Town of Hilton Head Island

Finance and Administration Committee Meeting

Tuesday, October 17, 2023, 1:00 PM
1 Town Center Court, Hilton Head Island, SC
Benjamin M. Racusin Council Chambers

The meeting can be viewed on the Town's YouTube Channel, the Beaufort County Channel, and Spectrum Channel 1304.

1. **Call to Order**
2. **Adoption of the Agenda**
3. **Approval of the Minutes**
   - **a.** Regular Meeting Minutes of September 19, 2023
4. **Appearance by Citizens:** Citizens who wish to speak on the matters being discussed during the meeting may do so by submitting the Request to Speak form no later than 4:30 PM the day prior to the meeting.
5. **New Business**
   - **a.** Consideration of Approval of a Sponsorship Agreement with the Heritage Classic Foundation for the RBC Golf Tournament - Josh Gruber, Deputy Town Manager
   - **b.** Discussion of Act 57 of the 2023 South Carolina General Assembly Legislation Session, Development of Workforce Housing - Josh Gruber, Deputy Town Manager
6. **Adjournment**

FOIA Compliance: Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Town of Hilton Head Island will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. Auditory accommodations are available. Any person requiring further accommodation should contact the Town of Hilton Head Island ADA Coordinator as soon as possible but no later than 48 hours before the scheduled event.

Municipal Association of South Carolina (MASC) Civility Pledge:
“I pledge to build a stronger and more prosperous community by advocating for civil engagement, respecting others and their viewpoints, and finding solutions for the betterment of my city or town.”

Town of Hilton Head Island
FINANCE & ADMINISTRATIVE COMMITTEE MEETING
September, 19, 2023 – 01:00 PM
MINUTES

Present from the Committee: Alex Brown, *Chairman*; David Ames, Steve Alfred, *Members*

Absent from Committee: Glenn Stanford

Present from Town Council**:** Tamara Becker

Call to Order: Chairman Brown called the meeting to order at 1:00 PM.

Adoption of the Agenda

Ames moved to approve the agenda as presented. Alfred seconded. Motion carried 3-0-1.

Approval of the Minutes

Regular Meeting Minutes of August 15, 2023

Ames moved to approve. Alfred seconded. Motion carried 3-0-1.

Appearance by Citizens

Mr. Skip Hoagland addressed the Committee regarding the need for transparency with the county managers, lawyers and CPAs. Mr. Hoagland requested a forensic audit for Hilton Head Island, as well as forensic audits for the school district, treasurer and the auditor's office.

New Business

Consideration of an Ordinance Amending the Business License Ordinance of the Town of Hilton Head Island to Update the Class Schedule as Required by Act 176 of 2020 – John Troyer, Finance Director

Troyer introduced April Akins, Revenue Services Manager, to speak to the Committee regarding the upcoming changes to the Town's Business License Tax Code.

Akins' presentation to the Committee provided additional background from September of 2020. South Carolina General Assembly passed Act 176, the Business License Standardization Act which requires every local government levying a business license tax to be administered in the same way across the state, effective January 1, 2022. As a result, Municipal Association of South Carolina (MASC) created and developed the Business License Model Ordinance for every local government to adopt, ensuring compliance with the state regulations. Hilton Head Island Town Council adopted the new

Business License model Ordinance in September 2021 and currently administers the Business License tax according to the Standardized State Law and Model Ordinance. Atkins continued with a brief summary, highlighting the elements of the law that impacted new changes forthcoming. MASC determines and revises the Standardize Business License Class Schedule using the latest nationwide IRS statistics every even year, and a three-year average of IRS profitability statistics as a guide to stabilize and limit large fluctuations in business classes and tax revenue. The Town completed a detail rate study analysis on approximately 14,000 business license accounts in July 2023 to determine the impact of the class schedule changes to the Town and to the business community.

Staff is recommending the Finance & Administration Committee adopt the Standardized Business License Class Schedule, as required by Act 176 and to maintain the current Business License Tax rates with no adjustment to the rates. Staff is also requesting that the Finance & Administrative Committee recommend to Town Council to amend the current Business License Ordinance and update the Business License Class Schedule as required by Act 176 of 2020. Akins provided a timeline of events if adopted, with the conclusion of the new Business License Class schedule implemented in January 2024.

Committee members asked questions and made comments regarding how the state law evaluates the industry class when looking at applicable rates; if the fluctuations in the historical timeline provide enough data to predict where today's rate; and how MASC takes into consideration the pandemic years when evaluating the historical data.

Councilman Brown asked if there were any public comments.

Mr. Hoagland addressed the committee asking questions and making comments regarding an explanation for the decrease with the accommodation business tax rate; difficulty collecting taxes from the internet-home based businesses and why the fishing and hunting class changed.

Ames moved to forward the ordinance amending the business license update to the class schedule as required by Act 176 of 2020 for consideration of approval to the full Town Council. Alfred seconded the motion. The motion carried 3-0-1.

<u>Adjournment:</u> The meeting was adjourned at 1:24 PM.

<u>Approved</u>:

The recording of this Meeting can be found on the Town's website at www.hiltonheadislandsc.gov

TOWN OF HILTON HEAD ISLAND

Finance and Administrative Committee

TO:	Finance and Administrative Committee Members
FROM:	Joshua Gruber, *Deputy Town Manager*
CC:	Marc Orlando, *Town Manager*
DATE:	October 9, 2023
SUBJECT:	Consideration of Approval of a Sponsorship Agreement with the Heritage Classic Foundation for the 2024 RBC Golf Tournament

RECOMMENDATION:

The Committee should review the proposed Sponsorship Agreement with the Heritage Classic Foundation for the 2024 RBC Golf Tournament Presented by Boeing.

BACKGROUND:

The Town has historically been a sponsor of the RBC Golf Tournament. With recent developments within the PGA TOUR, the 2024 Tournament has been designated as a "Signature Event" and will be one of eight Signature Events with limited field sizes on the 2024 PGA TOUR schedule. Each of the eight Signature Events will feature an increased $20 million purse, a limited field and five of the Signature Events, including the RBC Heritage, will not have a player cut.

Due to the increased prize purse and other related expenses of presenting a Signature Event, the Heritage Classic Foundation is requesting an increase in the Town's financial sponsorship from $298,509.71 in 2023 to $500,000 for this year's event. In exchange for this sponsorship, the Town will continue to receive recognition as a sponsor in many of the tournament's promotional materials. It has been estimated that the RBC Golf Tournament Presented by Boeing generates $102 million in economic impact each year. The 2023 Tournament also brought more than 101,000 to Hilton Head Island over the course of the week.

