

Lancaster County Council Administration Committee

Thursday, February 11, 2016

County Council Conference Room

Council Administration Building

101 N. Main Street

Lancaster, SC 29720

1. **Call to Order – Committee Chair Brian Carnes** 4:30 p.m.
2. **Approval of the agenda** *[deletions and additions of non-substantive matters]*
3. **Minutes of the January 12, 2016 meeting – pgs. 2-4**
4. **Special Presentation**
  - *Employees of the 4<sup>th</sup> Quarter 2015 - Kayla Small, Tamesha Fletcher and Lisa Murphy*
5. **Citizens Comments**
6. **Discussion / Action Items**
  - a. Budget request for direct assistance agencies. *Kimberly Hill*
  - b. Hospitality Tax discussion. *Steve Willis – pgs. 5-20*
  - c. Service requests from potential new municipalities. *Steve Willis – pgs. 21-30*
7. **Adjournment**

*Anyone requiring special services to attend this meeting should contact 285-1565 at least 24 hours in advance of this meeting.*

***Lancaster County Council Administration Committee agendas are posted at the Lancaster County Administration Building and are available on the Website: [www.mylancasteresc.org](http://www.mylancasteresc.org)***



MINUTES OF THE LANCASTER COUNTY COUNCIL ADMINISTRATION  
COMMITTEE

COUNTY ADMINISTRATION BUILDING  
COUNCIL CONFERENCE ROOM  
101 N. MAIN STREET, LANCASTER

Members of the Lancaster County Council Administration Committee

Brian Carnes, Committee Chairman – District 7  
Bob Bundy, Council Member – District 3  
Charlene McGriff, Council Member – District 2

**DRAFT**

**Thursday, January 21, 2016**

The Committee Members present were Brian Carnes, Bob Bundy and Charlene McGriff. Also present was John Weaver, Veronica Thompson, Kimberly Hill, Debbie Hardin, Brenisha Wells and other staff members. A quorum of the Lancaster County Council Infrastructure and Regulation Committee was present for the meeting.

The following press was notified of the meeting by e-mail or by fax in accordance with the Freedom of Information Act: Lancaster News, Kershaw News Era, The Rock Hill Herald, Fort Mill Times, Cable News 2, Channel 9 and the local Government Channel. The agenda was also posted in the lobby of the County Administration Building the required length of time and on the county website.

**Call to Order**

Chairman Brian Carnes called the meeting to order at 4:33 p.m.

**Approval of Agenda**

Councilwoman McGriff moved to approve the agenda. SECONDED by Councilman Bundy. Passed 3-0.

**Minutes of the December 17, 2015 Meeting**

MOTION was made by Councilwoman McGriff to approve the minutes of the December 17, 2015 meeting. SECONDED by Councilman Bundy. Passed 3-0.

**Citizen Comments**

Sherri Gregory and Barry Beasley provided a brief overview of the Lindsay Pettus Greenway project. Ms. Gregory stated that the largest task of the project has been complete, which was to acquire property and easements. The first phase of the Greenway will be a two (2) mile trail from the Barr Street Development Center (old Barr Street School) to Gillsbrook Road. At the completion of the project, there will be five (5) miles of trail, which will cost \$1.5 Million per mile. Ms. Gregory stated that it will take various resources from Lancaster



County, as a whole to complete. Ms. Gregory stated that Greenway space was listed as #4 on the priority list of the Clemson Study.

Councilwoman McGriff asked what could Lancaster County Government do to help if it could not assist with funding. Ms. Gregory stated that including them in planning for recreation and partnering with them in anyway that the County seen fit, would assist in making the project a reality.

Council thanked Ms. Gregory and Mr. Beasley for the presentation.

### **Discussion/Action**

#### ***Fleet operations building discussion***

Jeff Catoe, Public Works Director stated that he has received a quote of \$3.7 Million for the fleet operations building, taking three (bays) out. The original quote of \$4.7 Million included the public works facility and three (3) additional bays. Mr. Catoe provided the committee with the original quote and a schematic plan of the proposed building attached as schedule A.

Councilman Carnes asked approximately how much a stand alone public works facility will cost in the future. Mr. Catoe stated approximately \$1.5 Million.

There was a brief discussion on turning the layout of the facility around to maybe save on site work. It was also discussed that fleet operations will not being able to increase work productivity if the bays are cut out of the plan.

The committee asked Mr. Catoe to report back the following:

1. Obtain the cost to add the three (3) bays back into the plan.
2. Talk with Chad Catledge of Perception Builders to determine if changing the layout of the building would reduce the cost.
3. Obtain the cost if the County did the rough grading work – anything that could be done in-house.

#### ***Review of departmental budget requests FY 2016-2017***

Kimberly Hill, Budget Analyst and the various departments reviewed the budget request attached as schedule B.

Comments from Council Committee members were as follows:

Councilwoman McGriff requested that Ryan Whitaker, Risk Manager look into how the County can provide more security – employees first, money second.

**DRAFT**

Ms. Hill stated that the Auditor, Cheryl Morgan will be requesting for an additional person in their office, but it's not included with the budget documents presented at this meeting.

**Adjournment**

Councilwoman McGriff moved to adjourn the meeting at 5:56 p.m. Passed 3-0.

Respectfully Submitted:

Approved by Committee Chair

Brenisha S. Wells  
Deputy Clerk to Council

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Brian Carnes, Committee Chair

**DRAFT**

## Agenda Item Summary

Ordinance # / Resolution#:	Discussion Item
Contact Person / Sponsor:	Steve Willis
Department:	Administration
Date Requested to be on Agenda:	February Administration Committee Potential referral to full Council

**Issue for Consideration:**

Implementation of a Hospitality Tax in Lancaster County.

**Points to Consider:**

This is not a terribly involved process but is longer than a single page. Please see attachment.

**Funding and Liability Factors:**

Proceeds can only be utilized as allowed by law.

Without having a business license or registration it is impossible to accurately forecast the revenue amount that would be generated. Using Department of Revenue data and subtracting out the City of Lancaster amounts, a conservative revenue estimate is \$800,000 per year.

**Council Options:**

Impose the tax or not impose the tax.

**Staff Recommendation:**

Provided Council desires to utilize the tax for an approved purpose, impose the tax.

**Committee Recommendation:**

To be determined.

