

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF Horry )

William W. O'Day, David Guidos, Richard Pariseau, Amy Nichols, Jonathon Scott, Dixon Morrison, Robert Noles, Charles Rhine, ABATE of South Carolina, Inc., ABATE of Horry County, Inc.,

CIVIL ACTION COVERSHEET

Plaintiff(s) )

vs. )

-CP -

City of Myrtle Beach )

Defendant(s) )

(Please Print)

Submitted By: Chad Fuller, Tom McGrath, Matthew Danielson

Address: Law Offices of Tom McGrath

SC Bar #: SC Bar Nos. 79760, 3828, 79863

Telephone #: 803. 926. 5703

Fax #: 803. 926. 7508

Other:

E-mail: chad@tommcgrathlaw.com; tom@tommcgrathlaw.com; matt@tommcgrathlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. [X] NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
[X] This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)

- Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), [X] Other (799) DECLARATORY
Administrative Law/Relief: Reinstatement Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990)

JUDGMENT

- Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Employment Security Comm (991), Other (999)

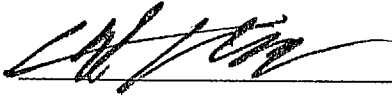
FILED 2010 JUN 15 PM 1:15 MELBA HUGGINS CLERK OF COURTS Horry County

Other (699)

Motion to Quash Subpoena in  
an Out-of-County Action (660)

Sexual Predator (510)

Submitting Party Signature:



Date:

6/15/10

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE CIRCUIT COURT FOR THE  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. \_\_\_\_\_

WILLIAM W. O'DAY, )  
DAVID GUIDOS, )  
RICHARD PARISEAU, )  
AMY NICHOLS, )  
JONATHON SCOTT, )  
DIXON MORRISON, )  
ROBERT NOLES, )  
CHARLES RHINE, )  
ABATE OF SOUTH CAROLINA, INC., )  
ABATE OF HORRY COUNTY, INC., )

Plaintiffs, )

v. )

CITY OF MYRTLE BEACH, )

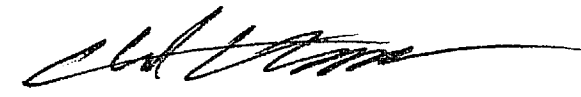
Defendant. )

SUMMONS

FILED  
HORRY COUNTY  
2010 JUN 15 PM 1:24  
MELANIE HUGGINS-WARD  
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint in a timely manner as set forth herein and by the applicable rules, judgment by default may be entered against you for the relief demanded in the complaint.



CHAD WILLIAM FULLER  
S.C. Bar No. 76970  
Email: [chad@tommcgrathlaw.com](mailto:chad@tommcgrathlaw.com)

JAMES THOMAS McGRATH  
S. C. Bar No. 3828  
Email: [tom@tommcgrathlaw.com](mailto:tom@tommcgrathlaw.com)

MATTHEW DAREN DANIELSON  
S.C. Bar No. 79863  
Email: [matt@tommcgrathlaw.com](mailto:matt@tommcgrathlaw.com)

Law Offices of Tom McGrath  
532 Knox Abbott Drive, Suite 7  
Cayce, South Carolina 29033

Attorneys for Plaintiffs

West Columbia, South Carolina  
June 15, 2010

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE CIRCUIT COURT FOR THE  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. \_\_\_\_\_

WILLIAM W. O'DAY, )  
DAVID GUIDOS, )  
RICHARD PARISEAU, )  
AMY NICHOLS, )  
JONATHON SCOTT, )  
DIXON MORRISON, )  
ROBERT NOLES, )  
CHARLES RHINE, )  
ABATE OF SOUTH CAROLINA, INC., )  
ABATE OF HORRY COUNTY, INC., )

Plaintiffs, )

v. )

CITY OF MYRTLE BEACH, )

Defendant. )

**COMPLAINT**  
**Declaratory Judgment Action**  
**(Non-Jury)**

FILED  
HORRY COUNTY  
2010 JUN 15 PM 1:24  
MELANIE HUGGINS-WARD  
CLERK OF COURT

The Plaintiffs, complaining of the Defendant herein, respectfully allege:

1. Plaintiffs William W. O'Day, David Guidos, Richard Pariseau, Amy Nichols, Jonathon Scott, Dixon Morrison, Robert Noles, and Charles Rhines (hereafter referred to as "the individual plaintiffs") are residents and citizens of the City of Myrtle Beach, South Carolina.
2. Each of the individual plaintiffs is more than the age of twenty-one (21) years. The individual plaintiffs each own and operate one or more motorcycles which are legal for operation on the public highways of the State, as defined by the provisions of Title 56, Chapters 1, 5, and 19 of the South Carolina Code of Laws, which are used regularly for transportation on the public highways within the city limits of the City of Myrtle Beach and elsewhere within the State of South Carolina. The motorcycles

owned by the individual plaintiffs are properly registered and titled under the laws of South Carolina and bear appropriate tags as required by state law. Each plaintiff owns one or more motorcycles that on information and belief do not comply with that certain ordinance enacted by the Defendant City of Myrtle Beach, as more fully described herein.

