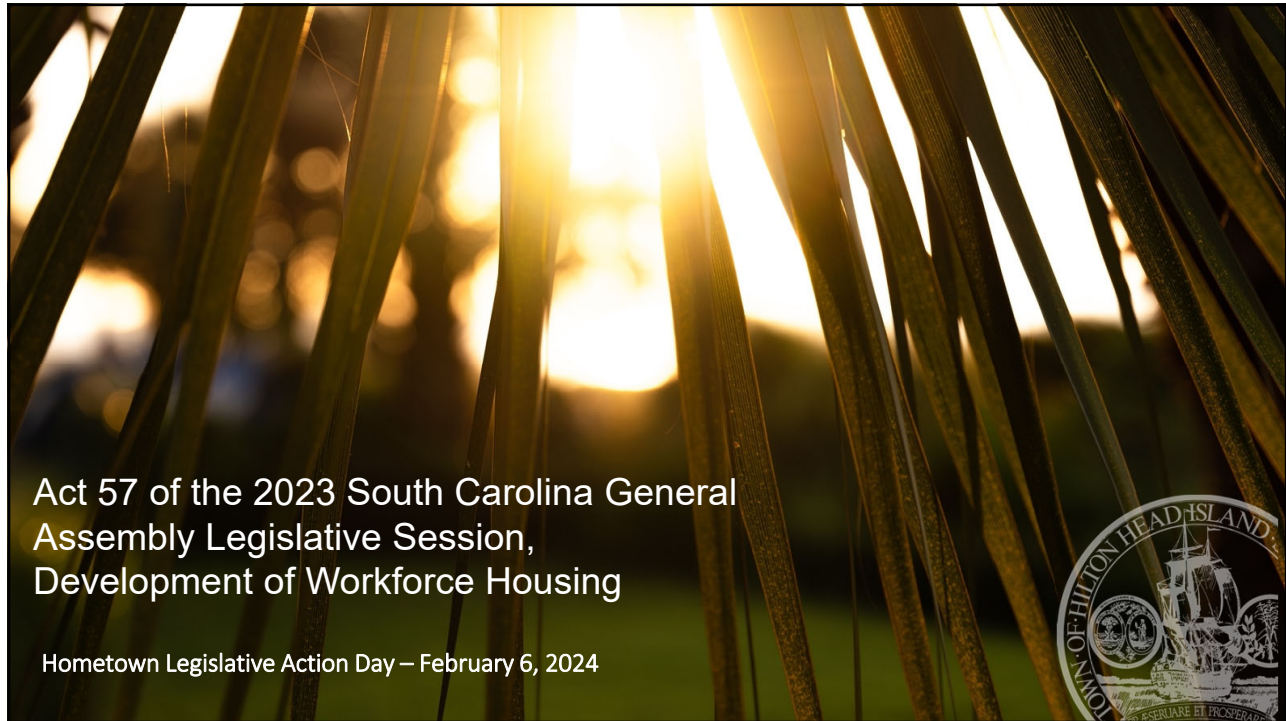


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| TOWN OF HILTON HEAD ISLAND

PRESENTATION OVERVIEW:

1. Use of Local Accommodation Taxes

- a) How are Local Accommodation Taxes Collected?
- b) Application of Act 57 to Local Accommodation Taxes.
- c) Procedural Outline for Allocation of Local Accommodation Taxes for Workforce Housing.

2. Use of State Accommodation Taxes

- a) How are State Accommodation Taxes Allocated?
- b) Application of Act 57 to State Accommodation Taxes.
- c) Procedural Outline for Allocation of State Accommodation Taxes for Workforce Housing.

3. Review of Attorney General Opinion Request.

4. Elements of a Housing Impact Analysis

5. Critical Path Outline for Implementation.



How are Local Accommodation Taxes Collected?

SECTION 6-1-520. Imposition of local accommodations tax.

(A) A local governing body may impose, by ordinance, a local accommodations tax, **not to exceed three percent**. However, an ordinance imposing the local accommodations tax must be adopted by a positive majority vote. The governing body of a county may not impose a local accommodations tax in excess of one and one-half percent within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.

Town of Hilton Head Island Code Sec. 4-10-20. - Declaration of purpose and intent.