**SUBJECT: Hospitality Tax information**

**Revenue Base:**

I contacted the Department of Revenue for information in order to calculate a potential revenue stream. They could not break out prepared food at locations such as grocery stores (deli sandwiches, cooked foods, etc.) nor could they break out what was collected inside the municipalities. Here is the base data from which I am working:

Lancaster County Food Services NAICS Codes						
Start Date: 7/1/2014 End Date: 6/30/2015						
LANCASTER						
NAICS	NAICS TITLE	UNITS	GROSS SALES	NET TAXABLE SALES	3% FOOD NET TAXABLE	TOTAL NET TAXABLE
722110	FULL-SERVICE RESTAURANTS	93	\$52,336,020.05	\$51,835,109.74	\$0.00	\$51,835,109.74
722211	LIMITED-SERVICE RESTAURANTS	25	\$23,434,871.83	\$23,246,480.47	\$0.00	\$23,246,480.47
722212	CAFETERIAS, GRILL BUFFETS, AND BUFFETS	5	\$1,768,174.17	\$1,751,384.17	\$0.00	\$1,751,384.17
722213	SNACK AND NONALCOHOLIC BEVERAGE BARS	1	\$9,309.00	\$9,309.00	\$0.00	\$9,309.00
722310	FOOD SERVICE CONTRACTORS	5	\$12,781.16	\$11,689.21	\$0.00	\$11,689.21
722320	CATERERS	7	\$28,494.63	\$28,494.63	\$0.00	\$28,494.63
722330	MOBILE FOOD SERVICES	10	\$99,988.52	\$96,910.52	\$0.00	\$96,910.52
			<b>\$77,689,639.36</b>	<b>\$76,979,377.74</b>	<b>\$0.00</b>	<b>\$76,979,377.74</b>

Using \$76,979,377.74 as my base number, a 2% (maximum allowed – Council could certainly decide to utilize 1%) Hospitality Tax would yield \$1,539,587.55. Keeping in mind that this would include locations inside the City of Lancaster, and that we could not charge a county tax inside the city limits as they are already capturing the maximum allowable amount, we would need to deduct \$797,921 which was their collections from the above time period. That yields a balance of \$741,666.55.

Given that this number does not include any prepared foods from locations such as grocery stores, I think a conservative revenue estimate of \$800,000 per year would be in order. I do believe that number is very conservative and would also note that the revenue stream would grow as growth continues in the unincorporated area.

**Potential Uses:**

This is governed by state law, a copy of which is below. I would note that you mentioned potentially using this revenue for development of large parks. I believe, but would certainly defer to John on legal opinions, that such a use would be permissible. I know that Rock Hill utilizes this funding source for Cherry Park and Manchester. The key is using it for large parks where regional, state, and national tournaments are held since it must be tourism related per section 6-1-730(A)(2). Locally Walnut Creek Park would likely qualify while Roy Hardin Park would absolutely not qualify. There is precedent for bonding these funds to pay for capital projects.

**State Law:**

**ARTICLE 7**  
**Local Hospitality Tax**

**SECTION 6-1-700.** Short title.

This article may be cited as the "Local Hospitality Tax Act".

HISTORY: 1997 Act No. 138, Section 9.

**SECTION 6-1-710.** Definitions.

As used in the article:

(1) "Local governing body" means the governing body of a county or municipality.

(2) "Local hospitality tax" is a tax on the sales of prepared meals and beverages sold in establishments or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.

(3) "Positive majority" means a vote for adoption by the majority of the members of the entire governing body, whether present or not. However, if there is a vacancy in the membership of the governing body, a positive majority vote of the entire governing body as constituted on the date of the final vote on the imposition is required.

HISTORY: 1997 Act No. 138, Section 9.

**SECTION 6-1-720.** Imposition of local hospitality tax.

(A) A local governing body may impose, by ordinance, a local hospitality tax not to exceed two percent of the charges for food and beverages. However, an ordinance imposing the local hospitality tax must be adopted by a positive majority vote. The governing body of a county may not impose a local hospitality tax in excess of one percent within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.

(B) All proceeds from a local hospitality tax must be kept in a separate fund segregated from the imposing entity's general fund. All interest generated by the local hospitality tax fund must be credited to the local hospitality tax fund.

HISTORY: 1997 Act No. 138, Section 9.



**SECTION 6-1-730.** Use of revenue from local hospitality tax.

(A) The revenue generated by the hospitality 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 and renourishment;

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

(5) advertisements and promotions related to tourism development; or

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

(B)(1) In a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenues of the hospitality tax authorized in this article may be used for the operation and maintenance of those items provided in (A)(1) through (6) including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local hospitality tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

HISTORY: 1997 Act No. 138, Section 9; 1999 Act No. 93, Section 14; 2006 Act No. 314, Section 2, eff June 1, 2006; 2010 Act No. 290, Section 36, eff January 1, 2011.

**SECTION 6-1-740.** Cumulative rate of local hospitality tax.

The cumulative rate of county and municipal hospitality taxes for any portion of the county area may not exceed two percent, unless the cumulative total of such taxes was in excess of two percent or were authorized to be in excess of two percent prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed or adopted as of December 31, 1996.

HISTORY: 1997 Act No. 138, Section 9.

**SECTION 6-1-750.** Local hospitality tax revenue upon annexation.

In an area of the county where the county has imposed a local hospitality tax that is annexed by a municipality, the municipality must receive only that portion of the revenue generated in excess of the county local hospitality tax revenue for the previous twelve months in the area annexed.

HISTORY: 1997 Act No. 138, Section 9.

**SECTION 6-1-760.** Ordinances prior to March 15, 1997; calculation; revenue.

(A) With respect to capital projects and as used in this section, "tourist" means a person who does not reside in but rather enters temporarily, for reasons of recreation or leisure, the



jurisdictional boundaries of a municipality for a municipal project or the immediate area of the project for a county project.

(B) Notwithstanding any provision of this article, any ordinance enacted by county or municipality prior to March 15, 1997, imposing an accommodations fee which does not exceed the three percent maximum cumulative rate prescribed in Section 6-1-540, is calculated upon a base consistent with Section 6-1-510(1), and the revenue from which is used for the purposes enumerated in Section 6-1-530, remains authorized and effective after the effective date of this section. Any county or municipality is authorized to issue bonds, pursuant to Section 14(10), Article X of the Constitution of this State, utilizing the procedures of Section 4-29-68, Section 6-17-10 and related sections, or Section 6-21-10 and related sections, for the purposes enumerated in Section 6-1-530, to pledge as security for such bonds and to retire such bonds with the proceeds of accommodations fees imposed under Article 5 of this chapter, hospitality fees imposed under this chapter, state accommodations fees allocated pursuant to Section 6-4-10(1), (2), and (4), or any combination thereof, and the pledge of such other nontax revenues as may be available for those purposes for capital projects used to attract and support tourists.

