

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

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

**DEFENDANT’S ANSWER AND
COUNTERCLAIMS**

vs.)

Horry County,)
)
Defendant.)
_____)

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

FIRST DEFENSE

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

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

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

4. The allegations of Paragraph 3 are admitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. The Defendant admits to Paragraph 18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31. The Defendant admits Paragraph 30.

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

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

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

34. Defendant denies the allegations in Paragraph 33.

35. Defendant admits the allegations in Paragraph 34.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND DEFENSE

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

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

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

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

THIRD DEFENSE

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

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

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

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

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

FOURTH DEFENSE

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

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

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

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

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

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

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

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

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

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

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

FIFTH DEFENSE

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

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

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

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

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

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

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

SIXTH DEFENSE

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

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

SEVENTH DEFENSE

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

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

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

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

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

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

EIGHTH DEFENSE

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

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

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

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

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

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

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

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

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

NINTH DEFENSE

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

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

TENTH DEFENSE

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

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

ELEVENTH DEFENSE

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

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

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

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

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

TWELFTH DEFENSE

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

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

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

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

THIRTEENTH DEFENSE

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

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

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

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

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

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

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

FOURTEENTH DEFENSE

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

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

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

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

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

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

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

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

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

FIFTEENTH DEFENSE

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

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

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

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

SIXTEENTH DEFENSE
AND
FIRST COUNTERCLAIM

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

166. The City filed its Complaint when it was neither well-grounded in fact nor warranted by existing law.

167. Furthermore, there exists no justiciable issue of either law or fact raised by City in its Complaint.

168. In reliance on the pleadings filed in this action, the costs of defending against the City's claims should be borne by the City and/or the City's counsel.

SEVENTEENTH DEFENSE
AND
SECOND COUNTERCLAIM

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted:

McNair Law Firm, P.A.

s/Henrietta U. Golding

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