

CHARLESTON COUNTY ORDINANCE NO. 1324

TO LEVY AND IMPOSE A ONE-HALF (2) OF ONE PERCENT SALES AND USE TAX, SUBJECT TO A REFERENDUM, WITHIN CHARLESTON COUNTY PURSUANT TO SECTION 4-37-30 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; TO DEFINE THE SPECIFIC PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY BE IMPOSED; TO PROVIDE THE ESTIMATED COST OF THE PROJECTS FUNDED FROM THE PROCEEDS OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM ON THE IMPOSITION OF THE SALES AND USE TAX AND THE ISSUANCE OF GENERAL OBLIGATION BONDS AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTIONS IN THE REFERENDUM; TO PROVIDE FOR THE CONDUCT OF THE REFERENDUM BY THE BOARD OF ELECTIONS AND VOTER REGISTRATION OF CHARLESTON COUNTY; TO PROVIDE FOR THE ADMINISTRATION OF THE TAX, IF APPROVED; TO PROVIDE FOR THE PAYMENT OF THE TAX, IF APPROVED; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

BE IT ENACTED BY THE COUNTY COUNCIL OF CHARLESTON COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1. Recitals and Legislative Findings. As an incident to the enactment of this Ordinance, the County Council of Charleston County, South Carolina (the ACounty Council@) have made the following findings:

(a) The South Carolina General Assembly has enacted Section 4-37-30 of the Code of Laws of South Carolina 1976, as amended (the AAct@), pursuant to which the county governing body may impose by ordinance a sales and use tax in an amount not to exceed one percent, subject to the favorable results of a referendum, within the county area for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.

(b) Pursuant to the terms of Section 4-37-10 of the Code of Laws of South Carolina 1976, as amended, the South Carolina General Assembly has authorized county government to finance the costs of acquiring, designing, constructing, equipping and operating highways, roads, streets and bridges and other transportation related projects either alone or in partnership with other governmental entities. As a means to furthering the powers granted to the County under the provisions of Section 4-9-30 and Sections 6-21-10, *et. seq* of the Code of Laws of South Carolina 1976, as amended, the County Council is authorized to form a transportation authority or to enter into a partnership, consortium, or other contractual arrangement with one or

more other governmental entities pursuant to Title 4, Chapter 37 of the Code of Laws of the South Carolina 1976, as amended. The County Council has decided to provide funding for roads, mass transit, and greenbelts, *inter alia*, without the complexity of a transportation authority or entering into a partnership, consortium, or other contractual arrangements with one or more other governmental entities at this time; provided that nothing herein shall preclude County Council from entering into partnerships, consortiums, or other contractual arrangements in the future. County Council may utilize such provisions in the future as necessary or convenient to promote the public purposes served by funding roads, mass transit, greenbelts as provided in this Ordinance.

(c) The County Council finds that a one-half of one percent sales and use tax should be levied and imposed within Charleston County, for the following projects and purposes:

(i) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities.

(ii) For financing the costs of greenbelts

(the above herein collectively referred to as the Aprojects@).

For a period not to exceed 25 years from the date of imposition of such tax, to fund the projects at a maximum cost not to exceed \$1,303,360,000 to be funded from the net proceeds of a sales and use tax imposed in Charleston County pursuant to provisions of the Act, subject to approval of the qualified electors of Charleston County in referendum to be held on November 2, 2004. The imposition of the sales and use tax and the use of sales and use tax revenue, if approved in the referendum, shall be subject to the conditions precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act, the provisions of this Ordinance, and other applicable law. Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects , and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public.

(c) County Council finds that the imposition of a sales and use tax in Charleston County for the projects and purposes defined in this Ordinance for a limited time not to exceed 25 years to collect a limited amount of money will serve a public purpose, provide funding for roads and transportation, mass transit, and greenbelts to facilitate economic development, promote public safety, provide needed infrastructure, promote desirable living conditions, enhance the quality of life in Charleston County, and promote public health and safety in the event of fire, emergency, panic, and other dangers, and prepare Charleston County to meet present and future needs of Charleston County and its citizens.

Section 2. Approval of Sales and Use Tax Subject to Referendum.

2.1 A sales and use tax (the ASales and Use Tax@), as authorized by the Act, is hereby imposed in Charleston County, South Carolina, subject to a favorable vote of a majority of the qualified electors voting in a referendum on the imposition of the tax to be held in Charleston County, South Carolina on November 2, 2004.