HISTORY: 1997 Act No. 138, Section 10; 2010 Act No. 284, Section 1, eff upon approval (became law without the Governor's signature on June 28, 2010).

**SECTION 6-1-770.** Remitting tax to local governing body; frequency determined by estimated average amounts.

The tax provided for in this article must be remitted to the local governing body on a monthly basis when the estimated amount of average tax is more than fifty dollars a month, on a quarterly basis when the estimated amount of average tax is twenty-five dollars to fifty dollars a month, and on an annual basis when the estimated amount of average tax is less than twenty-five dollars a month.

HISTORY: 1998 Act No. 419, Part II, Section 63B.

### **Sample Ordinance:**

The City of Lancaster ordinance, which was adopted in 2003, governs their Hospitality Tax program. This would be a good model to use. I would note that while the section about checking the books is in this ordinance, it has never been used to my knowledge. If we pursue this concept it might be something to consider omitting. If we ever thought a location was skimming on their taxes we can easily find their gross receipt information from the Department of Revenue. Here is their ordinance:

## **ARTICLE VI. - LOCAL HOSPITALITY FEE**

**Sec. 26-100. - Declaration of policy, purpose, intent.**

This article is enacted to preserve the general health, safety, and welfare of the general public and to promote the tourism industry within the City of Lancaster, South Carolina, by imposing a fee for the purpose of creating a fund which will be utilized for purposes enumerated in Section 6-1-730(A) of the Code of Laws of South Carolina as such may be amended.

(Ord. No. 002-34, § 3, 4-1-03)

**Sec. 26-101. - Imposition of a two percent local hospitality fee.**

There is hereby imposed within the municipal limits of the City of Lancaster a two (2) percent local hospitality fee tax upon the gross proceeds derived from the sale of all prepared meals and beverages served within the City of Lancaster by any establishment. In addition, the tax shall be imposed on all prepared foods and beverages sold in establishments licensed for the consumption of alcoholic beverages, beer, or wine within the City of Lancaster, South Carolina.

(Ord. No. 002-34, § 3, 4-1-03)

**Sec. 26-102. - Payment of fee.**

- (a) Responsibility for collecting the fee established herein shall be the liability of the provider of the services for items described in section 26-101. The fee shall be paid at the time of delivery of the services or items to which the fee applies and shall be collected by the provider or seller of the service, services, or items.
- (b) The fee collected by the seller or provider of services or items as required under section 26-101 shall be remitted to the City of Lancaster as follows:
- (1) On a monthly basis when the estimated amount of tax collected is more than fifty dollars (\$50.00) a month (annual gross revenue in excess of thirty thousand dollars (\$30,000.00)).
  - (2) On a quarterly basis when the estimated amount of tax collected is between twenty-five dollars (\$25.00) a month to fifty dollars (\$50.00) a month (annual gross revenue between fifteen thousand dollars (\$15,000.00) and thirty thousand dollars (\$30,000.00)).
  - (3) On an annual basis when the estimated amount of average tax collections is less than twenty-five dollars (\$25.00) a month (annual gross revenue receipts less than fifteen thousand dollars (\$15,000.00)).
- (c) Total collections and required reports shall be submitted to the City of Lancaster by the twentieth day of each month and shall cover sales for the previous month. Payments covered under the provision of subsection (b)(2) shall be submitted quarterly by the twentieth day of January, April, July, and October and shall cover sales for the previous quarter. Payments covered under the provision of subsection (b)(3) shall be submitted by January 20th and shall cover sales for the previous year. Any collections not remitted by the above stated deadlines shall be subject to a penalty of five (5) percent of the unpaid amount for each calendar month, or portion thereof, after the due date until paid. The failure to collect from patrons the amount imposed by this article shall not relieve any establishment subject to this article from making the required remittance.
- (d) Any person violating this article shall be deemed guilty of an offense and shall be subject to punishment under section 1-7 upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent amount, penalties, and costs as otherwise provided herein.
- (Ord. No. 002-34, § 3, 4-1-03)

**Sec. 26-103. - Hospitality fee account.**

A separate fund or an account, to be known as the City of Lancaster Local Hospitality Fee Fund<sup>2</sup>, shall be established, and all revenues received from the hospitality fee as well as all interest which accrues thereon shall be deposited into this account and shall remain segregated from the general fund. The principal and any accrued interest from this account shall be expended only as permitted in section 26-104, below.

(Ord. No. 002-34, § 3, 4-1-03)

**Sec. 26-104. - Permitted use of funds.**

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

(Ord. No. 002-34, § 3, 4-1-03)

**Sec. 26-105. - Inspection and audits.**

For the purposes of enforcing the provisions of this section, the finance director, licensing and permitting official, or other authorized agent of the city is empowered to enter upon the premises of any person subject to this section to make inspection, examine, and/or audit the books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records. In the event that the audit or inspection reveals that false information has been filed by the establishment, the cost of the audit shall be added to the corrected amount due and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper tax shall constitute a separate offense. The finance director, licensing and permitting official, or other authorized agent of the city shall make systematic inspections of the businesses within the city to insure compliance with this article.

(Ord. No. 002-34, § 3, 4-1-03)

**Sec. 26-106. - Authorization for use.**

Authorization to utilize revenues from the City of Lancaster Local Hospitality Fee Fund shall be by the annual budget ordinance, or budget amendment, duly adopted by the city council.

(Ord. No. 002-34, § 3, 4-1-03)

**POTENTIAL STEPS FOR IMPOSITION:**

If the Committee desires to recommend such an ordinance be adopted, I would respectfully recommend the following steps be included along with such other steps that Council may find desirable and convenient:

1. While it would be impossible to determine the expenditure of every dollar in advance, and such would be part of the budget process for future Councils, identify the primary desired use for the funds. The main thing I have heard is Parks and Recreation use.
  - a. As mentioned above, large regional parks that draw tournaments and similar events would certainly qualify. The funds could be used for construction of new facilities and upgrades of existing facilities.

