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CHEROKEE COUNTY, S.C.

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BRANDY W. MCBEE

**AN ORDINANCE**

**ESTABLISHING A LOCAL HOSPITALITY FEE ON THE SALES OF PREPARED MEALS AND BEVERAGES SOLD IN THE UNINCORPORATED AREA OF CHEROKEE COUNTY, SOUTH CAROLINA; AND OTHER MATTERS RELATING THERETO.**

**WHEREAS**, Cherokee County, South Carolina (the “*County*”), like other areas in the upstate of South Carolina, is a growing, and seeing increased tourism opportunities within the County;

**WHEREAS**, as the tourist industry grows and expands, the County must make provision to increase certain governmental services in order to accommodate the needs of tourists who visit from time to time;

**WHEREAS**, the cost of providing the special services required by the tourism industry should be apportioned equitably between the County’s residents and those who visit the County and enjoy the special benefits the County provides them. It is necessary for the promotion of the common interests of the residents of the County as well as those who are visitors to the County to provide a method to alleviate the added financial burden on County resources in providing the services and improvements needed to support tourism and the resulting transient population;

**WHEREAS**, in order to raise the necessary sums to defray a portion of those added costs, it is appropriate to impose a charge, the receipts of which will pay costs related to (1) the provision of governmental services that serve such visitors or tourists and (2) capital projects that not only enrich the County’s residents but also contribute to the tourism industry;

**WHEREAS**, Cognizant of the need for counties to be given direct statutory authorization to raise moneys earmarked to defray such costs related to the tourism industry, the South Carolina General Assembly adopted Act No. 138 of 1997, now codified, in part, as Sections 6-1-700 to 6-1-770 of the Code of Laws of South Carolina, 1976, as amended (the “*Enabling Act*”).

**WHEREAS**, pursuant to the provisions of the Enabling Act and specifically, Sections 6-1-720 and 730 of the Enabling Act, the County Council of Cherokee County (the “*County Council*”), the governing body of the County, is empowered to, impose, by ordinance, a local hospitality fee not to exceed two percent of the charges for prepared food and beverages; and

**WHEREAS**, the County Council finds that the revenue generated by a local hospitality fee as described in the Enabling Act will improve and support the services and facilities available to tourists of and visitors to the County, and thereby promote the economy of the County and benefit the general welfare of the residents and taxpayers of the County.

**NOW THEREFORE, BE IT ORDAINED**, by the County Council in a meeting duly assembled:

**Section 1. Findings.** All findings of fact herein above are ratified and confirmed. This Ordinance is enacted to preserve the general health, safety and welfare of the general public and to promote the tourism industry within the County, by imposing a fee for the purpose of creating a fund which will be utilized for purposes enumerated in Section 6-1-730 of the Enabling Act.

**Section 2. Definitions.** As used in this Ordinance, the following terms shall have the following meanings:

- (a) "County" means Cherokee County, South Carolina.
- (b) "Enabling Act" means Sections 6-1-700 to 6-1-770 of the Code of Laws of South Carolina, 1976, as amended.
- (c) "Food Service Establishment" means a business located in the County that sells Prepared Meals and Beverages.
- (d) "Local Hospitality Fee" means a charge on the sales of Prepared Meals and Beverages within certain areas of the County.
- (e) "Obligations" means bonds, certificates of participation, leases or other forms of indebtedness approved by the County payable or secured by the proceeds of the local hospitality fee to defray the costs of one or more projects authorized under this Ordinance and the Enabling Act.
- (f) "Prepared Meals and Beverages" means products sold ready for consumption either on-or off-premises in businesses classified as eating and drinking places under the "Standard Industrial Code Classification Manual" and including, but not limited to, lunch counters and restaurant stands, restaurants, lunch counters, and drinking places operated as a subordinate facility by other establishments, convenience stores, grocery delicatessens, and bars and restaurants owned by and operated for members of civic, social, and fraternal associations.
- (g) "State" means the State of South Carolina.

**Section 3. Imposition of Local Hospitality Fee.** A Local Hospitality Fee is hereby imposed on the sales of Prepared Meals and Beverages in Food Service Establishments. The Local Hospitality Fee shall be in an amount equal to two percent of the gross proceeds of sales of Prepared Meals and Beverages sold in Food Service Establishments within the unincorporated areas of the County. The Local Hospitality Fee shall be in an amount equal to one percent of the gross proceeds of sales of Prepared Food and Meals sold in establishments located within the boundaries of any incorporated municipalities within the County that has not imposed a local hospitality fee under the Enabling Act prior to the date of this Ordinance. Provided, however, the County shall not impose the Local Hospitality Fee within the area of any municipality in the County that has enacted a local hospitality fee under the Enabling Act prior to the date of this

Ordinance. In no event shall the cumulative rate of the Local Hospitality Fee, and any municipal local hospitality fee exceed two percent (in the aggregate) within any portion of the County.

**Section 4. Payment of Local Hospitality Fee.**

(a) Payment of the Local Hospitality Fee shall be the liability of the consumer of Prepared Meals and Beverages; however, collection of the Local Hospitality Fee shall be the responsibility of the Food Service Establishment.