CONCLUSION:

The Committee should review the 2024 Sponsorship Agreement with the Heritage Classic Foundation for the RBC Golf Tournament Presented by Boeing and provide a recommendation to Town Council.

ATTACHMENTS:

1. 2024 RBC Heritage Presented by Boeing Sponsorship Agreement

TOWN OF HILTON HEAD ISLAND BEAUFORT COUNTY, SOUTH CAROLINA

2024 RBC Heritage Presented by Boeing Sponsorship Agreement

TOWN OF HILTON HEAD ISLAND

RBC Heritage Presented by Boeing
April 15-21, 2024

THIS AGREEMENT made this _____day of ________________, 2023, by and among HERITAGE CLASSIC FOUNDATION (hereinafter referred to as "Heritage"), a South Carolina not-for-profit corporation and the TOWN OF HILTON HEAD ISLAND (hereinafter referred to as "TOWN").

WITNESETH

WHEREAS, Heritage contracts annually with the PGA TOUR, Inc. (hereinafter sometimes referred to as "PGA TOUR") to conduct a PGA TOUR sanctioned golf tournament known as the RBC Heritage Presented by Boeing (the "Tournament") on the Harbour Town Golf Links (the "Golf Course") in Sea Pines Resort, Hilton Head Island, South Carolina, such contracts to be hereinafter referred to as the "PGA TOUR Agreement";

WHEREAS, the Tournament provides significant economic impact and publicity to the Town of Hilton Head Island and;

WHEREAS, TOWN desires to become a non-named sponsor of the Tournament under the terms and conditions set forth herein.

NOW, THEREFORE for valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto agree as follows:

1. The above WHEREAS clauses are hereby incorporated into the body of this agreement.

2. ***DURATION***

The Agreement shall begin upon the date of signing of this agreement and concluding December 31st, 2024; provided, however, in the event Heritage enters into an agreement with a title sponsor or with a title and presenting sponsor for more than one year, then the term shall be the same as that in the title/presenting sponsor agreements but not beyond 2024.

3. ***TOURNAMENT NAME AND LOGO***

The Tournament shall be known as the "RBC Heritage Presented by Boeing." As a condition of its association with the Tournament, TOWN is hereby required to refer to the Tournament solely as the "RBC Heritage Presented by Boeing" and to only use the OFFICIAL logo as supplied by the Tournament in any promotional or advertising materials wherein the Tournament is mentioned. **Promotional materials must be approved by the Heritage Classic Foundation before they are put into use, that include OFFICIAL Tournament mention. Such materials must be sent to the Heritage for approval at least 48 hours prior to scheduled production.**

Heritage reserves the right to change the name of the Tournament and the official logo. If a change is made, TOWN agrees to refer to the Tournament by the new name and to use the new name from the date of being notified by Heritage of a change in name or official logo.

4. ***PRIVILEGES***

Heritage accepts and designates TOWN as an Official sponsor of the Tournament for the term of this agreement.

Heritage will provide or cause to be provided to TOWN the following, upon request and without cost, for the use by TOWN personnel and their guests:

a) TOWN will receive an upper tier logo placement in the Official Pairings Guide, Wednesday through Sunday of Tournament week;

b) TOWN will receive one (1) full page four (4) color ad in the Official Pairings Guide;

c) TOWN will receive a listing and link on the official website www.rbcheritage.com;

d) TOWN will receive a listing on the Tournament's Official video boards, Tuesday through Wednesday of Tournament week;

e) TOWN will receive an upper tier placement on the year-round Sponsor Board;

f) TOWN will receive a listing in the Official Media Guide;

g) TOWN will provide the Official Welcome Message on the Bus DVD's and placement of one (1) thirty (30) second commercial ad within the running time on the video boards located on the Heritage Lawn.

5. ***FEE***

TOWN agrees to pay Five Hundred Thousand Dollars ($500,000) due no later than April 1, 2024. The sponsorship fee for the Privileges listed in Item #4 above will support the operational needs of the Tournament, including but not limited to transportation and marketing. Further, this contract may be terminated and all the rights and privileges under this Agreement shall be forfeited if payment of the Sponsor fee is not paid within ten (10) days of being given written notice by Heritage that the Sponsor fee has not been paid. In addition to the forfeiture of all privileges, a default under this Agreement which is not timely cured shall also result in the forfeiture of all money paid to date as liquidated damages. Time shall be of the essence regarding the provisions of this section.

6. ***INDEMNIFICATION***

Heritage agrees to hold harmless TOWN, its subsidiaries, successors and assigns from and against all claims, damages, issues and expenses including reasonable attorneys' fees, arising out of or resulting from the Tournament or any of its related activities, provided that any such claims, damages, loss or expense (1) is attributed to bodily injury or property damage, and (2) is caused in whole or in part by any negligent act or omission of Heritage and not proximately caused in whole or in part by TOWN.

TOWN agrees to hold harmless Heritage, from and against all claims, damages, issues and expenses, including reasonable attorney's fees, arising out of or resulting from TOWN use of the Tournament facilities and the skybox/tent or its related activities, provided that any such claims, damages, loss or expense (1) is attributable to bodily injury or property damage, or claims by suppliers, guest, or third parties of TOWN; and (2) is caused in whole or in part by any negligent act or omission of TOWN and not proximately caused by Heritage. Sponsor must show proof of insurance with a Certificate of

Insurance supplied to the Tournament prior to March 31, 2024 with a minimum of $1,000,000 in Liability coverage per occurrence. The Tournament in turn will insure Sponsor under the Tournament's umbrella policy.

7. ***WARRANTIES AND REPRESENTATIONS***

(a) For the term of this Agreement, Heritage warrants and represents to TOWN:

(i) Heritage has the authority to enter into this Agreement and has obtained all permissions and consents necessary to fulfill Heritage's obligations under this Agreement;

(ii) The Tournament will be sanctioned as a scheduled event on the PGA TOUR and televised live by The Golf Channel and CBS;

(iii) Heritage has a valid cosponsor Agreement with the PGA TOUR for the Tournament;

(iv) The Tournament will be held principally to raise proceeds for charity and a substantial majority of Tournament personnel will be volunteers.

8. ***CANCELLATION OF THE TOURNAMENT***

In the event the Tournament or portions of the Tournament are cancelled due to inclement weather or other event (such as acts of God, earthquakes, tornadoes, hurricanes, malicious mischief, flood, insurrections, riots, labor disturbances, public enemy/terrorist activity, war, epidemics, pandemics, explosives, court orders or injunctions beyond the reasonable control of Heritage) during the Tournament or within thirty (30) days prior to the Tournament, Heritage shall have no obligation to refund any portion of the fee paid by TOWN to date.