- b. The funds could not be used at small local parks found throughout the county. We must be able to reasonably tie in tourism to the proposed uses.
    - c. Please keep in mind these funds are capital and operational funding, including staffing, would need to be discussed.
  2. For administration and collection we would utilize a similar process as used for the Accommodations Tax. I would note this is somewhat of a voluntary system as we have no business list to compare against. That said, we have not found any problems with the current tax.
    - a. Please note the reporting requirements vary depending upon the size of the tax collected. Small businesses would report on a less than monthly basis.
  3. Once Council has settled on the need and desired use for the tax, we would have County Attorney John Weaver draft an ordinance for Council's consideration.
    - a. While not required, I would recommend that a Public Hearing be part of the adoption process.
  4. If adopted, I would recommend that for the first six months we simply monitor the program. We would need a track record on collections moving forward with any potential bonding of the proceeds as well as to build up a fund balance to fund desired Council projects. As always, a conservative financial policy is a good financial policy.

## WHAT WOULD BE TAXED?

The following is from the City of Lancaster website:

**Hospitality Tax** is a two percent (2%) local hospitality fee tax upon the gross proceeds derived from the sale of all prepared foods and beverages served within the City of Lancaster by any establishment. In addition, the tax is imposed on all prepared foods and beverages sold in establishments licensed for the consumption of alcoholic beverages, beer, or wine within the City of Lancaster.

**Prepared foods** means food prepared or modified by an establishment that at the time of sale is ready for consumption by the public, regardless of the food's actual quantity, presentation, or packaging.

**Establishment** means any business within the City of Lancaster that sells prepared meals and beverages.

What items are taxed?\*

All food and/or beverages prepared or modified for immediate consumption, such as:

- Produce (vegetables, fruit) cut, sliced, cored, etc., or prepared/modified on site (vegetable/ fruit trays)
- Meats and cheeses cut, sliced, or prepared on site (meat/cheese trays)



- Salads made on site
- Sandwiches/subs prepared on site
- Bakery items cooked/baked on site
- Coffee brewed on site
- Popcorn made on site
- Ice cream prepared on site
- Seafood steamed/cooked on site
- Grilled hamburgers and hot dogs, pizza, nachos, chicken, etc.
- Packaged dinners cooked on site (Thanksgiving dinners, etc.)
- Fountain drinks
- Any food prepared, modified, or cooked on site by an employee or contractor
- Any prepared foods or meals that are subject to South Carolina Sales Tax
- Any served beverage, inclusive of beer, wine, and liquor

What items are exempt from the tax?\*

- Cold, canned or bottled drinks in a vending machine on site
- Consolidating fruit into a basket (fruit baskets)
- Prepackaged items (not prepared or modified on site) consolidated into a larger container to make one package (gift baskets)
- Prepackaged, ready-to-consume meats, cheeses, and deli salads
- Packaged dinners that are not cooked or modified on site
- Items cooked or baked off site without modifications on site
- Ready-to-eat prepackaged food a customer re-heats on site (customer makes the food consumable)
- Prepackaged cans, boxes, or jars of food
- Bags of chips, pretzels, nuts, candy, or other prepackaged food items

\* This list serves as an example only and is not an all-inclusive list of taxable/ exempt items.

Please advise if any additional information is needed.

In an area of the county where the county has imposed a local accommodations tax that is annexed by a municipality, the municipality must receive only that portion of the revenue generated in excess of the county local accommodations tax revenue for the previous twelve months in the area annexed.

HISTORY: 1997 Act No. 138, §8.

#### **SECTION 6-1-560: REAL ESTATE AGENTS REPORTING REQUIREMENT**

EDITOR'S NOTE: This section is self explanatory.

§6-1-560. Real estate agents required to report when rental property listing dropped.

Real estate agents, brokers, corporations, or listing services required to remit taxes under this section must notify the appropriate local governmental entity or entities if rental property, previously listed by them, is dropped from their listings.

HISTORY: 1997 Act No. 138, §8.

#### **SECTION 6-1-570: TAX REMITTANCE**

EDITOR'S NOTE: This section sets the frequency of collection of the Local Accommodations Tax.

§6-1-570. Remitting tax to local governing body; frequency determined by estimated average amounts.

The tax provided for in this article must be remitted to the local governing body on a monthly basis when the estimated amount of average tax is more than fifty dollars a month, on a quarterly basis when the estimated amount of average tax is twenty-five dollars to fifty dollars a month, and on an annual basis when the estimated amount of average tax is less than twenty-five dollars a month.

HISTORY: 1998 Act No. 419, Part II, §63A

Cross References --

Confidentiality of Returns required under §6-1-570, see §6-1-120.

### **ARTICLE 7: LOCAL HOSPITALITY TAX ACT**

#### **SECTION 6-1-700: SHORT TITLE**

EDITOR'S NOTE: This section is self explanatory.

§ 6-1-700

§6-1-700. Short title.

This article may be cited as the "Local Hospitality Tax Act".

HISTORY: 1997 Act No. 138, §9.

#### **SECTION 6-1-710: DEFINITIONS**

EDITOR'S NOTE: These definitions apply to the terms defined below as used in this article, §§6-1-700 through 6-1-750. Item (2) has an option of two different tax bases for this tax. The county has the option to tax meals in all restaurants or only those with an alcohol license.

§6-1-710. Definitions.

As used in the article:

(1) "Local governing body" means the governing body of a county or municipality.

(2) "Local hospitality tax" is a tax on the sales of prepared meals and beverages sold in establishments or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.

(3) "Positive majority" means a vote for adoption by the majority of the members of the entire governing body, whether present or not. However, if there is a vacancy in the membership of the governing body, a positive majority vote of the entire governing body as constituted on the date of the final vote on the imposition is required.

HISTORY: 1997 Act No. 138, §9.

#### **ATTORNEY GENERAL'S OPINION**

Construing "prepared meals" to apply to all components of meals such as breads and pies would lead to an absurd result, as most food items sold in a grocery store could be used as components of a meal. Furthermore, had the General Assembly intended to include these kinds of items, it could have used the more likely choice of words "prepared food and beverages" in the definition of the tax. A practical reading of §6-1-710 requires our conclusion that foods such as bread and pies, which typically serve as only components of a meal are not contemplated by the Act.

