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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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 IV of IV

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Columbia, S.C. 29211

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Counsel for Respondent

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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)	Preliminary Injunction
Situated Plaintiffs,)	
)	
Plaintiff,)	
)	
vs.)	
)	
Horry County,)	
)	
Defendant.)	
)	

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

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

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

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

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

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

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

Counselors,

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

Best,

Chris Kinon

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

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

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

Dear Mr. Kinon:

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

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

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

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

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

John Hoefler

From: Gilliam, James <JGilliam@burr.com>
Sent: Friday, July 12, 2019 2:20 PM
To: Seals, William Law Clerk (Christopher Kinon) <wsealslc@sccourts.org>
Cc: Golding, Henrietta <HGolding@burr.com>; Lambert, Grayson <GLambert@burr.com>; John Hoefler <JHoefler@Willoughbyhoefler.com>; Chad Johnston <CJohnston@Willoughbyhoefler.com>; Walker Humphrey <WHumphrey@Willoughbyhoefler.com>; Artigliere, Adam <AArtigliere@burr.com>; Evans, Sheila <SEvans@burr.com>
Subject: City of Myrtle Beach v. Horry County: Motion for Supersedeas

Dear Judge Seals:

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

Jim



AL • DE • FL • GA
MS • NC • SC • TN

James Gilliam • *Partner*

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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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From: [Jim Gilliam](mailto:Jim.Gilliam@burr.com)  
To: [Seals, William Law Clerk \(Christopher Kinon\)](mailto:Seals,William.Law.Clerk@scourts.org)  
Cc: [Golding, Henrietta Lambert Grayson](mailto:Golding,Henrietta.Lambert.Grayson@burr.com); [Chad Johnston](mailto:Chad.Johnston@burr.com); [Walker Hurnphrey](mailto:Walker.Hurnphrey@burr.com); [Artigliera, Adam](mailto:Artigliera,Adam@burr.com); [Evans, Sheila](mailto:Evans,Sheila@burr.com); [John Hoefler](mailto:John.Hoefler@burr.com)  
Subject: RE: City of Myrtle Beach v. Horry County: Motion to Stay  
Date: Wednesday, July 17, 2019 9:01:24 AM  
Attachments: [032\\_001.pdf](#)  
[032\\_001.pdf](#)

Dear Judge Seals:

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

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

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

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

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

Jim



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Burr A Former Johns Hopkins with McNair Law Firm, P.A. Effective January 1, 2019  
350 Attorneys, 19 Offices, 1 Firm, Southeast Strong.

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From: John Hoefler <[JHoefler@Willoughbyhoefler.com](mailto:JHoefler@Willoughbyhoefler.com)>  
Sent: Wednesday, July 17, 2019 7:30 AM  
To: Gilliam, James <[JGilliam@burr.com](mailto:JGilliam@burr.com)>; Seals, William Law Clerk (Christopher Kinon) <[wseals@scourts.org](mailto:wseals@scourts.org)>  
Cc: Golding, Henrietta <[HGolding@burr.com](mailto:HGolding@burr.com)>; Lambert, Grayson <[GLambert@burr.com](mailto:GLambert@burr.com)>; Chad Johnston <[CJohnston@Willoughbyhoefler.com](mailto:CJohnston@Willoughbyhoefler.com)>; Walker Hurnphrey <[WHurnphrey@Willoughbyhoefler.com](mailto:WHurnphrey@Willoughbyhoefler.com)>; Artigliera, Adam <[AArtigliera@burr.com](mailto:AArtigliera@burr.com)>; Evans, Sheila <[SEvans@burr.com](mailto:SEvans@burr.com)>  
Subject: RE: City of Myrtle Beach v. Horry County: Motion to Stay

Dear Mr. Kinon:

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

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

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

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

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

John Hoefler

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

Dear Judge Seals:

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

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

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

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

Jim



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James Gilliam • Partner

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

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

Dear Mr. Kinon:

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

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

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

John Hoefler

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

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

Mr. Hoefler,

That is perfectly fine with Judge Seals.

Best,

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

Sent from my iPhone

On Jul 16, 2019, at 11:23 AM, John Hoefler <JHoefler@willoughbyhoefler.com> wrote:

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

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

John Hoefler

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

Counselors,

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

Best,

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

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

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

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

Jim

[Burr & Forman LLP Logo]

AL • DE • FL • GA  
MS • NC • SC • TN

James Gilliam • Partner

Founders Centre, 2411 Oak St. Suite 206, Myrtle Beach, South Carolina 29577 main 843-444-1107 • fax 843-444-4729 jgilliam@hurr.com  
[www.hurr.com](http://www.hurr.com)  
[https://uddefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.hurr.com&d=DwMGAQ&e=YGVVmrQQ6VQOFx3Z93C9uQ&e=IKp3G-2eH3-ynY\\_aBu12ntDLChISKvhl\\_jYt18JhY&m=x](https://uddefense.proofpoint.com/v2/url?u=http-3A__www.hurr.com&d=DwMGAQ&e=YGVVmrQQ6VQOFx3Z93C9uQ&e=IKp3G-2eH3-ynY_aBu12ntDLChISKvhl_jYt18JhY&m=x)  
[https://uddefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.hurr.com&d=DwMGAQ&e=YGVVmrQQ6VQOFx3Z93C9uQ&e=IKp3G-2eH3-ynY\\_aBu12ntDLChISKvhl\\_jYt18JhY&m=x](https://uddefense.proofpoint.com/v2/url?u=http-3A__www.hurr.com&d=DwMGAQ&e=YGVVmrQQ6VQOFx3Z93C9uQ&e=IKp3G-2eH3-ynY_aBu12ntDLChISKvhl_jYt18JhY&m=x)

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

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to report this email as spam.

RESOLUTION 19-03

CITY OF NORTH MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA

RESOLUTION TO ESCROW NEW REVENUES  
GENERATED FROM LOCAL ACCOMMODATIONS  
AND HOSPITALITY TAXES

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

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

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

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

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

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

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

19-03

RESOLUTION 19-03

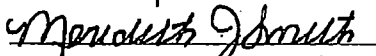
NOW, THEREFORE, BE IT RESOLVED THAT:

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

SIGNED AND SEALED THIS 23 DAY OF JULY, 2019

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

ATTEST:

  
Merideth J. Smith

CLERK

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED THAT:

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

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

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

BE IT SO RESOLVED THIS 23<sup>rd</sup> DAY OF JULY, 2019.

**TOWN OF SURFSIDE BEACH**

*Robert F. Childs, III*

Robert F. Childs, III, Mayor

*David L. Pellegrino*

David L. Pellegrino, Mayor Pro Tempore

*Mark L. Johnson*

Mark L. Johnson, Town Council

*Debbie Scoles*

Debbie Scoles, Town Council

*Bruce Dietrich*

Bruce Dietrich, Town Council

*Ron Ott*

Ron Ott, Town Council

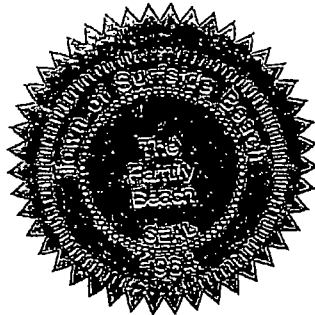
*Randle M. Stevens*

Randle M. Stevens, Town Council

Attest:

*Debra E. Herrmann*

Debra E. Herrmann, CMC  
Town Clerk



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

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

v.

Horry County, ..... Appellant.

