ALAN WILSON
ATTORNEY GENERAL

October 9, 2023

Robert C. Childs, III, Esq.
City Attorney
Town of Travelers Rest
Post Office Box 1519
Travelers Rest, South Carolina 29690

Dear Mr. Childs:

We received your request for an opinion from this Office concerning the fire protection fees for tax exempt properties provided under section 12-37-235 of the South Carolina Code. In your letter, you state the City of Travelers Rest (the "City") is considering enacting an ordinance to impose a Fire Protection Fee for tax exempt properties located in the City. You state:

> In particular, the City has found that tax exempt properties that house multiple individuals in a congregate, dormitory or appartement like setting such as college or university residential buildings, apartments, assisted living facilities, dormitories, barracks, sorority houses, fraternity houses, continuing care retirement centers, hotels, motels, nursing care facilities, nursing continuing care retirement centers, residential, rooming or boarding houses and other facilities that house more than 10 individuals on an overnight basis for more than 50% of the year result in the vast majority of fire department response calls to tax-exempt properties. Tax exempt premises such as churches, parsonages, burying grounds and child and adult daycare services without overnight housing have far less calls for service.
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> The City proposes to impose a per square footage fee of 50 cents on all college and university residential buildings, apartments, assisted living facilities, dormitories, barracks, sorority houses, fraternity houses, continuing care facilities that house more than 10 individuals on the property on an overnight basis more than 50% of a year.

## Law/Analysis

Section 12-37-235 of the South Carolina Code (2014) allows counties and municipalities to impose a fee for fire protection on owners of real property exempt from property tax and states as follows:

> Each county and municipality in this State may charge the owners of all real property exempt from ad valorem taxation under the provisions of items (2), except property of the State, counties, municipalities, school districts and other political subdivisions where such property is used exclusively for public purposes, (3), except public libraries, and (4) of subsection (A) of Section 12-37-220 of the 1976 Code, which is located within their respective boundaries, reasonable fees for fire protection; provided, that no fees may be charged by a county for protection or service provided to such owners by a municipality.
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> All such fees shall be based on the protection and services provided and which are maintained in whole or in part by funds from ad valorem taxes. No fees shall exceed the amount of taxes that would be levied on any of the subject property for any one service if the subject property were subject to ad valorem taxation.

S.C. Code Ann. § 12-37-235 (emphasis added). Whether or not this statute permits the imposition fees on some exempt property owners and not others is a question of statutory interpretation.

> The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Gilstrap v. South Carolina Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992). In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. Creech v. South Carolina Public Service Authority, 200 S.C. 127, 20 S.E.2d 645 (1942). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975).

Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996).

As we stated in a 1982 opinion regarding section 12-37-235, "the intended purpose was to allow counties and municipalities to charge owners of exempt real property reasonable fees for fire protection." Op. Att'y Gen., 1982 WL 155037 (S.C.A.G. Nov. 9, 1982). According to the plain language of this provision, local governments are allowed to impose these fees on all property exempt from property tax with the only exceptions being listed in the statute. S.C. Code Ann. § 12-37-235. Section 12-37-235 also states the amount of the fee must be based on the services provided. Therefore, the plain language of the statute indicates the Legislature's intent for different owners to be charged different amounts.

However, our analysis does not end here. Fees require uniformity to be valid uniform service charges. According to our Supreme Court,

> a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue

> generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.

C.R. Campbell Const. Co. v. City of Charleston, 325 S.C. 235, 481 S.E.2d 437, 438 (1997) (emphasis added). Nonetheless, our courts have upheld fees charging different individuals different amounts based on the services received. In J.K. Construction, Inc. v. Western Carolina Regional Sewer Authority, 336 S.C. 162, 519 S.E.2d 561 (1999), the Court considered the validity of a new account fee imposed by a sewer authority. The fee ranged from $500 to $80,000 depending on the customer. In discussing the uniformity of the fee, the Court stated:

> While no statute or constitutional provision explicitly requires charges by special purpose districts to be uniform, the Court has stated that charges or assessments imposed only upon certain individuals "must be fairly and justly apportioned among those charged with their payment. A method of apportionment, whether by statute or by regulation, that is manifestly arbitrary or discriminatory does not fulfill the constitutional requirements of due process and equal protection." Hagley Homeowners Ass'n, 326 S.C. at 76–77, 485 S.E.2d at 97 (quoting Newton v. Hanlon, 248 S.C. 251, 149 S.E.2d 606 (1966)).

