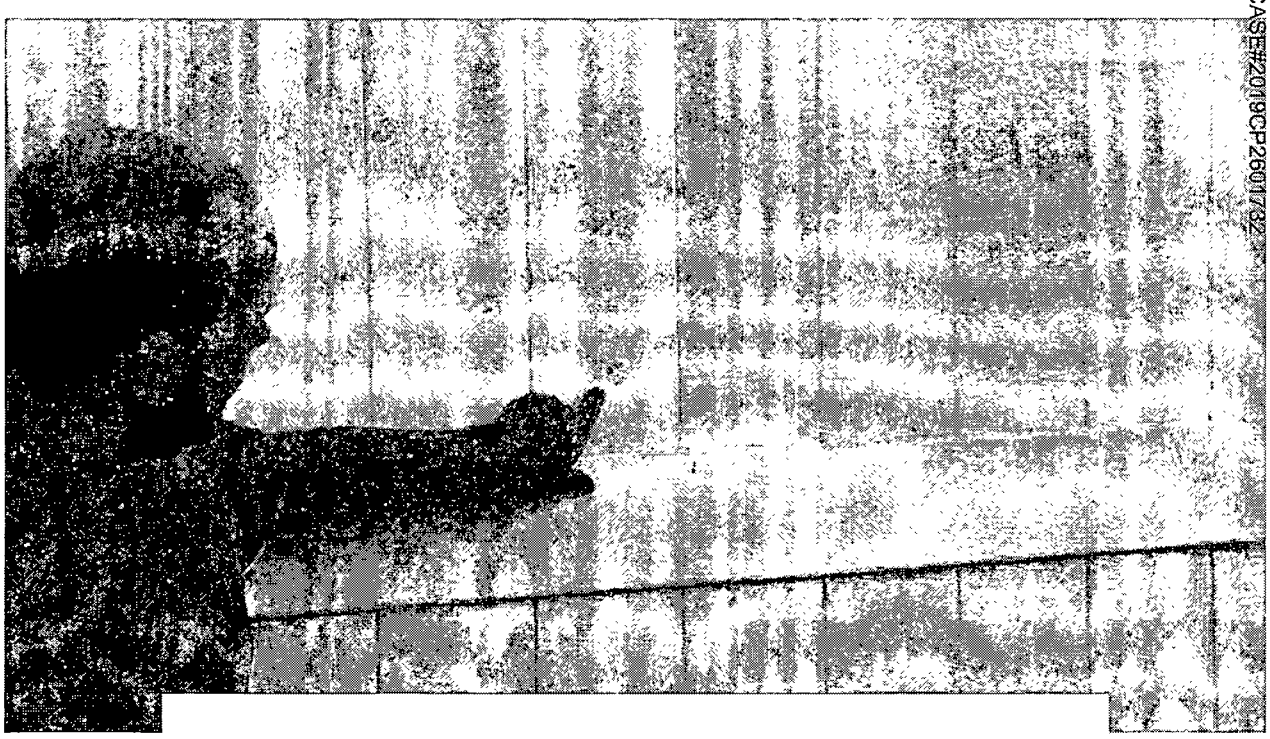
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LOCAL

'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 from
jurisdictions direc

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."

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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

JUNE 26, 2019 05:55 PM

LOCAL

Myrtle Beach to collect hospitality tax on July 1. Those in NMB, Surfside may get taxed twice

JUNE 24, 2019 06:29 PM



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

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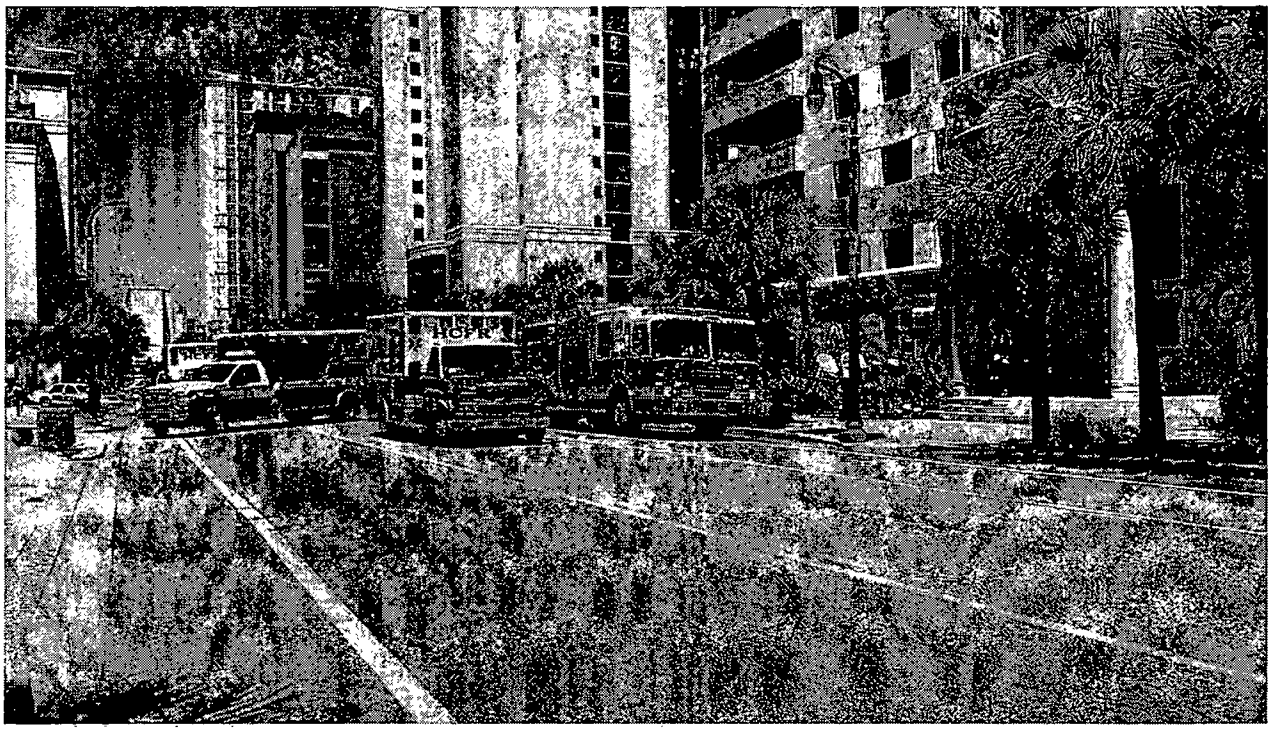
COMMENTS

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One stabbed at Dollar General in Horry County

JULY 01, 2019 11:58 AM

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

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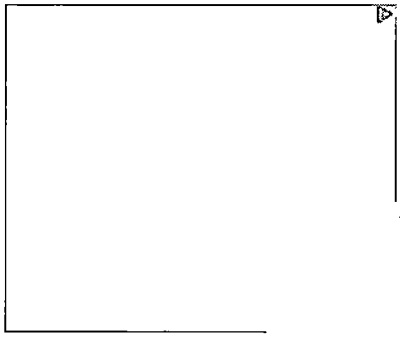
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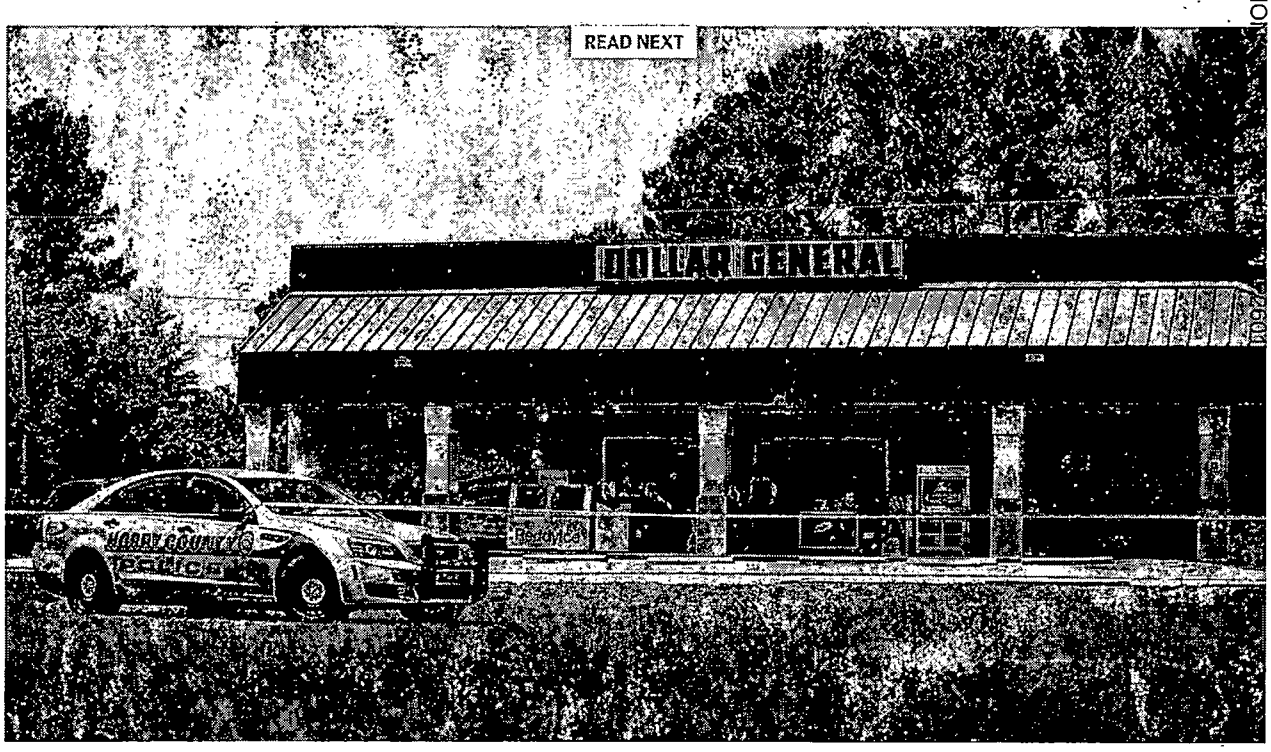
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CRIME

One stabbed at Dollar General in Horry County

BY ALEX LANG

JULY 01, 2019 11:58 AM;

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.

KEEP READING →

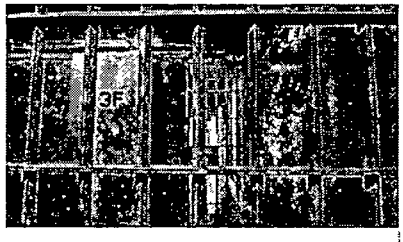
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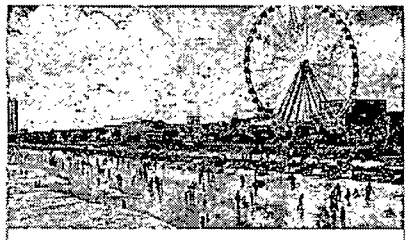
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CRIME

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

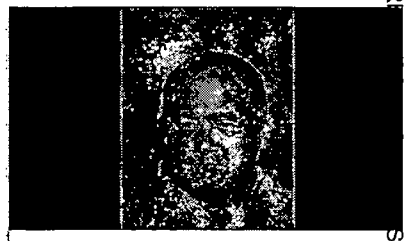
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LOCAL

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

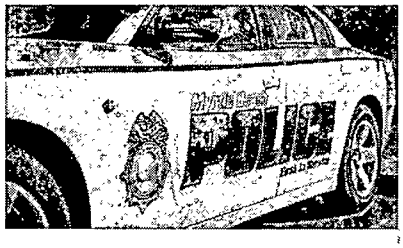
JULY 01, 2019 11:49 AM



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

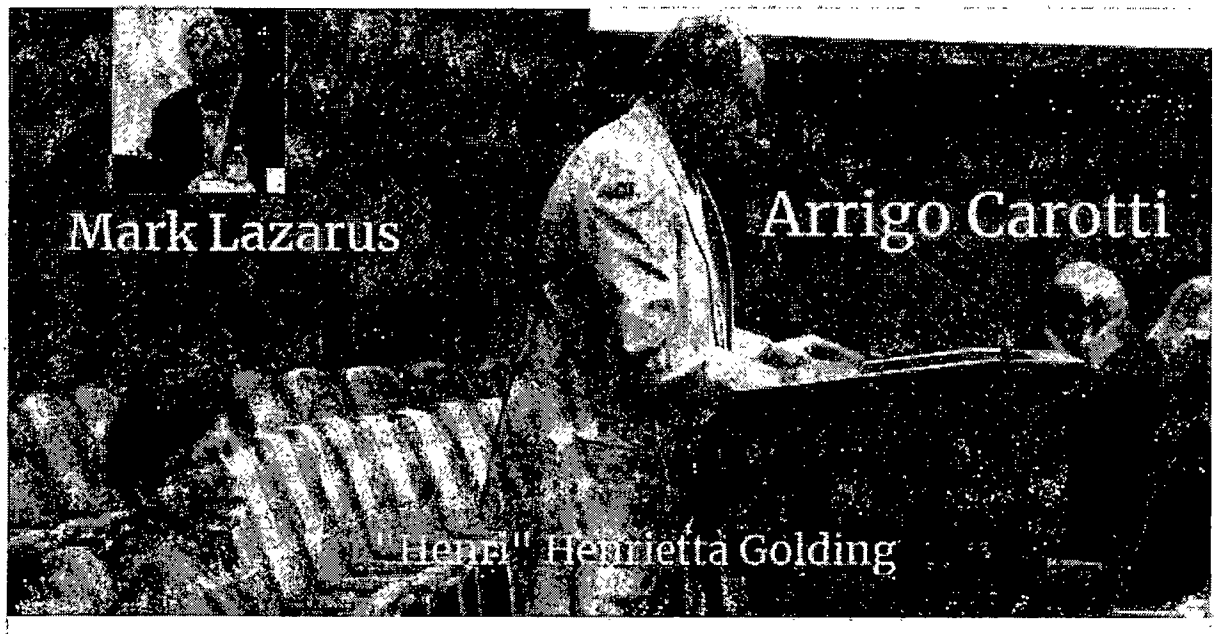
Henrietta Golding - Partner
Burr Forman McNair
Founders Centre, 2411 Oak St. Suite 206, Myrtle Beach, South Carolina 29577
main 843-444-1107 - fax 843-444-4729
hgolding@burr.com - www.burr.com

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EXHIBIT C

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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

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

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.

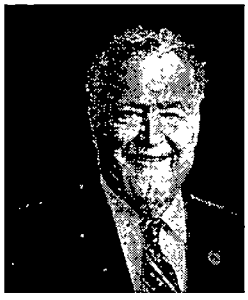
HC should suspend the collection in the incorporated areas until an appeal is granted or denied and then until the entire matter is resolved by a higher court.

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@ ; Henrietta Golding <HGolding@burr.com>; Carotti, Arrigo <CarottiA@HorryCounty.org>; Gosnell, Steve <gosnells@HorryCounty.org>; tyler@ ; DiSabato, Dennis <disabatod@horrycounty.org>; mayorhalley@nmb.us; Dennis Pieper <dpieper@surfsidebeach.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

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

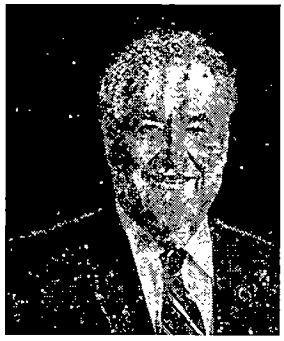
ATTORNEY-CLIENT PRIVILEGED

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 I, 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
1301 2nd Avenue, Conway, South Carolina 29526 Tel (843) 915-7412
(direct) / Fax (843) 915-6270 / mailto:carottia@horrycounty.org
www.horrycounty.org



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 ; Henrietta Golding <HGolding@burr.com>; Gosnell, Steve <gosnells@HorryCounty.org>; tyler@ ; DiSabato, Dennis <disabatod@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 Sort by Oldest

Add a comment...

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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EXHIBIT D

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

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

Henrietta Golding • *Partner*

AL • DE • FL • GA
MS • NC • SC • TN

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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 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, Plaintiff, vs. Horry County, Defendant.	)	**Order Denying Motions for Preliminary Injunction**

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 facia 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.

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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.]