(b) The Local Hospitality Fee shall be paid at the time of purchase of Prepared Meals and Beverages to which the charge applies and shall be collected by the Food Service Establishment when payment for meals or beverages is tendered.

(c) The Local Hospitality Fee shall be held in trust by the Food Service Establishment for the benefit of the County until remitted as provided in this Ordinance.

(d) As provided by the Enabling Act, the Local Hospitality Fee must be remitted to the County on a monthly basis when the estimated amount of average Local Hospitality Fee is more than \$50.00 a month, on a quarterly basis when the estimated amount of average Local Hospitality Fee is \$25.00 to \$50.00 a month, and on an annual basis when the estimated amount of average Local Hospitality Fee is less than \$25.00 a month. The closing date for monthly payments is the last day of the month; the closing dates for quarterly payments are the last days of the months of March, June, September and December, and the closing date for annual payments is the last day of December.

(e) The Food Service Establishment shall remit the Local Hospitality Fees, when due, to the County by the 20th day of the month following the closing date of the payment period for which the Local Hospitality Fee payment is to be remitted under subsection (d) above. A payment is considered to be timely remitted to the County if the return has a U.S. mail postmark date on or before the date the report form is due. If the 20th day of the month falls on a Sunday or postal service holiday, then payments postmarked on the next business day will be accepted as timely filed.

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

**Section 5. Local Hospitality Fee Special Revenue Fund.**

(a) An interest-bearing, segregated and restricted account to be known as the "Cherokee County Local Hospitality Fee Special Revenue Fund" (the "Fund") is hereby established. All revenues received from the Local Hospitality Fee shall be deposited into the Fund. Any interest accruing to the Fund shall be expended only as permitted by this Ordinance and the Enabling Act.

(b) The Fund shall be booked as a special revenue fund for accounting purposes and shall be kept in separate from the County's General Fund.

(c) Should the Local Hospitality Fee be pledged as security for any Obligations, the amount necessary for debt service shall take precedence over all other commitments related to the monies in the Fund. Additionally, in the event that any Obligations are outstanding, and subject to the continued authorization under the terms of the Enabling Act, the Local Hospitality Fees hereunder shall continue to be levied and collected by the County.

**Section 6. Organization Receiving Local Hospitality Fee Revenue.** Any department of the County or other organization or agency receiving an appropriation from the Fund shall submit a report of its expenditure of the said appropriation and the resulting impact on tourism within the County to the County Administrator on a form to be provided by the County.

**Section 7. Oversight and Accountability.**

(a) The County Administrator or his designee is hereby empowered and authorized to enter upon the premises of any Food Service Establishment subject to this Ordinance and inspect, examine or audit the books and reports of the Food Service Establishment.

(b) The County Administrator or his designee shall make the aforesaid inspection during normal business hours of the Food Service Establishment.

(c) The County Administrator or his designee shall provide 24 hours' notice to the Food Service Establishment before making the aforesaid inspection.

(d) Any costs incurred by the County in making the aforesaid inspection shall be added to the amount of Local Hospitality Fee due for remittance and added to the Fund.

**Section 8. Violations and Penalties.**

(a) In addition to the late fees accruing under Section 4(f) of this Ordinance, it shall be a violation of this Ordinance for any owner or operator of a Food Service Establishment that:

- (1) Fails to collect the Local Hospitality Fee as provided in this Ordinance;
- (2) Fail to remit to the county the Local Hospitality Fee collected, pursuant to this Ordinance;
- (3) Knowingly provide false information on the form of return submitted to the County; or
- (4) Fail to provide books and records to the County Administrator or other authorized agent of the County for the purpose of an audit upon 24-hours' written notice.

(b) Any person violating the provisions of subsection (a) above shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$200.00, or imprisoned for a term of not to exceed 30 days. Each day of a violation shall be considered a separate offense.

**Section 8. Public Hearing.** Pursuant to the provisions of Section 6-1-330 of the Code of Laws of South Carolina, 1976, as amended, a public hearing shall be held prior to the enactment of this ordinance. All actions taken by the County Administrator in providing the required notice of said hearing are hereby approved and ratified. The form of the proposed notice of public hearing is attached hereto as Exhibit A.

**Section 9. Further Action.** The County Administrator, the Chairman of County Council, and other officers of the County Council, or their designee, are herewith authorized and empowered to take such further action as may be necessary to fully implement the action taken by this Ordinance.

**Section 10. Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, phrase, sentence or portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining sections, phrases, sentences, or portions thereof.

**Section 11. Effective Date.** Upon enactment by a positive majority (as defined in the Enabling Act) of Council, this Ordinance shall become effective after third and final reading.

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DONE AND ORDAINED AT GAFFNEY, SOUTH CAROLINA, this **20th** day of **Sept.** 2021.

**CHEROKEE COUNTY, SOUTH CAROLINA**

(SEAL)

  
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Tim Spencer, Chairman  
Cherokee County Council

Attest:



Doris F. Pearson  
Master Clerk to County Council

First Reading: **08/23/21**  
Second Reading: **09/07/21**  
Public Hearing: **09/20/21**  
Third Reading: **09/20/21**