---

AFFIDAVIT

---

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

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

*Page 1 – Affidavit Adam Emrick*



Supp. App. 45


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

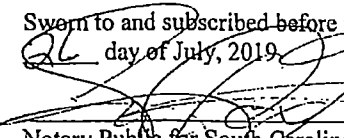
4. The referenced Ordinances amend City collected tax and fee rates within the statutory guidelines as referenced above. The funds or collections resulting from previous rates collected by the County under the former Hospitality fee and Accommodations tax structure includes a base rate of one percent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

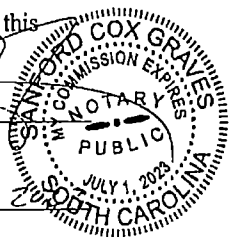
5. In my capacity as Administrator for the City, I affirm that the City has not adopted any budget or other ordinance to appropriate incremental revenues collected beyond the one percent (1%) base rate which will result from the increase in City tax and fee rates by virtue of the referenced Ordinances.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

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

FURTHER THE AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Adam Emrick

Sworn to and subscribed before me this  
26 day of July, 2019.  
  
Notary Public for South Carolina  
*Stephane Cox Graves*  
My Commission Expires: *July 1, 2023*  
[NOTARIAL SEAL]



ORDINANCE # ZA2019-04-15 (J)

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

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

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

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

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

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

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

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

Barbara Blain-Bellamy  
Barbara Blain-Bellamy, Mayor

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

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

Shane Hubbard  
Shane Hubbard, Council Member

Ashley Smith  
Ashley Smith, Council Member

Jean M. Timbes  
Jean M. Timbes, Council Member

Larry A. White  
Larry A. White, Council Member

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

First Reading: 4/1/19  
Final Reading: 4/15/19

ARTICLE D - Hospitality Tax

Sec. 1-5-40 - Authority.

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

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

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

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

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

Sec. 1-5-42 - Definitions.

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

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

Finance director means the director of finance for the city.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 1-5-45 - Verification.

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

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

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

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

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

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

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

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

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

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

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

aquariums;

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

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

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

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

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

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

ORDINANCE # ZA2019-04-15 (K)

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

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

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

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

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

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

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

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

Barbara Blain-Bellamy  
Barbara Blain-Bellamy, Mayor

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

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

Shirley Hubbard  
Shirley Hubbard, Council Member

Ashley Smith  
Ashley Smith, Council Member

Jean M. Timbes  
Jean M. Timbes, Council Member

Larry A. White  
Larry A. White, Council Member

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

First Reading: 4/1/19

Final Reading: 4/15/19

ARTICLE E.1 - Accommodations Tax

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

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

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

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

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

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

Sec. 1-5-59 - Definitions.

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

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

Finance director means the director of finance for the city.

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

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

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

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

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

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

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

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

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

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

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

Sec. 1-5-62 - Verification.

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

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

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

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

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

Sec. 1-5-64 - Severability.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 1-5-68 - Effective date.

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

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

Secs. 1-5-69—1-5-75 - reserved.

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.

---

REPLY IN SUPPORT OF PETITION FOR WRIT OF SUPERSEDEAS

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Horry County, pursuant to Rules 240(f) and 241(c), SCACR, submits this Reply in Support of its Petition for Writ of Supersedeas.

### INTRODUCTION

After the circuit court enjoined the County from collecting the Hospitality Fee that had been in place for more than two decades and left unsecured more than \$15 million in annual revenue from the Hospitality Fee, the County appealed and petitioned for a writ of supersedeas to stay the injunction pending the appeal. That Petition is grounded in black-letter law. For example, the Petition relied on Rule 65(c), which expressly exempts only “the State or an officer or agency thereof” from the requirement to provide security for an injunction. Rule 65(c), SCRCR. The Petition also pointed to our Supreme Court’s repeated instruction that an injunction may be entered “*only* if necessary to preserve the status quo ante.” *Hook Point, LLC v. Branch Banking & Tr. Co.*, 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012) (emphasis added). And the Petition observed that no constitutional or statutory provision explicitly requires the City’s consent for the County to adopt or extend the Hospitality Fee, while one statute—S.C. Code § 6-1-330(A)—specifically permits the County to do so.

Rather than engage solely with these legal arguments, the City’s Return to the Petition resorts to name-calling and adjectives to (mis)characterize the County’s position and wrongly accuse the County of misconduct. The County, instead of stooping to that level and allowing this appeal to devolve into a metaphorical mudslinging contest, seeks in its Reply to dial down the rhetoric and focus on the legal issues raised by the Petition.

---

Before diving into that analysis, it is worth noting what the Petition is and what it is not. The Petition seeks immediate relief from the injunction because of defects in that injunction that are unlikely to be cured by a decision on the merits. The Petition is not an attempt to argue the merits fully. The time for that will come later. For now, the question before this Court is whether the injunction should stay in place while the appeal is pending.

It should not. The City casts the County's Petition as focused "primarily" on "procedural arguments," seemingly trying to minimize the circuit court's errors in imposing the injunction. Return 2. No matter how the circuit court's errors are characterized, the errors are not minor. They represent significant departures from the law. The circuit court did not require the City to provide adequate security for the injunction as required by Rule 65(c), and the circuit court ignored the law that injunctions should be issued "only" to preserve the *status quo ante*. If the injunction is not stayed immediately, these errors cannot be fixed by a decision on the merits alone.

## ARGUMENT

### I. The Court can and should consider the Petition.

The Court can quickly dispose of the City's brief arguments that the Court should not even consider the Petition.

*First*, the fact that the County initially sought relief from the circuit court does not undermine the need for the writ, as the City asserts. *See* Return 1. Rule 241(d) sets forth the procedure that must be followed to obtain supersedeas relief. That rule states that "[e]xcept where *extraordinary circumstances* make it impracticable, an

application for an order lifting the automatic stay or for supersedeas *must first be made to the lower court* or administrative tribunal which entered the order or decision on appeal.” Rule 241(d)(1), SCACR (emphasis added).

Rule 241(d) places the petitioner between a proverbial rock and a hard place. The petitioner can either follow the mandatory language in Rule 241(d) and present his petition to the court that entered the injunction or he can take his petition straight to the appellate court, claiming “extraordinary circumstances” exist. The problem with the second option is no case law defines or interprets the phrase “extraordinary circumstances.” Clearly, under the plain language of this rule, the prudent course is to go first to the court that entered the injunction before asking the appellate court for supersedeas relief. That is what the County did here.

Had the County come directly to this Court claiming “extraordinary circumstances,” the City would have almost certainly argued that the County should have gone to the circuit court first because the circumstances were not extraordinary. That the County went first to the circuit court demonstrates simply that the County followed the mandatory procedures set forth in Rule 241, nothing more.

*Second*, the County cited the correct standard of review a court must employ in determining whether to grant supersedeas relief. *See* Return 10–11. The City contends the appropriate standard is set forth in Rule 241(d)(4)(C) which states that the petition shall contain “a showing that an application for [supersedeas relief] was made to the lower court . . . and was unjustifiably denied.” Rule 241(d)(4)(C), SCACR.

Our appellate courts have not explained what the phrase “unjustifiably denied” means. See Rule 241(d)(4)(C), SCACR.

