

ORDINANCE NO. 05-553

AN ORDINANCE AUTHORIZING SUMTER COUNTY, SOUTH CAROLINA, TO ENTER INTO A LEASE-PURCHASE TRANSACTION (HOSPITALITY FEE PLEDGE) IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$550,000 RELATING TO THE FINANCING OF THE RENOVATION AND EXPANSION OF THE SUMTER COUNTY CULTURAL COMMISSION BUILDING AND THE SUMTER COUNTY MUSEUM; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS INCLUDING THE BASE LEASE AGREEMENT AND THE LEASE AGREEMENT; DELEGATING THE AUTHORITY TO THE COUNTY COUNCIL CHAIRMAN AND COUNTY ADMINISTRATOR TO DETERMINE CERTAIN MATTERS; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED, BY THE COUNTY COUNCIL OF SUMTER COUNTY, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Definitions. The terms defined in this Section for all purposes of this Ordinance shall have the respective meanings as set forth in this Section. The term:

"Bank" means Branch Banking and Trust Company, Charlotte, North Carolina.

"Base Lease" means the Base Lease Agreement between the County and the Bank to be dated as of the date of its delivery.

"County" means Sumter County, South Carolina.

"Code" means the Internal Revenue Code of 1986, as amended, from time to time, or any successor internal revenue laws of the United States enacted by the Congress of the United States in replacement thereof. References to the Code and sections of the Code include relevant applicable regulations, temporary regulations and proposed regulations thereunder and any successor provisions to those sections, regulations, temporary regulations or proposed regulations.

"Council" means the County Council of Sumter County, South Carolina.

"Hospitality Fee" means the local hospitality fee imposed by the County pursuant to South Carolina Code Sections 6-1-700 to 6-1-770 and the Hospitality Fee Ordinance, which fee is equal to two percent (2%) on the gross proceeds derived from the sale of prepared meals and beverages for immediate consumption within the unincorporated area of the County.

"Hospitality Fee Ordinance" means Ordinance No. 04-534 enacted by the County Council on June 8, 2004, as amended on October 12, 2004, which imposed the Hospitality Fee which was initially collected beginning in July 2004.

"Lease Agreement" means the Lease Agreement between the County and the Bank to be dated as of the date of its delivery.

"Ordinance" means this Ordinance of the County.

"Project" means: (i) the expansion, renovation and improvements to the Sumter County Cultural Commission Building (Sumter Little Theatre, Sumter Gallery of Art, and Patriot Hall); (ii) renovations to the Sumter County Museum; and (iii) the costs of issuance including professional fees.

"South Carolina Code" shall mean South Carolina Code of Laws 1976 as amended.

Section 2. Findings and Determinations. The Council hereby finds and determines:

(a) Pursuant to Section 4-9-10, Code of Laws of South Carolina, 1976, as amended, and the results of a referendum held in accordance therewith, the Council-Administrator form of government was adopted and the County Council constitutes the governing body of the County.

(b) Pursuant to the authorization granted by the General Assembly to counties in Sections 6-1-700 to 6-1-770 of the South Carolina Code (collectively, the "Act"), the County Council imposed the Hospitality Fee. While the General Assembly utilized the words "local hospitality tax" in the Act as a means by which to designate the charge authorized to be imposed for the charges imposed for food and beverages, County Council expressed its interest in enacting the Hospitality Fee Ordinance to impose such charge as a "hospitality fee."

(c) It is a well established principle of South Carolina law that the use of a particular word is not determinative of its characterization. Jackson v. Breeland, 88 S.E. 128, 103 S.C. 184 (1915). As set forth in Brown v. County of Horry, 417 S.E.2d 565, 308 S.C. 180 (1992), the factors that are of paramount importance to the analysis of whether a charge constitutes a "tax" or a "fee" are the following: (1) the purpose behind its imposition; (2) the intended portion of the community that will be charged; and (3) the dedication of the sums so collected to the purpose for which it is charged. The Council finds that its actions in (1) imposing the Hospitality Fee; and (2) segregating the collections received from such fees in order that such sums be utilized according to the Act meet the test enunciated in Brown such that the charges imposed pursuant to the provisions of the Hospitality Fee Ordinance constitute fees.

(d) A vibrant tourism industry fosters and enhances the economic growth and well being of a community and its residents. Tourism has been and continues to be a growing industry for the County. The County is initiating efforts to promote tourism to the County and to the County's facilities and attractions.

(e) The Council has been advised and recognizes that Hospitality Fees and the proceeds of the financing authorized by this Ordinance must be used exclusively for tourism-related buildings, e.g., the Project. The renovation of the Project will promote additional tourism to the County. The Project will allow the County to market and attract tourists to attend and participate in many events. Further, area businesses will benefit from the influx of attendees, participants and their families coming to the County to attend and participate in events held at the Project.

(f) There is a need to undertake the Project. In order to finance a portion of the cost of the Project, the County has determined to enter into a lease-purchase transaction whereby the County will lease, pursuant to the Base Lease, the Property (as defined in the Lease Agreement) to the Bank, and contemporaneously lease-back, pursuant to the Lease Agreement, the Property back from the Bank.