Should TOWN cancel the Agreement at any time the following cancellation percentage will apply:

- Signing of Agreement to 120 Days of Tournament: 25% of Fee retained by Heritage
- Signing of Agreement to 90 Days of Tournament: 50% of Fee retained by Heritage
- Signing of Agreement to 60 Days of Tournament: 75% of Fee retained by Heritage
- Signing of Agreement to 30- 0 Days of the Tournament: 100% of Fee retained by Heritage

The cancellation percentage will also apply to multiple year Agreements.

9. ***MISCELLANEOUS***

(a) No person not a party to this Agreement shall have any equitable or other rights by virtue of this Agreement.

(b) If any term or provision of this Agreement should be determined to be invalid or unenforceable, such term or provision shall, if possible, be changed to the most minor extent necessary to make it valid and enforceable and to carry out the intent of the parties. In such event, all remaining terms and provisions of this Agreement shall remain in full force and effect with such change or without the effected term or provision, as the case may be.

(c) This Agreement constitutes the entire agreement of the parties and supersedes all prior written and all contemporaneous oral agreements, understandings, and negotiations between the parties.

(d) This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same documents.

(e) This Agreement and any rights herein granted are personal to the parties hereto, and shall not be assigned, sublicensed, encumbered, or otherwise transferred by any party without the prior written consent of the parties. Any attempt at volatile assignment, sublicense, encumbrance, or other transfer, whether voluntary or by operation of law, shall be void and of no force and effect.

(f) Failure of any party to complain of any act or omission on the part of any other party, no matter how long the same may continue, shall not be deemed to be a waiver by any party of its rights under this Agreement.

(g) This Agreement shall be binding on the parties hereto, their successors, assigns and legal representatives.

(h) Notice by any party is deemed given when personally delivered or mailed, postage prepaid, addressed to the other parties at the address appearing below.

(i) In the event either party must resort to litigation to protect or enforce its rights hereunder, the prevailing party is entitled to recover its reasonable attorney's fees and costs.

HERITAGE CLASSIC FOUNDATION	Simon Fraser, Chairman Heritage Classic Foundation Post Office Box 3244 Hilton Head Island, SC 29928

TOWN OF HILTON HEAD ISLAND

(name)____

(company)____

(address)____

(city, state, zip) _____________________________________

WITNESSETH WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

WITNESSES:

____

Date: ____________________

HERITAGE CLASSIC FOUNDATION

By:____

Its: ____

Date: ____________________

WITNESSES:

____

Date: ____________________

TOWN OF HILTON HEAD ISLAND

By:____

Its: ____

Date: ____________________

TOWN OF HILTON HEAD ISLAND

Finance and Administrative Committee

TO:	Finance and Administrative Committee Members
FROM:	Joshua Gruber, *Deputy Town Manager*
CC:	Marc Orlando, *Town Manager*
DATE:	October 9, 2023
SUBJECT:	Discussion of Act 57 of the 2023 South Carolina General Assembly Legislation Session, Development of Workforce Housing

RECOMMENDATION:

The Finance and Administrative Committee should review the terms of the recently adopted Act 57 of 2023 and the corresponding regulations that will need to be satisfied in order for the Town to lawfully allocate Accommodation Tax revenues to be used in the development of qualified workforce housing.

BACKGROUND:

The Town of Hilton Head Island was instrumental in the passage of Act 57 of the 2023 South Carolina General Assembly Legislative Session. This Act allows local governments to utilize a portion of either its state or local accommodations taxes, or both, to be utilized in the development of qualified workforce housing as a tourism related expenditure.

However, the legislation that was ultimately adopted by the General Assembly contained several provisions that were not included within the draft legislation that had been proposed and supported by the Town. As such, it is important to understand that nature and applicability of these requirements from a procedural standpoint so that the Committee and ultimately Town Council is aware of what steps may have to be undertaken should it desire to utilize accommodation tax funding for this purpose.

ANALYSIS:

Act 57 of 2023 changed the legislative provisions applicable to both State and Local Accommodation Taxes. These changes have some similarities to each other as well as some key differences. The following information will be covered in greater detail during the staff's presentation to the Committee. However, a summary outline of this information is included for reference purposes within the Memorandum.

Local Accommodation Taxes – 3% (Hilton Head Island – 1%)

Act 57 amended Section 6-1-530 of the South Carolina Code of Laws to provide that the development of workforce housing, which must include programs to promote home ownership, is now a permissible use of these revenues. However, this amendment goes on further to state that such expenditures are capped at fifteen percent (15%) of the local government's annual collections. For the Town of Hilton Head Island, its 2023 Local Accommodation Taxes were $6,948,465. Therefore, a maximum of $1,042,269.75 of Local Accommodation Taxes could be utilized to develop qualifying workforce housing. However, this assumes that such funding has not otherwise been allocated. As part of the Town's adopted FY24-25 Budget, all $6,948,465 was transferred to the General Fund.

<u>State Accommodation Taxes – 2%</u>

Act 57 amended several sections of the South Carolina Code of Laws. The first amendment allows for the development of qualified workforce housing as an allowable "tourism-related expenditure." However, before a local government may utilize state accommodation taxes for workforce housing, it must first complete a Housing Impact Analysis that meets several criteria set forth under the new Act. Additionally, this Housing Impact Analysis must be shared with several state and local governmental entities. The Town must then update its Comprehensive Plan to include/adopt the Housing Impact Analysis as a part of its housing element.

The Act also limits the expenditure of State Accommodation Taxes to 15%. However, it is unclear if this calculation applies to the entirety of the State Accommodation Taxes or only to the 65% that is allocated for tourism-related expenditures. The Town has sought an opinion from the South Carolina Attorney General on this matter. In 2023, the Town collected a total of $13,344,903. However, the amount of funding that was available under the 65% allocation was $8,857,735.44. Therefore, either $2,001,735.45 or $1,328,660.32 of State Accommodation Taxes would be the maximum amount permissible for the development of workforce housing depending on the outcome of Attorney General Opinion. However, in order to avoid potential conflict staff would recommend that Town Council utilize the more conservative approach of calculating the 15% from the 65% funds when identifying the maximum amount that can be used for developing workforce housing.

<u>Additional South Carolina Attorney General Opinion Requests</u>

In addition to the question posed above, the Town has also sought opinions from the South Carolina Attorney General on several related questions concerning the use of either Local or State Accommodation Taxes for the development of workforce housing. Those questions are as follows:

1. May a local government allocate all or any part of the funds described in item (4)(b)(ix) to a non-profit organization to be used to develop workforce housing, so long as the non-profit organization complies with the requirements of the statutes?