In its Petition, the County cited the correct standard of review when it cited *Kuhn v. Electric Manufacturing & Power Co.*, 92 S.C. 488, 75 S.E. 791, 791 (1912), which explained a writ should be issued to avoid “an irreparable injury or the miscarriage of justice.” Although *Kuhn* is a decision from one Justice, it is the exact standard that the full court held applies in *Andrews v. Sumter Commercial & Real Estate Co.*, 87 S.C. 301, 69 S.E. 604, 606 (1910). Therefore, when the County articulated the standard of review in accord with *Kuhn* and *Andrews*, the County cited the correct standard this Court must employ in ruling on the Petition.

*Third*, Rule 241(c)(2), SCACR, merely requires that an appellate court “consider” whether a writ is necessary to preserve its jurisdiction. See Return 11, 14. It is not an element that a petitioner must prove to obtain a writ.

*Fourth*, the City mistakenly invokes Rule 241(d)(1)(C). See Return 14. No such rule exists, so the County could not have violated it.

## **II. The injunction violates Rule 65(c).**

### **A. The City is not exempt from the security requirement.**

The City maintains that it is exempt from Rule 65(c)’s security requirement because “the State” is exempt and the City is a political subdivision of the State. Its logic is that the State is exempt because it can “raise revenue through taxation” to pay any damages, which the City can do too. Return 25–26.

Although it does not come out and say it directly, the City is asking the Court to ignore the plain language of Rule 65(c) and to instead divine some underlying purpose that would implicitly exempt the City through a novel interpretation of the Rule. Of course, the Court cannot do that. Courts must follow the plain language of a rule. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also Ex parte Wilson*, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005) (“In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.”). “If a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003).

That is the case here. The plain language of Rule 65(c) is unambiguous: Only the State, its agencies, and its officers are exempt from the security requirement. The language plainly does not exempt political subdivisions from the security requirements of Rule 65(c), and the Court should not and cannot ignore this plain language. The City therefore must provide security for the injunction.

**B. The belatedly imposed security is not adequate.**

The City must provide sufficient security for “the payment of such costs and damages as may be incurred or suffered by” the County if the injunction “is found to have been wrongfully enjoined or restrained.” Rule 65(c), SCRPC. The County never argued Rule 65(c) necessitates a “dollar-for-dollar security bond,” Return 15, but the rule does require that the security be sufficient to compensate the County for the

damages sustained while the injunction is in place. The security required by the circuit court is insufficient, as the injunction is unsecured in excess of \$15 million annually.

The City offers a plethora of reasons why leaving that much unsecured is acceptable, but none is compelling. *See* Return 26–28. *First*, if the County segregates funds from its Hospitality Fee, that protects all municipalities because the revenue will have been collected countywide. The City collects its revenue only within its borders, so escrowing that money will not cover all of the revenue the County has been enjoined from collecting. *See* Petition 11–12 (providing the breakdown for the amount of this shortfall).

*Second*, the County has pointed to an abuse of discretion in the circuit court’s injunction: the injunction is unsecured in excess of \$15 million annually. Leaving \$15 or even \$15,000 unsecured in a case this size is one thing. But leaving eight figures unsecured is something else entirely. Wherever the line between \$15,000 and \$15 million can be a question for another day. All that matters here is that the circuit court’s injunction leaves more than \$15 million annually unsecured, and thus, the security is not adequate to do what it is required to do pursuant to Rule 65(c)—pay for the damages suffered by the County if the injunction is reversed on appeal.

*Third*, the County never said the security (however belatedly imposed) was nominal. But being more than nominal is not equivalent to being sufficient. Rule 65(c) and the case law interpreting it require sufficient security to cover the damages the County will sustain if the injunction is reversed on appeal. With \$15 million in annual revenue unsecured, the security is insufficient.

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*Fourth*, this Court can of course consider the expanded injunction from the July 10 order that will go into effect on August 10 that applies to all of the municipalities in the County. Not taking this aspect of the injunction into account now would be a waste of judicial resources, as the parties would be back here in a matter of days raising this very issue.

It is worth pausing here to consider the July 10 order a little further. That order held the injunction would apply to the other municipalities in the County. Unprompted by either party, it also held that the countywide injunction would not take effect until a month later on August 10. (App. 18–19.) Part of obtaining a preliminary injunction is a showing of irreparable harm. *See Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). That the circuit court would allow the County to continue collecting the Hospitality Fee for a month in these other municipalities before the injunction takes effect shows that any supposed harm is not irreparable. *Cf. Nichol v DePuy Spine, Inc.*, No. 2014-CP-23-4895, 2013 WL 10573017, at \*2 (S.C. Com. Pl. Feb. 13, 2013) (Hill, J.) (observing that a preliminary injunction is typically necessary in “urgent situations where irreversible damage will result unless the challenged action is immediately halted”). Therefore, the injunction should have never been entered in the first place.

*Fifth*, the City’s attempt to circle back to its “we can raise taxes” argument is unavailing. No case in this State has ever held that a political subdivision can raise taxes in lieu of providing the security required by Rule 65(c).

As a fallback to all of these arguments, the City notes that more security is now in place than required by the circuit court's July 17 order, (App. 21), as North Myrtle Beach, Conway, and Surfside Beach have adopted (or, the City says, intend to adopt) resolutions escrowing revenue from their new local accommodations and hospitality taxes, *see* Return 28–29. This argument, however, has multiple shortcomings. For one, neither North Myrtle Beach, Conway, nor Surfside Beach are required to escrow this money by court order, so nothing is stopping them from repealing those ordinances (or simply not adopting them at all) the day after the Court rules on the Petition. For another, even the City acknowledges that this new security still leaves the injunction unsecured in the amount of approximately \$8 million annually. Although \$8 million is less than \$15 million, it still is an unacceptably (and unnecessarily) large amount for which no security exists on an annual basis.

On a more fundamental level, this argument about new security raises the question of why North Myrtle Beach, Conway, and Surfside Beach are escrowing this revenue at all. They are not parties to this litigation, so they are not subject to the jurisdiction of this Court or to the jurisdiction of the circuit court on remand. North Myrtle Beach, Conway, and Surfside Beach cannot be required to pay any damages stemming from the injunction, if it is determined to be wrongfully entered. That burden is squarely and solely on Myrtle Beach. Thus, these three municipalities' attempt to escrow revenue appears to be a litigation tactic designed to avoid having the injunction reversed for failing to comply with Rule 65(c).

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As yet another fallback argument, the City insists that this Court may require the City to post a \$28 million bond, citing a Rule of Civil Procedure, not an Appellate Court Rule. *See* Return 30. Even if the City is correct that this Court may do so, such a bond (which would cover only one year's worth of damages to the County) would not correct the other flaws with the injunction, so it would not make the writ unnecessary, nor would it save the injunction from being reversed.

**III. The injunction violates the Supreme Court's repeated holdings on preliminary injunctions serving only to preserve the *status quo ante*.**

Time and again, the Supreme Court has held that the "only" reason to grant a preliminary injunction is to preserve the *status quo ante*. *See, e.g., Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 768 (2018); *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010).

The City never expressly acknowledges this binding case law. *See* Return 30–35. Unsurprisingly so. The injunction changes the *status quo ante*, whether that is viewed as one that had existed for more than twenty-two years (from when the Hospitality Fee initially took effect) or more than two years (from after the original sunset date passed). Either way, the *status quo ante* changed: The County was able to collect the Hospitality Fee, but now it is not. And that violates clear Supreme Court precedent.

As an aside here, consider how the City attempted to reframe the time period from over twenty-two years to a little over two years. *See* Return 2 n.1. The City notes that its lawsuit "was brought *just* two years and almost three months" after the original sunset date of the Hospitality Fee. Return 2 n.1 (emphasis added). If the City were

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suffering some irreparable harm from the County continuing to collect the Hospitality Fee after the original sunset date passed (as it must have been to obtain a preliminary injunction, *see Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 908), then the City's delay of "two years and almost three months" is inexplicable. And, again, it is another reason why the injunction should have never been issued in the first place.