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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,)	
)	**HORRY COUNTY'S**
For Itself and a Class of Similarly)	**REPLY IN SUPPORT OF**
Situated Plaintiffs,)	**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.

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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.

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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_agn.html.

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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.

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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.

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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), SCRCP. 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

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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.

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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.

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- 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:

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Attorneys for Defendant

Myrtle Beach, South Carolina
Dated: July 8, 2019

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

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

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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.

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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

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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.*

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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 a 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:

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> 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.

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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.

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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,

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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

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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,

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Columbia, South Carolina
July 8, 2019

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

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.

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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

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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), SCRCP, 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 enjoinment 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 relieve 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.

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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 procedures[6] 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

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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 obeisance 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.

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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, SCRCP) (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.

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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.

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IV. The Instant Motion Does Not and Cannot Rescue the County from its Cursory, Incorrect Rule 65(d), SCRCP, 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), SCRCP, 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), SCRCP, 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

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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.

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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

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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

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EXHIBIT A

ELECTRONICALLY FILED - 2019 Jul 08 3:15 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

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*

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

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

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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,)	
)	**Order Denying Motions for**
For Itself and a Class of Similarly 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 facia 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.]

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EXHIBIT B

BURR & FORMAN MCNAIR

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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. Hoefer, Esquire (via email only)
Chad N. Johnston, Esquire (via email only)
R. Walker Humphrey, II, Esquire (via email only)
Enclosure

ELECTRONICALLY FILED - 2019 Jul 08 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 Preliminary Injunction**
For Itself and a Class of Similarly 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 facia 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.

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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

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 11 2019
SC 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

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

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ELECTRONICALLY FILED - 2019 Jul 12 12:32 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

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

RECEIVED
JUL 11 2019
SC Court of Appeals

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

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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.

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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

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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.

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

LAW/ANALYSIS

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

A. The City's Motion for Temporary Injunctive Relief

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

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

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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.

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

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

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

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

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

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

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

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

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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.

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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]

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[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

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

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

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

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

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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

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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

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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.

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

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

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

This ____ day of June, 2019
_____, South Carolina

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

ORDER

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SC Court of Appeals

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After hearing arguments from all attorneys on July 10, 2019, this Court understands that there may have been a misinterpretation of its Order for a Preliminary Injunction dated June 21, 2019. Therefore, this Court is not holding the Defendant in Contempt of Court pursuant to the Plaintiff's Rule to Show Cause. However, this Court is being extremely lenient with this ruling as the Complaint specifically makes clear in paragraphs 1, 7, 40, 42, and 43 that all municipalities in Horry County are included in this action. Additionally, there are specific references to all the municipalities throughout the Order for Preliminary Injunction, as well as specific references to all municipalities within Horry County throughout oral arguments. Additionally, the caption states "for itself and a class of similarly situated Plaintiffs."

For clarification, this Court is hereby making it clear that it's Order for a Preliminary Injunction dated June 21, 2019, includes not only Myrtle Beach ***but also*** **Atlantic Beach, Aynor, Conway, Loris, North Myrtle Beach and Surfside Beach** during the pendency of this action. As to Myrtle Beach, the Preliminary Injunction Order dated June 21, 2019, is already in full force and effect, and shall remain so for the pendency of this action. **As to the remaining above mentioned municipalities, this Order for Preliminary Injunction shall take full force and effect on**

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

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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	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	NO.: 2019-CP-26-01732
	)	APPELLATE NO.: 2019-____
City of Myrtle Beach,	)	
	)	**HORRY COUNTY'S**
For Itself and a Class of Similarly Situated Plaintiffs,	)	**MOTION TO STAY OR SUPERSEDEAS DURING PENDENCY OF APPEAL**
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

Horry County, pursuant to Rule 241(c), SCACR, and Rule 62(c), SCRCP, moves to stay the injunction[1] 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.

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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

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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

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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.

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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.

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[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.

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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.

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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

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[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.

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may move for an order imposing a supersedeas" to stay an injunction pending an appeal. Rule 241(c), SCACR; *see also* Rule 62(c), SCRCP. 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), SCRCP (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

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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),

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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

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(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

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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.

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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.

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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.

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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

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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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Attorneys for Defendant

Myrtle Beach, South Carolina
Dated: July 12, 2019

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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
	)	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.

A. Carotti

Arrigo Carotti, County Attorney for Horry County

Sworn to and subscribed before me
this 12th day of July, 2019.

Gina Livingston

Notary Public for South Carolina (Seal)
Commission Expires 1-11-29

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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,	)	
	)	**HORRY COUNTY'S**
For Itself and a Class of Similarly Situated Plaintiffs,	)	**MOTION TO STAY CASE**
	)	**PENDING APPEAL**
Plaintiff,	)	
	)	
vs.	)	
	)	
Horry County,	)	
	)	
Defendant.	)	
	)	

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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Dated: July 15, 2019

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ELECTRONICALLY FILED - 2019 Jul 16 11:47 AM - 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,	)	
	)	**HORRY COUNTY'S**
For Itself and a Class of Similarly Situated Plaintiffs,	)	**MEMORANDUM IN RESPONSE TO EMAIL FROM COUNSEL OF CITY DATED JULY 12, 2019 & EMAIL FROM COURT DATED JULY 15, 2019**
Plaintiff,	)	
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.

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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

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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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Attorneys for Defendant

Myrtle Beach, South Carolina
Dated: July 16, 2019

ELECTRONICALLY FILED - 2019 Jul 16 11:47 AM - 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,	)	
	)	**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.

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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).

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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

33850817 v2

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90329

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
JUL 19 2019
SC Court of Appeals

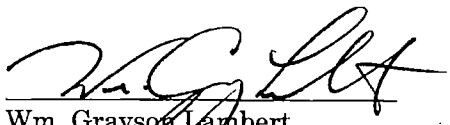
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, ... Respondents,

v.

Horry County, ... Appellant.

AMENDED NOTICE OF APPEAL

Horry County appeals from the Order of the Honorable William H. Seals, Jr. dated June 21, 2019; from the Order of the Honorable William H. Seals, Jr. dated July 10, 2019; and from the Order of the Honorable William H. Seals, Jr. dated July 17, 2019. Horry County received written notice of these Orders on the dates they were electronically filed—on June 21, 2019; July 10, 2019; and July 17, 2019. A copy of these Orders are attached to this Amended Notice of Appeal.



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Counsel for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 19 2019
SC 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

City of Myrtle Beach, ...Respondent,

v.

Horry County, ...Appellant.

CERTIFICATE OF SERVICE

I certify that this AMENDED NOTICE OF APPEAL was served on counsel for the Respondent via hand delivery on July 19, 2019:

John M.S. Hoefer
Chad N. Johnston
R. Walker Humphrey, II
Willoughby & Hoefer, P.A.
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33864333 v1

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

RECEIVED
JUL 19 2019
SC Court of Appeals

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

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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.

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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

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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.

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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. <u>The City Has Demonstrated a Likelihood of Success on the Merits.</u>

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

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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.

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

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

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

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

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

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

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

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

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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.

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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]

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[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

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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.

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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

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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.

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

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

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

This ____ day of June, 2019
_____, South Carolina

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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

ELECTRONICALLY FILED - 2019 Jul 10 4:47 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

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

After hearing arguments from all attorneys on July 10, 2019, this Court understands that there may have been a misinterpretation of its Order for a Preliminary Injunction dated June 21, 2019. Therefore, this Court is not holding the Defendant in Contempt of Court pursuant to the Plaintiff's Rule to Show Cause. However, this Court is being extremely lenient with this ruling as the Complaint specifically makes clear in paragraphs 1, 7, 40, 42, and 43 that all municipalities in Horry County are included in this action. Additionally, there are specific references to all the municipalities throughout the Order for Preliminary Injunction, as well as specific references to all municipalities within Horry County throughout oral arguments. Additionally, the caption states "for itself and a class of similarly situated Plaintiffs."

For clarification, this Court is hereby making it clear that it's Order for a Preliminary Injunction dated June 21, 2019, includes not only Myrtle Beach ***but also*** **Atlantic Beach, Aynor, Conway, Loris, North Myrtle Beach and Surfside Beach** during the pendency of this action. As to Myrtle Beach, the Preliminary Injunction Order dated June 21, 2019, is already in full force and effect, and shall remain so for the pendency of this action. **As to the remaining above mentioned municipalities, this Order for Preliminary Injunction shall take full force and effect on**

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

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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

ELECTRONICALLY FILED - 2019 Jul 17 1:04 PM - HORRY - COMMON PLEAS - CASE#2019CP2601732

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

RECEIVED
JUL 19 2019
SC Court of Appeals

This matter is before the Court on the July 12, 2019, motion of Defendant Horry County ("County") for a stay or supersedeas of the Court's June 21, 2019, and July 10, 2019, orders granting to Plaintiff City of Myrtle Beach ("City"), and all other similarly situated plaintiffs, which includes the other municipalities situated within Horry County,[1] a preliminary injunction against the collection of the County's 1.5% uniform service charge under County Ordinance 105-96 ("Hospitality Fee"). This injunction applied within the City on June 21, 2019, and will apply within the other municipalities beginning August 10, 2019.

After having fully considered the matter,[2] the Court denies the County's motion for stay or supersedeas. The Court concludes that the County has failed to establish any basis for relief under Rule 62(c), SCRCP, Rule 62(d), SCRCP, or Rule 241(c), SCACR.

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[1] As this Court noted in the July 10, 2019 order denying reconsideration, these municipalities are the Town of Atlantic Beach, the Town of Aynor, the City of Conway, the Town of Loris, the City of North Myrtle Beach, and the Town of Surfside Beach, which are hereinafter referred to as the "Other Municipalities."

[2] The Court has also considered the County's July 16, 2019, memorandum in support of its motion and the supplemental affidavit of the County's Finance Director, Barry A. Spivey asserting that in 2018, the County collected some $28,290,302 in revenues generated by the 1.5% uniform service charge it imposed within the municipalities of Horry County, the collection of which is presently enjoined in the City and which will be enjoined on and after August 10, 2019, in the other municipalities. The Court does not require a response to this memorandum and

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However, and as permitted by Rule 62(c), SCRCP, and based upon the County's further request and the City's subsequent invitation of same, the Court modifies its injunction to require that the City, which has adopted three ordinances dealing with the imposition of new local accommodations taxes and local hospitality taxes under S.C. Code Ann. §6-1-520 and S.C. Code Ann. §6-1-720, respectively, to escrow the new tax revenues collected under such ordinances to provide security to the County under Rule 65(c), SCRCP. The Court, in exercising its discretion as expressly permitted by Rule 65(c), finds that this escrow, along with the fact that the City possesses the authority to raise revenue via, *inter alia*, ad valorem taxes in the form of increases to millage rates, the imposition of other taxes or uniform service charges, or the issuance of bonds (*see, e.g.*, May 24, 2019 Affidavit of Michael W. Shelton), to cover any difference between the amount of the escrow and any costs and damages the County might incur or suffer in the event the Court's injunction is reversed on appeal, is a proper sum under Rule 65(c) and adequately protects the County.[3]

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affidavit by the City for two reasons. First, the substance of the County's July 16 memorandum is essentially a request that the Court reconsider its determination to issue an order denying the County's motion, modifying the injunction to address the County's previously expressed concerns regarding security, and requiring mediation within 20 days. This the Court declines to do. Second the revenue figures asserted by Mr. Spivey, although inconsistent with his assertions in his first affidavit to the Court and revenue figures advanced by County Council in Resolution R-36-19 (Ex. A to City Memo in Opp. to County Mot. to Amend Answer), are consistent with the revenue figures asserted by the City's finance director, Michael W. Shelton, in his affidavit previously submitted in connection with the parties' motions for injunctive relief. Therefore, this provides the Court with no new information. Further, the Court notes that the County has repeatedly acknowledged that it has no current need to use the revenues it is enjoined from collecting by stating that, if its motion for injunctive relief were to be granted, it would "segregate" the funds derived from the continued imposition of its uniform service charge within the municipalities.

[3] This Court's finding that the escrowing by the City of the new tax revenues collected under the recently-enacted local accommodations taxes and local hospitality taxes, along with its ability to otherwise raise revenue, is an appropriate security under these circumstances, which is not a "nominal security bond" according to the figures presented by Mr. Spivey, *cf. Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007), is made independent of, but is

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In addition, the Court directs that the City and County engage in mediation, same to be completed and conducted within twenty (20) days of the date of this order. The Court is informed by counsel for the City that counsel for the County has indicated that Karl A. Folkens, Esquire, is acceptable to the County to serve as a mediator. The Court is further informed by counsel for the City that it, too, finds Mr. Folkens acceptable and that Mr. Folkens has indicated that he is available to conduct this mediation on July 24, 2019, and continuing on August 1, 2019, should that become necessary. The Court therefore appoints Mr. Folkens to serve as mediator, with the cost to be split between the City and the County, and directs that the mediation be undertaken no later than August 1, 2019, continuing thereafter on a mutually agreed date, if necessary. The County has indicated to the Court its representatives will not be able to mediate on July 24, 2019. However, should the parties and Mr. Folkens be able to conduct the mediation any sooner than August 1, 2019, they may do so.[4]

IT IS SO ORDERED.

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

This ____ day of July, 2019
_____, South Carolina

certainly bolstered by, the Court's view as expressed in the July 10, 2019, order denying reconsideration that the City is not even required to post a security bond under Rule 65(c) based on its status as a political subdivision.

[4] By separate order, and with the consent of the City, the Court will grant the County's motion to stay any other proceedings in this Court while the County's appeal of the June 21 and July 10 orders is pending in the Court of Appeals or Supreme Court. That stay does not, however, relieve the County from its obligation to mediate as directed in the instant order.

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Horry Common Pleas

Case Caption: Myrtle Beach City Of VS Horry County Of

Case Number: 2019CP2601732

Type: Order/Supersedeas

IT IS SO ORDERED

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

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 19 2019
SC 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

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

v.

Horry County, ... Appellant.

PETITION FOR WRIT OF SUPERSEDEAS

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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

City of Myrtle Beach, For Itself and a Class of
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Horry County, pursuant to Rules 240(a) and 241(c), SCACR, petitions this Court for a writ of supersedeas to stay the injunction entered by the circuit court while this appeal is pending.

INTRODUCTION

The County comes to this Court under exigent circumstances. The stakes here are high. The circuit court has enjoined the County from collecting its Hospitality Fee within the municipalities in the County—a fee that it has collected for more than twenty-two years. Last year alone, the County collected more than $28 million from the Hospitality Fee within its municipalities.

An injunction is always a "drastic" remedy. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). Still, a court may, under the right circumstances, issue an injunction. What a court may not do is issue an injunction (1) that lacks adequate security, as required by Rule 65(c), and (2) that completely upends the *status quo ante* that has existed between the parties for more than two decades. Yet that is what happened here.

To make matters worse, in lieu of requiring the City to provide adequate security under Rule 65(c), the circuit court imposed the burden of paying for any damage caused by the injunction on the people of the City. The injunction is unsecured in excess of $15 million. That leaves the County facing an irreparable (and unnecessary) harm. When the County complained that the security was inadequate with this type of exposure, the circuit court held that the lack of security was not an issue because the City could always tax its people to pay those damages, should the injunction be

reversed on appeal, thereby unfairly (and unnecessarily) putting that burden on the people of the City.

The effects of the injunction are also repugnant to justice. The injunction completely destroys the *status quo ante* that has existed between the parties for more than twenty-two years and imposes a new, judicially created *status quo*. As this Court is well aware, the "only" purpose for issuing an injunction is to preserve and protect 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). Moreover, the injunction is repugnant to justice because it interprets the law as requiring the County to obtain the City's consent to continue collecting the Hospitality Fee. Such a conclusion is contrary to law, and it completely disregards S.C. Code § 6-1-330(A), which specifically authorizes the County to collect the Hospitality Fee until the County "repeal[s]" it.

The County therefore respectfully requests an immediate writ staying the injunction while the County's appeal is pending.

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. (App. 50). 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 County's short-term and long-term transportation needs. (App. 50). That committee issued its report, known as the RIDE Report, in September 1996. (App. 46–89).

To implement the recommendations in the RIDE Report, the County adopted a uniform service charge, known as the Hospitality Fee, on October 15, 1996. (App. 91–95). 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.[1] (App. 91–92).