2. Would the answer to this question change if the recipient of the grant or donation is a for-profit entity that develops affordable housing for the workforce?
3. If a local government has identified the lack workforce housing as an impediment to the economic growth, health and wellbeing of its community, would making a donation or grant from the local government's general fund to a non-profit entity that develops affordable housing for the workforce meet the public purpose requirement of S. C. Const., Article X, Sec, 5 and not violate the prohibition against pledging the credit of the State set out in S. C. Const., Art. X, Sec. 11 of the South Carolina Constitution?

CONCLUSION:

Due to the impacts that the responses to these questions could have on Town Council's ability to review and allocate funding from either State of Local Accommodation Taxes, it is necessary to receive and understand the South Carolina Attorney General's Opinion on this matter prior to taking any steps forward. However, once that information has been received, the Finance and Administrative Committee is now aware of the steps that must be undertaken to utilize either State of Local Accommodation Taxes for the development of workforce housing.

ATTACHMENTS:

1. Request for Attorney General Opinion by Curtis Coltrane, Town Attorney
2. Legal Opinion of R. Walker Humphrey, II, Esq. to South Carolina Tourism Expenditure Review Committee

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Certified Circuit Court Arbitrator
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Curtis L. Coltrane*
John W. Wilkins
*Also Member Virginia Bar

September 22, 2023

Hon. Alan Wilson
SOUTH CAROLINA ATTORNEY GENERAL
1000 Assembly Street, Room 519
Columbia, SC 29201

Via Overnight Delivery
Tracking Number 7734 9147 0133

RE: Request for Opinion
Amendments to S. C. Code Ann.

Dear Attorney General Wilson:

By way of introduction, I am the Town Attorney for the Town of Hilton Head Island, South Carolina. I have been asked to seek and opinion of your office regarding 2023 Act No. 57 (S. 284) and the ability of local governments to utilize general fund money in the form of grants or donations to private entities for the development of for workforce housing. 2023 Act No.57 amended parts of Title 6 of the South Carolina Code of Laws. Relevant to this inquiry, the amended statutes are S. C. Code Ann. §6-1-510 (Supp. 2023); S. C. Code Ann. §6-1-530 (Supp. 2023); S. C. Code Ann. §6-4-5 (Supp. 2023); S. C. Code Ann. §6-1-510 (Supp. 2023); S. C. Code Ann. §6-4-12 (Supp. 2023); S. C. Code Ann. §6-4-15 (Supp. 2023) and S. C. Code Ann. §6-29-510 (Supp. 2023).

The first question in this inquiry concerns the text in the amendment to S. C. Code Ann. § 6-4-10((b)(ix) (Supp. 2023). In relevant part, the amendment reads:

"Tourism-related expenditures include:

> (ix) development of workforce housing, which must include programs to promote home ownership. However, a county or municipality may not expend or dedicate more than fifteen percent of its annual local accommodations tax revenue for the purposes set forth in this item (4)(b)(ix). The provisions of this item (4)(b)(ix) are no longer effective after December 31, 2030.

The question is this: does item (4)(b)(ix) authorize the dedication of fifteen percent of the entire amount of the accommodations tax allocation to a local government, or does it authorize the dedication of fifteen percent of the "65%" fund described in 6-4-10 (4) (Supp. 2023)?

While item (4)(b)(ix) appears in the text describing the "65%" fund, the text reads: ". . . a county or municipality may not expend or dedicate more than fifteen percent of its annual local accommodations tax revenue . . .". There is no limitation to the "65%" fund stated in the text. Our own efforts with practitioners in the field have resulted in differing answers to this question, and we now seek an opinion of your office on it.

The second question is this:

May a local government allocate all or any part of the fund described in item (4)(b)(ix) to a non-profit organization to be used to develop workforce housing, so long as the non-profit organization complies the requirements of the statutes?[1] The amendments set out in 2023 Act No. 57 do not include a requirement for the workforce housing to be owned by the local government or that the expenditure of funds for workforce housing be made directly by the local government.

Non-profit organizations can be the recipient of allocations from the "65%" fund under the procedures in S. C. Code Ann. § 6-4-25 (Supp. 2023). Funding the construction or acquisition of housing is different from funding an event, though. The text of item (4)(b)(ix) does not include any restriction requiring ownership of the workforce housing or direct expenditure of the fund by the local government. so it would appear that non-profit organizations could apply for and be awarded the funds described in item (4)(b)(ix)[2]

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1 Prior to making any such allocation, the local government would have to comply S. C. Code Ann. § 6-4-12 (Supp. 2023), and the housing to be developed the non-profit organization would have to comply with S. C. Code Ann. § 6-4-5 (Supp. 2023).

2 This question has similarities to the question addressed by your office on June 25, 2008, regarding distribution of funds under the Capital Project Sales Tax Act [Cook to Martin, June 25, 2008, 2008 WL 2614989 (2008)]

Would the answer to either question change if the recipient of the grant or donation is a for-profit entity that develops affordable housing for the workforce?[3]

A sub-part to this question is this: May a local government allocate all or any part of the fund described in S. C. Code Ann. § 6-1-530(A)(7) (Supp. 2023) to a non-profit organization to be used to develop workforce housing, so long as the non-profit organization complies the requirements of the statutes?[4] There is no corollary to S. C. Code Ann. § 6-4-25 (Supp. 2023), in Title 6, Chapter 1, which may mean that the local accommodations taxes described in Title 6, Chapter 1, must be directly spent by the local government, and that any workforce housing developed or acquired must be owned by the local government. However, the amendments set out in 2003 S. C. Act 57 (S. 284) were all adopted as part of a single statutory scheme, and if the item (4)(b)(ix) can be allocated to a non-profit organization, the same rationale may be applicable to the fund described in S. C. Code Ann. § 6-1-530(A)(7) (Supp. 2023).

The final question is:

If a local government has identified the lack workforce housing as an impediment to the economic growth, health and wellbeing of its community:

(a) Would making a donation or grant from the local government's general fund to a non-profit entity that develops affordable housing for the workforce (i. e., Habitat for Humanity or similar) meet the public purpose requirement of S. C. Const., Article X, Sec, 5 of the South Carolina Constitution?

(b) Would making a donation or grant from the local government's general fund to a non-profit entity that develops affordable housing for the workforce (i. e., Habitat for Humanity or similar) violate the prohibition against pledging the credit of the State set out in S. C. Const., Art. X, Sec. 11?

As posed, the question is limited to the local government making donations or grants from the general fund, meaning there would be no pecuniary liability beyond the amount of the donation or grant and no charge against the credit of the local government or the taxing power of the local government.