Back to the *status quo ante* issue. Implicitly recognizing what our Supreme Court has said, the City contends that the *status quo ante* is actually the "last uncontested status" between the parties. Return 32. As an initial matter, that is not the law in this State. *See Cty. Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964) (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)).

But even if it were, the City would still be wrong. The last uncontested status was not January 1, 2017. *See* Return 33. On that date, the County believed that it was able to continue collecting the Hospitality Fee, based on the extension and ultimate removal of the sunset date. (*See* App. 174, 183, 710). The City, on the other hand, thought that the Hospitality Fee had expired and could not be collected. (At least theoretically the City thought that, under its theory of the case. It has never explained why, if it did hold this view on January 1, 2017, it waited those "two years and almost three months" to file suit.) Thus, on January 1, 2017, the parties contested the issue at the core of this case.

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The last date on which the parties agreed about the status of the Hospitality Fee was the previous day, on December 31, 2016—the day before the original sunset date. On that date, everyone agreed that the County could collect the Hospitality Fee. Thus, the “last uncontested status” to preserve with an injunction here is the County collecting the Hospitality Fee. So even under the City’s incorrect view of the law, the injunction is still improper.

Unable to defend the injunction in the face of the Supreme Court’s holdings about preserving the *status quo ante* being the “only” reason to issue a preliminary injunction, the City reaches back to old cases about municipal officials wrongly diverting public funds as justification for the injunction in this case. See Return 31–32 (citing *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948); *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13 (1939)). Those decisions are much narrower than the City needs them to be to prevail here. They are about the “diversion of public funds,” not about the imposition of a fee itself. *E.g.*, *Shillito*, 214 S.C. at 22, 51 S.E.2d at 99. Moreover, given the Supreme Court’s recent jurisprudence on taxpayer standing, it is not clear that the cases on which the City relies are even still good law. See *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 366 (2013); *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012); *ATC South, Inc. v. Charleston Cty.*, 380 S.C. 191, 669 S.E.2d 337 (2008). The City’s reliance on cases like *Shillito* and *Kirk* therefore does not help it avoid the Supreme Court’s holding that a preliminary injunction may be issued “only” to preserve the *status quo ante*.

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**IV. The City's consent was not required for the County to adopt or extend the Hospitality Fee.**

Although this Petition is not the time for briefing the merits fully, the City spent much of its Return focused on the question of whether its consent was required to adopt or extend the Hospitality Fee. Thus, the County offers a more detailed analysis of the flaws in the circuit court's conclusion that the City's consent was required than might otherwise be necessary at this stage.

**A. The critical question here is whether the County has the power to impose the Hospitality Fee.**

As a starting point, the City's argument does not frame the issue correctly. Substantively, the issue is whether the County has the *power* to collect the Hospitality Fee, which is a uniform service charge, without the City's consent. The power to impose a uniform service charge\* or to tax is solely vested in the General Assembly. *See Crow v. McAlpine*, 277 S.C. 240, 243, 285 S.E.2d 355, 357 (1981) ("The people of this State, in their sovereign capacity have, by the Constitution, entrusted the taxing power to the General Assembly . . ."). The General Assembly *may* delegate that power to counties and municipalities. S.C. Const. art. X, § 6. The specific question here is whether the General Assembly has empowered the County to collect the Hospitality Fee, and if the

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\* The Supreme Court has distinguished uniform service charges from ordinary taxes in *Brown v. Horry County*, 308 S.C. 180, 417 S.E.2d 565 (1992). At the same time, the Supreme Court has also recognized that, in a more general sense, any revenue-raising measure enacted by the government is a tax. *See Columbia Gaslight Co. v. Mobley*, 139 S.C. 107, 137 S.E. 211, 212 (1927); *see also Hosp. Ass'n of S.C., Inc. v. Cty. of Charleston*, 320 S.C. 219, 231, 464 S.E.2d 113, 121 (1995) (Finney, J., dissenting).

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General Assembly did, whether the General Assembly required the consent of the municipalities within the County for the County to collect the Hospitality Fee.

The framework for answering this question is set forth in *S.C. State Ports Authority v. Jasper County*, 368 S.C. 388, 629 S.E.2d 624 (2006). Pursuant to this framework, there is a two-step inquiry to determine whether a county ordinance is valid. First, a county must have the *authority* to enact the ordinance. *Id.*, at 395, 629 S.E.2d at 627. Second, if the county did have that authority, the ordinance must not *conflict* with the Constitution or State law. *Id.*

1. **The County is authorized to collect the Hospitality Fee.**

On the first step, the County is *authorized* to collect the Hospitality Fee. The general power to impose a uniform service charge is granted to the County by the General Assembly. See S.C. Code § 4-9-30(5)(a) (giving counties the power “to assess . . . uniform service charges . . . and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works”).

Specifically on the Hospitality Fee, the County is also authorized to collect it pursuant to S.C. Code § 6-1-330(A). The statute provides:

A local governing body, by ordinance approved by a positive majority, *is authorized to charge and collect a service or user fee . . . . 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, notwithstanding the provisions of this section.*

*Id.* § 6-1-330(A) (emphasis added).

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Section 6-1-330(A) “authorizes” local governing bodies to collect a service or user fee. Additionally, this statute provides that those fees adopted prior to December 31, 1996 remain “in force and effect until repealed by the enacting local governing body.” *Id.*

The General Assembly’s use of this particular date in § 6-1-330(A) cannot be ignored. There were only two governing bodies that imposed such fees prior to December 31, 1996: The County and the City of Charleston. (*See* App. 91–95); City of Charleston Ord. No. 1993-450, § 1. Therefore, the General Assembly necessarily could have had only these two fees in mind when it enacted § 6-1-330(A).

The County adopted the Hospitality Fee with the enactment of Ordinance 105-96 on October 15, 1996. Thus, pursuant to § 6-1-330(A), the County had the authority to adopt and collect the Hospitality Fee. Moreover, pursuant to that same section, the County can continue collecting the Hospitality Fee until it is repealed by County Council.

The statutory provisions granting the County the authority to collect the Hospitality Fee do not require the County to obtain the consent from the municipalities. This language is found nowhere in § 4-9-30(5)(a) or § 6-1-330(A). Indeed, were the City correct, § 6-1-330(A) would read very differently—something like the Hospitality Fee remains in effect only “until that fee automatically terminates when municipal consent expires.”

2. **Collecting the Hospitality Fee does not conflict with the Constitution or any State statute.**

The only inquiry left is whether Ordinance 105-96 *conflicts* with the Constitution or State law. According to the City, "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." Return 15-16. The City makes that assertion without any direct citation.

Instead, the City proceeds to list eight different provisions that supposedly support the City's position that its consent was required. *See* Return 16-18; (*see also* App. 6-7). But none of these provisions expressly supports the City's assertion or the circuit court's conclusion. Thus, the City (like the circuit court) tries to read a consent requirement into these provisions. This approach is akin to the often-criticized "penumbra" rationale of decisions like *Griswold v. Connecticut*, 381 U.S. 479 (1965). *See, e.g., State v. Forrester*, 343 S.C. 637, 644 n.2, 541 S.E.2d 837, 840 n.2 (2001) ("This [penumbra] analysis has engendered much controversy over the years among constitutional scholars and the Court itself."). As the Court made clear in *Forrester*, South Carolina has not embraced such an amorphous style of interpreting the law.