Component parts of a meal are not intended to constitute "prepared meals" for purposes the 2% Local Hospitality Tax Act. In short, items such as "slicing ham, pork chops from a loin, spiraling of a whole ham, the splitting of a watermelon, birthday cake" would not, in our opinion, constitute a "prepared meal." Nor typically would individual food items such as breads, cakes, pies, doughnuts or similar items be subject to the Local Hospitality Tax. Unpublished Op. Atty. Gen. dated October 17, 2003.



## SECTION 6-1-720: POSITIVE MAJORITY VOTE REQUIRED

EDITOR'S NOTE: Local governments are specifically authorized to impose a hospitality tax on prepared meals and beverages not to exceed a cumulative rate of two percent upon a positive majority vote of council. Before counties can impose more than a one percent hospitality tax inside municipal boundaries, the county must obtain the consent of the municipality. The county may not impose a hospitality tax within municipal limits in those municipalities which tax at the maximum rate. All revenue from the hospitality tax must be kept in a separate fund from the entity's general fund.

### §6-1-720. Imposition of local hospitality tax.

(A) A local governing body may impose, by ordinance, a local hospitality tax not to exceed two percent of the charges for food and beverages. However, an ordinance imposing the local hospitality tax must be adopted by a positive majority vote. The governing body of a county may not impose a local hospitality tax in excess of one percent within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.

(B) All proceeds from a local hospitality tax must be kept in a separate fund segregated from the imposing entity's general fund. All interest generated by the local hospitality tax fund must be credited to the local hospitality tax fund.

HISTORY: 1997 Act No. 138, §9.

## ATTORNEY GENERAL'S OPINION

A provider of services, including an institution of higher learning, must collect a county's hospitality fee from the consumer and hold it in trust until remitted to the proper authority. Unpublished Op. Atty. Gen., dated February 27, 1998.

## CASE NOTES

Accommodations Tax Act and Hospitality Tax Act do not permit a county to divest a municipality of a portion of its tax rate when municipality has previously imposed the full accommodations and/or hospitality tax authorized by those statutes. *City of Hardeeville v. Jasper County*, 340 S.C. 39, 530 S.E.2d 374 (2000)

## SECTION 6-1-730: USE OF LOCAL HOSPITALITY TAX REVENUE

EDITOR'S NOTE: Hospitality tax revenue must be used for one of the projects outlined in subsection (A). Counties generating more than \$900,000 in state accommodations tax pursuant to §12-36-920 may use the revenue from the hospitality tax for the projects listed in subsection (A) and



§ 6-1-730

the purposes set forth in subsection (B)(1). Counties collecting less than \$900,000 annually in state accommodations tax revenue may use up to 50% of their local hospitality tax revenue on the operational expenses for the capital facilities listed in subsection (A).

§6-1-730. Use of revenue from local hospitality tax.

(A) The revenue generated by the hospitality 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 and renourishment;
- (4) highways, roads, streets, and bridges providing access to tourist destinations;
- (5) advertisements and promotions related to tourism development; or
- (6) water and sewer infrastructure to serve tourism-related demand.

(B)(1) In a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenues of the hospitality tax authorized in this article may be used for the operation and maintenance of those items provided in (A)(1) through (6) including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local hospitality tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

HISTORY: 1997 Act No. 138, §9; 1999 Act No. 93, §14; 2006 Act No. 314, §2; 2010 Act No. 290, §36.

ATTORNEY GENERAL'S OPINIONS

The town may not stack the accommodations tax revenues for the three counties in which it is located for the purpose of meeting the accommodations tax requirement enabling it to use its local hospitality tax proceeds for the additional purposes listed in §6-1-730(B). The town may use its hospitality tax proceeds for the additional purposes listed in §6-1-730(B) if at least one of the counties in which it is located annually collects at least \$900,000 in state accommodations tax. Section 6-1-730(B) does not require those funds for the additional services be used in that county, but may be used in any location within the Town. Unpublished Op. Atty. Gen. Dated February 3, 2006.

We imagine that the field house and athletic field improvements described are solely used by the students and staff of the school, rather than by tourists as would a civic center. We do not



believe a court would find them appropriate for funding with hospitality revenues. Unpublished Op. Atty. Gen. Dated December 20, 2006 (2006 WL 3877521).

We do not believe a county may use hospitality tax revenues to fund its transit system. Unpublished Op. Atty. Gen. Dated November 4, 2008 (2008 WL 5120764).

#### **SECTION 6-1-740: LOCAL HOSPITALITY TAX RATE**

EDITOR'S NOTE: Local governments are specifically authorized to impose a hospitality tax on food and beverages not to exceed a cumulative rate of two percent upon a positive majority vote. Any hospitality taxes exceeding two percent that were imposed prior to December 31, 1996, are grandfathered.

§6-1-740. Cumulative rate of local hospitality tax.

The cumulative rate of county and municipal hospitality taxes for any portion of the county area may not exceed two percent, unless the cumulative total of such taxes was in excess of two percent or were authorized to be in excess of two percent prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed or adopted as of December 31, 1996.

HISTORY: 1997 Act No. 138, §9.

#### **ATTORNEY GENERAL'S OPINION**

Cities and counties are now cumulatively capped in the imposition of their accommodations and hospitality taxes by the General Assembly. The legislature has not allowed a local government to piggy back its pre-existing tax rate on top of the maximum cumulative tax rate which state law now allows. An ordinance which increases the tax on the already taxed accommodations or hospitality items to an amount beyond the maximum that the Legislature has allowed would violate state law. Unpublished Op. Atty. Gen. Dated September 18, 2001. [Editor's Note: The question which arose was whether a county or municipality which had already enacted a accommodations tax or a hospitality tax could then utilize the newly enacted Local Accommodations Tax or Hospitality Tax to increase revenue by stacking two tourism taxes.]

#### **SECTION 6-1-750: ANNEXATION AND LOCAL HOSPITALITY TAX REVENUE**

EDITOR'S NOTE: If a hospitality taxpayer is annexed by a municipality, the county revenue from the site is frozen at the previous year's level and the municipality receives the growth in revenue from the taxpayer.

§6-1-750. Local hospitality tax revenue upon annexation.



§ 6-1-750

In an area of the county where the county has imposed a local hospitality tax that is annexed by a municipality, the municipality must receive only that portion of the revenue generated in excess of the county local hospitality tax revenue for the previous twelve months in the area annexed.