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[3] There is a 2005 Attorney General Opinion (No. 85-12, February 11, 1985) concluding that disbursements to for-profit entities violate S. C. Code Ann. § 6-4-10 (Supp. 2023). The Administrative Law Court reached a different conclusion in the case of *City of Myrtle Beach v. Tourism Expenditure Review Committee*, Docket 04-ALJ-30—382-CC. I am unaware of any opinion of the South Carolina Court of Appeals or South Carolina Supreme Court on this question.

[4] Prior to making any such allocation, the local government would have to comply S. C. Code Ann. § 6-4-12 (Supp. 2023), and the housing to be developed the non-profit organization would have to comply with S. C. Code Ann. § 6-1-510 (Supp. 2023).

Would the answer to either question change if the recipient of the grant or donation is a for-profit entity that develops affordable housing for the workforce?

Thanking you in advance for your assistance with this inquiry, I am,

Sincerely,

COLTRANE & WILKINS, LLC

Curtis L. Coltrane

CLC/tdr
cc: Hon. Alan R. Perry
Mr. Marc A. Orlando
Mr. Joshua A. Gruber

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MEMORANDUM

To: Tourism Expenditure Review Committee

From: R. Walker Humphrey, II, Esq.
Willoughby Humphrey & D'Antoni, PA

Date: September 19, 2023

Re: Act 57 and Workforce Housing

Introduction

Last session, the General Assembly enacted Act 57, which allows state accommodations tax revenues to fund workforce housing expenditures. This memorandum presents an overview of Act 57 and addresses several questions about Act 57's requirements. A copy of Act 57 is attached to this memorandum for your convenience.

Because Act 57 was ratified less than four months ago, there are no court decisions interpreting its provisions. Any answer to these questions therefore cannot be free from doubt. But we have endeavored to answer TERC's questions using the Act's plain language and the overall legislative purpose of ensuring that state accommodations tax revenues are devoted to tourism-related expenditures.

Background

State law imposes a 7% tax on accommodations which consists of three components: (1) a 4% tax credited to the state public school building fund, (2) a 1% tax deposited in the South Carolina Education Improvement Act of 1984 Fund, and (3) a 2% local accommodations tax ("A-tax") which is credited quarterly to the local governments where the tax was collected. S.C. Code Ann. § 12-36-2630. The A-tax funds are to be used as follows:

(1) The first $25,000 is deposited in the local government's general fund;

(2) Five percent of the balance is allocated to the local government's general fund;
(3) Thirty percent of the balance is allocated to a special fund for advertising and the promotion of tourism to develop and increase tourist attendance through the generation of publicity; and
(4) The remaining balance plus interest, known as the "65% funds," is allocated to a special fund used for tourism-related expenditures, and local governments with a high concentration of tourism activity may use the 65% funds to provide government services that enhance the ability of the local government to attract tourists.

S.C. Code Ann. § 6-4-10.

Act 57 added "the development of workforce housing, which must include programs to promote home ownership," to the list of acceptable tourism-related expenditures on which the 65% funds may be used. 2023 Act No. 57 § 2, 4(b)(ix). "'Workforce housing' means residential housing for rent or sale that is appropriately priced for rent or sale to a person or family whose income falls within thirty percent and one hundred twenty percent of the median income for the local area, with adjustments for household size . . . ." *Id.* § 5, (9). The local government may not expend or dedicate more than 15% of its total A-tax revenues on workforce housing. *Id.* § 2, 4(b)(ix). A-tax revenues may also secure bonds issued to finance the cost of workforce housing. *Id.* § 3. The ability to fund workforce housing expenditures with A-tax revenues expires December 31, 2030. *Id.* § 2, 4(b)(ix).

The local government desiring to use A-tax revenues for workforce housing must prepare a housing impact analysis and provide a copy of it to TERC, the Department of Revenue, and members of the local government's legislative body. *Id.* § 4. Act 57 details the required content of this analysis. *Id.* The impact analysis is developed in conjunction with the local government's comprehensive plan. *See id.* (requiring the local government to distribute the impact analysis before the second reading of "the ordinance"); S.C. Code Ann. § 6-4-5(7) (defining "ordinance" as "an ordinance adopted pursuant to Section 6-29-530"); S.C. Code Ann. § 6-29-530 (providing requirements for adoption of a comprehensive plan). The Department of Revenue cannot distribute A-tax funds for use on workforce housing until all designated recipients receive the housing impact analysis. 2023 Act No. 57 § 4, (F).

Act 57 became effective on May 19, 2023, upon Governor McMaster's approval.

Analysis

In evaluating Act 57, we are mainly guided by three principles. First, the cardinal rule of statutory construction is to carry out the legislature's intent, and the best evidence of that intent is a statute's plain language. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Second, bodies created by the legislature possess only the power delegated by the General Assembly and must act within the authority granted to them for that purpose. *Bazzle v. Huff*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995). And third, public funds must be used for a public purpose. S.C. Const. art. X, §5; *S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 123, 804 S.E.2d 854, 861 (2017). These principles compel many answers below.

Must a local government apply to TERC before using A-tax revenues for workforce housing or obtain TERC's approval of the impact analysis?

We do not believe so. The only change to *the mechanics* of how local governments spend A-tax revenues in Act 57 is the adoption and submission of an impact analysis by those local governments which wish to use A-tax funds for workforce housing. The Act does not create any mechanism for a local government to apply to or seek pre-approval from TERC before using A-tax funds on workforce housing; the local government should report workforce housing expenditures just as it reports all other expenditures.

The Act also does not grant TERC any power to approve the impact analysis upon its submission. As noted below, TERC only considers whether the impact analysis fits within the four corners of the Act—and cannot review its underlying substance—when the committee reviews any workforce housing expenditures included in a local government's annual report.

Must the impact analysis be performed along with a new comprehensive plan?

We do not believe so. Act 57 requires that the impact analysis be developed along with the local government's comprehensive plan. *See* 2023 Act No. 57 § 4 (requiring the local government to distribute the impact analysis before second reading of "the ordinance"); S.C. Code Ann. § 6-4-5(7) (defining "ordinance" as "an ordinance adopted pursuant to Section 6-29-530"); S.C. Code Ann. § 6-29-530 (providing requirements for adoption of a comprehensive plan).

The local government's planning commission must update the comprehensive plan every 10 years. S.C. Code Ann. § 6-29-510(E). It also must "review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan." *Id.* Any periodic amendments or additions to the plan are approved just as the whole plan. *See* S.C. Code Ann. §§ 6-29-520 through -530.

We see no reason why developing an impact analysis cannot be part of the intermediate "as often as necessary" review of the comprehensive plan.

Must local governments which do not report under § 6-4-25(D)(3) submit an impact analysis to TERC if they wish to use A-tax revenues for workforce housing?