As another flaw, the City and the circuit court disregard what those provisions expressly require or prohibit. For example, the general requirement to follow the law does not provide any insight on the specific question here (obviously, everyone has to follow the law). *See* S.C. Const. art. VIII, § 7; S.C. Code § 4-9-25. The circuit court never pointed to a single municipal road that the County built or any other service

the County is providing within the City. See S.C. Code §§ 4-9-30(a)(5); 5-7-30. The circuit court never identified a particular joint function the City and County undertook, as any such function would presumably have required some clear agreement about the sharing of powers or duties (the adoption of the Hospitality Fee, of course, was a County decision, and the City having input on the road plan is not actually sharing a government function). See S.C. Const. art. VIII, § 13; S.C. Code § 4-9-41(A). The circuit court never invoked any contract between the City and County that the County was violating. See S.C. Code §§ 4-9-40; 5-7-60. The circuit court never cited any use of the 1.5 percent piece of the Hospitality Fee for something that is not permitted or what particular “service” was being provided that the County was not allowed to provide with the Hospitality Fee revenue. See *id.* § 6-1-530 (setting forth the permissible uses for revenue from the Hospitality Fee).

The City (and the circuit court) ignored the rules of statutory construction by relying on these other statutes. That is because when “there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010). Here, § 6-1-330(A) is the specific statute dealing with the County’s authority to collect the Hospitality Fee. That statute does not require the County to obtain municipal consent to collect the Hospitality Fee. In fact, no statute or constitutional provision prohibits the County from collecting the Hospitality Fee without the consent of the municipalities.

Plus, the idea that municipal consent is required for a county to adopt every fee or tax within a municipality is inconsistent with Act 138 of 1997 (the very act in which the General Assembly established the current framework for local accommodations and hospitality taxes). There, the General Assembly expressly permitted counties to collect up to a certain percent of local accommodations or hospitality taxes without getting municipal consent. *See* S.C. Code §§ 6-1-520(A); 6-1-720(A).

Because the County has the *authority* to collect the Hospitality Fee without municipal consent and because the continued collection of that fee by the County without municipal consent does not *conflict* with the law, the circuit court erred in the legal analysis underlying the injunction.

One final, more philosophical (yet still practical) point on this subject: Requiring consent in this situation would be illogical and antidemocratic. Mandating municipal consent here would effectively give people who live in a city or town the option to refuse to pay any county fee, thereby unfairly casting the burden of financing county projects solely on those people who live outside a city or town.

**B. The County did not need municipal consent to extend or remove the sunset provision or to change how funds from the Hospitality Fee would be used.**

The County amended Ordinance 105-96 to extend and ultimately to remove the sunset provision. (*See* App. 710, 174, 183). The County also announced its plan to use funds from the Hospitality Fee to fund construction of I-73 and for the operation and maintenance of police, fire protection, emergency medical services, and

emergency preparedness operations directly related to tourism-related infrastructure, facilities, and programs. (See App. 195). The City contends the County could not extend the sunset provision or change the use of revenue from the Hospitality Fee without its consent.

The answer to whether the County could remove the sunset provision and change the use of the funds from the Hospitality Fee are answered by looking at the power granted to the County by the General Assembly.

**1. The County has the power to change the sunset provision.**

When initially adopted, the Hospitality Fee contained a sunset provision, stating that the County would stop collecting the Hospitality Fee on January 1, 2017. (App. 97). The County amended that sunset provision three times, first for up to five years, then reaffirming that the extension was for the full five years, and finally removing the sunset provision entirely. (App. 710, 174, 183).

The General Assembly empowered the County to collect the Hospitality Fee by enacting § 6-1-330(A). This statutory provision expressly provides for the duration for which the County could collect the Hospitality Fee. The statute provides that the Hospitality Fee remains “in force and effect until repealed.” S.C. Code § 6-1-330(A). County Council has not repealed the Hospitality Fee. Although the initial ordinance creating the Hospitality Fee contained a sunset provision, that provision was a self-limitation imposed on the County by the County, not by the General Assembly. The General Assembly expressly empowered the County to continue collecting the

Hospitality Fee until it is repealed. Because the sunset provision was a self-imposed limitation on the County, the County was free to amend it (and even remove it).

**2. The County has the power to change the use of the Hospitality Fee revenue.**

The County originally planned to use the revenue from the Hospitality Fee to finance the road-construction projects outlined in the RIDE Report. Now, after those projects have been completed, the County has found new, yet similar uses for that revenue. (App. 174–75, 193, 195). Most recently, in July 24, 2018, the County adopted Resolution 84-18, which provided that the funds from the Hospitality Fee would be used to fund construction of I-73 and for the operation and maintenance of police, fire protection, emergency medical services, and emergency preparedness operations directly related to tourism-related infrastructure, facilities, and programs. (App. 195).

The General Assembly has specifically placed limitations on how funds from the Hospitality Fee may be used. *See* S.C. Code § 6-1-530. Of particular note, the General Assembly has stated that the funds can be used for “highways, roads, streets, and bridges providing access to tourist destinations,” as well as for “police, fire protection, emergency medical services, and emergency-preparedness operations directly attending to those facilities” when a county collects as much revenue as the County does. *Id.*

The County has never used the funds from the Hospitality Fee for an improper purpose. Initially, the County used the funds for the roads contemplated by the RIDE Report. Most recently, the County proposed to use the funds for I-73 and approved

police, fire protection, and emergency medical services. The General Assembly allows the County to use the funds from the Hospitality Fee for these purposes. *See id.* Like the sunset provision, when the County initially adopted the Hospitality Fee, it limited its use of funds from the Hospitality Fee to the road projects contemplated by the RIDE Report. Yet this too was a self-imposed limitation by the County, not by the General Assembly. The County was free to remove this limitation it placed on itself for use of the funds, as long as it used those funds only as allowed by the General Assembly. There is nothing improper about these new uses for the revenue from the Hospitality Fee. They are exactly those uses permitted by state law for hospitality and local accommodations taxes. *See id.*; *see also id.* § 6-1-730. As long as the revenue from an accommodations fee established at the time the Hospitality Fee was adopted is used only for the purposes in those statutes, that fee remains in effect and unaffected by Act 138. *See id.* § 6-1-760(B).

That the County would adopt new uses makes sense. Eventually the projects in the RIDE Report were completed, but that does not mean tourism-related needs disappeared. As the County grows, new needs emerge. Those needs, however, are similar to the needs identified in the RIDE Report. For instance, just as the RIDE Report was concerned about promoting tourism in Horry County, (App. 47, 70), the current uses of the revenue are also tourism-related and involve roads, including I-73, (App. 174-75, 195).

C. **Changes to Ordinance 105-96 did not create a new Hospitality Fee.**

The plain language of § 6-1-330(A) should control this case. That section empowers the County to collect the Hospitality Fee and to continue collecting it until the County repeals it. The circuit court (in a footnote (App. 7–8)) tried to get around the plain language of § 6-1-330(A) by characterizing the changes to the Hospitality Fee as the adoption of a new fee. As a new fee, the circuit court reasoned that municipal consent was required.

But extending—or even removing—the sunset provision and changing the use for revenue from the Hospitality Fee did not create a new fee. The same countywide 1.5 percent part of the Hospitality Fee that went into effect on January 1, 1997 was the same countywide 1.5 percent part of the Hospitality Fee that the County was collecting when the City filed this lawsuit. Amendments to Ordinance 105-96 did not alter anything about the substance of the Hospitality Fee and did not create a new fee.