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." (App. 93). This ordinance also stated that the Hospitality Fee would expire after twenty years, on January 1, 2017. (App. 94).

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. (App. 101–04, 106–09).

The municipalities were not the only entities that adopted ordinances urging the County to adopt the Hospitality Fee. 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. (App. 100, 105).

---

[1] Later amendments increased the fee in the unincorporated areas of the County and added a countywide 2.5 percent fee on rental cars. (App. 719–20).

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.

As initially enacted, Ordinance 105-96 contained a sunset provision, providing that the Hospitality Fee would expire on January 1, 2017. (App. 94). 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. (App. 710). *Second*, in 2016, the County enacted Ordinance 93-16, which reaffirmed the five-year extension of the Hospitality Fee from Ordinance 11-04. (App. 174). *Third*, in 2017, the County removed the sunset provision from the Hospitality Fee altogether. (App. 183).

The City never voiced an objection to any of the three amendments extending the sunset provision when they were adopted. The City said nothing when the County extended the sunset provision for the first time in 2004. The City said nothing when the County reaffirmed that extension in 2016. And the City 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 without its consent, even though the County had done so on three occasions, years earlier.[2]

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[2] The lawsuit was filed only about one month after the County paid off the State Infrastructure Bank loans referenced in the 2004 amendment. (*See* App. 709–10). The County used the Hospitality Fee revenue from 2017 through early 2019 to pay

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 piece 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 building this new interstate. (App. 490, 492). Other revenue from the Hospitality Fee would be used as permitted by S.C. Code §§ 6-1-530 and 6-1-730.

The City adopted local accommodations and hospitality taxes.

In March 2019, shortly before filing this lawsuit, the City adopted two new taxes. The City adopted a 3 percent local accommodations tax, the maximum amount a county and a municipality may cumulatively collect under § 6-1-540. (App. 494–96). The City also adopted a 2 percent hospitality tax, again the maximum a county and a municipality may cumulatively collect under § 6-1-740. (App. 498–500).

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. (App. 27–228). 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" in this context or that otherwise indicates that consent was necessary. 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

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these loans (until the loans were defeased on February 15, 2019)—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.

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 on January 1, 2017 (even though an additional twenty-five-and-a-half months were necessary to pay off the State Infrastructure Bank loans used to finance the very road projects that the City claims it actually consented to being performed through the use of the Hospitality Fee).

The circuit court enjoined the County's Hospitality Fee.

After it filed its proposed class complaint, the City moved for a preliminary injunction, (App. 325–27), as did the County, (App. 516–18). The parties filed multiple briefs and dozens of exhibits. (App. 328–515, 519–756, 776–855, 916–1014). 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 circuit 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. (App. 1–17). The County moved to reconsider four days later. (App. 1022–33).

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. (App. 1034–83).[3]

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[3] Other motions remain pending, but none of those is essential to deciding the legal issues on this appeal. These motions include the County's motion for leave to amend its counterclaims, (App. 856–89), the City's motion to dismiss the counterclaims, (App. 757–75), the County's motion for judgment on the pleadings

The circuit court denied both the motion to reconsider and the motion to hold the County in contempt on July 10, 2019, after holding a hearing earlier that day. In denying both motions, the circuit court clarified that the injunction applied to Atlantic Beach, Aynor, Conway, Loris, North Myrtle Beach, and Surfside Beach.[4] (App. 18–19). The order is not set to take effect in those municipalities until August 10, 2019. (App. 18–19).

The County appealed the injunction order pursuant to S.C. Code § 14-3-330(4) on July 11, 2019. (App. 1230–51). The day after filing its notice of appeal, the County moved the circuit court to stay its injunction, pursuant to Rule 241(d)(1), SCACR. (App. 1252–67). The circuit court denied that motion, although it did order the City to escrow "the new tax revenues collected" pursuant to its new ordinances. (App. 20–23). The County is in the process of filing an amended notice of appeal that adds the circuit court's order denying the County's motion for supersedeas to those orders currently on appeal.

The County also asked the circuit court to stay the entire case, given that this Court's decision might effectively resolve the litigation. (App. 1268–70). The circuit court granted that motion. (App. 24–26).

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regarding the class action allegations, (App. 1091–94), and the County Treasurer's motion to intervene, (App. 1095–139).

[4] In its motion to reconsider, the County invoked Rule 65(d), which requires that an injunction "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. The circuit court said it was "being extremely lenient" in not holding the County, noting that the complaint and the transcript of the hearing referred to other municipalities. (App. 18). This defense of the June 21 order proves that the order violated Rule 65(d).

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 may move for an order imposing a supersedeas" to stay an injunction pending an appeal. Rule 241(c), SCACR. Unless "extraordinary circumstances make it impracticable," this relief should be sought first from the court that entered the injunction. Rule 241(d)(1), SCACR. After that, a party may seek a writ of supersedeas from the appellate court. Rule 241(d)(2), SCACR.

To supersede an injunction pending an appeal, the party seeking to stay the injunction must clearly show that allowing the injunction to remain in 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 sufficient security.

Sometimes, a circuit court's decision to grant a preliminary injunction gets reversed. *See, e.g., Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882 (2007); *Scratch Golf Co.*, 361 S.C. 117, 603 S.E.2d 905. Given the substantive and procedural flaws with the injunction here, this is likely going to be one of those times.

A. Rule 65(c) requires security for an injunction, and the City is not exempt from that requirement.

To protect a party who was wrongly enjoined, Rule 65(c) requires security from the party who obtains the injunction. That rule provides:

> 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), SCRCP. In other words, a party who obtains an injunction must give sufficient security that the enjoined party may be made whole, if the injunction was wrongly entered.

The circuit court has enjoined the County from collecting more than $28 million annually by preventing it from collecting the Hospitality Fee. (App. 808, 1276). The circuit court has made clear that it "believes that a bond as required by Rule 65 is not necessary and/or required for these parties."[5] (App. 19). Only finally in denying the County's motion for supersedeas did the circuit court impose any security at all, requiring the City to escrow "the new tax revenues collected" pursuant to the City's new local accommodations and hospitality taxes. (App. 21). It did so despite holding fast to its view that Rule 65(c) does not require any security from the City, and it did so without giving any explanation for why it was bothering to require a security at all, if Rule 65(c) supposedly does not require it. (App. 21–22).

The circuit court ignored the plain language of Rule 65(c) in determining that the City is not required to provide any security for the injunction, and the court's belated attempt to impose some security is insufficient. Rule 65(c) mandates security

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[5] The City is the only party whose motion for an injunction was granted, so it is unclear why the circuit court referred to "parties" in the plural. The other municipalities are not parties here, so the circuit court could not require security from them.

for an injunction, and to issue an injunction without sufficient security is to disregard the plain language of that rule. *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 security requirement of Rule 65(c). Rule 65(c) exempts only the State, State officers, and State agencies from that 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." But the City is (obviously) not the State of South Carolina. As the City observed at the hearing on the motion to reconsider, (App. 315), 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 from the State. Put differently, they are not the State by another name. And they are not automatically entitled to the same legal protections as the State. *See, e.g., Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280–81 (1977) (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. That is exactly what other states have done. *See, e.g.*, Fla. R. Civ. P. 1.610(b); La. Stat. Ann. § 13:4581; Mass. R. Civ. P. 65(c); Pa.R.C.P. No. 1531(b). But the drafters of South Carolina's rule did not do that, and the rule must be applied as written. *See Maxwell*, 356 S.C. at 620, 591 S.E.2d at 27.

The circuit court's failure to adhere to the plain language of Rule 65(c) and to require sufficient 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. Just in fiscal year 2018, the Hospitality Fee revenue within the municipalities was over $28 million. (App. 808, 1276).

B. The security the circuit court finally required is insufficient.

Requiring the County to escrow "the new tax revenues collected" pursuant to the City's new ordinances is not enough. That might provide some security for an injunction that applies only to the City. But it is far from sufficient security here.

The County's Hospitality Fee included a 1.5 percent fee on accommodations, prepared food and beverage, and admissions and a 2.5 percent fee on rental cars. The City's new taxes do not increase its existing fees[6] up to the level of the County's

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[6] The City is still collecting the hospitality fee it adopted in 1996. (*See* App. 502–05).

Hospitality Fee for anything except accommodations. Put differently, a person in Myrtle Beach is now collectively charged .5 percent less on prepared food and beverage, 1.5 percent less on admissions, and 2.5 percent less on rental cars. All told, the City will collect more than $5 million less under its new taxes than the County collected as part of the Hospitality Fee. (App. 1277). Therefore, simply escrowing the new revenue is not sufficient to make the County whole, if the injunction is reversed.

Moreover, this escrow requirement does *nothing* to provide any security for the injunction as it applies in the other municipalities in the County. This part of the injunction will prevent the County from collecting over $10 million in annual revenue—a substantial amount of money. (App. 1277). 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 North Myrtle Beach and Surfside Beach (the only other municipalities that have adopted local accommodations and hospitality taxes like the City has (App. 507–10, 512–15)) may have done with the revenue they had collected by that time. And no one will have collected any of the Hospitality Fee revenue within Atlantic Beach, Aynor, Conway, or Loris (which have not adopted and thus will not be collecting new taxes) while the injunction was in place.

Rather than requiring a bond from the City when the injunction was entered or requiring more money to be escrowed, the circuit court thought escrowing only the new revenue was sufficient because the City has other ways to "raise revenue": establishing new taxes, raising millage rates, or issuing bonds. (App. 21). The circuit

court cites no proposition of law, either in the text of Rule 65(c) itself or opinions from our appellate courts, recognizing the potential prospective ability of a public entity to raise revenue through taxes as an exemption to the security requirements of Rule 65(c). The circuit court's creation of this exemption is novel, and it radically departs from the plain language of Rule 65(c) and the case law on that rule.

The circuit court's order not only violates the adequate-security requirements of Rule 65(c), but it also unjustly passes the burden of paying for any wrongfully issued injunction on the people of the City (who are also the people of the County and the State). The burden passed onto the people of the City by the circuit court is a heavy one. The circuit court has put on the shoulders of the City's residents the responsibility to pay damages for the injunction on a countywide basis—an exposure of more than $15 million annually. This Court should save the people of the City from the unlawful burden imposed upon them by the circuit court and stay the injunction while the County's appeal is pending. Otherwise, if the injunction is reversed on appeal, the people of the City will stand to lose significantly and unfairly.

By ignoring the plain language of Rule 65(c), the injunction results in a miscarriage of justice, leaving the County with no certain means of being made whole and leaving the people of the City to foot the bill, should an appellate court reverse the injunction. This Court can significantly mitigate this 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 Court resolves 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 long instructed that a "preliminary injunction should issue *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); *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); *Cty. Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964).

The injunction here does not preserve the *status quo ante*, but does just the opposite: 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* by putting a new fee-collection regime in place, as the City began collecting its taxes on July 1, 2019 and the County had to stop collecting the Hospitality Fee. This injunction is thus just like others that have been reversed for "do[ing] 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).[7]

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[7] This opinion is admittedly unpublished, so it has no precedential value. *See* Rule 268(d), SCACR. Nevertheless, it demonstrates how courts have approached injunctions that do not preserve the *status quo ante*.

The City has argued that the "true" *status quo ante* is the "last uncontested status" between the litigants. (App. 1145–46). Even if that position were the law,[8] the result is still the same: The *status quo ante* should permit the County to 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 originally set to expire. 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),[9] 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.

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[8] It is not. *See Cty. Council of Charleston*, 244 S.C. at 483–84, 137 S.E.2d at 578 (explaining that the "sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is *at the time of the Order*" (emphasis added)).

[9] 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 does not appear to have developed its current theory on the County extending the Hospitality Fee until well after January 1, 2017.

On the subject of this two-year delay, the City's delay in bringing this lawsuit makes clear that any harm that it may suffer is not irreparable, meaning that the City cannot establish that necessary element for a preliminary injunction. *See Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 908.

The lack of irreparable harm is also evident from the circuit court's July 10 order. There, the circuit court clarified that the injunction applied to all the municipalities in the County but held that the injunction would not take effect countywide until August 10, 2019. (App. 18–19). If any harm here was irreparable, the circuit court surely would not have let that "harm" continue for another month before the injunction took effect.

The issue in this case requires particularly careful consideration. As the City acknowledged, (App. 791), no appellate court has addressed the central question raised in this lawsuit: whether a municipality's consent is required for the County to extend the Hospitality Fee. Rather than have the City and County (and now the other municipalities) 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 sensible approach is to stay the injunction while this Court considers 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 or taxes.

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 put the 1.5 percent piece of the Hospitality Fee 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 taxes, which will put them in the same position as if they had been collecting new taxes 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 extend the Hospitality Fee.

Not staying the injunction yields yet another miscarriage of justice: It allows the circuit court's flawed legal analysis on the central question of this case to remain.[10]

The City cites to an array of provisions to the State Constitution and Titles 4 and 5 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, e.g.*, App. 267, 271, 335–37). The circuit court accepted the City's arguments seemingly at face value, without examining those provisions to see what they actually require or prohibit.

Even a cursory look reveals that the circuit court's conclusion finds no support in the State Constitution or Titles 4 and 5 of the South Carolina Code of Laws, or even in the Home Rule doctrine that the City invoked (which is about 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)). One has to do nothing more than look at the circuit court's order granting the preliminary injunction (which was initially drafted by the City). That order quotes generic language about counties having to follow the law and then provides a string cite to various provisions. But nowhere in that order does the circuit court cite a single legal authority that expressly requires a municipality's consent for the County to adopt or extend the Hospitality Fee. And

[10] The County will address the problems in the circuit court's analysis of this issue in more depth in its merits brief, but it highlights those shortcomings here.

nowhere in that order does the circuit court identify which specific provision the County violated or explain how the County did so. (*See* App. 6–7).

In an attempt to bolster its position, the circuit court pointed to Ordinance 105-96, which adopted the Hospitality Fee, and the City's 1996 resolution urging the County to do so as evidence that the City's consent was required for the Hospitality Fee to be adopted. Neither document, however, supports that conclusion.

First, as for Ordinance 105-96, it never even uses the word "consent." Its twenty-year sunset provision was a separate part of the ordinance from the provision that actually adopted the Hospitality Fee. Similarly, the requirement that the County adopt a road plan "in concert" with the municipalities does not mean that the municipalities had to consent to the source of the revenue for that plan. (*See* App. 91–95).

Second, as for the City's 1996 resolution, it merely "urge[d]" the County to adopt the Hospitality Fee. It did not actually "consent" to the Hospitality Fee. (*See* App. 97–98). Moreover, other municipalities did not adopt their resolutions "urg[ing]" the County to adopt the Hospitality Fee until after the County had done so (without Ordinance 105-96 containing any language about the Hospitality Fee not taking effect unless those other municipalities passed such resolutions). (*See* App. 101–04, 106–08). That means the Hospitality Fee would have taken effect even if all of the municipalities in the County had not adopted resolutions "urg[ing]" the County to adopt the Hospitality Fee, so this municipal consent could not have been necessary.

The circuit court's attempt to justify its conclusion that municipal consent was necessary to extend the Hospitality Fee is no more persuasive. Section 6-1-330(A) of the South Carolina Code of Laws specifically allows the County to impose the Hospitality Fee. That section states, "A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body . . . ." S.C. Code § 6-1-330(A). Here, the County adopted the Hospitality Fee on October 15, 1996. Therefore, pursuant to the plain directive from the General Assembly, the Hospitality Fee remains in effect "*until repealed* by the enacting local governing body." *Id.* (emphasis added). The County has not repealed the Hospitality Fee. Accordingly, it remains in effect.

To try to get around this black-letter law, the circuit court reasoned that by extending the Hospitality Fee, the County adopted a "new" fee that was not covered by § 6-1-330(A) and thus was subject to the requirements of Act 138 of 1997 (which established the current framework for local accommodations and hospitality taxes). Extending a sunset provision, however, does not create a "new" law; it merely extends an existing one. The circuit court cites to no legal authority to support its conclusion that changing the sunset provision adopted a new fee. In fact, legal authority goes the other way, not treating a change to a sunset provision as a change to the substantive law. *See, e.g., Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 538–39 (2013) (reviewing the history of extensions of the Voting Rights Act); Letter to Mark R. Elam, 1994 WL 378027, at *1 (S.C.A.G. June 29, 1994) (General Assembly's removal of the sunset provisions for the Boards of Dentistry and Opticianry).

