e-Filed in Office
Tammie Mosley
Clerk of Superior Court
Chatham County
Date: 10/2/2025 11:21 AM
Reviewer: SL

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

DAMON L. AND SEBRELL E. SMITH,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. SPCV23-00211
v.	)	
	)	
CHATHAM COUNTY,	)	
	)	
Defendant.		

ORDER

Currently pending before the Court are Defendant's Motion to Dismiss, Defendant's Motion for Judgment on the Pleadings, and cross motions for Summary Judgment filed by Named Plaintiffs and Defendant. The relevant facts in this matter are not in dispute. For the reasons set forth herein and based on the pleadings and evidence of record, Named Plaintiffs' Motion for Summary Judgment is **GRANTED** and Defendant's Motion to Dismiss, Motion for Judgment on the Pleadings, and Motion for Summary Judgment are **DENIED.**

STATEMENT OF THE CASE AND UNDIPUSTED FACTS

Southside Communities Fire protection, Inc. d/b/a Chatham Emergency Services, Inc. ("CES") historically provided fire protection services in portions of the unincorporated area of Chatham County and funded its operations through a voluntary subscription program whereby payments were paid by and collected from those individuals and entities owning property serviced by CES. In or around 2020, CES expressed concerns about its continued ability to fund its fire service operations. In response, the County contracted with CES for its continued provision of fire protection services to much of the unincorporated areas of Chatham County, and to fund such services, the County initially adopted a Fire Service Protection Tax on December 29, 2021. Shortly thereafter, however, the County repealed the tax on May 13, 2022, and instead added Article XII

to Chapter 21 of its Code of Ordinances, entitled "Fire Protection Service Fee Ordinance", *i.e.*, the Fire Protection Service Fee or Fire Fee Ordinance. The County then amended the Fire Fee Ordinance the very next month on June 24, 2022.[1]

By and through the Fire Fee Ordinance and pursuant to Article IX, § II, ¶ VI of the Georgia Constitution, the County created the "Fire Service Area", a special service district consisting of those portions of the unincorporated areas of Chatham County, Georgia serviced by CES, and agreed, through its contract with CES, to provide fire protection services within the Fire Service Area. To fund such services, the County implemented a charge known as the Fire Protection Service Fee (the "Fire Fee") and annually assessed such Fee for fiscal year 2023 and 2024[2], against all parcels of real property in the Fire Service Area[3] The Fire Fee was initially structured as a combination of a flat fee for the land and a variable rate for the square footage of all structures located thereon, including mobile homes and ancillary structures outlined in the County's Code of Ordinances at §21-1213. Specifically, the Fire Fee included a flat fee of $100.00 on the land generally, *no matter the size, nature, use, or characteristics of the property assessed*, as well as an additional fee for all structures located thereon, the amount of which increased in bracketed increments with the square footage of such structures. For instance, a property including a structure containing between 0.0001 and 499.99 square feet was assessed a flat fee of $100.00 and an additional $75.00 fee, and a property including a larger structure, such as one containing between

[1] Due to the timing of the June 2022 Amendment and the lack of any enforcement of the Fire Fee Ordinance prior to the June 2022 Amendment, the following discussion, unless specifically noted otherwise, pertains to the Fire Fee Ordinance as amended on June 24, 2022.

[2] The County's fiscal year is July 1-June 30. The County has not assessed or collected the Fire Fee since its 2024 fiscal year.

[3] Only linear rights-of-way were completely exempted from the Fire Fee. Those properties including structures classified as a church or school did, however, receive a fifty percent (50%) discount.

500 and 999.99 square feet, was assessed a flat fee of $100.00 and an additional $100.00 fee. *Id.*[4] Pursuant to such formula, the County assessed its first Fire Fee and issued corresponding bills to the relevant property owners in November 2022 (the "2023 Fire Fee").

After assessing and collecting the 2023 Fire Fee, the County again revised the Fire Fee Ordinance on June 23, 2023. Most relevantly, the June 2023 Amendment changed the method by which the Fire Fee was calculated, removed the $100.00 flat fee assessed against the land generally, and steered away from the bracketed approach to calculating the Fire Fee charged on structures. Instead, the County opted to assess a flat fee of $100.00 on the unimproved/vacant parcels located in the Fire Service Area and a flat fee of $0.14 per square foot (with the minimum fee being $100.00) for all properties containing a "burnable structure", including the main structure and any ancillary structure listed in the County's Code of Ordinances at §21-12-13.[5] In accordance with such revised formula, the County assessed Fire Fees in 2023 and issued corresponding bills to the relevant property owners in or about September 2023 (the "2024 Fire Fee").