2.2 The Sales and Use Tax shall be imposed for a period not to exceed 25 years from the date of imposition.

2.3 The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of \$1,303,360,000, and the maximum amount of net proceeds to be raised by the tax shall not exceed \$1,303,360,000, which includes administrative costs and debt service on bonds issued to pay for the projects. The estimated principal amount of initial authorization of bonds to be issued to pay costs of the projects and to be paid by a portion of the Sales and Use Tax is \$113,000,000. The proceeds of these bonds shall be used for the following projects, in estimated amounts as described: \$25,000,000 to begin the right-of-way acquisition and engineering process for the widening and improvement of Johnnie Dodds Boulevard from the Arthur Ravenel, Jr. Bridge to the I-526 overpass; \$7,000,000 for Glenn McConnell Parkway/Bees Ferry Road Intersection improvements; \$10,000,000 for road improvements on James Island (Folly Road and Maybank Highway intersection improvements, Harbor View Road Improvements, and an off-ramp interchange loop from the James Island Connector to Folly Road); \$6,000,000 for a US Highway 17 access ramp onto the US Highway 61 connector near Wesley Drive; \$29,000,000 for acquisition and construction of a roadway connecting Ashley Phosphate Road and the Palmetto Parkway through Spartan Blvd.; and \$36,000,000 for greenbelts.

2.4 The Sales and Use Tax shall be expended for the costs of the following projects, including payment of any sums as may be required for the issuance of and debt service for bonds, the proceeds of which are applied to such projects, for the following purposes:

(i) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than \$1,081,788,800.

(ii) For financing the costs of greenbelts. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than \$221,571,200.

2.5 If the Sales and Use Tax is approved by a majority of the qualified electors voting in a referendum to be held in Charleston County on November 2, 2004, the tax is to be imposed on the first day of May, 2005 provided the Board of Elections and Voter Registration of

Charleston County shall certify the results not later than November 30, 2004, to Charleston County Council and the South Carolina Department of Revenue. Included in the certification must be the maximum cost of the projects to be funded in whole or in part from the proceeds of the tax, the maximum time specified for the imposition of the tax, and the principal amount of initial authorization of bonds, if any, to be supported by a portion of the tax.

2.6 The Sales and Use Tax, if approved in the referendum conducted on November 2, 2004 shall terminate on the earlier of:

- (1) on April 30, 2030; or
- (2) the end of the calendar month during which the Department of Revenue determines that the tax has raised revenues sufficient to provide the greater of either the costs of the projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

2.7 Amounts of Sales and Use Tax collected in excess of the required proceeds must first be applied, if necessary, to complete each project for which the tax was imposed. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of Charleston County on transportation infrastructure debts only.

2.8 The Sales and Use Tax must be administered and collected by the South Carolina Department of Revenue in the same manner that other sales and use taxes are collected. The Department may prescribe amounts that may be added to the sales price because of the tax.

2.9 The Sales and Use Tax is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 of the Code of Laws of South Carolina, and the enforcement provisions of Chapter 54 of Title 12 of the Code of Laws of South Carolina. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the Code of Laws of South Carolina are exempt from the tax imposed by this Ordinance. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture Food Stamps are exempt from the tax imposed by this Ordinance. The tax imposed by this Ordinance also applies to tangible property subject to the use tax in Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina.

2.10 Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

2.11 Utilities are required to report sales in the county in which the consumption of the tangible personal property occurs.

2.12 A taxpayer subject to the tax imposed by ' 12-36-920 of the Code of Laws of South Carolina 1976, as amended, who owns or manages rental units in more than one county must report separately in his sales tax return the total gross proceeds from business done in each county.

2.13 The gross proceeds of sales of tangible personal property delivered after the imposition date of the Sales and Use Tax, either under the terms of a construction contract executed before the imposition date, or written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this ordinance if a verified copy of the contract is filed with Department of Revenue within six months after the imposition date of the sales and use tax provided for in this Ordinance.

2.14 Notwithstanding the imposition date of the Sales and Use Tax with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this ordinance is imposed beginning on the first day of the billing period beginning on or after the imposition date.

Section 3. Remission of Sales and Use Tax; Segregation of Funds; Administration of Funds; Distribution to Counties: Confidentially.

3.1 The revenues of the Sales and Use Tax collected under this Ordinance must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of such revenues, the State Treasurer shall distribute the revenues quarterly to the Charleston County Treasurer and the revenues must be used only for the purposes stated herein. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these distributions must be made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

3.2 (a) Any outside agencies, political subdivisions or organizations designated to receive funding from the Sales and Use Tax must annually submit requests for funding in accordance with procedures and schedules established by the County Administrator. The County Administrator shall prepare the proposed budget for the Sales and Use Tax and submit it to the County Council at such time as the County Council determines. At the time of submitting the proposed budget, the County Administrator shall submit to the County Council a statement describing the important features of the proposed budget.