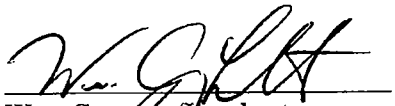
The circuit court's analysis on this critical question of whether the City's consent was required for the County to extend the Hospitality Fee is fatally flawed. It misreads State law and misinterprets the evidence in the record. Because it falls so short, the injunction is a miscarriage of justice and should not remain in place while the appeal is pending.

CONCLUSION

The Court should grant the writ and stay the injunction while the appeal is pending.

Pursuant to Rule 241(d)(6)(A), SCACR, the County respectfully requests that the Court issue an immediate order staying the injunction without waiting for a response from the City. As set forth above, the County is suffering immediate and irreparable harm every day the injunction remains in place. Rule 241(d)(6)(B), SCACR, is not implicated here because the City has received notice of this petition.

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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

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

v.

Horry County, ...Appellant.

COUNTY'S VERIFICATION FOR PETITION FOR WRIT OF SUPERSEDEAS

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 Petition for Writ of Supersedeas 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 petition.

Arrigo Carotti,
County Attorney for Horry County

Sworn to and subscribed before me

this 18th day of July, 2019.

Notary Public for 8/16/23 (Seal)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

RECEIVED
JUL 19 2019
SC Court of Appeals

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

Appellate Case No. 2019-001134

Case No. 2019-CP-26-01732

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

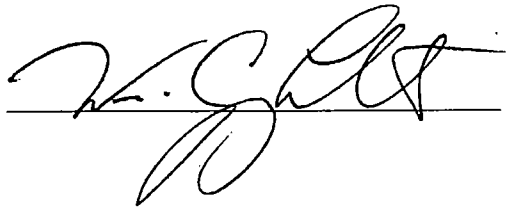
v.

Horry County, ... Appellant.

CERTIFICATE OF SERVICE

I certify that this PETITION FOR WRIT OF SUPERSEDEAS and APPENDIX TO COUNTY'S PETITION FOR WRIT OF SUPERSEDEAS was served on counsel for the Respondent via hand delivery on July 19, 2019:

John M.S. Hoefer
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 29 2019
SC Court of Appeals

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

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

v.

Horry County, ... Appellant.

RESPONDENTS' RETURN AND MEMORANDUM IN OPPOSITION TO APPELLANT'S PETITION FOR SUPERSEDEAS

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The City of Myrtle Beach ("City"), on behalf of itself and all other similarly situated plaintiffs ("Respondents"), pursuant to Rule 240(e), SCACR, hereby submits this return and memorandum in opposition to the Petition for a Writ of Supersedeas ("Petition") of Appellant Horry County ("County"). At bottom, a grant of the relief sought by the County would permit it to continue imposing within the municipalities of Horry County a uniform service charge for unspecified services without the consent of these municipalities—an unlawful charge that the County asserts it may impose in perpetuity. For the reasons discussed herein, the circuit court correctly enjoined the County and the Petition should therefore be denied.

INTRODUCTION

The County introduces the Petition by asserting that it comes to this Court "under exigent circumstances." Petition at 1. Yet no explication of what these circumstances might be is provided and, in fact, the County's assertion in this regard is contradicted by its submission of a motion for supersedeas to the circuit court. *Cf.* Rule 241(d)(3)(C), SCACR (authorizing an appellant to eschew an application for supersedeas to the lower court where "extraordinary circumstances" make such an application "impracticable"). The County then asserts that "[t]he stakes here are high," Petition at 1, but again never explains what that sentence means. These mysteriously unsupported assertions are then followed by a misstatement regarding the scope of the injunction issued in the circuit court, which does not "enjoin[] the County from collecting ... a fee that it has collected for more than twenty-two years." *Id.* Rather, the injunction below only precludes the County from continuing[1] to impose a new uniform service charge within the

[1] The County's assertions regarding a change in more than twenty-two years of practice is misleading, at best. While it is true that the Hospitality Fee was first implemented on January 1, 1997, the City does not dispute that it, along with each of the other municipalities in Horry County, provided their consent for the County's collection of the Hospitality Fee for a period of twenty years. Rather, the City's claim for declaratory and injunctive relief is that, because the

corporate limits of all municipalities in Horry County, which injunction was issued in view of the fact that (a) the 1996 County ordinance which imposed a 1.5% uniform service charge within these municipalities was (i) by its own terms effective for a period of only twenty years, (ii) for a limited specific improvement, (iii) consented to by the municipalities, and (iv) terminated by its own terms on January 1, 2017; (b) the new uniform service charge which the County now claims may be imposed "forever"[2] has not been consented to by these municipalities as required by law; and (c) the County has taken official actions recognizing that it intends to use the revenue for no specific improvement within the ambit of the 1996 ordinance.

Given the foregoing, it is quite bold for the County to begin its argument by predicting that substantive and procedural errors committed by the circuit court in issuing the injunction will lead to a reversal on the merits of the County's appeal. *See* Petition at 8 ("[s]ometimes, a circuit court's decision to grant a preliminary injunction gets reversed. Given the substantive and procedural flaws with the injunction here, **this is likely going to be one of those times**") (emphasis supplied, citation omitted). Notwithstanding this presumptuous statement, the Petition primarily focuses on procedural arguments and gives short shrift to the substantive issue before the Court. That substantive issue is whether the circuit court correctly found that the City established all five of the required elements for the issuance of a preliminary injunction against the County's continued enforcement of the ordinance imposing a new uniform service charge within the corporate limits of all municipalities in Horry County without the consent of such municipalities as required by law.

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consent provided by the municipalities was expressly limited to twenty years, the County was unable to lawfully collect the Hospitality Fee in every municipality within Horry County beyond their consent, beginning January 1, 2017; thus, this claim was brought just two years and almost three months following the termination date of this uniform service charge as all of these municipalities originally agreed.

[2] *See* App'x at 301, ll. 4-7.

The County's description of the circumstances giving rise to this injunction is replete with mischaracterizations of and omissions from the matters presented to the circuit court and actually reinforces the irreparable harm that will befall the City and the proposed plaintiff class without the protection of the injunction the County seeks to have superseded. Further, the County's predicted reversal of the injunction is wholly undercut by the County's own (misguided) argument regarding protection of the interests of the Respondents under Rule 241(c)(3), SCACR, which is borne out of an apparent lack of understanding by the County as to the nature of the claims made against it in this case.

PROCEDURAL BACKGROUND

The City commenced this action on March 20, 2019, by filing and serving a summons and complaint against the County seeking declaratory, injunctive, and other equitable relief with respect to the validity and enforceability of amendments to the County's Ordinance 105-96 imposing a 1.5% uniform service charge on the sale of accommodations, prepared food and beverage, and admissions within the corporate limits of municipalities situated within Horry County ("Hospitality Fee") on and after January 1, 2017. App'x at 27-228. On April 19, 2019, the County filed and served its answer denying the allegations of the City's complaint and therein also asserted two counterclaims against the City—one for attorneys' fees and costs against the City and its counsel because the complaint was not "well-grounded in fact nor warranted by existing law" and the other for promissory estoppel arising out of the City's "promises ... to support ... the [County's] ... implement[ation] [of] the RIDE Report[3] and collect[ion] [of] a Hospitality Fee." App'x at 255-257.

[3] "RIDE" is an acronym for "Road Improvement Development Effort." A description and discussion of the RIDE committee and the referenced report are set out at p. 9, *infra*.

On May 3, 2019, the City filed a motion for preliminary injunction with supporting affidavits and a memorandum of law,[4] seeking to "enjoin[] ... [the County] from continuing to collect its 1.5% fee on the sale of accommodations, prepared food and beverages, and amusements within the corporate limits of the City and any other Horry County municipality ... during the pendency of [the] litigation." App'x at 325. On May 14, 2019, the County filed a Motion for Preliminary Injunction seeking to enjoin the City from "collecting or enforcing any tax or fee imposed in the City's newly enacted Ordinances 2019-22 and 2019-23,"[5] App'x at 516, along with supporting exhibits and a memorandum of law in support of the County's motion and in opposition to the City's motion for preliminary injunctive relief, App'x at 519-756.[6]

[4] This case is subject to the requirements of Supreme Court Order 2015-09-10-01 creating the Civil Motions Pilot Program. Accordingly, the various motions which have been submitted to the circuit court have all been required to be supported by memoranda of law and affidavits or other materials in support, opposition, or reply filed well in advance of the hearings. This explains in large part the voluminous appendix submitted by the County (in excess of 1,275 pages), which the City is contemporaneously herewith supplementing as permitted by Rule 240(c)(3), SCACR, to include pertinent matter omitted by the County. In addition to the motions specifically addressed herein, the City moved for assignment to the Business Court Program of the South Carolina Circuit Court, *see* Supplemental Appendix ("Supp. App'x") at 3-12 (which motion the County opposed but was granted by the Honorable Roger M. Young and resulted in the assignment of the case to the Honorable William H. Seals, Jr., *see* Supp. App'x at 1-2) and to dismiss the County's counterclaims. The County has moved for partial judgment on the pleadings with respect to the City's class action claims, and the Horry County Treasurer has moved to intervene in this action. Aside from the motion for assignment, those motions remain outstanding.

[5] These ordinances, adopted by the City pursuant to S.C. Code Ann. §§ 6-1-520 and 6-1-720 and imposing a 3% accommodation and 2% hospitality tax within the corporate limits of the City, respectively, are hereinafter referred to as the "Local Tax Ordinances."

[6] Because the County had not stated a cause of action for injunctive relief, the City argued that the County was not entitled to move for preliminary injunctive relief. App'x at 921-922. The County thereafter sought leave to amend its Answer and Counterclaims to include claims for declaratory and injunctive relief, App'x at 856-889, which the City opposed on the ground that they constitute compulsory counterclaims that have been waived, App'x at 890-902. The circuit court did not rule on the City's argument that preliminary injunctive relief is not proper, *see* App'x at 13-14, and the County's motion for leave remains pending.

After the substantial briefing by the parties, the circuit court heard the City's and County's motions for preliminary injunction at the Horry County Judicial Center on June 14, 2019. App'x at 265-96. Following this hearing, the circuit court instructed counsel for the City to prepare a proposed order granting the City's motion for preliminary injunction and denying the County's motion for preliminary injunction, which it submitted on June 19, 2019. Supp. App'x at 12-31. Minutes after the City submitted the requested proposed order, counsel for the County sent an electronic mail message to the circuit court with an unsolicited proposed order denying both the City's and County's motions for preliminary injunction. Supp. App'x at 32 - 34. On June 21, 2019, the circuit court entered an order enjoining the County from collecting the Hospitality Fee and denying the County's request that the City be enjoined from enforcing the Local Tax Ordinances ("Injunction Order"). App'x at 1-17.

In so doing, the circuit court thoroughly analyzed and expressly found that the City had established each of the five elements necessary for entitlement to injunctive relief against the County. App'x at 5-13. The circuit court further found that the County had failed to demonstrate a likelihood of success on the merits with respect to the claimed invalidity of the Local Tax Ordinances and concluded that it was therefore unnecessary to address any of the City's arguments regarding the other four elements required to be shown by the County in order for it to be entitled to injunctive relief. App'x at 13-15.

On June 25, 2019, the County filed a motion pursuant to Rules 52(b), 54(b), and 59(e), SCRCP, seeking reconsideration of the Injunction Order on, *inter alia*, the ground that the circuit court had erred in not requiring the City to post security (even though it is a political subdivision of the State and therefore exempt from this requirement under Rule 65(c), SCRCP), App'x at 1024-25, notwithstanding the County's own assertion that it considers the "segregat[ion of]

revenue from the 1.5 percent paid by the City within its borders pending the outcome of this litigation" to be acceptable and sufficient security for the County's own proposed injunction. App'x at 1027. On June 26, 2019, the City filed a motion for the issuance of a rule to show cause as to why the County should not be held in contempt of the Injunction Order on the ground that the County had publicly stated its intent to continue collecting the Hospitality Fee in every municipality in Horry County other than the City, App'x at 1034-59, which motion the City supplemented on July 1, 2019. App'x at 1060-83.[7]

On July 10, 2019, the circuit court heard the County's motion for reconsideration and the City's motion for a rule to show cause at the Marion County Courthouse.[8] App'x at 297-324. On the same date, the circuit court issued an order in which it denied both motions ("Reconsideration Order"). App'x. at 18-19.

On July 11, 2019, the County filed in this Court its Notice of Appeal from the circuit court's Injunction Order and Reconsideration Order, App'x at 1230, and separately filed with the Supreme Court a "motion to transfer" this appeal seeking certification of same pursuant to Rule 204(b), SCACR. The next day, the County filed a motion for supersedeas or stay of these orders with the circuit court. App'x at 1252-67, Supp. App'x at 36. Counsel for the City promptly

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[7] On July 2, 2019, the County filed a response in opposition to the City's motion for a rule to show cause, App'x at 1084-90, and a motion for judgment on the pleadings, App'x at 1091-94. On July 3, 2019, the City filed its memorandum in opposition to the County's motion for reconsideration of the Injunction Order. App'x at 1140-86. Also on July 3, the treasurer of Horry County filed a motion to intervene and a proposed motion to deny certification of the class action. The City has not responded to this motion and will not be doing so during the pendency of this appeal as a result of the circuit court's July 18 order. Nonetheless, the City notes its position that the treasurer has no standing which would permit her intervention in view of the plain language of Rule 65(d), SCRCP, which makes the Injunction Order binding upon her. Thereafter, on July 8, 2019, the County filed a reply memorandum in support of its motion for reconsideration of the Injunction Order, App'x at 1187-96, and the City filed a reply memorandum in support of its motion for the issuance of a rule to show cause, App'x at 1208-29.

[8] This transcript mistakenly indicates the hearing was held on July 11.

inquired of the circuit court as to whether it desired a response to the County's motion for supersedeas or stay and, in response to the County's assertions regarding the posting of security under Rule 65(c), SCRCP, reiterated its willingness to have the injunction modified, as permitted by Rule 62(c), SCRCP, to direct that the City hold the revenues derived from the Local Tax Ordinances in escrow, consistent with the type of security the County had argued would be appropriate in support of its own motion for preliminary injunction. Supp. App'x at 35-36. On July 15, 2019, the County filed a separate motion to stay the underlying litigation before the circuit court pending appeal. App'x at 1268-70. Also on July 15, 2019, the circuit court directed the City to prepare an order denying the County's motion for supersedeas or stay of the injunction, modifying the injunction pursuant to Rule 62(c) to require an escrow of the additional revenues derived by the City from the Local Tax Ordinances, and requiring that the parties mediate the case within twenty days.[9] Supp. App'x at 35. On July 16, 2019, the circuit court informed the parties of its inclination to grant the County's motion to stay further proceedings in the circuit court while the matter was pending on appeal with the exception of the contemplated mediation.

[9] Thereafter, the County sent unsolicited electronic mail messages to the Court demanding that it reverse course on its announced decision on the supersedeas and the directive to the parties to engage in a mediation of the case. Supp. App'x at 37-38. The County also filed a "Memorandum in Response to Email from County of City Dated July 12, 2019 & Email from Court Dated July 15, 2019." App'x at 1271-78. In form and substance, but without any authority to do so in the rules, the County sought reconsideration of the circuit court's decisions before any order was even issued. Counting these messages, the County argued its position to the circuit court on five separate occasions (in initial briefing on the motion for preliminary injunction, on reconsideration, in support of its motion for supersedeas, in opposition to the rule to show cause for contempt, and in reconsideration of the court's announced decision denying the supersedeas and requiring that the parties engage in mediation); thus any suggestion by the County that the circuit court did not adequately consider the issues before it, or that the County did not have a sufficient opportunity to present its arguments below and is before this Court under "exigent circumstances," is patently false.

On July 17, 2019, the circuit court issued its order denying the County's motion for a stay or supersedeas of the Injunction and Reconsideration Orders, modifying the injunction to require that the City escrow the additional revenues collected under the Local Tax Ordinances pursuant to Rule 62(c), directing that the parties mediate the case beginning no later than August 1, 2019, and appointing Karl Folkens, Esquire, to serve as the mediator ("Supersedeas Order"). App'x at 20-23. On July 18, 2019, the circuit court issued its order granting the County's motion to stay further proceedings below during the pendency of the instant appeal with the exception of the August 1 mediation before Mr. Folkens. App'x at 24-26.