We do not believe so. Local governments must only report the expenditure of A-tax revenues which are not deposited in the local government's general fund. *See* S.C. Code Ann. § 6-4-25(D)(3). A-tax revenues deposited in the local government's general fund "are exempt from all other requirements" of Title 6, Chapter 4. S.C. Code Ann. § 6-4-10(1), -(2). While a local government may use A-tax revenues in its general fund on workforce housing, we believe § 6-4-10(1) and -(2)'s specific exemption of these funds from all other requirements in the statute eliminated the need to prepare and submit an impact analysis if the expenditures are limited to the general fund. *See Spectre, LLC v. S.C. Dep't of Health & Envtl. Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010) (holding that a specific statutory provision controls over a more general one).

How does TERC review expenditures for workforce housing?

TERC must still review any reports prepared under § 6-4-25(D)(3) to ensure compliance with Title 6, Chapter 4. If those reports disclose expenditures for workforce housing, TERC's review should consider whether the local government complied with the requirements for preparing and submitting an impact analysis, and whether the expenditures themselves are for the "development of workforce housing, which must include programs to promote home ownership," 2023 Act No. 57 § 2, 4(b)(ix). Act 57 does not grant TERC authority to review an impact analysis's substance; TERC may only determine whether the impact analysis facially complies with the Act's requirements. In other words, TERC will determine whether the impact analysis includes the necessary substance but will not look behind it.

TERC must also consider whether the workforce housing expenditures have a tourism nexus. *See* S.C. Code Ann. § 6-4-10(4)(d) (requiring that local governments using the 65% funds "are required to promote tourism and make tourism-related expenditures primarily in the geographical areas of the county or municipality in which the proceeds of the tax are collected where it is practical"). Workforce housing can support, promote, and develop tourism; housing is sorely needed for service workers who support many local tourism economies. But workforce housing does not necessarily have that impact. To ensure public funds are spent for a public purpose, TERC should confirm that workforce housing projects which are funded by A-tax revenues have a substantial objective of promoting tourism rather than supporting purely private interests. *See S.C. Pub. Int. Found.*, 421 S.C. at 123, 804 S.E.2d at 861 ("In deciding whether governmental action satisfies a public purpose, we look to the object sought to be accomplished. As a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents, ***or at least a substantial part thereof.***") (emphasis in original) (citations and quotations omitted).

Can private third parties apply to local governments to use A-tax revenues for workforce housing?

We believe they can, so long as the workforce housing expenditures have a sufficient tourism relationship. Act 57 itself envisions entities other than local governments using A-tax revenues to fund workforce housing. *See* 2023 Act No. 57 § 2, 4(b)(ix) ("[A] county or municipality may not expend *or dedicate*" more than 15% of its A-tax revenues on workforce housing) (emphasis added). And while the statute limits recipients of the 30% funds to non-profits, S.C. Code Ann. § 6-4-10(3), there is no such limitation for using A-tax revenues in a general fund or the 65% funds. We therefore believe a for-profit entity may receive A-tax revenues for workforce housing if there is an appropriate tourism connection.

May a local government use A-tax revenues generated before Act 57 to fund workforce housing expenditures?

Our opinion is that Act 57 allows A-tax revenues generated before its effective date to be used for future workforce housing expenditures, but such funds cannot be used on workforce housing expenditures incurred before the Act became effective.

In South Carolina "there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary." *S.C. Dep't of Revenue v. Rosemary Coin Mach.*, 339 S.C. 25, 28, 528 S.E.2d 416, 418 (2000). Act 57 only amended the law on how A-tax revenues can be *used*. *E.g.*, 2023 Act No. 57 ("An Act to Amend the South Carolina Laws by . . . Amending Section 6-4-10, Relating to the *Use* of Certain Revenue from the Accommodation Tax so as to Provide that the Development of Workforce Housing is One of the Purposes for which the Funds May Be *Used*; By Amending Section 6-4-15, Relating to the *Use* of Revenues to Finance Bonds, so as to Provide That The Development of Workforce Housing is One of the Purposes for which Bonds May Be Issued . . . .") (emphasis added). It did not amend any provision regarding the *imposition* of the tax.

In Act 57, there is no provision or clear legislative intent making the statute retroactive. Further, there is no express limitation on using existing revenues and collections for future workforce housing expenditures. We therefore believe such expenditures are proper. Indeed, restricting workforce housing expenditures to only future collections may even frustrate the General Assembly's intent to fund these projects given the short December 31, 2030 sunset provision by substantially limiting the pool of available funds for them. But without any indication that the Act applies retroactively, we do not believe A-tax funds can support workforce housing expenditures incurred before the Act's effective date.

Can A-tax funds be used on costs such as mortgages, taxes, insurance, and utilities?

We do not believe so. Act 57 defines "workforce housing" separately from "housing costs," which include items such as mortgages, taxes, insurance, and utilities—separately from "workforce housing." 2023 Act No. 57 § 5, (5)-(6), (9). The only place where Act 57 uses the defined term "housing costs" is as one of the items required for the impact analysis, and that section distinguishes between "housing costs" and "the cost of developing, construction [sic], rehabilitating, improving, maintaining, or owning single-family or multifamily dwellings." *Id.* § 4, (B)(1)(a), -(d).

Under Act 57, the only permissible expenditure in this regard is the "development of workforce housing, which must include programs to promote homeownership." 2023 Act No. 57 § 2, 4(b)(ix). Workforce housing means residential housing for rent or sale priced for the target demographic. *Id.* § 5, (9). Putting these two together, local governments may use A-tax funds to develop qualifying residential housing, not the ordinary costs of living in a house. We note that Act 57 includes "programs to promote homeownership" as a required element of workforce housing expenditures. The Act does not define that term. Arguably, it could include grants or other programs to offset housing costs. But it could also include programs like awareness campaigns and other efforts to encourage use of workforce housing developed with A-tax funds. Consistent with the Act's distinction between housing costs and workforce housing, we believe the latter and other promotional programs are the more consistent reading.

Can funds currently rolled over under § 6-1-10(4)(c) be used for workforce housing?

We believe so. Act 57 allows funds to be carried forward for the development of workforce housing without TERC's approval. 2023 Act No. 57 § 2, 4(c)(ii). For any existing funds that are currently held over, the local government should approve holding them over for workforce housing by a two-third affirmative vote of the governing body. *See id.* If a local government wants to use any funds currently held over under § 6-1-10(4)(c)(i) on a specific workforce housing project or program, it should make that recommendation and seek TERC's approval.

Can A-tax funds collected before the December 31, 2030 sunset be rolled over for workforce housing?