(b) County Council shall adopt annually and prior to the beginning of fiscal year a budget for expenditures of Sales and Use Tax revenues. County Council may make supplemental appropriations for the Sales and Use Tax following the same procedures prescribed for the enactment of other budget ordinances. The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for the Sales and Use Tax for purposes other than as specified in the annual budget when such transfers are approved by County Council. In the preparation of the annual budget, County Council may require any reports, estimates, and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the County.

(c) Except as specifically authorized by County Council, any outside agency or organization receiving an appropriation of the Sales and Use Tax must provide to County Council an independent annual audit of such agency's or organization's financial records and transactions and such other and more frequent financial information as required by County Council, all in form satisfactory to County Council.

3.3 The Department of Revenue shall furnish data to the State Treasurer and to the Charleston County Treasurer for the purpose of calculating distributions and estimating revenues. The information which must be supplied to the County upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of S.C. Code Ann. ' 12-54-240. Any person violating the provisions of this section shall be subject to the penalties provided in S.C. Code Ann. ' 12-54-240.

Section 4. Sales and Use Tax Referendum; Ballot Question.

4.1 The Board of Elections and Voter Registration of Charleston County shall conduct a referendum on the question of imposing the Sales and Use Tax in the area of Charleston County on Tuesday, November 2, 2004, between the hours of 7 a.m. and 7 p.m. under the election laws of the State of South Carolina, mutatis mutandis. The Board of Elections and Voter Registration of Charleston County shall publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and purposes as set forth herein, and the cost of projects, and shall publish such election and other notices as are required by law.

4.2 The referendum question to be on the ballot of the referendum to be held in Charleston County on November 2, 2004, must read substantially as follows:

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

I approve a special sales and use tax in the amount of one-half (2) of one percent to be imposed in Charleston County for not more than 25 years, or until a total of \$1,303,360,000 in resulting revenue has been collected, whichever occurs first. The sales tax proceeds will be used for the following projects:

Project (1) For financing the costs of highways, roads, streets, bridges, and other transportation- related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities. \$1,081,788,800.

Project (2) For financing the costs of greenbelts. \$221,571,200.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of levying the special sales and use tax shall vote “YES;” and

All qualified electors opposed to levying the special sales and use tax shall vote “NO.”

QUESTION 2

I approve the issuance of not exceeding \$113,000,000 of general obligation bonds of Charleston County, payable from the special sales and use tax described in Question 1 above, maturing over a period not to exceed 25 years, to fund completion of projects from among the categories described in Question 1 above.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote “YES;” and

All qualified electors opposed to the issuance of bonds for the stated purposes shall vote “NO.”

4.3 In the referendum on the imposition of a special sales and use tax in Charleston County, all qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote “yes” and all qualified electors opposed to levying the tax shall vote “no”. If a majority of the electors voting in the referendum shall vote in favor of imposing the tax, then the

tax is imposed as provided in the Act and this Ordinance. Expenses of the referendum must be paid by Charleston County government.

4.4 In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purpose shall vote “yes” and all qualified electors opposed to the issuance of bonds shall vote “no”. If a majority of the electors voting in the referendum shall vote in favor of the issuance of bonds, then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Charleston County government.

Section 5. Imposition of Tax Subject to Referendum.

The imposition of the Sales and Use Tax in Charleston County is subject in all respects to the favorable vote of a majority of qualified electors casting votes in a referendum on the question of imposing a sales and use tax in the area of Charleston County in a referendum to be conducted by the Board of Elections and Voter Registration of Charleston County on November 2, 2004, and the favorable vote of a majority of the qualified electors voting in such referendum shall be a condition precedent to the imposition of a sales and use tax pursuant to the provisions of this Ordinance.

Section 6. Miscellaneous.

(c) If any one or more of the provisions or portions hereof are determined by a court of competent jurisdiction to be contrary to law, then that provision or portion shall be deemed severable from the remaining terms or portions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance; if any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied to any particular case in any jurisdiction or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever; provided, however, that the Sales and Use Tax may not be imposed without the favorable results of the referendum to be held on November 2, 2004

(d) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

(e) The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not effect the meaning, construction, interpretation, or effect of this ordinance.

(f) This Ordinance shall take effect immediately upon approval at third reading.

(g) All previous ordinances regarding the same subject matter as this ordinance are hereby repealed.

ENACTED THIS 10TH DAY OF AUGUST, 2004.

CHARLESTON COUNTY COUNCIL

(SEAL)

Chairman

Clerk of Council

First Reading: June 26, 2004
Public Hearing: July 8, 2004
Second Reading: July 27, 2004
Third Reading: August 10, 2004