In a 2007 opinion, we considered whether a county could exempt elderly individuals from the county's road maintenance fee. Op. Att'y Gen., 2007 WL 3244893 (S.C.A.G. Aug. 15, 2007). We noted:

> In Brown v. County of Horry, 308 S.C. 180, 184, 417 S.E.2d 565, 567 (1992), the Supreme Court observed that section 4-9-30 of the South Carolina Code "does not specify the amount of such fees or the persons upon whom they can be imposed." Thus, upon finding the Horry County had the authority to levy a road maintenance fee, the Court considered whether that fee was uniform and whether it was contrary to the equal protection clause. Id. Because the fee was imposed on all motor vehicles registered in Horry County, the Court found it uniform and therefore, "[t]here is not inequity or discrimination which would render the fee invalid." Id. at 186, 417 S.E.2d at 568.
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> The Court also considered whether placing Horry County registered vehicles in a class violated the equal protection clause. The Court stated:
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> > If a classification is reasonably related to a proper legislative purpose and the members of each class are treated equally, any challenge under the equal protection clause fails. Robinson v. Richland County Council, supra; Medlock v. S.C. Fam. Farm Dev., 279 S.C. 316, 306 S.E.2d 605 (1983). The requirements of equal protection are satisfied if: (1) the classification bears a reasonable relation to the legislative purpose; (2)

> the members of the class are treated alike under similar circumstances; and (3) the classification rests on some reasonable basis. Medlock, supra. In addition, the burden is upon those challenging the legislation to prove lack of rational basis. Ex parte Yeargin, 295 S.C. 521, 369 S.E.2d 844 (1988).
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> A legislatively created classification will not be set aside as violative of the equal protection clause unless it is plainly arbitrary and there is no reasonable hypothesis to support the classification. Samson v. Greenville Hosp. System, 295 S.C. 359, 368 S.E.2d 665 (1988); Medlock, supra.

Id. at 186, 417 S.E.2d at 568-69.

Id. We commented that there were no South Carolina cases addressing the constitutionality of a statute or ordinance classifying based on age, but other jurisdictions appear to uphold similar classifications as permissible. Id. We also noted,

> In considering the constitutionality of the proposed exemption from the road maintenance fee for elderly motor vehicle owners, we must keep in mind that an ordinance is a legislative enactment and therefore, is presumed to be constitutional. Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000). Moreover, only a court, not this Office, may declare an ordinance unconstitutional.

Id. However, we concluded whether the classification bears a reasonable relationship to a legitimate governmental objective was ultimately a question of fact, which a court must decide. Id.

Similar to the Court's observation in Brown, 308 S.C. 180, 417 S.E.2d 565, the City has authority to impose the fee pursuant to section 12-37-235. Thus, like in Brown, we must consider whether that fee was uniform and whether it was contrary to the equal protection clause. As we stated in our 2007 opinion, this determination must be made weighing the facts to determine whether the classification bears a reasonable relationship to the City's governmental objectives. Op. Atty. Gen., 2007 WL 3244893 (S.C.A.G. Aug. 15, 2007). Your letter includes reasons why the City finds particular owners should be charged, while others are not. You state these owners use the services much more frequently than others. Therefore, a court may very well find the classification is reasonably related to a proper legislative purpose and the members of each class are treated equally. However, this is a factual determination that must ultimately be determined by a court. Op. Atty. Gen., 2021 WL 5235061 (S.C.A.G. Nov. 1, 2021). Furthermore, we must also keep in mind all ordinances are presumed valid and constitutional. Op. Att'y Gen., 2023 WL 6279001 (S.C.A.G. Sept. 19, 2023). Therefore, should the City enact the ordinance as described it would be enforceable until a court decides otherwise.

**Conclusion**

Section 12-37-235 of the South Carolina Code gives municipalities authority to impose fire protection fees on property exempt from ad valorem taxation and states "[a]ll such fees shall be based on the protection and services provide . . . ." We believe this provision gives the City authority to impose fire protection fees based on the services an exempt owner receives allowing it to charge different property owners different amounts.

Nevertheless, a court would need to determine whether the City's decision to impose a fee on some exempt owners and not others comports with the equal protection clause. This requires a determination that the classification is reasonably related to a proper legislative purpose and the members of each class are treated equally. Because this is a factual determination, only a court may make such a decision. Nevertheless, any ordinance enacted by the City is presumed valid and enforceable unless and until a court rules otherwise.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General