HISTORY: 1997 Act No. 138, §9.

**SECTION 6-1-760: CALCULATION OF HOSPITALITY TAX; DEFINITION OF TOURIST; AUTHORITY TO USE REVENUE FOR BOND REPAYMENT**

EDITORS NOTE: This section grandfathers hospitality taxes imposed prior to March 15, 1997 as long as the tax does not exceed 3%, is calculated on a base consistent with §6-1-510(1), and is used for the purposes enumerated in §6-1-530.

This section also defines the term "tourist" as a person who does not reside within a particular jurisdictional boundary but enters for reasons of recreation or tourism. The Act provides that revenues generated from the hospitality tax, local accommodations tax and state accommodations tax may be pledged to secure bonds for the purposes of developing capital projects to attract and support tourists.

§6-1-760. Ordinances prior to March 15, 1997; calculation; revenue.

(A) With respect to capital projects and as used in this section, 'tourist' means a person who does not reside in but rather enters temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of a municipality for a municipal project or the immediate area of the project for a county project.

(B) Notwithstanding any provision of this article, any ordinance enacted by county or municipality prior to March 15, 1997, imposing an accommodations fee which does not exceed the three percent maximum cumulative rate prescribed in Section 6-1-540, is calculated upon a base consistent with Section 6-1-510(1), and the revenue from which is used for the purposes enumerated in Section 6-1-530, remains authorized and effective after the effective date of this section. Any county or municipality is authorized to issue bonds, pursuant to Section 14(10), Article X of the Constitution of this State, utilizing the procedures of Section 4-29-68, Section 6-17-10 and related sections, or Section 6-21-10 and related sections, for the purposes enumerated in Section 6-1-530, to pledge as security for such bonds and to retire such bonds with the proceeds of accommodations fees imposed under Article 5 of this chapter, hospitality fees imposed under this chapter, state accommodations fees allocated pursuant to Section 6-4-10(1), (2), and (4), or any combination thereof, and the pledge of such other nontax revenues as may be available for those purposes for capital projects used to attract and support tourists.

HISTORY: 1997 Act No. 138, §10; 2010 Act No. 284, §1.



## **ARTICLE 7: LOCAL HOSPITALITY TAX ACT**

### **P.21 SECTION 6-1-730: USE OF LOCAL HOSPITALITY TAX REVENUE**

#### **ATTORNEY GENERAL'S OPINIONS**

If a county collects at least \$900,000 in accommodations taxes pursuant to §12-36-920, it may use its hospitality tax revenue for the maintenance and operation of a tourism-related building. Op. Atty. Gen. Dated June 10, 2010 (2010 WL 2678689). [EDITOR'S NOTE: See Op. Atty. Gen. Dated March 27, 2014 indicating that revenue for such maintenance and operation is allowed even if the county collects less than \$900,000 in annual accommodations tax; however, the expenditures would be limited to 50% of the hospitality tax revenue.]

Section 6-1-730(B) allows the use of local hospitality tax revenue for fire protection services as part of the "operation and maintenance" costs of facilities listed in §6-1-730(A), if the services are directly attendant to the facility. The service area of a fire truck purchased with local hospitality tax revenue must include, but need not be limited to, a facility listed in §6-1-320(A). Op. Atty. Gen. Dated December 5, 2011 (2011 WL 6959374).

Funds from the local hospitality tax collected pursuant to §6-1-720 may be used for the maintenance and repair of roads, streets, and bridges so long as the roads, streets, and bridges provide access to tourist destinations. What constitutes a tourist destination and whether a particular road provides such access is a question of fact for the court to decide. Op. Atty. Gen. Dated March 27, 2014 (2014 WL 1511521).

Funds from the local hospitality tax collected pursuant to §6-1-720 may be used for a recreational facility as long as it serves to promote and facilitate tourism in accord with the intent of the tax and as long as it fits within one of the purposes listed in §6-1-730(A). A court will likely find there must be a direct and casual connection between tourism and the promotion thereof for local hospitality funds to be used in whole or part to pay for a recreational facility. Determining if a recreational facility serves to promote tourism and would be considered to be "tourism-related" is a question of fact for the court to decide. Op. Atty. Gen. Dated February 17, 2015 (2015 WL 836506).

## **ARTICLE 9: DEVELOPMENT IMPACT FEE ACT**

### **P.25 SECTION 6-1-920: DEFINITIONS**

#### **ATTORNEY GENERAL'S OPINION**

The school district would be responsible for any impact fee imposed by the county. Moreover, we believe the county has the general authority to impose fees on the school district through its authority under §4-9-30. We do not believe the county has the ability to exempt school



## Agenda Item Summary

Ordinance # / Resolution#:	Discussion Item
Contact Person / Sponsor:	Steve Willis
Department:	Administration
Date Requested to be on Agenda:	February Administration Committee
	Potential referral to full Council

**Issue for Consideration:**

Service requests from potential new municipalities.

**Points to Consider:**

We have two potential new municipalities under consideration; Indian Land and Van Wyck.

Both have mentioned utilizing county services via contract.

We must determine what services we would desire to offer.

**Funding and Liability Factors:**

Varies depending upon the service.

**Council Options:**

Determine what services we would provide. Please see attached sheet for service discussions.

**Staff Recommendation:**

Be consistent with what services we currently offer to the existing municipalities. If Council elects to offer additional services, be prepared to do the same for Heath Springs, Kershaw, and Lancaster.

**Committee Recommendation:**

To be determined.

## From the Municipal Association Handbook for Incorporation:

**The area to be incorporated has filed a proposal for providing either directly or by contract a minimum level of law enforcement services as required in regulations promulgated by the State Law Enforcement Division.**

If law enforcement services are by contract, the proposal must indicate which governmental entity provides the service and the estimated compensation for the service.