On July 19, 2019, the City filed its return and memorandum to the County's motion to certify the instant appeal. The City also requested an extension of time to file the within return and opposition, which this Court granted over the County's objection. On July 19, 2019, the County amended its Notice of Appeal to include the Supersedeas Order.

FACTUAL BACKGROUND

The Hospitality Fee came into existence by way of Horry County Ordinance 105-96, which was adopted on October 15, 1996, to implement recommendations made by the RIDE Committee, created by the South Carolina Department of Transportation at the direction of Governor Beasley, to address certain transportation infrastructure needs and improvements within Horry County and the methods by which to fund them. App'x at 1-2. The impetus for the adoption of the ordinance was the County's unsuccessful attempt to obtain an affirmative referendum vote to allow a countywide local option sales tax (presumably pursuant to S.C. Code Ann. § 4-10-20) to fund road improvement projects throughout the County – including projects within the City. App'x at 329, 356. The ordinance, in pertinent part, established the Hospitality Fee and mandated that its revenues "shall be deposited in 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." App'x at 2, 351. It further provided that the Hospitality Fee would take effect on January 1, 1997, and terminate twenty years after its effective date, *i.e.*, January 1, 2017. App'x at 2, 352.

Prior to Ordinance 105-96's effective date, and as required by law, each municipality in Horry County adopted a resolution consenting to the imposition of the Hospitality Fee within their respective corporate limits, specifically recognizing the "proposed implementation of a 1.5% hospitality fee for a period of up to 20 years" and "urg[ing] Horry County Council to enact expeditiously the necessary ordinances to implement the RIDE Committee report." App'x at 2, 400-10 (emphasis removed). Thereafter, the County began to collect the Hospitality Fee and used the revenues to fully pay off $547 Million in loans it obtained from the South Carolina State Transportation Infrastructure Bank ("STIB") to fund the projects provided for in the RIDE Report. App'x at 35, 193-195; Supp. App'x at 8. While the County attempted to unilaterally amend Ordinance 105-96 on three separate occasions to extend and ultimately repeal the sunset date, and has indicated its intent to change the scope of services to be funded by the Hospitality Fee, App'x at 3-4, neither the City nor any other municipality within Horry County consented to these amendments, the collection of the Hospitality Fee within their respective corporate limits after January 1, 2017, or the use of the revenues derived from the Hospitality Fee on other services not enumerated in the RIDE Report.[10] App'x at 3, 7. The City adopted the Local Tax Ordinances on March 7, 2019, to be effective July 1, 2019, increasing its existing local accommodations tax from 0.5% to 3%, the maximum allowed by S.C. Code Ann. § 6-1-540, and

[10] Furthermore, one such amendment, found in Ordinance 11-04, appeared only in an "Editor's Note" in the County's Code of Ordinances and was never codified. App'x at 3; *see also* App'x at 534 & n. 5 (the County acknowledging that Ordinance 11-04 was only "referenced" in the Code of Ordinances); *cf.* S.C. Code Ann. § 4-9-120.

imposing a 2% hospitality tax, the maximum rate S.C. Code Ann. § 6-1-740 permits. App'x at 4, 745-52.[11]

On March 20, 2019, the City filed the instant action for itself and on behalf of a class of similarly situated plaintiffs who have paid the Hospitality Fee since the termination of Ordinance 105-96 on January 1, 2017. Primarily, the City's complaint seeks declaratory and injunctive relief to stop the collection of the 1.5% uniform service charge within the municipalities without their consent, which currently generates approximately $28 Million per year in revenues. App'x at 38-41, 808. The City concomitantly filed the motion to preliminarily enjoin the County's continued collection of the Hospitality Fee during the pendency of this lawsuit which the circuit court granted. Secondary to declaratory and injunctive relief, the City seeks a pro rata refund for itself and all others similarly situated who have paid the County's 1.5% uniform service charge on purchases of accommodations, prepared food and beverage, and admissions within the corporate limits of municipalities after it terminated two and a half years ago. The potential class consists of all individuals and entities that have paid the Hospitality Fee since January 1, 2017, including the City and the Other Municipalities, on covered purchases within the corporate limits of municipalities. App'x at 28. In retaliation, the County moved to enjoin the City from enforcing its Local Tax Ordinances. The Petition does not seek supersedeas of the circuit court's

[11] Three other municipalities in Horry County adopted similar ordinances of their own. *See* Supp. App'x at 8, 41, 43, 45-46. The City requests that this Court take notice of City of Conway Code of Ordinances §§ 1-5-40, et seq. and 1-5-57 adopting a 3% accommodation tax and 2% hospitality tax within that municipality on April 15, 2019, same to be effective July 1, 2019, and the related minutes of the Conway City Council on April 1, 2019, and April 15, 2019, copies of which are set forth in the City's supplemental appendix at pp. 48-59 *See Masters v. Rogers Development Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984); *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) ("[A]n appellate court can take judicial notice of something that was not before the trial court if it is indisputable.").

orders to the extent they denied the County's motion, although those orders are appealed by the County.

As a result of the Injunction, Reconsideration, and Supersedeas Orders, respectively, the County is now enjoined from collecting the Hospitality Fee within the City, and, based on the timeline set forth in the Reconsideration Order, will be enjoined from collecting the Hospitality Fee within the other municipalities in Horry County on August 10, 2019, but the City and the other municipalities can—and are—enforcing their respective Local Tax Ordinances. Although its July 14 order denied the City's motion for a rule to show cause as to why the County should not be held in contempt for continuing to impose its uniform service charge within the other municipalities after the Injunction Order had been issued, the circuit court found that it was being "extremely lenient" because the Injunction Order expressly characterized the relief being sought as applying within all municipalities in Horry County, in addition to the fact that the City's complaint, the oral arguments on the motions, and the case caption all made it clear that all municipalities in Horry County were within the ambit of the preliminary injunction that was issued.

STANDARD

The County asserts that the "legal standard" governing the issuance of a writ of supersedeas is whether the absence of a supersedeas will work an irreparable harm upon the applicant or result in a miscarriage of justice. *See* Petition at 8. The case relied upon by the County, *Kuhn v. Electric Mfg. & Power Co.*, 92 S.C. 488, 75 S.E. 791 (1912), does not support this proposition, as it is not a decision of the Supreme Court and does not make the holding asserted by the County. To the contrary, *Kuhn* is an order of an individual justice refusing to supersede a lower court injunction because "the petitioners have not clearly shown that, pending

appeal, it will result in irreparable injury or the miscarriage of justice" as is required for an individual justice to supersede a lower court order under the Supreme Court's opinion in *Andrews v. Sumter Commercial Real Estate Co.*, 87 S.C. 301, 69 S.E. 604 (1910)—a case cited in *Kuhn* but not mentioned by the County in its petition. Accordingly, because the County is not seeking supersedeas from an individual justice or judge in this matter, *Kuhn* does not apply and all of the County's arguments based upon the contrary assertion should be ignored by this Court.

The applicable standard of review to determine whether a writ of supersedeas should be issued by this Court is whether the circuit court "unjustifiably denied" the County's motion for supersedeas below (*see* Rule 241(d)(4)(C), SCACR) and whether a writ is needed "to preserve jurisdiction of the County's appeal or to prevent a contested issue from becoming moot." *See* Rule 241(c)(2), SCACR; *also see* Toal, J.H., Walker, A.W., Baker, M.E., *Appellate Practice in South Carolina*, 346 (3d ed., 2016). Moreover, the grant of the writ may be conditioned by this Court upon such terms as it deems appropriate, including the filing of a bond or other undertaking by the County—*see id.* at 347; Rule 241(c)(3), SCACR—a point which the County conveniently ignores.

For the reasons discussed below, the County is not entitled to the writ under the applicable standard—or even under the incorrect standard argued by the County.

SUMMARY OF ARGUMENT

As the County belatedly recognizes, *see* Petition at 15-16, the underlying issue in this case is whether the County may impose a uniform service charge within the corporate limits of municipalities situated within Horry County without the municipalities' consent to same. In this case, the County unilaterally extended the duration and seeks to change the scope of the Hospitality Fee which had been consented to by the municipalities of Horry County. As will be

discussed below, the actions of the County are expressly forbidden under the constitutional provision providing for Home Rule and statutes implementing and giving effect to same. Moreover, because the Hospitality Fee terminated on its own based on the express language of the Sunset Provision which codified the municipalities' consent for twenty years, the County's actions, if anything, constitute an attempt to impose a new uniform service charge. The circuit court found that the City had shown a likelihood of success on the merits because it had raised a reasonable question as to its right to relief from the County's imposition of the Hospitality Fee on and after January 1, 2017, within the corporate limits of these municipalities but without their consent based upon the express provisions of S.C. Const. art. VIII § 13(A), S.C. Code Ann. § 4-9-25; *id.* § 4-9-30(a)(5); *id.* § 4-9-40; *id.* § 4-9-41(A); and *id.* § 5-7-60. *See* App'x at 5-7. The County has failed to meet its burden for the issuance of the instant writ as it has not shown that the circuit court was unjustified in denying the motion for supersedeas below, or that the writ is needed to prevent a loss of appellate jurisdiction or to prevent its appeal from becoming moot. And, to the extent it is pertinent to a determination on the Petition, the County has not demonstrated that irreparable harm to the County or a miscarriage of justice will result from a denial of supersedeas.

ARGUMENT

I. Because it Does Not Address the Applicable Standard, the County's Petition Should Be Denied

The County does not mention, much less address the substance of, Rules 241(d)(1)(C) and Rule 241(c)(2), SCACR, which provide the applicable standard of review in this matter. Having failed to do so, this Court should deny the Petition without further inquiry. *Cf.* Rule 208(b)(D), SCACR; *State v. Lindsay*, 394 S.C. 354, 364, 714 S.E.2d 554, 599 (Ct. App. 2011) (holding that an issue not addressed in a brief is deemed abandoned).

II. Because the County Cannot Meet the Applicable Standard, the County's Petition Should be Denied

Even assuming that the County's asserted standard of review applies—which it does not—or that the elements of that standard are in some manner pertinent to the considerations required by this Court under the standard of review which does apply, the County has failed to meet its burden to justify issuance of the writ. Although the County professes to be coming before this Court under "exigent circumstances" that cause "an irreparable injury or the miscarriage of justice," tellingly, the County spends very little of its brief discussing the underlying legal arguments that convinced the circuit court that the County was acting in contravention to the constitution and applicable implementing statutes, thus warranting the enjoinment of the continued collection of the Hospitality Fee. Instead, the County's brief begins with and focuses almost exclusively on alleged procedural defects going to the terms of the Injunction, Reconsideration and Supersedeas Orders which are inherently within the circuit court's discretion, rather than addressing the merits of the County's actions which led to the enjoinment in the first instance. The City submits that the County's approach in that regard is strategic, as the County has yet to advance a legally viable defense to the clear and overwhelming constitutional, statutory, case law, and secondary source citations put forward by the City and on which the circuit court relied in granting the injunction.

Moreover, as to the County's procedural argument that the amount of the security under Rule 65(c), SCRCP, is not discretionary with the circuit court, that it was instead required to impose upon the City a dollar-for-dollar security bond under the injunction – which obligation would amount to the posting of $28 million dollars in security in this case – and that its failure to do so is a miscarriage of justice exposing the County to irreparable injury, Petition at 8-13, it is wholly without merit for the many reasons discussed below.

a. It is the County's, and Not the Circuit Court's, Analysis of the Law on the Underlying Issue that is Wrong.

Perhaps in recognition of the frailty of its only substantive argument, the County leaves to the very end of its Petition (and even then, only implicitly) any discussion addressing one of the five elements that the City was required to establish in order to obtain the injunction issued by the circuit court—*i.e.*, likelihood of success on the merits. *See* Petition at 17-20. With no supporting authority, the County asserts that the circuit court's "flawed legal analysis" constitutes a "miscarriage of justice" warranting issuance of the writ. Petition at 17. Once again, the County's penchant for misstating the arguments of the City and either failing to address or misstating the applicable legal authority is on full display.

i. The Constitutional Provision and Statutes Relied upon by the Circuit Court Justified the Issuance of the Injunction and the Denial of the Motion for Supersedeas.

The circuit court concluded that the City had demonstrated a likelihood of success on the merits because it had raised a fair question with respect to its right to relief from the County's imposition of a uniform service charge within the corporate limits of municipalities in Horry County, where neither the City nor any other municipality had consented to same for any period after January 1, 2017, or for any purpose other than implementation of the transportation infrastructure project in the RIDE Report. App'x. at 5-7. South Carolina law prohibits the

imposition of a uniform service charge by county ordinance within municipal limits unless the municipality has agreed and consents, or the General Assembly expressly provides otherwise. The circuit court's conclusion in this regard was proper in view of the clear requirements of the following law relied upon in its orders:

(1) **S.C. Const. art VIII, § 7 Organization, powers, and duties of counties; special laws prohibited**: states in pertinent part that "[t]he General Assembly shall provide by general law for the ... powers ... and the responsibilities of counties." The Legislature has done this, *inter alia*, in S.C. Code Ann. § 4-9-25, *see infra*, which specifically provides that a county's ordinances may not be "inconsistent with the Constitution and general law of this State" and § 4-9-30 which specifically provides that a county's powers (including the power to impose a uniform service charge under § 4-9-30(5)) are constrained "by the Constitution and subject to the general law of this State."

(2) **S.C. Const. art. VIII, § 13(A) Joint administration of functions and exercise of powers**: states in pertinent part that "[a]ny county, incorporated municipality, or other political subdivision ... may agree with ... any other political subdivision for the joint ... exercise of powers." Accordingly, the joint administration of functions and powers, is permitted, but only where it is agreed to by both the county and the municipality. Here, a joint exercise of powers was undertaken in 1996 when City and the other municipalities consented and agreed that the County could impose a uniform service charge within the corporate limits of the municipalities for the specific purpose of road improvements pursuant to the "road plan" which County admits was developed "in conjunction with the City." The City and County each possessed then, and still do today, the statutory authority to make road improvements within their respective jurisdictions under S.C. Code Ann. §§ 5-7-30 and 4-9-30. However, under this constitutional provision, County has no authority to impose a uniform service charge within the municipalities for road improvements located outside the municipalities' corporate limits (*e.g.*, the long discussed but never constructed I-73) unless the municipalities consent or agree "to a joint exercise of these powers and the sharing of its costs" – which they have not.

(3) **S.C. Code Ann. § 4-9-25** empowers the County to "enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State." The County is thus statutorily constrained to ensure that its ordinances are consistent with the Constitution and any applicable statute.

(4) **S.C. Code Ann. § 4-9-30(a)(5)** empowers the County to "assess ... uniform service charges ... for functions and operations of the county, including, but not limited to ... roads," but only if the exercise of that power is "within the authority granted [to the County] by the Constitution." Further, any exercise of this power is expressly "subject to the general law of this State." *Cf.* § 4-9-25. Subsection (17) further provides that "[t]he governing body of any county shall not create a special tax district ... any portion of which falls within the corporate boundaries of a municipality, except upon the

concurrence of the governing body of the municipality." The County overlooks the language of § 4-9-30(a), as the County's authority to provide services within municipalities is restricted by S.C. Const. art. VIII, § 13(A) and it is not empowered to act contrary to the general law provisions set out S.C. Code Ann. § 4-9-40 and § 4-9-41 as discussed, *infra*.