We do not believe so. The sunset provision is in the section allowing A-tax funds to be used on workforce housing. 2023 Act No. 57, § 2, 4(b)(ix) (designating workforce housing as a permissible tourism-related expenditure and stating that "[t]he provisions of this item (4)(b)(ix) are no longer effective after December 31, 2030"). Under a plain reading of the Act, workforce housing no longer qualifies as a tourism-related expenditure after December 31, 2030, regardless of when the supporting revenues were collected.

Conclusion

We hope you find these answers helpful. We remind TERC that no cases interpret Act 57 and, like the rest of Title 6, Chapter 4, the provisions of Act 57 are not artfully drafted. Our answers therefore are not free from doubt. Still, we believe that applying the General Assembly's intent via the Act's plain language, keeping TERC's authority within the four corners of the Act and its enabling legislation, and enforcing the maxim that public funds must be spent on a public purpose provides a safe course for TERC.

(A57, R66, S284)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 6-1-530, RELATING TO USE OF REVENUE FROM LOCAL ACCOMMODATIONS TAX, SO AS TO PROVIDE THAT THE DEVELOPMENT OF WORKFORCE HOUSING IS ONE OF THE PURPOSES FOR WHICH LOCAL ACCOMMODATIONS TAXES MAY BE USED; BY AMENDING SECTION 6-4-10, RELATING TO THE USE OF CERTAIN REVENUE FROM THE ACCOMMODATIONS TAX, SO AS TO PROVIDE THAT THE DEVELOPMENT OF WORKFORCE HOUSING IS ONE OF THE PURPOSES FOR WHICH THE FUNDS MAY BE USED; BY AMENDING SECTION 6-4-15, RELATING TO THE USE OF REVENUES TO FINANCE BONDS, SO AS TO PROVIDE THAT THE DEVELOPMENT OF WORKFORCE HOUSING IS ONE OF THE PURPOSES FOR WHICH BONDS MAY BE ISSUED; BY ADDING SECTION 6-4-12 SO AS TO REQUIRE A LOCAL GOVERNMENT TO PREPARE A HOUSING IMPACT ANALYSIS BEFORE USING SUCH FUNDS FOR WORKFORCE HOUSING; BY AMENDING SECTIONS 6-4-5 AND 6-1-510, RELATING TO DEFINITIONS, SO AS TO ADD CERTAIN DEFINITIONS; BY AMENDING SECTION 6-29-510, RELATING TO LOCAL PLANNING, SO AS TO REQUIRE THE PLANNING COMMISSION MUST SOLICIT INPUT FOR THE ANALYSIS FROM HOMEBUILDERS AND OTHER EXPERTS WHEN DEVELOPING A HOUSING ELEMENT FOR THE LOCAL COMPREHENSIVE PLAN; TO CREATE THE LAND DEVELOPMENT STUDY COMMITTEE TO EXAMINE CURRENT AND PROSPECTIVE METHODS TO PLAN FOR AND MANAGE LAND DEVELOPMENT; AND TO REQUIRE A REPORT DETAILING THE EFFECTS OF THIS ACT ON TOURISM AND WORKFORCE HOUSING.

Be it enacted by the General Assembly of the State of South Carolina:

Local accommodations tax for workforce housing

SECTION 1. Section 6-1-530(A) of the S.C. Code is amended to read:

(A) The revenue generated by the local accommodations tax must be used exclusively for the following purposes:

(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, renourishment, or other tourism-related lands and water access;

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

(5) advertisements and promotions related to tourism development;

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

(7) development of workforce housing, which must include programs to promote home ownership. However, a county or municipality may not expend or dedicate more than fifteen percent of its annual local accommodations tax revenue for the purposes set forth in this item. The provisions of this item are no longer effective after December 31, 2030.

State accommodations tax for workforce housing

SECTION 2. Section 6-4-10(4) of the S.C. Code is amended to read:

(4)(a) The remaining balance plus earned interest received by a municipality or county must be allocated to a special fund and used for tourism-related expenditures. This section does not prohibit a municipality or county from using accommodations tax general fund revenues for tourism-related expenditures.

(b) The funds received by a county or municipality which has a high concentration of tourism activity may be used to provide additional county and municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance, as well as the continual promotion of tourism. The funds must not be used as an additional source of revenue to provide services normally provided by the county or municipality but to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county or municipality to attract and provide for tourists.

"Tourism-related expenditures" include:

(i) advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;

(ii) promotion of the arts and cultural events;

(iii) construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and other nearby roads and utilities for the facilities;

(iv) the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities. This is based on the estimated percentage of costs directly attributed to tourists;

(v) public facilities such as restrooms, dressing rooms, parks, and parking lots;

(vi) tourist shuttle transportation;

(vii) control and repair of waterfront erosion, including beach renourishment;

(viii) operating visitor information centers;

(ix) development of workforce housing, which must include programs to promote home ownership. However, a county or municipality may not expend or dedicate more than fifteen percent of its annual local accommodations tax revenue for the purposes set forth in this item (4)(b)(ix). The provisions of this item (4)(b)(ix) are no longer effective after December 31, 2030.

(c)(i) Allocations to the special fund must be spent by the municipality or county within two years of receipt. However, the time limit may be extended upon the recommendation of the local governing body of the county or municipality and approval of the oversight committee established pursuant to Section 6-4-35. An extension must include provisions that funds be committed for a specific project or program.

(ii) Notwithstanding the provisions of subsubitem (i), upon a two-thirds affirmative vote of the membership of the appropriate local governing body, a county or municipality may carry forward unexpended allocations to the special fund beyond two years provided that the county or municipality commits use of the funds exclusively to the control and repair of waterfront erosion, including beach renourishment or development of workforce housing, which must include programs to promote home ownership. The county or municipality annually shall notify the oversight committee, established pursuant to Section 6-4-35, of the basic activity of the committed funds, including beginning balance, deposits, expenditures, and ending balance.

(d) In the expenditure of these funds, counties and municipalities are required to promote tourism and make tourism-related expenditures primarily in the geographical areas of the county or municipality in which the proceeds of the tax are collected where it is practical.

Bonds for workforce housing

SECTION 3. Section 6-4-15 of the S.C. Code is amended to read:

Section 6-4-15. A municipality or county may issue bonds, enter into other financial obligations, or create reserves to secure obligations to finance all or a portion of the cost of constructing facilities, all of which must fulfill the purpose of this chapter, for civic activities, the arts, cultural events, or workforce housing that includes programs to promote home ownership. The annual debt service of indebtedness incurred to finance the facilities or lease payments for the use of the facilities may be provided from the funds received by a municipality or county from the accommodations tax in an amount not to exceed the amount received by the municipality or county after deduction of the accommodations tax funds dedicated to the general fund and the advertising and promotion fund. However, none of the revenue received by a municipality or county from the accommodations tax may be used to retire outstanding bonded indebtedness unless accommodations tax revenue was obligated for that purpose when the debt was incurred.