*The key point here is that any agreement would be with the Sheriff and not with County Council. I have made both groups aware of the following Attorney Generals Opinion:*

### **ATTORNEY GENERAL'S OPINIONS**

*A sheriff, as chief law enforcement officer of a county, is statutorily obligated to patrol his county, which presumably includes municipalities within that county. However, a sheriff, as a county official, is not responsible for providing a specific level of services within municipalities or for enforcing municipal ordinances. A municipality may contract with the sheriff of the county to provide specific services within municipalities, but that is best accomplished through intergovernmental agreement. Op. Atty. Gen., dated April 20, 2011.*

*While a county and county officials are not obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services. A sheriff is not obligated to provide specific services within a municipality; however, a sheriff may contract with a municipality to provide law enforcement services. Op. Atty. Gen., dated August 25, 2006.*

**The area to be incorporated has filed a proposal demonstrating that at least three of the following services will be provided to the incorporated area no later than the first day of the third fiscal year following the effective date of incorporation. The services may be either provided by the municipality or by contract.**

a. fire protection at a minimum service level required in regulations promulgated by the South Carolina Fire Marshall;

*This would need to be negotiated with the applicable fire department(s) and the Fire Commission. We do not employ the volunteers and cannot direct that they provide any level of service. Depending upon the model used, we would work with them in a volunteer capacity as we do with Heath Springs and Kershaw or in a career capacity as we do with Lancaster.*

b. solid waste collection and disposal;

*We would allow any county resident, including residents of a municipality, to utilize our recycling centers as we currently do. We would pay for any municipal collection tipping fees as we currently do.*

c. water supply, water distribution, or both;

*This would need to be negotiated with the Lancaster County Water and Sewer District.*

d. wastewater collection and treatment;

*This would need to be negotiated with the Lancaster County Water and Sewer District.*

e. storm water collection and disposal;

*Not applicable at this time.*

f. enforcement of building, housing, plumbing, and electrical codes;

*We would offer to provide service via agreement as we currently do for Heath Springs and Kershaw.*

g. planning and zoning;

*We would offer to provide service via agreement as we currently do for Heath Springs and Kershaw.*

h. recreational facilities and programs; or

*We would offer to join the Joint Recreation Commission as we currently do for Heath Springs, Kershaw, and Lancaster.*

i. street lighting.

*Not applicable for us. This would need to be negotiated with the appropriate electrical utility.*

# Incorporation Handbook

Incorporation of a new municipality is accomplished by special election initiated by petition of 15 percent of electors and conducted by commissioners appointed by the Secretary of State pursuant to S.C. Code Title 5, Chapter 1, § 5-1-10 through 5-1-110, and as amended in Act 77 effective July 1, 2005. If the election favors incorporation, the Secretary of State issues a certificate of incorporation. The statutes establish prerequisites that must be met before a certificate of incorporation is issued. Incorporators should demonstrate compliance with the prerequisites when they file the petition for incorporation with the Secretary of State.

## Certificate of Incorporation Prerequisites

The Secretary of State must determine all of the following requirements set forth in S.C. Code § 5-1-30, are met before he issues a certificate of incorporation:

1. **The area to be incorporated has a population density of at least 300 people per square mile according to the latest United States Census.** This population requirement does not apply to areas bordering on or within two miles of the Atlantic Ocean and to sea islands bounded on at least one side by the Atlantic Ocean. These areas must have a minimum of 150 dwelling units with an average of at least one dwelling per three acres of land, for which at least 15 percent of qualified electors in the area petition for incorporation.
2. **No part of the area is within five miles of the boundary of an active incorporated municipality.** This condition does not apply if one or more of the following conditions are exist:
  - a. if the area has been refused annexation by the nearest municipality for six months;
  - b. if the area has a population of more than 7,000;
  - c. if the boundaries of the area are within five miles of the boundaries of two different incorporated municipalities in two separate counties other than the county within which the area lies, and when the boundaries of the area are more than five miles from the boundaries of the nearest incorporated municipality that lies within the same county of the area, and when the area seeking incorporation exceeds one-fourth of the land area of the nearest municipality;



- d. the area seeking incorporation lies within a county with a population of less than 51,000 people.
3. **An approved service feasibility study for the proposed municipality has been filed with the Secretary of State, evaluated by the Joint Legislative Committee on Municipal Incorporation, and approved by the Secretary of State.**
  4. **The area to be incorporated is contiguous.** If publicly-owned property intervenes between two areas proposed to be incorporated together, which but for the intervening publicly-owned property would be adjacent and share a continuous boundary, the intervening publicly-owned property does not destroy contiguity. Publicly-owned property is defined as any federally-owned, state-owned, or county-owned land or water area.
  5. **The area to be incorporated has filed a proposal for providing either directly or by contract a minimum level of law enforcement services as required in regulations promulgated by the State Law Enforcement Division.** If law enforcement services are by contract, the proposal must indicate which governmental entity provides the service and the estimated compensation for the service.
  6. **The area to be incorporated has filed a proposal demonstrating that at least three of the following services will be provided to the incorporated area no later than the first day of the third fiscal year following the effective date of incorporation. The services may be either provided by the municipality or by contract.**
    - a. fire protection at a minimum service level required in regulations promulgated by the South Carolina Fire Marshall;
    - b. solid waste collection and disposal;
    - c. water supply, water distribution, or both;
    - d. wastewater collection and treatment;
    - e. storm water collection and disposal;
    - f. enforcement of building, housing, plumbing, and electrical codes;
    - g. planning and zoning;
    - h. recreational facilities and programs; or
    - i. street lighting.

## Secretary of State Regulations

The Secretary of State issued Regulation 113-200 (1993) providing for the certification of information required by S.C. Code § 5-1-30 as follows:

- A. **Population density.** Incorporators must provide a certification by the Research and Statistical Services Division (RSSD) of the South Carolina Budget and Control Board that the area in the proposed municipality has a population density of at least 300 persons per square mile.
- B. **Boundaries.** Incorporators must provide a certification by RSSD or a county planning or zoning office that no part of the area of the proposed municipality is within five miles of an active municipality. They must show they served by certified mail the notice of intent to incorporate to the Mayor, Town Manager, or similar official, of a municipality within 10 miles of the proposed municipality, as well as the Municipal Association of South Carolina. They must serve the notice at least 15 days prior to applying to the Secretary of State. Notice must include a map of proposed boundaries.
- C. **Total Land Area.** Incorporators must provide a certification by RSSD or a county planning or zoning office regarding total land area (in square miles) in the proposed corporate limits.
- D. **Current Assessed Value.** Incorporators must provide a certification by RSSD or a county assessor or auditor of the current assessed value of real and personal property in the proposed municipality. They must include with the certification a calculation of general obligation bonding capacity available without a referendum.
- E. **Service Feasibility Study.** Incorporators must provide the following minimum information for approval of a service feasibility study:
  - 1. A map showing proposed corporate limits and distance from corporate limits of any active municipality.
  - 2. Total population in proposed corporate limits based on latest U.S. Census.
  - 3. Total land area (in square miles) in proposed corporate limits.
  - 4. Definite list of proposed services to be provided by proposed municipality.
  - 5. Detailed explanation of each service to be provided with number, qualifications and salary ranges of personnel required to deliver services.
  - 6. Service to be obtained by contract must include detailed description of the service and realistic estimate of cost of service contract. Consent letters, contracts or ordinances for services to be provided by another

governmental unit, indicating willingness to provide service, terms and conditions must be attached.

