

ORDINANCE NO. 04-534

An Ordinance Establishing A Two Percent (2%) Local Hospitality Fee On Prepared Foods And Beverages For Immediate Consumption Within The Corporate Limits Of The County Of Sumter.

Section 1. Findings

It is hereby found and declared by the County Council of the County of Sumter ("County Council@), the governing body of the County of Sumter, South Carolina (the "County"):

1. Tourism is becoming a major industry in the County. The County supports this major industry.
2. Moreover, as the tourism industry grows and expands, the County must make provision to increase certain County services in order to accommodate the needs of tourists who visit from time to time in addition to the residents of Sumter.
3. The cost of providing the special services required by the tourism industry should be apportioned equitably between the County's residents and those who visit the County and enjoy the special benefits the County provides to them. It is necessary for the promotion of the common interests of the residents of the County as well as those who are visitors to the County to provide a method to alleviate the added financial burden on County resources in providing the services and improvements needed to support tourism and the resulting transient population.
4. In order to raise the necessary sums to defray a portion of those added costs, it is appropriate to impose a charge, the receipts of which will pay costs related to (1) the provision of services which serve such visitors or tourists and (2) capital projects which not only enrich the County's residents but also contribute to the tourism industry.
5. Cognizant of the need for counties to be given direct statutory authorization to raise money embarked to defray such costs related to tourism, recreation, cultural and historic facilities, the South Carolina General Assembly adopted Act No. 138 during its 1997 Session, now codified, in part, as Sections 6-1 700 to 6-1-770 (the "Enabling Act") of the South Carolina Code of Laws of 1976, as amended (the "S.C. Code"). While the General Assembly utilized the words "hospitality tax" as a means by which to designate the charge authorized to be imposed upon residents and Atransients@, as such term is defined in the Enabling Act, it is the intent of the County Council to impose such charge as a "hospitality fee" pursuant to the provisions of this ordinance.
6. It is a well-established principle of South Carolina law that the use of a particular word is not determinative of its characterization. See Jackson vs. Breeland, 88 SE 128, 103 SC 184 (1915). As set forth in Brown v. County of Horry, 417 SE2d 565, 308 SC 180 (1992), the factors that are of paramount importance to the analysis of whether a charge constitutes a "tax" or a "fee" are the following: (1) the purpose behind its imposition, (2) the intended portion of the community that

will be charged; and (3) the dedication of the sums so collected to the purpose for which it is charged.

7. County Council finds that its actions in (1) imposing a hospitality fee upon prepared food and beverages sold for immediate consumption from establishments within the County and (2) segregating the collections received from such fees in order that such sums be utilized according to the Enabling Act meet the test enunciated in Brown such that the charges imposed pursuant to the provisions of this ordinance constitute fees.

Section 2. Authority

This chapter is enacted pursuant to the authority of Title 4 of the South Carolina Code of Laws, including, without limitation, S.C. Code Ann. Section 4-9-25 (Supp. 2000), and S.C. Code Ann. Section 4-9-30 (Supp. 2000), which provide, in relevant part, that counties may adopt all ordinances which appear necessary and proper for the security, general welfare, and convenience of the county and for the preservation of the general health, peace, and order in the county.

Section 3. Declaration of Purpose and Intent

This article is enacted to preserve the general health, safety, and welfare of the general public within the County of Sumter, South Carolina by creating a uniform fee for the purpose of creating a fund for uses that are enumerated in Section 6-1-730 of the Code of Laws of South Carolina, as amended. This fund will to pay in whole or in part for current and future public park facilities, for capital expenditures to promote quality of life, tourism, recreation, cultural and historic structures and to provide infrastructure and promotion to and for these projects.

Section 4 Imposition

(A) A fee equal to two percent (2%) is hereby imposed on the gross proceeds, derived from the sale of prepared food and beverages (prepared for immediate consumption) by an establishment, including, but not limited to, restaurants, hotels, motels, caterers, or other food service facility, located in the unincorporated portions of the County of Sumter, determined as of the date of passage of this Ordinance.

(B) A fee equal to one (1)% percent is hereby imposed on the gross proceeds derived from the sale of prepared food and beverages (prepared for immediate consumption) by an establishment, including, but not limited to, restaurants, hotels, motels, caterers, or other food service facility, located in the unincorporated portions of the County of Sumter lying within any incorporated municipality determined as of the date of passage of this Ordinance; provided that no fee is imposed on the gross proceeds derived from the sale of prepared food and beverages (prepared for immediate consumption) by an establishment, including, but not limited to, restaurants, hotels, motels, caterers, or other food service facility, located in the portions of the County of Sumter lying within any incorporated municipality, determined as of the date of this Ordinance, that has imposed the full two (2%) percent hospitality tax or fee as of the date of passage of this Ordinance.

