

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: September 20, 2021

Agenda Item: 5B	Prepared for: Chris Noury
Agenda Section: Consent: Resolution	Date: September 15, 2021
Subject: Support for legislation that would continue to allow local governments to collect user fees	Division: Legal

**Background:**

Due to recent SC Supreme Court decisions, the collection of existing user fees may no longer be legal. It is, therefore, necessary that City Council request the South Carolina General Assembly to take the necessary actions to continue to allow local governments to collect user fees that fund critical needs such as public safety and infrastructure. The attached resolution outlines the associated issues and suggests two possible amendments to Section 6-1-300(6) of the state code to remedy the situation.

**Recommended Action:**

Adopt the resolution

Reviewed by Division Head	Reviewed by City Manager	Reviewed by City Attorney
Council Action: Motion By _____ 2 <sup>nd</sup> By _____ To _____		

COUNTY OF HORRY )  
 )  
STATE OF SOUTH CAROLINA )

RESOLUTION - 21-08

**A RESOLUTION TO EXPRESS NORTH MYRTLE BEACH CITY COUNCIL’S REQUEST THAT THE SOUTH CAROLINA GENERAL ASSEMBLY TAKE THE NECESSARY ACTIONS TO CONTINUE TO ALLOW LOCAL GOVERNMENTS TO COLLECT USER FEES THAT FUND CRITICAL NEEDS SUCH AS PUBLIC SAFETY AND INFRASTRUCTURE**

**WHEREAS**, the City of North Myrtle Beach, along with the vast majority of citizens, acknowledge that as a result of the recent SC Supreme Court decision in *Burns v. Greenville County Council* (2021), and revenues lost due to the COVID-19 pandemic, counties and municipalities throughout the state have been and will continue to struggle funding critical needs such as public safety and infrastructure; and

**WHEREAS**, counties were specifically granted the authority to impose uniform service charges in §4-9-30 and road fees were specifically considered and deemed allowed by the South Carolina Supreme Court in *Brown v. County of Horry* (1992); and

**WHEREAS**, in 1997, the South Carolina General Assembly enacted §6-1-300(6), which defines “service or user fee” as “a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee”; and

**WHEREAS**, relying on this code section, the South Carolina Supreme Court ruled Greenville County’s road fee ordinance invalid as it determined that the county’s residents who pay the user fee receive the same benefit as the non-payers; and

**WHEREAS**, the South Carolina Supreme Court made it clear in its decision that the fee payer must receive a different benefit from paying the fee, not merely a greater benefit; and

**WHEREAS**, the *Burns* decision potentially puts user fees, including those that have been in place for decades, in jeopardy which could result in the loss of millions of dollars in county and municipal revenues throughout South Carolina; and

**WHEREAS**, one solution to this issue would be for the SC General Assembly to amend §6-1-300(6) to allow counties and municipalities to have the option to utilize user fees that benefit the payer in some manner different from or greater than the members of the general public not paying the fee; and

**WHEREAS**, the above solution does not increase counties’ or municipalities’ revenue-raising authority beyond its ability prior to the recent *Burns* decision and, therefore, does not constitute a “new fee or tax”; and

**WHEREAS**, another potential solution would be to amend §6-1-300(6) to state that “the general public may derive a benefit from the fee as long as the substantial benefit goes to the payer”; and

**WHEREAS**, to validate previously imposed uniform service charges that were imposed pursuant to the criteria set forth in *Brown v. County of Horry* (1992) and *Campbell v. City of Charleston* (1997), §6-1-330 should be amended to state that, “A fee adopted or imposed by a local governing

body prior to June 30, 2021, remains in full force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this section.”

**NOW THEREFORE, BE IT RESOLVED** by the North Myrtle Beach City Council that it is in support of legislation that would preserve user fees as they are a vital source of local revenue and requests that all members of the South Carolina General Assembly take action to ensure that Home Rule is protected and that appropriate legislation is enacted to preserve this important county and municipal financial resource during the 124<sup>th</sup> Session of the General Assembly.

**AND IT IS SO RESOLVED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**North Myrtle Beach City Council**

\_\_\_\_\_  
Marilyn Hatley, Mayor

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Terry White, Mayor Pro Tempore

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J.O. Baldwin, Council Member

\_\_\_\_\_  
Fred Coyne, Council Member

\_\_\_\_\_  
Nicole Fontana, Council Member

\_\_\_\_\_  
Trey Skidmore, Council Member

\_\_\_\_\_  
Hank Thomas, Council Member

\_\_\_\_\_  
ATTEST: Allison Galbreath, City Clerk