7. Current **assessed value** of real and personal property in the proposed corporate limits, including calculation of general obligation bonding capacity available without a referendum.
8. Proposed **operating budget** for first fiscal years detailing sources and amounts of anticipated revenue, tax millage rate and anticipated revenue from property taxes. Detailed expenditures must include line items for personnel, equipment, supplies and other operating costs for each department or service.
9. Proposed **capital budget** itemizing property, equipment, rolling stock, infrastructure and other items expected to be required in first two years of operation and proposed method of financing each item.
10. Use any forms promulgated by the Secretary of State.

## **Steps Required for Incorporation**

### **Petition for Incorporation**

An incorporation initiated pursuant to S.C. Code § 5-1-40, requires a petition signed by 15 percent of qualified electors who reside in the proposed municipality to be filed with the Secretary of State. The petition must set out the proposed corporate limits and the number of inhabitants within the area.

### **Evaluation by the Joint Legislative Committee on Municipal Incorporation**

Pursuant to § 5-1-26, a seven member committee must review the petition and documentation submitted by an area seeking municipal incorporation and make a recommendation to the Secretary of State as to whether the area meets the minimum service standard incorporation requirements as provided in § 5-1-30. The committee consists of two Senators appointed by the President Pro Tempore of the Senate; two members of the House of Representatives appointed by the Speaker of the House of Representatives; one person appointed by the Governor; one city manager or elected city official appointed by the President Pro Tempore of the Senate from a list of three persons recommended by the Municipal Association of South Carolina; and one county council member or county manager or administrator appointed by the Speaker of the House of Representatives from a list of three persons recommended by the South Carolina Association of Counties.

## Election

After receiving an incorporation petition meeting requirements of § 5-1-40 and receiving the written recommendations of the Joint Legislative Committee on Municipal Incorporation, the Secretary of State issues a commission to three or more residents of the proposed municipality. These individuals are empowered to:

- a. hold an election not less than 20 or more than 90 days after issuance of the commission; and
- b. appoint three election managers to conduct the election after notice is published in a newspaper of general circulation in the community or posted in three public places. The notice must be given not less than five or more than 15 days before the election in the area proposed to be incorporated. It must contain detailed information concerning the election.

The election is conducted according to the general law governing special elections *mutatis mutandis*, except as otherwise provided in S.C. Code Title 5, Chapter 1. General law on conduct of elections is found in S.C. Code Title 7.

Registered electors living in the area to be incorporated vote on the following questions as prescribed by S.C. Code § 5-1-50:

- a. incorporation
- b. name of municipality
- c. form of government
- d. method of election (prescribed in § 5-15-20)
- e. whether the election shall be partisan or nonpartisan
- f. the terms of the mayor and council members

When any of the above questions proposed in an election contain more than two options, the option receiving the highest number of votes will prevail.

*Provided*, however, notwithstanding the results of selections made by voters as to questions (d), (e) and (f) above, **the initial council shall consist of four council members and a mayor, all elected at-large in a nonpartisan election for terms of two years.** Thereafter, selections made by electors could be implemented. Under § 5 of the Voting Rights Act, the Justice Department must preclear all changes affecting voting rights. The letter to the Department of Justice should request preclearance for the election of the question of incorporation and election of the council members of the newly incorporated municipality. Should the incorporation be approved, request for the election of the council members in the original request will expedite the process.

## **Election Returns**

The election managers must make sworn returns of the election result to the election commissioners. The returns must show the total number of votes cast and the number of votes cast on each question proposed. S.C. Code § 5-1-60.

The election commissioners must certify under oath the election result to the Secretary of State. S.C. Code § 5-1-70.

## **Issuance of Certificate of Incorporation**

If the majority of electors vote in favor of incorporation, the Secretary of State issues a certificate of incorporation to the election commissioners (S.C. Code § 5-1-90) after the incorporation fee required by S.C. Code § 5-1-80 is paid to the State Treasurer. The municipality will have all privileges, powers and immunities and be subject to the limitations provided by law (S.C. Code § 5-1-70) upon election of municipal officers pursuant to § 5-1-90. See also § 5-1-10.

The incorporation fees are

- (a) population of 1,000 or less - \$100
- (b) population between 1,000 and 5,000 - \$300
- (c) population more than 5,000 - \$600

## **Election of Municipal Officers**

After receiving the certificate of incorporation, the election commissioners immediately provide for the election of municipal officers, pursuant to Chapter 15 of Title 5 governing municipal elections, and in accordance with the certificate as to the form of government. S.C. Code § 5-1-90.

The certificate of incorporation is not effective until municipal officers are elected and qualified. Only the elected municipal council may exercise the powers of the municipality. S.C. Code § 5-1-90.

## **Cancellation of Certificate of Incorporation**

A certificate of incorporation is automatically forfeited when a municipality has decreased in population to less than 50 inhabitants. S.C. Code § 5-1-100.

A certificate of incorporation may be surrendered by two-thirds vote of electors in an election initiated by petition of a majority of registered electors of the municipality.



A certificate of incorporation shall be canceled by the Secretary of State if he determines that the municipality is neither performing municipal services nor collecting taxes or other revenues and has not held an election during the past four years.

## **Suit Challenging Incorporation**

A suit to challenge the incorporation procedures of a municipal corporation must be brought within 60 days after the issuance of the certificate of incorporation. S.C. Code § 5-1-110.

The Supreme Court (*Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996)) held that § 5-1-110 did not bar a suit challenging incorporation three weeks prior to issuance of a certificate of incorporation.

S.C. Code § 5-1-10 provides that the incorporation or corporate capacity of a municipality shall not be attacked in court except as provided by statute.