Housing impact analysis

SECTION 4. Chapter 4, Title 6 of the S.C. Code is amended by adding:

Section 6-4-12. (A) If a local government intends to use the funds for the development of workforce housing, then the local government shall prepare a housing impact analysis prior to giving second reading to the ordinance.

(B) The analysis required by subsection (A) must include:

(1) information about the effect of the ordinance on housing, including the effect of the ordinance on each of the following:

(a) the cost of developing, construction, rehabilitating, improving, maintaining, or owning single-family or multifamily dwellings;

(b) the purchase price of new homes or the fair market value of existing homes;

(c) the cost and availability of financing to purchase or develop housing;

(d) housing costs; and

(e) the density, location, setback, size, or height development on a lot, parcel, land division, or subdivision; and

(2) an analysis of the relative impact of the ordinance on low- and moderate-income households.

(C) The following applies to information on housing costs required to be included in the analysis conducted pursuant to subsection (B)(1)(d):

(1) the analysis must include reasonable estimates of the effect of the ordinance on housing costs, expressed in dollar amounts. The local government shall include a brief summary of, or worksheet demonstrating, the computations used in determining the dollar amounts. However, if the local government determines that it is not possible to make an estimate expressed in dollar amounts, then the analysis must include a statement setting forth the reasons for the local government's determination; and

(2) the analysis must include descriptions of both the immediate effect and, to the extent ascertainable, the long-term effect of the ordinance on housing costs.

(D) Except as otherwise provided in this section, a housing impact analysis required pursuant to this section must be based on costs associated with the development, construction, financing, purchasing, sale, ownership, or availability of a median-priced single-family residence. However, the analysis may include estimates for larger developments as part of an analysis of the long-term effects of the ordinance.

(E) A local government may request information from any state agencies, local units of government, universities or colleges, organizations, or individuals as necessary to prepare a housing impact analysis pursuant to this section.

(F) The local government shall provide the housing impact analysis for an ordinance to the members of the legislative body of the local government, the Department of Revenue, and the Tourism Expenditure Revenue Committee before the ordinance is considered by the legislative body. The Department of Revenue may not disburse any accommodations taxes to the local government for purposes of development of workforce housing unless and until the local government has provided the housing impact analysis to the parties required pursuant to this subsection.

Definitions

SECTION 5. Section 6-4-5 of the S.C. Code is amended to read:

Section 6-4-5. As used in this chapter:

(1) "County area" means a county and municipalities within the geographical boundaries of the county.

(2) "Cultural", as it applies to members of advisory committees in Section 6-4-25, means persons actively involved and familiar with the cultural community of the area including, but not limited to, the arts, historical preservation, museums, and festivals.

(3) "Hospitality", as it applies to members of the committees in item (2), means persons directly involved in the service segment of the travel and tourism industry including, but not limited to, businesses that

primarily serve visitors such as lodging facilities, restaurants, attractions, recreational amenities, transportation facilities and services, and travel information and promotion entities.

(4) "Travel" and "tourism" mean the action and activities of people taking trips outside their home communities for any purpose, except daily commuting to and from work.

(5) "Housing costs" for housing occupied by the owner means:

(a) the principal and interest on a mortgage loan that finances the purchase of the housing;

(b) the closing costs and other costs associated with a mortgage loan;

(c) mortgage insurance;

(d) property insurance;

(e) utility-related costs;

(f) property taxes; and

(g) if the housing is owned and occupied by members of a cooperative or an unincorporated cooperative association, fees paid to a person for managing the housing.

(6) "Housing costs" for rented housing means:

(a) rent; and

(b) utility-related costs, if not included in the rent.

(7) "Ordinance" means an ordinance adopted pursuant to Section 6-29-530.

(8) "Utility-related costs" means costs related to power, heat, gas, light, water, and sewage.

(9) "Workforce housing" means residential housing for rent or sale that is appropriately priced for rent or sale to a person or family whose income falls within thirty percent and one hundred twenty percent of the median income for the local area, with adjustments for household size,

according to the latest figures available from the United States Department of Housing and Urban Development (HUD).

Definition

SECTION 6. Section 6-1-510 of the S.C. Code is amended by adding:

(4) "Workforce housing" means residential housing for rent or sale that is reasonably and appropriately priced for rent or sale to a person or family whose income falls within thirty percent and one hundred twenty percent of the median income for the local area, with adjustments for household size, according to the latest figures available from the United States Department of Housing and Urban Development (HUD).

Local comprehensive plan

SECTION 7. Section 6-29-510(D)(6) of the S.C. Code is amended to read:

(6) a housing element which considers location, types, age, and condition of housing, owner and renter occupancy, and affordability of housing. This element includes an analysis to ascertain nonessential housing regulatory requirements, as defined in this chapter, that add to the cost of developing affordable housing but are not necessary to protect the public health, safety, or welfare and an analysis of market-based incentives that may be made available to encourage development of affordable housing, which incentives may include density bonuses, design flexibility, and streamlined permitting processes. The planning commission must solicit input for this analysis from homebuilders,

developers, contractors, and housing finance experts when developing this element;

Land Development Study Committee

SECTION 8. (A) There is created the Land Development Study Committee to examine current and prospective methods to plan for and manage land development in South Carolina.

(B) The study committee must be comprised of three members of the Senate appointed by the President of the Senate and three members of the House of Representatives appointed by the Speaker of the House. Staff from the Senate and House of Representatives shall assist the study committee.

(C) The members of the study committee shall seek assistance from governmental agencies including the South Carolina Building Codes Council, the South Carolina Housing Authority, and the South Carolina Department of Agriculture, and from members of the private sector including, but not limited to, the Homebuilders Association of South Carolina, Habitat for Humanity South Carolina, the Realtors Association of South Carolina, the Municipal Association of South Carolina, the South Carolina Association of Counties, South Carolina Land Trust, Conservation Voters of South Carolina, the South Carolina Chapter of the American Planning Association, and the Manufactured Housing Institute of South Carolina.

(D) The study committee shall provide a report to the General Assembly by December 31, 2023, at which time the study committee shall dissolve.

Report

SECTION 9. Before the beginning of the 2030 Legislative Session, the Director of the Department of Parks, Recreation and Tourism, in consultation with the Secretary of Commerce and the Commissioner of Agriculture, shall issue a report to the General Assembly detailing the effects on tourism and workforce housing resulting from the codified provisions of this act.

Time effective

SECTION 10. This act takes effect upon approval by the Governor.

Ratified the 17th day of May, 2023.

Approved the 19th day of May, 2023.