

ORDINANCE NO. 21-05-28

**AN ORDINANCE TO AMEND ORDINANCE NO. 96-2-3 AND
ORDINANCE NO. 20-10-43 REGARDING THE BERKELEY COUNTY
ACCOMMODATIONS FEE.**

WHEREAS, Berkeley County wishes to continue to promote the facilities that serve the tourists who visit Berkeley County; and

WHEREAS, Berkeley County wants to more strongly support the public services that are available to tourists to promote and further encourage tourism in the County; and

WHEREAS, Berkeley County Council desires to continue this fee to assist with the costs associated with the support of tourism and tourist services; and

WHEREAS, the South Carolina Supreme Court has acknowledged and confirmed a county's authority under the Home Rule Act, in the cases of *Brown vs. Horry County and Williams vs. Town of Hilton Head* to charge user fees, and has specifically approved of this type fee in *Hospitality Association of S.C., Inc., et al vs. the County of Charleston, etc., et al.*; and

WHEREAS, data reviewed by the County indicates that tourists account for the majority of the use of lodging facilities in Berkeley County, and further, that the tourist season in Berkeley County is year-round; and

WHEREAS, Berkeley County believes that the continuation of a two percent (2%) accommodations fee upon the rentals of hotels, motels, and other lodging establishments in Berkeley County that offer accommodations to tourists, can be used for the dedicated purpose of providing and improving services and promotion for tourism, pursuant to S.C. Code Ann. Section 6-1-520.

NOW, THEREFORE, BE IT ORDAINED by the County Council of Berkeley County, South Carolina, duly assembled, and by the authority of the same as follows:

Section I. Definitions.

(1) "County" means Berkeley County and all the municipalities within the geographical boundaries of Berkeley County.

(2) "Local Accommodations Fee" means a fee on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in Section 12-36-920(A) and which is imposed on every person engaged or continuing within the jurisdiction of the imposing local governmental body in the business of furnishing accommodations to transients for consideration as defined in S.C. Code Ann. Section 6-1-510.

(3) "Local Governing Body" means the governing body of the County as defined in S.C. Code Ann. Section 6-1-510.

(4) "Travel" and "Tourism" mean the action and activities of people taking trips outside their home communities for any purpose, except daily commuting to and from work as defined in S.C. Code Ann. Section 6-4-5(4).

(5) "Positive Majority" means a vote for adoption by the majority of the members of the entire Berkeley County 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 as defined in S.C. Code Ann. Section 6-1-510.

Section II. Accommodations Fee.

The County shall continue to impose a uniform fee equal to two percent (2%) on the gross proceeds derived from the rental of any accommodations within Berkeley County as permitted under S.C. Code Ann. 6-1-520.

Section III. Payment of Accommodations Fees.

Payment of the accommodations fee established herein shall be the liability of the consumer of the services. The fee shall be paid at the time of delivery of the services to which the fee applies and shall be collected by the provider of the services. The failure of the provider to collect said fee does not relieve the provider of liability to remit the appropriate fees. The County shall promulgate a form of return which shall be utilized by the provider of services to calculate the amount of accommodations fees collected and due. This form shall contain a sworn declaration as to the correctness thereof by the provider of services. The provider of services shall remit the accommodations fees due on the 20th of each month, to the Berkeley County Treasurer, at 223 North Live Oak Drive, Moncks Comer, SC 29461.

Section IV. Accommodations Fee Special Revenue Fund.

All proceeds from the local accommodations fee must be kept in a separate fund segregated from the County's general fund. All interest generated by the local accommodations fee fund must be credited to the local accommodations fee fund as required under S.C. Code Ann. 6-1-520.

Section V. Distribution of Funds.

Pursuant to S.C. Code Section 6-1-530 and under the direction of the Attorney General, the revenue generated by the local accommodations fee must be used exclusively for the following purposes:

- (a) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;
- (b) tourism-related cultural, recreational, or historic facilities;

- (c) beach access, renourishment, or other tourism-related lands and water access;
- (d) highways, roads, streets, and bridges providing access to tourist destinations;
- (e) advertisements and promotions related to tourism development; or
- (f) water and sewer infrastructure to serve tourism-related demand.

Section VI. Fee Revenue Not Subject to Committee Review.

The Local Accommodations Fee revenue is not subject to Tourism Expenditure Review Committee review or subject to the local advisory committee created to suggest expenditures of the state accommodations tax revenue.

Section VII. Inspections, Audits, and Administration.

To enforce the provisions of this Chapter, the Code Enforcement Officer, Tourism Director, and other authorized agent of Berkeley County, are empowered to enter upon the premises of any person subject to this Ordinance and to make inspections, examine and audit books and records. It shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours upon twenty-four (24) hours written notice. If an audit reveals that false information has been filed by the remitter, the costs of the audit shall be added to the correct amount of fees determined to be due. All operational and administrative costs associated with the billing and collection of this accommodations fee will be charged to the Special Revenue Fund. The Code Enforcement Officer, Tourism Director, or other authorized agent may make systematic inspections of all accommodations within Berkeley County to ensure compliance with this Ordinance.

Section VIII. Violations and Penalties.

It shall be a violation of this Ordinance to :

- a. fail to collect the accommodations fee in connection with the rental of any accommodations to transients,
- b. fail to remit to Berkeley County the accommodations fees collected, according to this Ordinance monthly,
- c. knowingly provide false information on the form of the return submitted to Berkeley County,
- d. fail to provide books and records to the Code Enforcement Officer, Tourism Director, or other authorized agents of Berkeley County for the purpose of an audit upon twenty-four (24) hours written notice.

The penalty for violation of this Ordinance shall be five percent (5%) per month, charged on the original amount of the accommodations fee due, up to a maximum of one hundred percent (100%). Additionally, violators may be deemed guilty of a misdemeanor, and subject to a penalty of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for violation of this Ordinance.


Section IX. 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.


ADOPTED this 24th day of May, 2021.

BERKELEY COUNTY, SOUTH CAROLINA

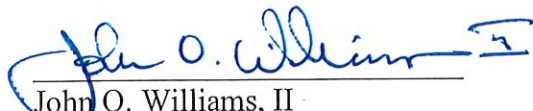
[SEAL]


John P. Cribb, County Supervisor
Berkeley County Council Chairman

Attest:


Shelley R. Forest
Interim Clerk to County Council

Approved as to form:


John O. Williams, II
County Attorney

First Reading: March 22, 2021
Second Reading: April 26, 2021
Public Hearing: May 24, 2021
Third Reading: May 24, 2021

21-05-28

MEMBERS OF COUNTY COUNCIL



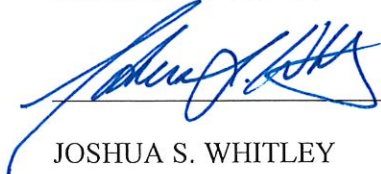
THOMAS D. OWENS

Voting Aye



BRANDON COX

Voting Aye



JOSHUA S. WHITLEY

Voting Aye



JACK H. SCHURLKNIGHT

Voting Aye



PHILLIP OBIE, II

Voting Aye



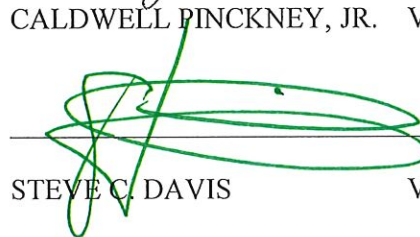
CALDWELL PINCKNEY, JR.

Voting Nay



JOE T. NEWELL

Voting Aye



STEVE C. DAVIS

Voting Aye