This chapter is enacted to preserve the general health, safety and welfare of the general public within the town, **by enacting a one (1) percent local accommodations tax** to be collected for the purpose of creating an additional source of funding to pay, in whole or in part, for the current and future needs of the town, for the following items: tourism-related buildings, including, but not limited to, civic centers, coliseums, and aquariums; cultural, recreational, or historic facilities; beach access and renourishment; highways, roads, streets, and bridges providing access to tourist destinations; advertisements and promotions related to tourism development; water and sewer infrastructure to serve tourism-related demand; and, the operation and maintenance of those items previously enumerated, and police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

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SECTION 6-1-530. Use of revenue from local accommodations tax.

(A) The revenue generated by the local accommodations 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, renourishment, or other tourism-related lands and water access;
- (4) highways, roads, streets, and bridges providing access to tourist destinations;
- (5) advertisements and promotions related to tourism development;
- (6) water and sewer infrastructure to serve tourism-related demand; or
- (7) development of workforce housing, which must include programs to promote home ownership. However, a county or municipality may not expend or dedicate more than fifteen percent of its annual local accommodations tax revenue for the purposes set forth in this item. The provisions of this item are no longer effective after December 31, 2030.

(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 local accommodations tax authorized in this article may also 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.

So, what are the procedural steps that must be taken to utilize Local Accommodation Taxes for workforce housing purposes?

1. Update the Town Code to allow for Local Accommodation Taxes to be used for workforce housing.
2. Identify the maximum allowable amount of Local Accommodation Taxes that can be used for workforce housing based on the prior year's collections.
3. If the funding will be provided mid-year, a budget amendment will need to be adopted via an Ordinance. Otherwise, include the funding request as part of the Town's annual budget adoption. If the funding will be provided to an external entity, consider including them as part of the Affiliated Agency funding process.
4. If the funding will be given to an external entity, create a Memorandum of Understanding or other similar agreement that will document how the funding will be utilized to ensure that the requisite workforce housing standards are understood and will be met.
5. Identify any financial reporting/auditing requirements that will be needed during the terms of the Memorandum of Understanding or as may otherwise be outlined by Town Council as a condition of receiving funding.

How are State Accommodation Taxes Collected?

SECTION 12-36-920. Tax on accommodations for transients; reporting.

(A) A sales tax equal to **seven percent** is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration.

SECTION 12-36-2630. Seven percent sales tax on accommodations for transients composed of three components.

The tax imposed by Section 12-36-920(A) is composed of three taxes as follows:

(3) a **two percent local accommodations tax**, which must be credited to the political subdivisions of the State in accordance with Chapter 4, Title 6. The proceeds of this tax, less the department's actual increase in the cost of administration and the expenses of the Tourism Expenditure Review Committee established pursuant to Section 6-4-35, must be remitted quarterly to the municipality or the county in which it is collected. The two percent tax provided by this item may not be increased except upon approval of two-thirds of the membership of each House of the General Assembly. However, the tax may be decreased or repealed by a simple majority of the membership of each House of the General Assembly.

How are State Accommodation Taxes Allocated?

SECTION 6-4-10. Allocation to general fund; special fund for tourism; management and use of special fund.

The funds received by a municipality or a county in county areas collecting more than fifty thousand dollars from the local accommodations tax provided in Section 12-36-2630(3) must be allocated in the following manner:

- (1) The first twenty-five thousand dollars must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.
- (2) Five percent of the balance must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.
- (3) Thirty percent of the balance must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity....
- (4)(b) The funds received by a county or municipality which has a high concentration of tourism activity may be used to provide additional county and municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance, as well as the continual promotion of tourism. The funds must not be used as an additional source of revenue to provide services normally provided by the county or municipality but to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county or municipality to attract and provide for tourists.

How are State Accommodation Taxes Allocated?

SECTION 6-4-10. Allocation to general fund; special fund for tourism; management and use of special fund.

(4)(a) The remaining balance plus earned interest received by a municipality or county must be allocated to a special fund and used for tourism-related expenditures. This section does not prohibit a municipality or county from using accommodations tax general fund revenues for tourism-related expenditures.

"Tourism-related expenditures" include:

- (i) advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;
- (ii) promotion of the arts and cultural events;
- (iii) construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and other nearby roads and utilities for the facilities;
- (iv) the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities. This is based on the estimated percentage of costs directly attributed to tourists;
- (v) public facilities such as restrooms, dressing rooms, parks, and parking lots;
- (vi) tourist shuttle transportation;
- (vii) control and repair of waterfront erosion, including beach renourishment;
- (viii) operating visitor information centers;

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Under Act 57 of 2023, the definition of "Tourism-related Expenditures" was amended to include:

(ix) development of workforce housing, which must include programs to promote home ownership. However, a county or municipality may not expend or dedicate more than fifteen percent of its annual local accommodations tax revenue for the purposes set forth in this item (4)(b)(ix). The provisions of this item (4)(b)(ix) are no longer effective after December 31, 2030.