(5) **S.C. Code Ann. § 4-9-40** empowers the County to "perform any of its functions ... [and] furnish any of its services within the corporate limits of any municipality ... by contract with [a] municipal governing body **subject always** to the general law and Constitution of this State regarding such matters." (Emphasis supplied.) Moreover, "where such service is being provided by the municipality or has been budgeted or funds have been applied for that **such service may not be rendered without the permission of the municipal governing body**." (Emphasis supplied). In addressing the applicability of this statute, County has made the incredible assertion that "it is not providing any service that the City could possibly be providing, but rather the County is collecting a fee." App'x at 530. Quite clearly, the City could be (and does) provide services to its residents and visitors with respect to road design, construction, maintenance and operation as authorized by § 5-7-30. App'x at 811.[12]

The County also clearly misapprehends the correlation between the provision of services and the enactment of a uniform *service* charge. Under the clear precedent of the Supreme Court in *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992) and *C.R. Campbell Const. Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437 (1997), a uniform service charge may only be imposed if it is tied to a specific service and "if (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*, 325 S.C. at 236, 481 S.E.2d at 438 (interpreting *Brown* and specifying the above four-part test for determining whether a uniform service charge is legally valid). Under the precedent of *Brown* and *C.R. Campbell*, in order for a uniform service charge to be valid, it must be tied to a specific service provided by the imposing political body and for the specific improvements enumerated in the ordinance.

Thus, the Hospitality Fee was a valid uniform service charge since its inception only if it was collected for the specific road improvement services specified in Ordinance 105-96 which, by its plain language, was limited to the road projects specifically enumerated in the RIDE report (which did not contemplate the I-73 project identified by the County for receipt of the Hospitality Fee revenues on a going forward basis, much less the provision of general police protection services identified by the County for the remainder in its various ordinances and resolutions adopted without municipal consent). Further, because

[12] The County has thrice adopted resolutions indicating that it intends to use revenues from the Hospitality Fee for a variety of other functions and services, including public safety, which City is also statutorily authorized to provide and does provide. App'x at 193-95; Supp. App'x at 8-9.

the municipalities only consented to the imposition of the Hospitality Fee within their corporate limits for a period of twenty years, the County's unilateral extension of the duration of the fee indefinitely violates the further specific restriction of § 4-9-40 that "such service may not be rendered without the permission of the municipal governing body."

(6) **S.C. Code Ann. § 4-9-41(A)** authorizes the County and municipalities to "provide for the joint administration of any [of their] function[s] and exercise any of [their] powers" and only subject to the express limitation of § 4-9-41(B) that same does not diminish or alter the City's "political integrity" in engaging in such functions or exercising such powers. As City has asserted, the County's unilateral actions in imposing a uniform service charge within municipal limits without bespeaking the City's consent do not "provide for" a joint administration of any function or exercise of any power and have destroyed the rights of municipal voters, thus contravening § 4-9-41(B).

(7) **S.C. Code Ann. § 5-7-30** empowers the City to enact regulations, resolutions and ordinances with respect to a variety of matters, including roads, streets and public safety. Although this section may not specifically give the City "the right or authority to approve of a fee imposed by a county" as County contends, this section clearly gives the City the power to control its own roads and law enforcement. Moreover, nothing in this section authorizes a County to impose a uniform service charge for roads and law enforcement within the municipalities' limits. But even if it did, it would be in conflict with S.C. Const. art. VIII, §§ 7 and 13(A) and § 4-9-30, § 4-9-40, and § 4-9-41.

(8) **S.C. Code Ann. § 5-7-60** empowers the City to perform any of its functions and provide any of its services in areas outside its corporate limits, which would include the unincorporated areas of Horry County, by contract and, where a county is already providing such service, to do so only with the permission of such county. The limitations in § 5-7-60 are nearly identical to those imposed on the County by § 4-9-30 and § 4-9-40. Under the County's rubric, City would have the ability to discharge its functions and exercise its powers, and impose a uniform service charge relating to same, outside its corporate limits without the County's agreement and consent. The Court of Appeals has recognized that the "permission" required for a municipality to provide its services in the territory of another local governmental entity involves that entity's consent. *See Comm'rs of Public Works of the City of Laurens v. City of Fountain Inn*, 423 S.C. 461, 465, 815 S.E.2d 21, 23 (Ct. App. 2018) (describing a declaratory judgment action brought by a municipality against a municipal commission of public works based upon the "permission" requirement of § 5-7-60 as a challenge to a municipality's extension of "natural gas service in a particular area without the **consent** of the" commission of public works). The circuit court order imposing the injunction against the County recognizes that the permission required to be obtained by a municipality under § 5-7-60 and the permission required to be obtained by a county under § 4-9-40 operate in the same way to require "consent."

See App'x at 787-89.

In addition, the circuit court looked to the plain language of Ordinance 105-96, which it found to be self-limiting and to require the consent of the respective municipalities. App'x at 6. Ordinance 105-96 allowed only for the collection of a uniform service charge "which will be used to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County." App'x at 6, 351; *cf.* S.C. Code Ann. § 4-9-40. This language has not been changed or repealed. The County therefore could collect the Hospitality Fee only to the extent the municipalities still consented to this "comprehensive road plan." App'x at 6. As limited by the RIDE Report, the STIB Application, and the municipalities' consent, Ordinance 105-96's Sunset Provision expressly limited its duration to twenty years from the effective date of the ordinance. App'x at 6. There is no evidence any municipality consented to an ordinance which had the effect of altering this original agreement. App'x at 7. The lack of consent precludes the County from imposing the Hospitality Fee within the corporate limits of any Horry County municipality and invalidates the Hospitality Fee by its own terms. Any extension of the Hospitality Fee, whether in time or scope, without municipal consent is not "implement[ing] a comprehensive road plan adopted by the County in concert with the municipalities of the County," and is violative of S.C. Const. art. VIII, § 13(A) and S.C. Code Ann. § 4-9-40 and § 4-9-41.[13]

[13] Moreover, the circuit court cited to and relied upon a number of South Carolina Attorney General opinions recognizing municipal independence from unilateral county interference. App'x at 7 n.4 (stating that "for over thirty years, the Attorney General similarly has recognized the independence of municipalities from county interference absent consent or express statutory authority") (citing S.C. Att'y Gen. Op., 2016 WL 7031993 (Nov. 15, 2016) (finding that a county has no power with respect to roads located within a municipality and, in so doing, observing that "[t]he Legislature did not grant county councils the ability to exercise any power within the territory of a municipality **without the permission of the municipal council**.") (emphasis supplied); S.C. Att'y Gen. Op., 2011 WL 3918176 (Aug. 10, 2011) (concluding that a county may not enforce its non-smoking ordinance within the corporate limits of municipalities because it infringes upon the autonomy of municipalities under Home Rule unless a municipality

Notwithstanding the circuit court's citation to and reliance upon the foregoing provisions of law, cases, and secondary sources, the County makes a variety of assertions which it contends demonstrate inadequacies in the circuit court's orders, *e.g.*, "the circuit court's conclusion finds no support in the ... Constitution ... Code ... or ... Home Rule doctrine (which is about the relationship between the State and local governments)),"[14] Petition at 17, "[t]he circuit court accepted the City's arguments seemingly at face value," *id.*, the "order granting the preliminary injunction (which was initially drafted by the City) ... quotes generic language about counties having to follow the law and then provides a string cite to various provisions," and "nowhere in that order does the circuit court cite a single legal authority that expressly requires a municipality's consent for the County to adopt or extend the Hospitality Fee," *id.* In addition to being factually incorrect and disrespectful to the circuit court, these assertions rehash the County's arguments below but do not overcome that which compelled the circuit court to conclude that the City had demonstrated a likelihood of success on the merits: under South

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chooses to allow it by agreement); S.C. Att'y Gen. Gen. Op., 1988 WL 383501 (Feb. 25, 1988) (recognizing that the Home Rule amendments to the Constitution and associated legislative enactments do not permit a County to regulate bingo within municipal corporate limits and stating that "[o]ur beliefs are in accordance with the general law on this issue. Counties and cities are viewed co-equal political subdivisions which are independent of each other politically, geographically, and governmentally"); S.C. Att'y Gen. Gen. Op., 1984 WL 249691 (Oct. 2, 1984) (recognizing the autonomy of a municipality within its borders to the exclusion of a county with respect to a referendum for the sale of mini-bottles by non-profit entities). These Attorney General opinions cite many, if not all, of the constitutional provisions and statutes relied upon by City in this action. The County recognizes Attorney General opinions can be persuasive. Petition at 19.

[14] This is a clear misstatement of the law as the Home Rule provisions of the Constitution and related statutes quite clearly involve the governance of relationships between local governments. *See*, e.g., *Comm'rs of Public Works of the City of Laurens*, *supra*, 423 S.C. at 471, 815 S.E.2d at 25 (Ct. App. 2018) ("'[t]he Home Rule Act of 1975 completely rewrote the powers of municipalities in this [s]tate. [Section] 5-7-60 [of the South Carolina Code] contains provisions both granting and delimiting the exercise of corporate functions of municipalities outside their corporate limits.'") (citing *City of Newberry v. Public Serv. Comm'n*, 287 S.C. 404, 406, 339 S.E.2d 124, 126 (1986)).

Carolina law, a county has no authority to impose a uniform service charge for services provided within the corporate limits of a municipality unless the municipality has consented to it. The County cites to no authority—case law, statutory, or otherwise—which provides to the contrary. Accordingly, the circuit court justifiably denied the motion for supersedeas.

ii. The County's Semantics Do Not Rescue It from the Injunction or the Denial of the Motion for Supersedeas.

In order to paint its inaccurate picture of the circuit court's orders, the County engages in a variety of word-games which this Court should reject—if not condemn. For example, while it would be accurate to say that the circuit court's orders do not cite to any caselaw comprising "legal authority" for the proposition that the City's consent is required "for the County to adopt or extend the Hospitality Fee," Petition at 17, that means nothing as there has never been (at least to the City's knowledge) any determination regarding the County and its Hospitality Fee by an appellate court in South Carolina. However, this Court has recognized that the requirement that one local government obtain the "permission" of another local government in order to provide its services in the latter's territorial limits under § 5-7-50 involves "consent." *See Comm'rs of Public Works of the City of Laurens*, *supra*, 423 S.C. at 465, 815 S.E.2d at 23. That no appellate decision has specifically addressed whether a county may provide its services within incorporated areas and impose a uniform service charge without the consent of the affected municipality is unsurprising given the sheer cheek that is required for a county to contend that it may do so. The City argued as much below without any effective rejoinder by the County. App'x at 272, ll. 18-24.

Similarly sophistic is the County's complaint that none of the provisions of law cited in the circuit court's orders "expressly requires a municipality's consent" and that the County's Ordinance 105-96 "never even uses the word consent." Petition at 17-18. Only in the County's

mind do the statutory requirements that a county's exercise of its functions, the provision of its services, and the imposition of its uniform service charges within a municipality be done on a "joint" basis in which costs are "shared," or by "contract", or with the "agree[ment]" or the "permission" of the municipality, not require the "consent" of the municipality. Along the same lines, only by twisted logic can the County assert that the specific requirement of Ordinance 105-96 that the proceeds of the Hospitality Fee be used "to implement a comprehensive road plan adopted by the County in concert with the municipalities of the County" does not require the "consent" of the municipalities. Or that "strongly urg[ing]" the County to adopt the Hospitality Fee is not consenting to it. *See* App'x at 8.

iii. Not Only is There No Black Letter Law Justifying Issuance of the Writ, the County Argued the Exact Opposite Proposition Below.

Equally uncompelling is the County's contention that the circuit court "attempted to justify its conclusion that municipal consent was necessary to extend the Hospitality Fee" by ignoring "black letter law" in the form of S.C. Code Ann. § 6-1-330(A), which the County contends required the circuit court to recognize the continuing validity of Hospitality Fee. Petition at 19. The circuit court correctly disposed of this rationalization on the part of the County by concluding that the unilateral change in the duration of the ordinance and the use of the revenues from the Hospitality Fee for a purpose other than to "implement a comprehensive road plant adopted by the County in concert with the municipalities" rendered it a new uniform service charge which was not entitled to the grandfathered status arising under § 6-1-330(A). App'x at 7 n.6. Nothing the County argues in its Petition to this Court justifies a departure from the circuit court's ruling in this regard.

Moreover, the County's actions in the circuit court give lie to its current assertion that § 6-1-330(A) is a "plain directive from the General Assembly" requiring that the Hospitality Fee

remain[] in effect 'until repealed.'" Petition at 19. Following the hearing on the motions for preliminary injunction, but before the circuit court issued its June 21 order, the County wrote to the circuit court and asserted that "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." Supp. App'x at 32. Also, attached to the County's June 19 correspondence to the circuit court was an unsolicited proposed order in which the County stated that "[w]ith 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." Supp. App'x at 33.

Now, when it is seeking relief which will allow it to continue imposing a uniform service charge under an ordinance which, by the consent of the City and the other municipalities, became effective on January 1, 1997, by its own terms terminated on January 1, 2017, and provided for the use of the revenue on a specific improvement that has been completed, the County contends that the circuit court ignored "black letter law" which contains a "plain directive" from the legislature in § 6-1-330(A) that allows it to impose that charge "forever." *See* App'x at 301, ll. 4-7. To say the least, the County's criticism of the circuit court in regard to its ruling that the Hospitality Fee provision of Ordinance 105-96 is not grandfathered under this statute is unfounded. Allowing the County to circle back, change the positions it took below, and criticize the circuit court for not giving § 6-1-330(A) a reading which essentially guts Home Rule would constitute a "miscarriage of justice" that should not inure to the benefit of the County.

b. <u>The County Is Not Exposed to Irreparable Harm and No Miscarriage of Justice Exists.</u>

Regarding the County's misguided argument that Rule 65(c) does not allow the trial court to set a non-nominal security for the issuance of an injunction, and that the trial court's exercise of that discretion amounts to a miscarriage of justice leaving the County exposed to irreparable injury, the facts do not support the County's hyperbole.

i. *The City is Exempt from the Security Requirement of Rule 65(c).*

The circuit court found in its order denying the County's motion for reconsideration that "a bond as required by Rule 65 is not necessary and/or required of these parties." App'x. at 19. Although it attempts to suggest otherwise,[15] this ruling can hardly have been a surprise to the County since it asserted to the circuit court that the County's ability to collect and hold the revenues it would derive from the Hospitality Fee on a going forward basis was sufficient to protect the City from irreparable harm if the circuit court granted the County's motion to enjoin the City from enforcing the Local Tax Ordinances. *E.g.*, App'x at 1027. In fact, even after its motion for reconsideration of the Injunction Order was denied, the County repeated this assertion in its motion to the circuit court for a stay or supersedeas, stating that "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[16] that have enacted ordinances to collect local accommodations and hospitality [taxes]." App'x at 1264. Now, the County posits that Rule 65(c) "requires security from the party who obtains the

[15] *See* Petition at 9, n.5 ("[t]he City is the only party whose motion for injunction was granted, so it is unclear why the circuit court referred to 'parties' in the plural"). The County overlooks the fact that it, too, sought injunctive relief – the denial of which it has appealed from but which is not raised in the Petition.

[16] The County's assertion in this regard indicates that it does not understand the underlying issue in this case and the relief sought. The City is not asserting that it is entitled to the funds unlawfully collected by the County under the Hospitality Fee. The City is asserting that the persons and entities paying the improper Hospitality Fee are entitled to these funds. See App'x at 2-5, 15-17.

injunction" (Petition at 8), argues that no exemption is available to the City thereunder (Petition at 9-11), and asserts that the City's escrow of the additional revenues it generates from the Local Tax Ordinances is insufficient to comply with the security requirements of Rule 65(c) (Petition at 11-13).[17]

As an initial matter, the circuit court correctly concluded that the City is entitled to the exemption from giving security under Rule 65(c) because it is not independent from, but rather is a political subdivision of, the State. App'x at 2 n.3.; *see also Hibernian Society v. Thomas*, 282 S.C. 465, 472, 319 S.E.2d 339, 343 (Ct. App. 1984). This Court must apply the same rules which govern the construction of statutes when interpreting the SCRCP. *See Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006). Accordingly, Rule 65(c) must be given a reasonable reading in light of its intended purpose, *Enos v. Doe*, 380 S.C. 295, 304, 669 S.E.2d 619, 623 (Ct. App. 2008), and must be interpreted in a manner which is consistent with the law at the time of its adoption in 1985, *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970). The City submits that the intended purpose behind this exemption in Rule 65(c) is to recognize that the State has the ability to respond to judgments by virtue of the fact that it has the power to raise revenue through taxation and therefore no security is needed to protect persons or entities subject to an injunction obtained by the State. *See* 11A Fed. Prac. & Proc. Civ. § 2954 (3d ed.) ("[a]lthough the government later may be liable for [damages arising from an improperly issued injunction], security is unnecessary because there is no substantial risk that the United States will be

[17] In support of these assertions, the County also makes the astonishing contention that it is actually protecting the residents of the City by seeking a writ of supersedeas of an injunction that prohibits the County from imposing a uniform service charge against these residents. Petition at 13. The obvious irony of this contention aside, the Petition is deafeningly silent with respect to whether the County should be required to file a bond or undertaking as provided for in Rule 241(c)(3), SCACR, should the writ be issued.

financially unable to indemnify the enjoined party for any of the costs it is legally obligated to pay").