(C) The imposition and collection of the fees established under subsections (A) and (B) of this section for areas annexed by a municipality after the date of passage of this Ordinance shall be determined pursuant to '6-1-750 of the South Carolina Code of Laws (2000 Supp.) as may be in effect at the time of such annexation.

(D) The fees established under subsections (A) and (B) of this section also apply to meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine located in the unincorporated portions of the County of Sumter, determined as of the date of passage of this Ordinance. This fee does not apply to organizations that are recognized by the South Carolina Department of Revenue as non-profit organizations that do not collect sales tax. For purposes of subsections (A) and (B) of this section, the term Establishment shall not include any business that receives less than fifteen (15%) percent of its gross revenues from the sale of prepared foods and beverages; provided, however, that whenever two or more businesses are operated from one location (e.g. a convenience store that occupies the same building as a restaurant) the determination of whether either business is an establishment shall be determined separately for each business.

Section 5 Public Hearing

Pursuant to the provisions of Section 6-1-330 of the Code of Laws of South Carolina, 1976, as amended, a public hearing shall be held prior to the adoption of this Ordinance. All actions taken by the County Administrator in providing the required notice of said hearing are hereby approved and ratified.

Section 6 Payment of Fee

(a) Payment of the fee established herein shall be the liability of the consumer of the services for items described in Section 4. The fee shall be paid at the time of delivery of the services or items to which the fee applies and shall be collected by the provider or seller of the items.

(b) The fee collected by the seller or provider of the items as required under Section 4 shall be remitted to the County of Sumter as follows:

(1) On a monthly basis when the estimated amount of average collections is more than Fifty (\$50.00) Dollars a month (annual gross revenue in excess of \$20,000).

(2) On a quarterly basis when the estimated amount of average collections is between Twenty-Five (\$25.00) Dollars to Fifty (\$50.00) Dollars a month (annual gross receipts between \$10,000 to \$20,000).

(3) On an annual basis when the amount of average collections is less than Twenty-Five (\$25.00) Dollars a month (annual gross receipts less than \$10,000).

(c) Total collections and required reports shall be submitted to the County of Sumter by the twentieth day of the month and shall cover sales for the previous month. A copy of the completed *South Carolina State Sales and Use Tax Return Form* (Form ST-3) shall be attached

along with the required reports. Payments covered under the provisions of Section 6(b)(2) shall be submitted quarterly by the twentieth day of January, April, July and October for the previous quarterly sales or annually by January 20th for the calendar year sales as provided in Section 6(b)(3).

Any collections not remitted by the above stated deadlines shall be subject to a penalty of five percent (5%) of the unpaid amount for each calendar month or portion thereof after the due date until paid. The failure to collect from patrons the amount imposed by this article shall not relieve any establishment subject to this article from making the required remittance.

(d) Any person violating this article shall be deemed guilty of an offense and shall be subject to punishment pursuant to the County's Code of Ordinances upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent amount, penalties, and costs provided for herein.

Section 7 Hospitality Fee Account

A fund or an account, to be known as the County of Sumter Local Hospitality Fee Fund shall be established, and all revenues received from the hospitality fee shall be deposited into this account. The principal and any accrued interest from this account shall be expended only as permitted in Section 8 below.

Section 8 Permitted Uses of Funds

The County of Sumter, South Carolina is hereby authorized to utilize the funds collected from the imposition of the hospitality fee for the purposes enumerated in Section 6-1-730 of the State Code of Laws of South Carolina and as may be amended.

Section 9 Inspection and Audits

For the purpose of enforcing the provisions of this section the County's Finance Director or other authorized agent of the County is empowered to enter upon the premises of any person subject to this section to make inspection, examine and/or audit the books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records. In the event that the audit or inspection reveals that the establishment has supplied false information, the cost of the audit shall be added to the corrected amount due and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper fee shall constitute a separate offense. The County Finance Director, or other authorized agent of the County, may make systematic inspections of the businesses within the County to insure compliance with the section. Records of inspections and audits shall not be deemed public records and shall not be released by the County

Section 10 Authorization for Use

Authorization to utilize revenues from the Hospitality Fund for the purposes enumerated in Section 6-1-730 of the State Code of Laws of South Carolina, as may be amended, shall be by the annual budget ordinance duly adopted by the County Council.

Section 11 Severability

If any section, phrase, sentence or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, phrase, sentence or portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining sections, phrases, sentences, or portions thereof.

Section 12 Effective Date

This Ordinance shall become effective July 1, 2004.

**THE COUNTY COUNCIL FOR SUMTER COUNTY
SOUTH CAROLINA**

Naomi D. Sanders
BY:

Naomi D. Sanders

ITS: Chairman

ATTEST:

BY:

Mary W. Blanding
Mary W. Blanding

ITS: Clerk to County Council

First Reading: May 11, 2004.

Second Reading: May 25, 2004.

Public Hearing: May 25, 2004.

Third Reading and Adoption: June 8, 2004