This is very similar to the language that was adopted pertaining to the use of Local Accommodation Taxes for workforce housing purposes. However, the General Assembly adopted additional conditions that pertain to the use of State Accommodation Taxes that do not appear to apply to the use of Local Accommodation Taxes.

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Amended Section 6-4-12 to require the following:

- (A) If a local government intends to use the funds for the development of workforce housing, then the local government **shall prepare a housing impact analysis prior to giving second reading to the ordinance.**
- (B) The analysis required by subsection (A) must include:
- (1) information about the effect of the ordinance on housing, including the effect of the ordinance on each of the following:
 - (a) the cost of developing, construction, rehabilitating, improving, maintaining, or owning single-family or multifamily dwellings;
 - (b) the purchase price of new homes or the fair market value of existing homes;
 - (c) the cost and availability of financing to purchase or develop housing;
 - (d) housing costs; and
 - (e) the density, location, setback, size, or height development on a lot, parcel, land division, or subdivision; and
 - (2) an analysis of the relative impact of the ordinance on low- and moderate-income households.
- (C) The following applies to information on housing costs required to be included in the analysis conducted pursuant to subsection (B)(1)(d):
- (1) the analysis must include reasonable estimates of the effect of the ordinance on housing costs, expressed in dollar amounts. The local government shall include a brief summary of, or worksheet demonstrating, the computations used in determining the dollar amounts. However, if the local government determines that it is not possible to make an estimate expressed in dollar amounts, then the analysis must include a statement setting forth the reasons for the local government's determination; and
 - (2) the analysis must include descriptions of both the immediate effect and, to the extent ascertainable, the long-term effect of the ordinance on housing costs.

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Section 6-4-12:

(D) Except as otherwise provided in this section, a housing impact analysis required pursuant to this section must be based on costs associated with the development, construction, financing, purchasing, sale, ownership, or availability of a median-priced single-family residence. However, the analysis may include estimates for larger developments as part of an analysis of the long-term effects of the ordinance.

(E) A local government may request information from any state agencies, local units of government, universities or colleges, organizations, or individuals as necessary to prepare a housing impact analysis pursuant to this section.

(F) The local government shall provide the housing impact analysis for an ordinance to the members of the legislative body of the local government, the Department of Revenue, and the Tourism Expenditure Revenue Committee* before the ordinance is considered by the legislative body. The Department of Revenue may not disburse any accommodations taxes to the local government for purposes of development of workforce housing unless and until the local government has provided the housing impact analysis to the parties required pursuant to this subsection.

*See Legal Opinion of R. Walker Humphrey, II, Esq. to South Carolina Tourism Expenditure Review Committee.

- Act 57 was signed by the Governor on May 10, 2023. The Town contracted with Tammie Hoy Hawkins to begin crafting the required Housing Impact Analysis on June 7, 2023.

ACT 57 of the 2023 South Carolina General Assembly Legislative Session, Development of Workforce Housing – Application to State Accommodation Taxes

When the new code language speaks to “an ordinance” what is it referring to?

SECTION 7. Section 6-29-510(D)(6) of the South Carolina Code of Laws pertaining to the development of a local Government’s Comprehensive Plan is amended to read:

(6) a housing element which considers location, types, age, and condition of housing, owner and renter occupancy, and affordability of housing. This element includes an analysis to ascertain nonessential housing regulatory requirements, as defined in this chapter, that add to the cost of developing affordable housing but are not necessary to protect the public health, safety, or welfare and an analysis of market-based incentives that may be made available to encourage development of affordable housing, which incentives may include density bonuses, design flexibility, and streamlined permitting processes. The planning commission must solicit input for this analysis from homebuilders, developers, contractors, and housing finance experts when developing this element;

ACT 57 of the 2023 South Carolina General Assembly Legislative Session, Development of Workforce Housing – Application to State Accommodation Taxes

So, what are the procedural steps that must be taken to utilize State Accommodation Taxes for workforce housing purposes?

1. Complete a Housing Impact Analysis.
2. Distribute the Housing Impact Analysis to the required entities.
3. Update/Ratify the Town's Comprehensive Plan.
 - a) Share the Housing Impact Analysis with the Planning Commission.
 - i. Solicit input from homebuilders, developers, contractors, and housing finance experts.
 - b) Adopt an Ordinance incorporating the Housing Impact Analysis into the Comprehensive Plan.
4. If funding will be provided mid-year, adopt an Ordinance providing for a budget amendment. Otherwise, include the funding request as part of the FY24-25 Budget/Affiliated Agency funding process.