In view of *Hibernian Society*, *supra*, which was existing law at the time the SCRCP were adopted, a reasonable reading of Rule 65(c) is that a political subdivision of the State is within the ambit of the exemption because it, too, has revenue raising capability. By virtue of its repeated assertions below that its ability to devote public funds it collects to secure against irreparable harm to the payers of its Hospitality Fee in the event the injunction it sought was granted but later reversed on appeal, the County has implicitly acknowledged the correctness of the circuit court's finding that "a bond as required by Rule 65 is not necessary and or required of these parties." Accordingly, the circuit court was justified in denying the County's motion for supersedeas and no miscarriage of justice can result from a denial of the Petition.

ii. The City Has Given Adequate Security.

Without citation to any authority supporting the proposition, the County asserts that the security required by the circuit court is not "adequate" and is "insufficient" because it will not "make the County whole, if the injunction is reversed." Petition at 1, 11-12. Even assuming that Rule 65(c) does not exempt the City from giving security for the injunction against the County's collection of the Hospitality Fee, issuance of the writ on this ground is not warranted for a number of reasons.

First, the circuit court ordered the City to give the County the exact same type of security which the County repeatedly asserted below was adequate to protect the City in the event that the County succeeded in having the Local Tax Ordinances enjoined. *E.g.*, App'x at 1027. Having conceded below that this is an adequate form of security, the County may not now contend

otherwise. *See TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) ("An issue conceded in a lower court may not be argued on appeal.").

Second, the amount of security required for the issuance of an injunction is a matter within the discretion of the circuit court. *See* Rule 65(c), SCRCP (providing that security is to be given "in such sum as the court deems proper"). An abuse of discretion arises only if the circuit court's determination is controlled by an error of law or fact. *Tri–County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). The County points to no error of law or fact committed by the circuit court in ordering the security it required to be given by the City.

Third, in cases not involving the State or its political subdivisions, our appellate courts have recognized only that it is improper for a circuit court to issue an injunction where either no security, or only nominal security, is required. *See AJG Holdings v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (2009) (holding that, where "there would be [a] need for a bond to protect" an enjoined party, "Rule 65(c), SCRCP requires the trial court to order [the party obtaining an injunction] to post a bond"); *see also Atwood Agency v. Black*, 374 S.C. 68, 78, 646 S.E.2d 882, 884 (2007) (holding that "a nominal security bond does not satisfy Rule 65(c)"). Here, by the County's own admission, the circuit court has required security from the City in the approximate amount of $12.77 million dollars. *See* App'x at 1276-1277, paras. 4.A and 8. This is clearly not a nominal amount.

Fourth, the County's assertion that the $12.77 million dollars of security required of the City is inadequate to address the County's estimated loss of revenues resulting from the application of the injunction in the other municipalities (Petition at 12) is not a proper consideration at this point since the injunction will not take effect in these other municipalities

until August 10, 2019. App'x at 18-19. As recognized in *AJG Holdings*, whether security is needed is an appropriate consideration for a trial court. 382 S.C. at 50, 674 S.E.2d at 508 (observing that, where enjoined party had ceased the improper commercial use of residential property, "it follows there would be no need for a bond to protect their future losses as a result of the injunction"). Here, no security is presently needed with respect to these other municipalities as the County continues to collect the Hospitality Fee within their jurisdictions.

Fifth, the County's criticism of the circuit court for "recognizing the potential prospective ability of a public entity to raise revenue through taxes as an exemption to the security requirements of Rule 65(c)" is unfounded given the specific discretion accorded trial courts to determine the appropriate amount of security under that rule. This discretion has been recognized by both appellate courts in the cases cited above, which resulted only in a remand to the lower court for a determination of an appropriate amount of security. *See AJG Holdings v. Dunn*; *Atwood Agency v. Black*, *supra*.

In conclusion on this point, the circuit court's refusal to grant the County's motion for supersedeas was justified for the foregoing reasons and does not present any potential for a loss of jurisdiction over or mootness of the County's appeal. And, to the extent relevant, that refusal does not expose the County to irreparable harm or constitute a miscarriage of justice. Indeed, the County's offer to escrow and thus not use any and all funds it collects under the Hospitality Fee pending this litigation proves the County will not be irreparably harmed if the injunction remains in effect.

iii. Security Beyond that Ordered by the Circuit Court is Now in Place.

Subsequent to the issuance of the circuit court's July 17 order (App'x at 20-23), the next three largest municipalities in Horry County (in terms of revenues collected by the County from

the Hospitality Fee in 2018, which are the City of North Myrtle Beach, the City of Conway, and the Town of Surfside Beach) that have enacted ordinances similar to the City's Local Tax Ordinances, have either adopted resolutions agreeing to escrow the additional revenues generated within their corporate limits by their 3% accommodation and 2% hospitality taxes or indicated their intent to do so. *See* Supp. App'x at 41-47.[18] These resolutions are (or will become) official actions of these municipalities, *see* S.C. Code Ann. § 5-7-260, and ensure the availability of funds to address "costs and damages" which may be incurred by the County as a result of the application of the injunction in their jurisdictions on and after August 10, 2019. Based upon the County's own estimates, this will result in an additional security of $5.82 million dollars generated in the City of North Myrtle Beach and $887,211 generated in the Town of Surfside Beach. App'x at 1275-1276. Further, the revenues which are generated by the City of Conway's 3% accommodation and 2% hospitality taxes that have been in place since July 1, 2019 (*see* n.11, *supra*), are estimated to generate an additional $815,000, no part of which is being expended and is also likely to soon be escrowed. *See* App'x at 1276-1277, Supp. App'x at 10, 45. The combination of the $12.77 million dollars being escrowed by the City and the escrows of these other three municipalities results in a total security of approximately $20.34 million dollars as against the County's claimed exposure of $28 million dollars resulting from the injunction. The City submits that this is more than adequate security – particularly in view of the City's undisputed ability to raise additional revenue through ad valorem taxation and otherwise.

iv. This Court May Require Additional Security Without Issuing the Writ.

[18] This Court may take judicial notice of these resolutions pursuant to *Masters v. Rogers Development Group* and *Wise, supra.* Moreover, such resolutions, along with the affidavit of the City Administrator of the City of Conway, are also properly submitted to the Court under Rule 240(c)(3), SCACR.

Should this Court conclude that the City is not entitled to the "State" exemption under Rule 65(c), the security required by the circuit court is not sufficient, the escrow resolutions adopted and to be adopted by the other municipalities, and the City's ability to raise revenue is insufficient to satisfy the security requirements of the rule, the Court may modify the injunction to require the City to give security of $28 Million dollars or such lesser amount as this Court may find proper in view of the security already given. Just as the circuit court has authority to modify an injunction that is the subject of an appeal with respect to the amount of security does under Rule 62(c), SCRCP, this Court has the authority to modify an injunction on appeal. *See* Rule 220, SCACR. As noted above, a determination of inadequate security does not require that the injunction be reversed and a remand to the lower court to determine and require an appropriate amount of security is proper where security is absent. *See AJG Holdings*, *supra*. In this instance, should this Court determine that additional security is required, even a remand would be unnecessary given that the County has asserted that $28 Million dollars is the proper amount of security, App'x at 1025, and nothing remains to be determined by the circuit court in this regard.

c. An Injunction is Properly Issued to Prevent Unlawful Conduct and the City's Status Quo Argument Does Not Support the Issuance of the Writ

As it did before the circuit court without success, *see* App'x at 1025, 1191-92, 1261-64, the County asserts that the circuit court's injunction improperly fails to preserve the *status quo ante*. Petition at 14-16. The County's breathtakingly illogical contention in this regard—which is that the law commands that all parties *must* carry on as they were at the time of the lawsuit, even if the actions of the party sought to be enjoined are unlawful and illegal—is contrary to law and can provide no basis for the issuance of the writ.

Initially, the City submits that South Carolina law has long recognized that the *status quo ante* is not required to be maintained in the face of illegal conduct. *See, e.g., LeFurgy v. Long Cove Club Owners Ass'n, Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994) (holding that an injunction may issue "when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected") (citing *Carter v. Lake City Baseball Club*, 218 S.C. 255, 269, 62 S.E.2d 470, 476 (1950) (holding that "Courts of Equity have power, of course, to issue mandatory injunctions" in such instances)). And this principle has specifically been recognized in the context of unlawful local government actions involving public funds. *See, e.g., Kirk v. Clark*, 191 S.C. 205, ___, 4 S.E.2d 13, 15 (1939), which held that

> Perhaps the most frequent ground of application for relief by injunction against municipal corporations is for the prevention of an illegal or an unauthorized diversion of public funds. The foundation of the relief which is invoked in cases of this nature rests in the doctrine of trusts, and **while courts of equity are averse to any interference with the proceedings of** municipal officers while acting within the scope of their authority, and while they will not by injunction control the judgment or revise the action of **municipal bodies** in matters resting within their own well defined jurisdiction or discretion, **they will yet relieve in behalf of citizens and taxpayers against official acts on the part of such bodies, when they move without authority or warrant of law and in excess of the corporate powers.**

(Emphasis added, citation omitted). Similarly, in *Shillito v. City of Spartanburg*, 214 S.C. 11, 21, 51 S.E.2d 95, 99 (1948), the court recognized the right of a taxpayer to seek injunctive relief against a municipal government with respect to the expenditure of public funds and, in so doing stated that

> **[a]s a rule, private citizens may not restrain official acts** when they fail to allege and prove damage to themselves different in character from that sustained by the public generally. **An apparent exception** to **this rule exists when the Act sought to be enjoined** is] an unlawful **diversion of public funds**. [Citation omitted.] In such cases, **a taxpayer who may be compelled to pay the assessment, or who has contributed to the sum jeopardized, is considered to have sufficient interest to enjoin the illegal Act.**

(Emphasis added).

And South Carolina authority in this regard is not unique. Courts in other jurisdictions have recognized that the *status quo ante* cannot consist of, or prevail in the face of, illegal conduct. *See, e.g., DeNoie v. Bd. of Regents of Univ. of Tex. Sys.*, 609 S.W.2d 601, 603 (Tex. Ct. Civ. App. 1980) (holding that the "[s]tatus quo can never be a course of conduct which is a prima facie violation of law"); *Viestenz v. Arthur Twp.*, 54 N.W.2d 572, 574 (N.D. 1952) ("[w]hile such injunctions are not favored by the courts 'it is now well settled that unless prohibited from so doing by some constitutional or statutory provision, a court of equity can, and in a proper case will, award mandatory as well as prohibitive injunctive relief. It may, by its mandate, compel the undoing of those acts that have been illegally done, as well as it may, by its prohibitive powers, restrain the doing of illegal acts'); *Seaboard Air Line R. Co. v. Atl. Coast Line R. Co.*, 74 S.E.2d 430, 434 (N.C. 1953) ("'a court of equity may, by its mandate, compel the undoing of those acts that have been illegally done, as well as it may, by its prohibitive powers, restrain the doing of illegal acts'") (citation omitted).

Further, the *status quo ante* is not the circumstances which existed at the time the lawsuit was filed as asserted by the County. Petition at 15. If this were the case, preliminary injunctions would never issue. The Fourth Circuit has held that that "[t]he 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 terminating on January 1, 2017, in accordance with its own terms and the consent provided by the respective municipalities in 1996. That is the status quo the City, on behalf of all similarly situated plaintiffs, seeks to protect. And that is the status quo the circuit court protected in its orders enjoining the County from continuing to collect its Hospitality Fee.

Finally, on the altar of preserving the *status quo ante*, the County contends that it should be allowed to continue collecting a uniform service charge the circuit court has seen fit to enjoin because the County is in a position to put certain municipalities "in the same position as if they had been collecting new taxes" Petition at 16. According to the County, this is a "sensible approach" in view of the lack of appellate authority on the specific issue raised by this case. *Id.* In addition to being no basis upon which to grant the writ under the applicable standard of review, this suggestion is an astounding revelation that the County has yet to comprehend what the City's action seeks to achieve.

The purpose of the City's lawsuit is not to preserve the right of any municipality to impose taxes. The purpose of the City's lawsuit is to protect persons and entities which are subject to the County's Hospitality Fee (which does include the City and, upon information and belief, includes other municipalities) from the imposition of an unlawful uniform service charge. The County's proposal that it be allowed to continue imposing the Hospitality Fee because it can later pay the proceeds of it over to four municipalities if the City prevails in the underlying action would do nothing to compensate the other persons and entities that have actually paid the unlawful charge. Although this might be a resolution of the issue before this Court which can be affected "without harm to the City," the County's proposal in this regard would visit upon the

persons and entities who are subject to the Hospitality Fee the "irreparable harm" and "miscarriage of justice" to which the County purports to be exposed by a denial of the writ.[19]

In conclusion on this point, the circuit court was justified in denying the County's motion for supersedeas as unlawful acts cannot constitute the *status quo ante* that is required to be preserved by an injunction. Nor does the injunction issued jeopardize the Court's jurisdiction over the County's appeal or render same moot. Accordingly, the County is not entitled to a writ of supersedeas under the applicable standard of review. *See* Rules 241(d)(4)(C) and 241(c)(2), SCACR. Moreover, the County has not shown that irreparable harm or a miscarriage of justice—even though neither is an element of the pertinent standard of review—will result from a denial of the writ. To the contrary, the County's proposed "sensible approach" that can be adopted "with no harm to the City" would expose the persons and entities who are being subjected to the County's unlawful uniform charge to the exact same irreparable harm that led the circuit court to issue the injunction against the County.

And, perhaps most importantly, at no point has the County presented evidence showing that *it* will be irreparably harmed by allowing the injunction to remain in force and effect.[20] Indeed, the County previously argued that the result it seeks here—that it can continue collecting the Hospitality Fee while the City can continue collecting under its Local Tax Ordinances during the pendency of this litigation—would cause irreparable harm and "mayhem." App'x at 538-39.

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[19] The Court should view the County's protestations that the City's residents are harmed by the putative lack of security required by the circuit court (Petition at 1, 13) through the prism of the County's proposal for "particularly careful consideration" of the issues in this case. Petition at 16.

[20] Nor can the County use its reply to advance such justification for the first time. *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) (holding that a party may not use a reply brief as a vehicle to argue issues not argued in the initial brief or filing).

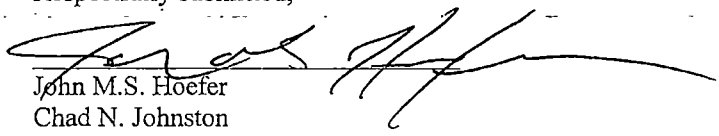
This is yet another example of the County advancing a position to this Court that is the exact opposite of what it argued below. *See, e.g.*, pp. 23-24, *supra*. The County's prior protestations of irreparable harm caused by these circumstances should bar it from now asking that this Court create that very situation.

CONCLUSION

The County has not demonstrated that the writ is needed to prevent a loss of jurisdiction of the instant appeal or to prevent it from becoming moot. Nor has the County demonstrated that the circuit court's denial of the motion for supersedeas was unjustified. It has therefore not met its burden under the applicable standard of review set out in Rule 241, SCACR. Even assuming that the standard is irreparable harm or a miscarriage of justice as the County contends, it has not demonstrated that either results from the injunction issued by the circuit court. At bottom, the City has demonstrated its entitlement to injunctive relief against the County by satisfying the five elements for same and the County's ham-handed effort to implicitly deride the circuit court's conclusion with respect to only one of these – the City's likelihood of success on the merits – via word-games should be rejected and the Petition for Writ of Supersedeas denied.

[signature page follows]

Respectfully submitted,



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Columbia, South Carolina
July 29, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 29 2019
SC Court of Appeals

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

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

v.

Horry County, ... Appellant.