Looking at other sunset provisions confirms this. The United States Supreme Court has not treated a change to a sunset provision as the adoption of a new law. Take for example the Voting Rights Act of 1965, one of the most significant pieces of legislation in the past century. *See* Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437. That act had certain provisions in § 4(a) and § 5 that were that were set to expire in 1970. Congress extended those provisions before they initially expired, and it extended them again in 1975, 1982, and 2006, each time before those provisions expired. *See Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 538–39 (2013) (reviewing the

history of these extensions). The Supreme Court never interpreted Congress's actions as adopting a "new" Voting Rights Act; instead, the Supreme Court viewed Congress as having merely extended the law it had originally enacted in 1965 (with whatever substantive amendments Congress might have made).

As a second example, look at the General Assembly's decision to remove sunset provisions from certain state boards. See 1994-1995 Appropriations Act, Part II, § 117. Shortly after the General Assembly's decision, the attorney general, in a letter analyzing the impact of this legislation on the Boards of Dentistry and Opticianry, raised no problem with the General Assembly removing those sunset provisions. See Letter to Mark R. Elam, 1994 WL 378027 (S.C.A.G. June 29, 1994). No one would claim that a "new" Board of Dentistry or Board of Opticianry was created simply because the sunset provision was changed.

And so it is with the Hospitality Fee. The changes to Ordinance 105-96 were permissible pursuant to the power conferred upon the County by the General Assembly and do not create a new fee. S.C. Code §§ 6-1-330(A); 6-1-530; 6-1-760(B).

**D. The City never consented to the Hospitality Fee.**

The issue of whether the City gave its consent to the Hospitality Fee when it passed the resolution "urg[ing]" the County to adopt the Fee is irrelevant. As set forth above, this case is about power—specifically the power conferred upon the County by the General Assembly to collect the Hospitality Fee. If the General Assembly did not require the County to obtain municipal consent before collecting the Fee (which it did not), whether the City gave its consent to the Hospitality Fee in

its resolution has no legal effect. Nevertheless, because the circuit court examined this issue, the County will do so briefly.

Ordinance 105-96 was proposed and adopted by the County alone. The City had no role in that process. The City did not propose it. The City did not vote on it. Moreover, Ordinance 105-96 nowhere says that any municipality's consent is necessary, nor is it conditioned on any other entity approving of—or consenting to—it.

Also, an examination of the City's resolution reflects that it merely "urge[d]" the County to adopt the Hospitality Fee. The City did not "consent" to the Hospitality Fee. The City did not cite any provision of State law that its consent was required. All it did was "strongly and unanimously support" the RIDE Report and "urge[]" the County to adopt the Hospitality Fee. (App. 97–98).

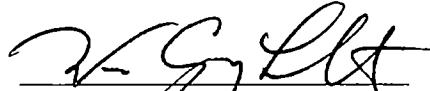
Also telling are the resolutions from the Horry County Board of Education and the South Carolina Department of Transportation. These two resolutions are similar to the municipal resolutions. (*Compare* App. 100, 105, *with* App. 97–98, 101, 102–03, 104, 106–07, 108). Like the municipalities, the Board of Education and Department of Transportation encouraged the County to implement the RIDE Report, which meant adopting the Hospitality Fee. If the municipalities were passing those resolutions to comply with some (unstated) State law, then the Board of Education and Department of Transportation would have had no reason to adopt resolutions of their own.

What explains all of these resolutions, both from the municipalities and other entities, is the political context in which the County adopted the Hospitality Fee. Earlier in 1996, voters in Horry County had rejected a local option sales tax to finance a proposed comprehensive road plan. (*See App. 47*). These resolutions demonstrated broad support for the County's plan to finance a road-construction plan with the Hospitality Fee, despite the results of the referendum. In other words, the resolutions had nothing to do with any legally required consent, but instead were a show of unanimity for addressing the County's road problems.

#### CONCLUSION

The County respectfully requests that this Court grant the writ in expeditious fashion and stay the injunction while the appeal is pending.

Respectfully submitted:



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THE STATE OF SOUTH CAROLINA  
In the 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

RECEIVED  
AUG 05 2019  
SC Court of Appeals

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 REPLY IN SUPPORT OF PETITION FOR WRIT OF  
SUPERSEDEAS was served on counsel for the Respondent via hand delivery on August  
5, 2019:

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THE STATE OF SOUTH CAROLINA  
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**RESPONDENTS' SUPPLEMENTAL RETURN AND MEMORANDUM  
IN OPPOSITION TO APPELLANT'S PETITION FOR SUPERSEDEAS**

The City of Myrtle Beach ("City"), on behalf of itself and all other similarly situated plaintiffs ("Respondents"), hereby submits this supplemental return and memorandum in opposition to the Petition for a Writ of Supersedeas ("Petition") of Appellant Horry County ("County").

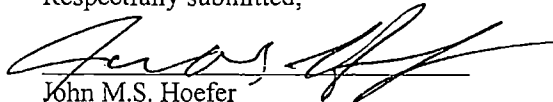
The primary thrust of the County's Petition is that the circuit court erred in not requiring that the City post a bond in the amount of \$28 Million under Rule 65(c), SCRCF. See Petition at 8-13. As Respondents explained in their original return and memorandum in opposition to the Petition, notwithstanding its belief that no security is required under Rule 65(c), the City and the other municipalities in Horry County which have enacted local hospitality and accommodations taxes under S.C. Code Ann. §§ 6-1-500, *et seq.*, and 6-1-700, *et seq.* ("Local Taxes"), the collection of which the County unsuccessfully sought to have enjoined by the circuit court but has not sought to have superseded by this Court, have agreed to escrow their collections of the

Local Taxes during the pendency of this litigation to provide security to the County. *See* Resp'ts' Return & Mem. in Opp'n to Appellant's Pet. for Supersedeas at pp.28-29. And as indicated in the Affidavit of City Manager John Pedersen located in the Second Supplemental Appendix filed concurrently with this supplemental return, the City has caused to be purchased an \$8.815 Million surety bond to eliminate any financial risk the County has identified in the Petition. Second Supp. App'x at 60-61. The City intends on filing a motion with the circuit court to lift the stay of further proceedings in that court imposed under its July 18, 2019, order (see App'x at 24) for the sole purpose of filing this bond.

By obtaining this bond, the City does not concede such a bond can be required of a municipality. The City thus reserves all arguments that the circuit court's order was proper in all respects. However, the County's argument regarding the sufficiency of the security is now moot.

For the reasons discussed herein and in Respondents' original return and memorandum in opposition, this Court should deny the Petition.

Respectfully submitted,



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Chad N. Johnston  
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*Attorneys for Respondents*

Columbia, South Carolina  
August 5, 2019

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

**RECEIVED**

AUG 05 2019

SC Court of Appeals

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

v.

Horry County, ..... Appellant.

**SUPPLEMENTAL APPENDIX II**

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(843) 619-4426

*Attorneys for Respondents*

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**SUPPLEMENTAL APPENDIX INDEX**

**Page**

**OTHER MATERIALS OR DOCUMENTS**

1. Affidavit of John Pedersen (August 5, 2019) .....060

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

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

v.

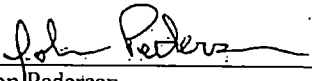
Horry County, ..... Appellant.