(g) The County presently owns, will convey a leasehold interest to the Bank and thereafter will acquire all right and title to the Property upon payment of all costs, including financing costs, principal and interest payments, and expenses of every nature and kind incurred in connection with the Property and the maintenance thereof in accordance with the Lease Agreement.

(h) The Hospitality Fees may be used only for the purposes stated in Section 6-1-730 of the South Carolina Code. The Hospitality Fee constitutes an “enterprise charge” within the meaning of Section 11-27-110(A)(4) of the South Carolina Code and the Lease Agreement constitutes an “enterprise financing agreement” within the meaning of Section 11-27-110(A)(5) of the South Carolina Code and as such the Lease Agreement shall not be included within the County’s constitutional debt limitation.

(i) The Council finds that the proceeds of the Base Lease authorized by this Ordinance, as well as the Hospitality Fees pledged in connection therewith, will be used for a public purpose and that the execution and delivery of the Base Lease and Lease Agreement as well as all related documents is necessary and in the best interest of the County.

(j) In order to finance the construction of the Project, it is necessary and in the best interest of the County to enter into the lease-purchase transaction authorized by this Ordinance with the Bank. Such lease-purchase transaction will serve a proper public and corporate purpose of the County.

Section 3. Approval of Financing. The Project shall be financed pursuant to the terms and conditions set forth in the commitment letter of Branch Banking and Trust Company dated January 18, 2005, which is hereby accepted.

Section 4. Pledge of Hospitality Fee. As security for its obligation to make payments pursuant to the Lease Agreement, the County hereby pledges the Hospitality Fee to the extent necessary to make all required payments under the Lease Agreement due in any bond year. Upon payment of all amounts required in a fiscal year, all revenue collected from the Hospitality Fee not needed to make payments required by the Lease Agreement may be utilized as directed by the County Council.

Section 5. Approval of Base Lease. The form, terms and provisions of the Base Lease presented to this meeting and filed with the minutes of the Council meeting at which this Ordinance was enacted be and hereby are approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Base Lease were set out in this Ordinance in its entirety. The Chairman of County Council be and is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk to Council is hereby authorized, empowered and directed to attest, the Base Lease in the name and on behalf of the County, and thereupon to cause the Base Lease to be delivered to the Bank and to cause the Base Lease (or memoranda thereof) to be recorded in the office of the Register of Deeds for Sumter County. The Base Lease is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Chairman of County Council (with advice from the County's Attorney), the Chairman’s and Clerk to Council's execution thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Base Lease now before this meeting. Any amendment to the Base Lease shall be executed in the same manner.

Section 6. Approval of Lease Agreement. The form, terms and provisions of the Lease Agreement presented to this meeting and filed with the minutes of the Council meeting at which this Ordinance was enacted be and hereby are approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Lease Agreement were set out in this Ordinance in its entirety. The Chairman be and is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk to Council is hereby authorized, empowered and directed to attest, the Lease Agreement in the name and on behalf of the

County, and thereupon to cause the Lease Agreement to be delivered to the Bank and to cause the Lease Agreement (or memoranda thereof) to be recorded in the office of the Register of Deeds for Sumter County. The Lease Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Chairman (with the advice of the County's Attorney), the Chairman's and the Clerk to Council's execution thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the form of the Lease Agreement now before this meeting. Any amendment to the Lease Agreement shall be executed in the same manner.

Section 7. Execution of Documents. The Chairman or the County Administrator, or either one of them acting alone, and the Clerk to Council, Finance Director and County Attorney are fully empowered and authorized to take such further actions and to execute and deliver such additional documents as may be deemed necessary or desirable in order to effectuate the execution and delivery of the Base Lease and the Lease Agreement in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Chairman and County Administrator shall approve, is hereby fully authorized. The Council hereby retains the law firm of McNair Law Firm, P.A., as special counsel in connection with respect to the transaction authorized by this Ordinance.

Section 8. Federal Tax Covenant. The County agrees and covenants that it will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest components of the Base Rent (as defined in the Lease Agreement) under the Lease Agreement.

The County covenants that, in accordance with Section 265(b)(3) of the Code, it is hereby designating the Lease Agreement as a "qualified tax-exempt obligation" and that it does not reasonably anticipate that it will issue more than \$10,000,000 in tax-exempt obligations which are not "private activity bonds" during calendar year 2005, all within the meaning of Section 265(b) of the Code.

Section 9. 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 portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 10. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the County, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 11. Effective Date. This Ordinance shall be effective upon its enactment by the County Council of Sumter County, South Carolina.

This Ordinance shall forthwith be codified in the Code of County Ordinances in the manner prescribed by law.

Enacted this 8th day of February, 2005.

SUMTER COUNTY, SOUTH CAROLINA

Chairman, County Council

(SEAL)

ATTEST:

Clerk, County Council

Date of First Reading: January 11, 2005

Date of Second Reading: January 25, 2005

Publication of Notice of

Public Hearing in The Item: January 21, 2005

Date of Public Hearing: February 8, 2005

Date of Third Reading: February 8, 2005

APPROVED AS TO FORM:

County Attorney