CERTIFICATE OF SERVICE

This is to certify that I, a Legal Assistant with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of Respondent City of Myrtle Beach's **Return and Memorandum in Opposition to Appellant's Petition for Supersedeas** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows, or via hand delivery where indicated below:

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This 29th day of July, 2019.

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July 29, 2019

RECEIVED
JUL 29 2019
SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Respondents, *v.* Horry County, Appellant; Appellate Case No. 2019-001134

Dear Ms. Kitchings:

On behalf of Respondents, enclosed for filing please find the original and six (6) copies of the Respondents' Return and Memorandum in Opposition to the Appellant's Petition For Supersedeas and Respondents' Supplemental Appendix in the above-referenced appeal.

I would appreciate very much your acknowledging receipt of the enclosed documents by file stamping the extra copy of same and returning it to me via my courier.

By copy of this letter, I am serving counsel for Appellant and enclose a certificate of service to that effect. If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

John M. S. Hoefer

cc: Henrietta U. Golding, Esquire
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 29 2019
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APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

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

v.

Horry County, ... Appellant.

SUPPLEMENTAL APPENDIX

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5. County's Correspondence to Circuit Court, City's Response, Circuit Court's Instructions (July 12 - 15, 2019) 035
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ELECTRONICALLY FILED - 2019 May 06 11:08 AM - HORRY - COMMON PLEAS - CASE#2019CP2601732

STATE OF SOUTH CAROLINA COUNTY OF HORRY City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiffs, vs. Horry County, Defendant.	IN THE COURT OF COMMON PLEAS CASE NO.: 2019-CP-26-1732 **ORDER FOR CASE ASSIGNMENT TO THE BUSINESS COURT**

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

And it is SO ORDERED.

Charleston, South Carolina

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Horry Common Pleas

Case Caption: Myrtle Beach City Of VS Horry County Of

Case Number: 2019CP2601732

Type: Order/Case Assignment to Business Court Approved

It is so ordered.

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

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

STATE OF SOUTH CAROLINA,	)	IN THE CIRCUIT COURT
COUNTY OF HORRY	)	**MOTION FOR CASE ASSIGNMENT TO THE BUSINESS COURT PROGRAM**
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs,	)	
Plaintiffs	)	CASE NO. 2019-CP-26-01732
vs.	)	
Horry County,	)	
Defendant.	)	

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

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Program.
(Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.)

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

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

Non-Moving Party Signature (if applicable)

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Date: May __, 2019

Attorney for Horry County

s/John M. S. Hoefer
Signature

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Attorneys for City of Myrtle Beach

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

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

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

Description of Claims

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

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

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

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

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Justification for Assignment

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

First, the nature of this action is unique as it involves two (and potentially as many as nine[2]) political subdivisions and an unknown number of individuals and other entities in a class action. This by itself warrants an assignment to a single judge which an exercise of jurisdiction by the Business Court would achieve.

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

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

Fourth, and quite apart from the legal and financial interests of the City and the County, municipal residents have an interest in having input into the election of **all** persons[3] who make

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

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

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

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

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

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Horry County
SOUTH CAROLINA
Committed to Excellence

Horry County Council

Johnny Gardner
Chairman

Harold Worley
District 1
Vice Chairman

Bill Howard
District 2

Dennis DiSabato
District 3

Gary Loftus
District 4

Tyler Servant
District 5

Cam Crawford
District 6

Orton Bellamy
District 7

Johnny Vaught
District 8

W. Paul Prince
District 9

Danny Hardee
District 10

Al Allen
District 11

Patricia S. Hartley
Clerk to Council

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

April 3, 2019 **VIA EMAIL**

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

FROM: Johnny Gardner, Horry County Chairman

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

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

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

Warm regards,

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

COUNTY OF HORRY)
) RESOLUTION R-36-19
STATE OF SOUTH CAROLINA)

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

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

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

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

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

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

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

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

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

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

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

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

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

HORRY COUNTY COUNCIL

Johnny Gardner, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6
Orton Bellamy, District 7
Johnny Vaught, District 8
W. Paul Prince, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

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Attachment A

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

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

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

[1] Current is based on County 1.5% Hospitality & 2.5% Rental Car Collections by Municipality and Analysis of Municipal Financial Reports.
[2] No 1.5% is calculated at 2% Food/Beverage, 3% Accommodations, 0% Admissions and 0% Car Rental.

Prepared by Horry County Finance, March 28, 2019

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

Attachment B

Horry County, South Carolina
FY2020 Hospitality Revenue Allocation Analysis

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

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

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

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

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

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

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

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

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

Prepared by Horry County Finance, April 3, 2019

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

Dear Judge Seals:

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

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

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

Respectfully,

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

WILLOUGHBY & HOEFER, P.A.
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June 19, 2019

VIA ELECTRONIC AND U.S. MAIL

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

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

Dear Judge Seals:

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

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

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

With best regards, I am

Respectfully,

WILLOUGHBY & HOEFER, P.A.

John M. S. Hoefer

JMSH/cgc
Enclosure

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

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

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

FACTUAL/PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LAW/ANALYSIS

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

A. The City's Motion for Temporary Injunctive Relief

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

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

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

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

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

municipalities of the County."[4]

Second, the State Constitution and statutes implementing Home Rule also demonstrate a reasonable likelihood that municipal consent is required. Counties have the statutory authority to adopt ordinances that are "not inconsistent with the Constitution and general law of this State." S.C. Code Ann. § 4-9-25. They also have the authority to impose "uniform service charges," but only "within the authority granted by the Constitution and subject to the general law of this State." S.C. Code Ann. § 4-9-30(a)(5). Both the Constitution and statutes enacted under Home Rule provide for the relationship between counties and municipalities, and in particular when each may perform its functions and provide its services within the boundaries of the other. *See* S.C. Const. art. XIII, § 13(A); S.C. Code Ann. § 4-9-40; *id.* § 4-9-41(A); *id.* § 5-7-60.

South Carolina law thus preserves the autonomy of municipalities within their borders absent their agreement or consent or an express statutory provision to the contrary.[5] The County and the City each possess the authority to enact uniform service charges, and in particular the authority to enact them to support road improvements. S.C. Code Ann. § 4-9-30(a)(5) (counties); *id.* § 5-7-30 (cities). However, neither section grants the City or the County the power to unilaterally impose such a uniform service charge within the jurisdictional limits of the other. Consistent with these principles, each municipality consented to Ordinance 105-96 and the

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

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

imposition of the Hospitality Fee within its boundaries for twenty years.[6] But because there is no evidence of consent to any ordinance extending or expanding the Hospitality Fee, the City has demonstrated a likelihood of success on the merits of its claim.[7]

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

The Court disagrees. Courts have long disfavored applying the equitable doctrine of laches against the government. *See, e.g, United States v. Kirkpatrick*, 22 U.S. 720, 735 (1824); *United States v. City of Greenville*, 118 F.2d 963, 966 (4th Cir. 1941). The facts here do not warrant departing from this long-standing practice. First, the City has demonstrated a likelihood

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

[7] The Court also agrees with the City's contention that, without municipal consent the County's extension and expansion of the Hospitality Fee constitutes a new uniform service charge which is not permitted by South Carolina law. The General Assembly grandfathered uniform service charges properly adopted before December 31, 1996, when it enacted new rules regarding local government uniform service charges and taxes, particularly hospitality and accommodations taxes. S.C. Code Ann. § 6-1-330(A). The grandfathering of Ordinance 105-96 did not exempt it from existing municipal consent requirements; it merely ensured the ordinance was not invalidated because of the new procedural requirements for uniform service charges. The substantive changes to the Fee Use and Sunset provisions constituted an attempt to enact a new uniform service charge that is perpetual in duration and broader in scope, and is unlawful because the County lacked the requisite municipal consent.

of success on the merits that its consent is required to extend the duration or purpose of the Hospitality Fee. Ordinance 11-04 therefore was legally inoperative to extend the Sunset Provision. Second, the plain language of Ordinance 11-04 only gave the County the *option* to extend the Hospitality Fee for a period "not to exceed" five years if the County needed additional time to repay the SIB loan. The earliest the City might have had an actionable claim would have been in December 2016 when the County extended the Sunset Provision without qualification or condition until January 1, 2022, although such a claim would not have fully ripened until the County actually collected the Hospitality Fee after its original expiration on January 1, 2017. *See Sloan v. Greenville Cnty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) ("A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract nature."). Third, the County has not demonstrated any prejudice; it submitted only arguments of counsel, not facts, and its claimed prejudice—that it continued developing plans for I-73 and incurring administrative costs—are insufficient as the County will continue collecting at least $22 Million per year from the remaining portions of Ordinance 105-96 and the County's accommodations tax. And fourth, the County never codified Ordinance 11-04 as required by S.C. Code Ann. § 4-9-120. While an Editor's Note "referenced" the ordinance, as the County notes, it was never fully codified in the text of Horry County's municipal code.[8]

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

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

[9] Even if the statute of limitations is not directly applicable, courts look for an analogous statute of limitations as a guide when applying laches. *See S.C. State Ports Auth. v. M/V Tyson Lykes*, 837 F. Supp. 1357 (D.S.C. 1993) (stating that "the fact that this action was commenced well within the state statute of limitations, while not controlling, is a consideration of the court in ruling on laches"); Am. Jur.

PCS Nitrogen, Inc. v. Ross Dev. Corp., 127 F. Supp. 3d 568, 590 (D.S.C. 2015); 22A Am. Jur. 2d. *Declaratory Judgments* § 182 (2019). Because the City brought its claims within three years of any cause of action having accrued, the City's actions are timely. Furthermore, the County's imposition of the Hospitality Fee also is a recurring violation that gives rise to a new claim every time it is paid, thus triggering a new limitations period. *See State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 414 S.C. 33, 78, 777 S.E.2d 176, 200 (2015) ("[W]here a liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period."). For all of these reasons, laches does not apply.

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

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

The County has no authority to appoint a "Board of Fee Appeals" as this entity does not "provide services of local concerns for public purposes." *See* S.C. Code Ann. § 4-9-30(6). Even

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2d *Laches* § 38 (2019) ("However, a statute of limitations may serve as a guide in determining whether an action is barred by laches"). Because the City satisfied the statute of limitations, the Court finds the timing of the City's action was not unreasonable and thus does not trigger laches.

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

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

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

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[10] Among these are the provision of Ordinance 8-00 allowing the County's administrator, and not its governing body, to appoint members of this board. *See* S.C. Code Ann. § 4-9-170; *id.* § 4-9-630 (setting forth powers of county administrators); Att'y Gen. Op., 1985 WL 166006 (April 11, 1985) ("Once the General Assembly has delegated appointment power to a body other than itself, additional delegation may not be made absent statutory authorization.") (citations omitted). Furthermore, Ordinance 8-00 purports to vest in "a court of competent jurisdiction" appellate authority to review the "written decision based on findings of fact and the applicable ordinance[]," but no court in South Carolina has jurisdiction in such matters. *See* S.C. Code Ann. § 14-25-45 (describing municipal court jurisdiction); S.C. Code Ann. § 22-3-10 (describing magistrates' court jurisdiction); *id.* § 1-23-600(D) (describing administrative law court appellate jurisdiction); *id.* § 14-5-340 (providing for circuit court appellate jurisdiction); *id.* § 14-8-200 (providing for court of appeals' jurisdiction); *id.* §§ 14-3-310, *et seq.* (providing for supreme court appellate jurisdiction). And the County has no authority to create jurisdiction for an appellate court.

Given that it cannot dispute that governmental exactions under invalid ordinances or the expenditure of public funds for invalid purposes constitute irreparable harm as a matter of law where no adequate remedy at law exists to protect the payor, the County attempts to flip the analysis and assert that the alleged irreparable harm *it* will suffer if the Court enjoins it from collecting the Hospitality Fee is pertinent to the analysis of the City's motion. To support its argument, the County cites to the affidavit of its Finance Director, Barry Spivey, who states that the County collects over $51 Million annually under the "Ordinance," and the City's success in this action would be "a fiscal catastrophe for Horry County as its residents." Mr. Spivey's affidavit is unpersuasive whether viewed from the perspective of the City's or the County's motion. Primarily, the "Ordinance" described by Mr. Spivey consists of four separate revenue collection streams, only one of which is at issue here. As demonstrated in the affidavit of the City's Chief Financial Officer, Michael W. Shelton, if the City prevails in this matter, the County will continue collecting over $22 Million annually under the remaining portions of the "Ordinance." This is more than double the amount necessary to cover the "critical public safety expenditures" Mr. Spivey claims are in jeopardy. As described above, the County has not yet determined how it wishes to spend future Hospitality Fee revenues, aside from dedicating a portion of them to the proposed I-73 project and public safety. This injunction therefore will not cause the County irreparable harm.

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

Absent an adequate remedy at law, the only way to safeguard the City and the Class Member's rights during the pendency of this litigation is an injunction. An injunction also protects the interests of municipal residents to give their local elected representatives, not members of County Council who are not elected by residents of one or more municipalities,

input on whether a fee would be imposed upon them and the terms of such a fee. *Cf.* S.C. Code Ann.§ 4-9-41(B).

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

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

South Carolina law requires municipal consent to the imposition of uniform service charges within incorporated areas. This fact is demonstrated by the fact that the County obtained this consent when it first enacted the Hospitality Fee in Ordinance 105-96. As the original twenty-year term came to a close, the County unilaterally attempted to extend the Hospitality Fee for five years and then, just months later, attempted to remove the Sunset Provision altogether. It did so without soliciting any consent from each affected municipality. Minutes of the County Council meetings show that it felt it was "under urgency" that "they had been apprised of the problem that they would lose their grandfathered status once they paid off the SIB loan never to be recovered." These minutes further show that County acted without any specific plans for these funds; it would collect them and *then* determine how to spend the money. The County also believes, albeit incorrectly, that the Hospitality Fee precludes the City from adopting the Local Tax Ordinances to collect a portion of these revenues itself.

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

B. The County's Motion for Temporary Injunctive Relief

1. The County Has Not Demonstrated a Likelihood of Success on the Merits.

The County has not pled a cause of action for injunctive relief in its counterclaims, nor is there any claim whatsoever related to the Local Tax Ordinances. The County has moved to amend its counterclaims to include claims for declaratory and injunctive relief for these taxes. The City opposed that motion on the ground that they constitute compulsory counterclaims which the County waived by not pleading them originally. Although the Court agrees with the City's argument that these counterclaims have been waived by the County under Rule 13(a), SCRCP, the Court finds the County is otherwise not entitled to temporary injunctive relief.

The County's sole argument is that the Local Tax Ordinances, when imposed in conjunction with the Hospitality Fee, exceed the maximum cumulative tax rates in S.C. Code Ann. §§ 6-1-540 and 6-1-740.[11] As the County has misapprehended the application of these sections to the Hospitality fee, it has not demonstrated a likelihood of success on the merits of this argument.

First, the County's argument presupposes that it will be permitted to continue collecting the Hospitality Fee. Because the Court enjoins the County from doing so during the pendency of this litigation, the County's argument necessarily fails. Second, the County's argument misapprehends the distinction between uniform services charges and taxes. Under South

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

Carolina law, uniform service charges (such as the Hospitality Fee) and taxes (such as the Local Tax Ordinances) are fundamentally different means of raising revenue. *See Brown v. Cnty. of Horry*, 308 S.C. 180, 185, 417 S.E.2d 565, 568 (1992) ("Although a service charge may possess points of similarity to a tax, it is inherently different and governed by different principles"). Within Chapter 1, Title 6 of the South Carolina Code, the General Assembly retains and recognizes this distinction. *Compare* S.C. Code Ann. § 6-1-330 (providing for the imposition of uniform service charges), *with id.* §§ 6-1-500, *et seq.* (providing for local accommodations taxes) *and id.* §§ 6-1-700, *et seq.* (providing for local hospitality taxes). The County itself adheres to this critical distinction, as integral parts of the Hospitality Fee are not authorized taxes a county may impose, such as the fee on admissions, the fee on rental cars, and the 2.5% fee on prepared food and beverage in the unincorporated area in excess of the 2% cumulative hospitality tax cap in § 6-1-740.[12]

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

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

This ____ day of June, 2019
_____, South Carolina

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

Hello Judge Seals-

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

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

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

Henrietta Golding • *Partner*

AL • DE • FL • GA
MS • NC • SC • TN

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