**AFFIDAVIT OF JOHN PEDERSEN**

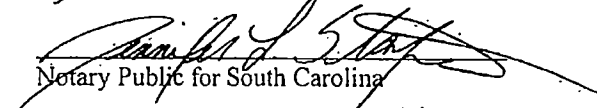
Personally appeared before me, John Pedersen, who being duly sworn, affirms and swears as follows:

1. I am in excess of eighteen years of age and competent to give this affidavit.
2. I am currently City Manager of the City of Myrtle Beach and have served as such since November 3, 2014.
3. In my position as City Manager, I have caused a bond in the amount of \$8,815,000.00 to be purchased as a surety for the preliminary injunction ordered by the trial court on June 21, 2019, as modified on July 10, 2019 and July 17, 2019, respectively, in the above-captioned matter.
4. A copy of the surety bond purchased by the City of Myrtle Beach will be filed with the Horry County Clerk of Court.

FURTHER THE AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
John Pedersen

Sworn to and subscribed before me this  
5<sup>th</sup> day of August, 2019.

  
\_\_\_\_\_  
Notary Public for South Carolina

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



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

RECEIVED  
AUG 05 2019  
SC Court of Appeals

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 paralegal 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 **Supplemental Return and Memorandum in Opposition to Appellant's Petition for Supersedeas and Second Supplemental Appendix** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows::

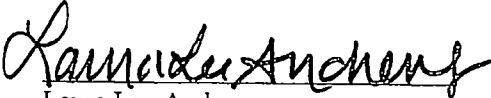
Henrietta U. Golding, Esquire  
**Burr & Forman, LLP**  
P.O. Box 336  
Myrtle Beach, SC 29578

James K. Gilliam, Esquire  
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---

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William Grayson Lambert, Esquire  
**Burr & Forman, LLP**  
P.O. Box 11390  
Columbia, SC 29211

  
Laura Lee Andrews

---

Columbia, South Carolina  
This 5<sup>th</sup> day of August, 2019

|                                     |   |                                    |
|-------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA             | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF HORRY                     | ) | FIFTEENTH JUDICIAL CIRCUIT         |
|                                     | ) |                                    |
| City of Myrtle Beach,               | ) | CIVIL ACTION NO. 2019-CP-26-01732  |
|                                     | ) |                                    |
| For Itself and a Class of Similarly | ) |                                    |
| Situated Plaintiffs,                | ) |                                    |
|                                     | ) | <b>MOTION TO LIFT STAY TO FILE</b> |
| Plaintiff,                          | ) | <b>EVIDENCE OF SURETY BOND AND</b> |
| vs.                                 | ) | <b>MEMORANDUM IN SUPPORT</b>       |
|                                     | ) |                                    |
| Horry County,                       | ) |                                    |
|                                     | ) |                                    |
| Defendant.                          | ) |                                    |

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

Plaintiff City of Myrtle Beach (“City”), on behalf of itself and a class of similarly situated plaintiffs, moves for an order lifting the stay entered by this Court on July 18, 2019, for the sole and limited purpose of filing evidence that the City has obtained a surety bond in the amount of \$8.815 Million.

On June 21, this Court issued an order granting the City an injunction against Defendant Horry County (“County”) and did not require that the City post security under Rule 65(c), SCRCF. On July 10, this Court denied the County’s motion for reconsideration, finding in pertinent part that “a bond as required by Rule 65 is not necessary and/or required for these parties.” The Court thereafter modified the injunction pursuant to Rule 62(c), SCRCF, to require the City to escrow new revenues collected under the City’s local accommodations and hospitality tax ordinances, adopted pursuant to S.C. Code Ann. § 6-1-520 and § 6-1-720, as security for the injunction. Since that time, the other municipalities in Horry County which have enacted their own new local accommodations and hospitality taxes have agreed to escrow their collections of

such taxes as additional security. *See* Respondents' Return & Memorandum in Opposition to Appellant's Petition for Supersedeas at 28-29, *City of Myrtle Beach v. Horry Cnty.*, No. 2019-001134 (S.C. Ct. App. July 29, 2019). The total escrowed collections are estimated to be \$20.34 Million. *Id.* at 29. Notwithstanding, the County has continued to argue against the sufficiency of the security that was set under this Court's clear discretion under Rule 65(c), SCRCF, even while conceding the fact that the security ordered by the Court is not "nominal." Respondents' Reply in Supp. of Appellant's Petition for Supersedeas at pp.5-9, *City of Myrtle Beach v. Horry Cnty.*, No. 2019-001134 (S.C. Ct. App. July 29, 2019). In order to take the issue of the sufficiency of the security off the table so that the focus of any review of the injunction is on the unlawfulness of the County's action, the City has now taken the additional step of obtaining a surety bond in the amount of \$8.815 Million to bring the total amount of security over the \$28 Million requested by the County. Exhibit A attached hereto; *see also* County's Motion for Reconsideration at 4 ("[T]he City must be required to provide security for its injunction which must be in the amount of not less than \$28 Million . . .").<sup>1</sup>

To ensure the efficacy of this bond, the City requests that this Court lift the stay entered on July 18 for the sole and limited purpose of allowing the City to file evidence of this bond with the Clerk of Court. The determination of whether to issue a stay is within the discretion of this Court. *See City of Spartanburg v. Belk's Dep't Store*, 199 S.C. 458, 20 S.E.2d 157 (1942). Thus, the determination of whether to lift a stay issued is also within the discretion of this Court. The Court should exercise its discretion and lift the stay for the limited purpose of allowing the

<sup>1</sup> By obtaining this bond, the City does not concede such a bond can be required of a municipality. The City thus reserves all arguments that this Court's orders dated June 21, 2019, July 10, 2019, and July 17, 2019, respectively, were proper in all respects. However, the County's argument regarding the sufficiency of the security is now moot.

City to file evidence of additional security posted for the benefit of the County. There can be no prejudice to the County from a lifting of the stay for this limited purpose as it would only inure to the County's benefit to have additional security—which it has repeatedly asserted in this Court and in the Court of Appeals is required—be posted. Moreover, a granting of the within motion is certainly appropriate here given that the County has posted no security for the stay it received from this Court, *cf.* Rule 62(d), SCRCP (providing for an appellant to post a supersedeas bond in order to obtain a stay of an otherwise appealable order), and therefore has no exposure itself in regard to the existing stay as against further proceedings in this Court.

Pursuant to Rule 11(a), SCRCP, the undersigned hereby certifies that consultation with opposing counsel regarding the substance of this motion would serve no useful purpose.

Respectfully submitted,

*s/ Chad N. Johnston*

---

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 Chad N. Johnston, SC Bar # 73752  
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*Attorneys for Plaintiff City of Myrtle Beach and All  
 Others Similarly Situated*

Columbia, South Carolina  
 August 6, 2019

# EXHIBIT A

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

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

**Introduction**

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

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

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

### Legal Standard

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

Federal courts, applying similar a rule of civil procedure,<sup>1</sup> 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

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

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

Argument

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

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

A party who obtains a preliminary injunction must provide some security so that if the injunction was improper, the enjoined party can be made whole. *See* Rule 65(c), SCRCF; *see Hylar 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), SCRCF, and the fact that requiring nominal security “erroneously assumes the injunction is proper”).

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

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

**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.<sup>3</sup> 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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<sup>2</sup> Barry Spivey is a financial officer with the County and Mike Shelton is a financial officer with the City.