3. The Plaintiffs ABATE of South Carolina, Inc., and ABATE of Horry County, Inc., are non-profit corporations organized and existing under the laws of the State of South Carolina, whose members own and ride motorcycles on the public roads throughout South Carolina, including within the City of Myrtle Beach.
4. The Defendant, City of Myrtle Beach, is a municipality incorporated under the laws of South Carolina.
5. The Plaintiffs bring this action pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.* This action arises from the adoption of a certain ordinance (Ordinance 2008-68, *as amended by* 2008-77) (“the Ordinance”) by the City of Myrtle Beach which conflicts with the general laws of South Carolina, as well as the South Carolina Constitution, and thereby directly affects the legal rights of the plaintiffs herein. The enactment by the City of the Ordinance is outside the power of the City to enact as a result of controlling State law.
6. A present justiciable controversy of a judicial nature exists between the parties in that the Ordinance prohibits the plaintiffs from exercising a legal right granted to them by the State of South Carolina by limiting the plaintiffs’ right to ride their motorcycles in the City of Myrtle Beach without violating the Ordinance. Further, the existence of

the Ordinance requires the plaintiffs to risk the confiscation of their property even though riding their motorcycles on the public streets within the City is in full compliance with State law. Lastly, the ordinance interferes with the uniformity of law in the area of motorcycles permitted on the public highways of the State.

7. Specifically, this Ordinance is preempted by South Carolina statutes, purports to criminalize conduct otherwise allowed under South Carolina law, and otherwise violates the South Carolina Constitution by exceeding the constitutional powers of municipalities and those powers reserved to the General Assembly.
8. The Ordinance requires that motor vehicles, including motorcycles operated within the City of Myrtle Beach, have an exhaust muffler bearing certain labeling by the federal Environmental Protection Agency (EPA) not required by the State's Uniform Traffic Act.
9. By way of example, the Ordinance requires motorcycles operated within the City of Myrtle Beach not emit a measured noise level of more than 89 decibels when measured 20 inches from the exhaust pipe at a 45-degree angle while the engine is operating at idle.
10. Under the ordinance, failure to comply with the Ordinance qualifies as a misdemeanor and subjects motorcycle operators to the immediate confiscation, towing, and impoundment of their property until their vehicles can be removed from the City of Myrtle Beach without violating the Ordinance.
11. The Ordinance conflicts with the provisions of S.C. Code Ann. § 56-5-5020, which requires merely that all motor vehicles be equipped with a muffler in good working

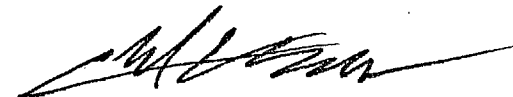
order and in constant operation to prevent excessive or unusual noise and annoying smoke.

12. Unlike the Ordinance, S.C. Code Ann. § 56-5-5020 makes no special regulation for the mufflers on a motorcycle that do not also apply to other motor vehicles.
13. The Ordinance violates S.C. Code Ann. § 56-5-3660 and S.C. Constitution, Article VIII, § 14, in that it conflicts with state law and criminalizes otherwise legal conduct.
14. The Ordinance places an illegal burden on the Plaintiffs to purchase and use equipment not mandated by uniform state law in order to operate their motorcycles within the City of Myrtle Beach where they reside, travel, work, or move.
15. The Plaintiffs have no adequate remedy at law.

#### PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs seek a declaratory judgment:

- A. Determining that the Ordinance is void, insofar as it exceeds the powers reserved to the defendant City of Myrtle Beach;
- B. Determining that the Ordinance is invalid as it is inconsistent with S.C. Code Ann. § 56-5-3660, § 56-5-5020, § 56-5-3610, and other applicable state statutes.
- C. Determining that the Ordinance is invalid in that it is preempted by State law pursuant to the Constitution of South Carolina, Article VIII, §14.



---

CHAD WILLIAM FULLER  
S.C. Bar No. 76970  
Email: [chad@tommcgrathlaw.com](mailto:chad@tommcgrathlaw.com)

JAMES THOMAS McGRATH  
S. C. Bar No. 3828  
Email: [tom@tommcgrathlaw.com](mailto:tom@tommcgrathlaw.com)

MATTHEW DAREN DANIELSON  
S.C. Bar No. 79863  
Email: [matt@tommcgrathlaw.com](mailto:matt@tommcgrathlaw.com)

Law Offices of Tom McGrath  
532 Knox Abbott Drive, Suite 7  
Cayce, South Carolina 29033  
Tel: 803.926.5703  
Fax: 803.926.7508

Attorneys for Plaintiffs

June 15, 2010