Request for an Opinion from the South Carolina Attorney General

Several questions have arisen regarding the interpretation of the language contained within Act 57 of 2023 as well as how certain provisions of that legislation can be applied. The Town has sought a formal opinion from the South Carolina Attorney General on the following questions:

1. Does Act 57 of 2023 authorize the dedication of fifteen percent of the entire amount of the state accommodation taxes received by a local government, or does it authorize the dedication of fifteen percent of the "65%" fund described in 6-4-10 (4)?

Answer: The statute sets a cap at 15% of total annual accommodation tax collections for either local or state accommodation taxes.

2. May a local government allocate all or any part of the funds described in the Act to a non-profit organization to be used to develop workforce housing, so long as the non-profit organization complies the requirements of the statutes?

Answer: Yes.

Request for an Opinion from the South Carolina Attorney General

3. Would the answer to this question change if the recipient of the grant or donation is a for-profit entity that develops affordable housing for the workforce?

Answer: Yes, a local government could provide funding to a for-profit entity.

4. If a local government has identified the lack workforce housing as an impediment to the economic growth, health and wellbeing of its community, would making a donation or grant from the local government's general fund to a non-profit entity that develops affordable housing for the workforce meet the public purpose requirement of S. C. Const., Article X, Sec, 5 and not violate the prohibition against pledging the credit of the State set out in S. C. Const., Art. X, Sec. 11 of the South Carolina Constitution?

Answer: Yes, so long as the expenditure constitutes a public purpose as defined by judicial precedent.

Considerations on Public Funds for Private Use.

An elementary principle of South Carolina law is that all legislation must serve a public purpose. This comes from the requirements in Article X, Section 5 of the South Carolina Constitution which states that... [a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.

Although this requirement has been applied in many contexts, a precise definition of the term "public purpose" has proven elusive to the courts and is somewhat unsettled. Currently, the best guidance comes from the South Carolina Supreme Court in the case of Nichols v. South Carolina Research Authority.

That case established four questions for a local government to consider when deciding if an appropriate of public funds complies with the public purpose doctrine:

- (1) the ultimate goal or benefit to the public intended by the project;
- (2) whether public or private parties will be the primary beneficiaries;
- (3) the speculative nature of the project; and
- (4) the probability that the public interest will be served and to what degree.

Elements of a Housing Impact Analysis



THE TOWN OF HILTON HEAD ISLAND



HOUSING IMPACT ANALYSIS

DECEMBER 2023

The Town crafted a Housing Impact Analysis per Act 57. The elements of this analysis included:

- Current housing and employment trends on Hilton Head Island
- Local analysis of housing and development costs
- Market-rate housing prices
- Cost of available financing to purchase or develop housing.
- Local determination of need for workforce housing including income and housing disparities
- ATAX revenue impacts on short- and long-term housing costs

A copy of this analysis is publicly available at the following website:

<https://hiltonheadislandsc.gov/workforcehousing/documents/HHIIHousingImpactAnalysis.pdf>

Critical Path and Timeline for Implementation – Local Accommodation Taxes

1. Receive Attorney General Opinion Responses – **Received October 16, 2023**
2. Amend Town Code Section – 6-1-530
 - a) Public Planning Committee – 1st Quarter 2024
 - b) Town Council
 - i. First Reading – 1st Quarter 2024
 - ii. Second Reading – 1st Quarter 2024
3. Budget Ordinance Amendment (Depending on Source of Funding)
 1. First Reading – 1st Quarter 2024
 2. Second Reading – 1st Quarter 2024

Critical Path and Timeline for Implementation – State Accommodation Taxes

1. Receive Attorney General Opinion Responses – Received October 16, 2023
2. Complete the Housing Impact Analysis – Completed December 15, 2023
3. Distribute Housing Impact Analysis to Required Entities – Completed December 31, 2023
4. Adopt an Ordinance Updating/Ratifying the Town's Comprehensive Plan
 - a) Planning Commission – Completed January 18, 2024
 - b) Public Planning Committee – February 8, 2024
 - c) Public Hearings by Town Council
 - i. First Reading – March 5, 2024
 - ii. Second Reading – March 19, 2024
5. Budget Amendment Ordinance (Depending on Source of Funding)
 - a) First Reading – March 5, 2024
 - b) Second Reading – March 19, 2024