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

When a court enters an injunction, the order “shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Rule 65(d), 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<sup>4</sup> 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

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<sup>4</sup> In fact, the City has not filed a motion seeking certification.

of money is not considered irreparable . . .”). To prevent an irreparable harm to the City, the Court merely has to order the County to segregate revenue from the 1.5 percent paid by the City within its borders pending the outcome of this litigation. After all, at this stage, the City is the only plaintiff, so harm to it is the only concern in this analysis. By having the County set that money aside, the City could recover it if it prevails. At most, if the Court ordered the County to segregate all of the revenue from the 1.5 percent collected from within the City’s borders, that would sufficiently protect the City’s interest both as an individual litigant and a political entity from any irreparable harm, all without so drastic a measure as enjoining the County from collecting a fee that has been in place for more than two decades.<sup>5</sup> 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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<sup>5</sup> 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Respectfully submitted:

**Burr & Forman LLP**  
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Myrtle Beach, South Carolina  
Dated: June 25, 2019

Attorneys for Defendant

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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.

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, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Horry County, )  
 )  
Defendant. )  

---

**NOTICE OF FILING**

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

**YOU WILL PLEASE TAKE NOTICE** that, in the above-captioned case and consistent with the Court’s August 16, 2019, Order Lifting the Stay for this limited purpose, Plaintiff City of Myrtle Beach (“City”), on behalf of itself and all others similarly situated, is hereby filing evidence of a surety bond obtained by the City on August 5, 2019, in the amount of \$8.815 Million. A copy of the surety bond is attached hereto as Exhibit A. Although the City maintains that no security is required under Rule 65(c), SCRCF, and that the security provided under the Court’s July 17, 2019, Order denying Horry County’s (“County”) motion for supersedeas, together with the revenues collected and escrowed as additional security by the other municipalities in Horry County which have enacted local accommodations and hospitality taxes, evidence of which has been filed in the appellate proceeding of this matter, is sufficient, the purpose of this surety bond is to bring the total amount of security for the preliminary injunction to over \$28 Million, which is the amount of security expressly claimed by the County to be adequate.

By this notice of filing, true and correct copies of the August 5, 2019 surety bond in the amount of \$8.815 Million are hereby served on the County through their counsel this 20<sup>th</sup> day of August, 2019.

Respectfully submitted,

s/ Chad N. Johnston

John M.S. Hoefler, SC Bar # 2549

Chad N. Johnston, SC Bar # 73752

R. Walker Humphrey, II, SC Bar # 79426

**Willoughby & Hoefler, P.A.**

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(803) 252-3300 (office)

(803) 256-8062 (facsimile)

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

Columbia, South Carolina  
August 20, 2019

ELECTRONICALLY FILED - 2019 Aug 20 9:14 AM - HORRY - COMMON PLEAS - CASE#2019CP2601732

# EXHIBIT A

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,

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

Plaintiff,  
  
vs.

)  
) **BOND FOR PRELIMINARY INJUNCTION**  
)

Horry County,

Defendant.

Plaintiff and principal City of Myrtle Beach, South Carolina, on behalf of itself and a class of similarly situated plaintiffs, has commenced the above-captioned action against defendant Horry County, South Carolina. In connection with said action, plaintiff has applied for and received a preliminary injunction against defendant, enjoining and restraining them from the commission of certain acts, to wit: the collection of a uniform service charge by defendant within the corporate limits of certain municipalities within the territorial limits of Horry County, South Carolina, as specified in the orders of the court issued on June 21, 2019, and July 10, 2019, the terms and provisions of which orders are incorporated herein. Defendant has appealed said orders and has asserted, as a basis for such appeal, that plaintiff has not provided adequate security against the event that said orders may be reversed and the injunction provided therein dissolved as a result.

Now, the undersigned Capitol Indemnity Corporation, a corporation as surety, in consideration of the premises, and of the issuance of the preliminary injunction, does undertake in the sum of Eight Million Eight hundred fifteen thousand Dollars (\$8,815,000), and promise that if the preliminary injunction shall be dissolved the plaintiff will pay to the defendant such damages, not exceeding the sum of Eight Million Eight hundred fifteen thousand Dollars (\$8,815,000), as they may incur or suffer if found to have been wrongfully enjoined.

Capitol Indemnity Corporation has caused this undertaking to be signed and its corporate seal affixed by its duly authorized attorney-in-fact at 2pm this 5th day of August.

[Signature]  
City of Myrtle Beach, South Carolina

By: John Pedersen  
Its: City Manager

by: Lauren Brashier  
Attorney-in-fact's Signature for Surety

Lauren Brashier  
Attorney-in-fact's Name

PO box 27149 Greenville SC 29607  
Attorney-in-fact's Address

BOND #60108627

CAPITOL INDEMNITY CORPORATION  
POWER OF ATTORNEY

60108627

KNOW ALL MEN BY THESE PRESENTS, That the CAPITOL INDEMNITY CORPORATION, a corporation of the State of Wisconsin, having its principal offices in the City of Middleton, Wisconsin, does make, constitute and appoint

WILLIAM T. BAYNE, CHARLES D. WELCH, LAUREN BRASHIER

its true and lawful Attorney(s) in fact, to make, execute, seal and deliver for and on its behalf, as surety, and as its act and deed, any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED \$20,000,000.00

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of CAPITOL INDEMNITY CORPORATION at a meeting duly called and held on the 15th day of May, 2002.

RESOLVED: that the President, Executive Vice President, Vice President, Secretary or Treasurer, acting individually or otherwise, be and they hereby are granted the power and authorization to appoint by a Power of Attorney for the purposes only of executing and attesting bonds and undertakings, and other writings obligatory in the nature thereof, one or more resident vice-presidents, assistant secretaries and attorney(s) in fact, each appointee to have the powers and duties usual to such offices to the business of this company; the signature of such officers and seal of the Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking or other writing obligatory in the nature thereof to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any of said officers, at any time.

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

IN WITNESS WHEREOF, the CAPITOL INDEMNITY CORPORATION has caused these presents to be signed by its officer undersigned and its corporate seal to be hereto affixed duly attested, this 8th day of January, 2014.

Attest:

*Richard W. Allen III*

Richard W. Allen III  
President  
Surety & Fidelity Operations



CAPITOL INDEMNITY CORPORATION

*Stephen J. Sills*

Stephen J. Sills  
CEO & President

STATE OF WISCONSIN } s.s.  
COUNTY OF DANE }

On the 8th day of January, 2014 before me personally came Stephen J. Sills, to me known, who being by me duly sworn, did depose and say: that he resides in the County of New York, State of New York; that he is President of CAPITOL INDEMNITY CORPORATION, the corporation described herein and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



*Daniel W. Krueger*

Daniel W. Krueger  
Notary Public, Dane Co., WI  
My Commission Is Permanent

STATE OF WISCONSIN } s.s.  
COUNTY OF DANE }

CERTIFICATE

I, the undersigned, duly elected to the office stated below, now the incumbent in CAPITOL INDEMNITY CORPORATION, a Wisconsin Corporation, authorized to make this certificate, DO HEREBY CERTIFY that the foregoing attached Power of Attorney remains in full force and has not been revoked, and furthermore, that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at the City of Middleton, State of Wisconsin this 5 day of August, 2019



*Alan S. Ogilvie*

Alan S. Ogilvie  
Secretary

THIS DOCUMENT IS NOT VALID UNLESS PRINTED ON GRAY SHADED BACKGROUND WITH A RED SERIAL NUMBER IN THE UPPER RIGHT HAND CORNER. IF YOU HAVE ANY QUESTIONS CONCERNING THE AUTHENTICITY OF THIS DOCUMENT CALL 800-475-4450. CIC-FOA (Rev. 11-13)