According to the Fire Fee Ordinance, the Fire Fee is intended to allocate the cost of maintaining a constant state of availability, readiness and preparedness to provide fire protection services among the owners of property in the Fire Service Area in proportion to the demands of

[4] Altogether, the Fire Fee Ordinance included eleven (11) square footage billing brackets ranging from 0.0001 square foot to 50,000+ square feet and placed a cap of $10,000 for structures containing 50,000 or more square feet or more. Accordingly, under the Fire Fee Ordinance, a large commercial warehouse, store, or residential apartment building consisting of more than, for example, 100,000 square feet was charged the same variable rate based on square footage as a building spanning 50,000 square feet. Furthermore, the amount of the additional per square foot fee, like the flat land fee, *failed to contemplate the nature, use, or characteristics of the structure assessed.* A property containing a 2,000 square foot residential structure was therefore assessed the same variable rate based on square footage as a property including a 2,000 square foot industrial or commercial warehouse.

[5] The June 2023 Amendment removed the cap of $10,000 for Fire Fees previously found in Section 21-1205(5)(b). And, again, the County's method of calculating the Fire Fee *neglected to consider the size of the land itself or the nature, use, or characteristics of the property assessed or the structures located thereon.* Accordingly, under the June 2023 Amendment, a property containing a commercial warehouse, industrial plant, or residence is charged the same variable rate based on square footage despite the differing uses and acreage of the properties. Likewise, a one (1) acre, cleared and vacant lot is assessed the same flat $100 Fire Fee as a twenty (20) acre vacant lot containing timber.

the properties. Should a property owner fail to pay the Fire Fee when due, the Fire Fee Ordinance authorizes the County to assess the property owner a late charge penalty of the greater of $25 or ten percent (10%) of the amount due, as well as all costs of collection, including attorney's fees and court costs; collect the Fire Fee by any means allowed under law, including but not limited to filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby, including enforcement of any lien resulting from any such judgment; and punish nonpayment through fines and community service.[6]

Named Plaintiffs, owners of real property located in the Fire Service Area and subject to the Fire Fee[7], filed a Verified Class Action Complaint on or about February 21, 2023, alleging that the Fire Fee is an illegal tax and asserting a cause of action on behalf of themselves and 36,274 prospective class members for refunds under O.C.G.A. § 48-5-380 (the "Refund Statute"), declaratory judgment, injunction, and attorney's fees for bad faith and stubborn litigiousness.[8] Named Plaintiffs and the 36,274 prospective class members paid Fire Fees for fiscal years 2023 and 2024 totaling $26,852,778.90. If a refund is owed, Named Plaintiffs contend that in addition to the fees actually paid, they and the class members are likewise entitled to recover prejudgment

[6] Notably, the Fire Fee Ordinance initially stated that unless reduced to a judgment and a writ of fieri facias issued, the unpaid Fire Fee could not constitute a direct lien against the owner or the property. Thus, the County could obtain a lien against a non-payer's property by filing a lawsuit, obtaining a judgment, and recording a writ of fieri facias. The County, however, amended the Fire Fee Ordinance in June 2023 to provide the County the alternative option of directly placing a lien on the property with the Superior Court of Chatham County for the unpaid Fire Fee balance plus court costs and late charges. The County again revised the Fire Fee Ordinance in September 2023 to remove the direct lien option but retained the ability to file a writ of fieri facias to enforce a judgment.

[7] Named Plaintiffs' own that certain real estate located at 9104 Ferguson Avenue, Savannah, Georgia 31406, and were assessed and paid the 2023 Fire Fee in the amount of $400.00 and the 2024 Fire Fee in the amount of $527.24.

[8] Since the filing of this lawsuit, the County elected to forgo the collection of any Fire Fees for its fiscal year 2025, terminated its service contract with CES, purchased certain fire apparatus and equipment from CES, and as it originally did in December 2021, adopted an ordinance providing for the collection of a Fire Protection Service *Tax*. Neither a fire tax nor a fire fee has yet been issued or collected by the County for 2025. As noted previously, the Fire Fee Ordinance nevertheless remains intact and unrepealed.

interest bringing the total in dispute to $29,643,288.33.[9] Defendant does not dispute the amount of damages owed if the Fire Fee is determined to be a tax. Since the filing of this lawsuit, the County elected to forgo the collection of any Fire Fees for its fiscal year 2025, terminated its service contract with CES, purchased certain fire apparatus and equipment from CES, and as it originally did in December 2021, adopted an ordinance providing for the collection of a Fire Protection Service Tax. The Fire Fee Ordinance nevertheless remains intact and unrepealed.

STANDARD OF REVIEW

The filings pending before the Court and addressed herein require the Court apply two (2) standards of review – the standard of review applicable to a motion to dismiss and motion for judgment on the pleadings as well as the standard of review applicable to a motion for summary judgment. The standard employed in determining a motion for judgment on pleadings is the same as that employed when reviewing a motion to dismiss for failure to state a claim. *Scata v. Pinnacle Enterprises, Inc.*, 136 Ga. App. 451, 452 (1975). A motion to dismiss should only be granted when the complaint shows with certainty that the plaintiff would not be entitled to relief under any state of facts that could be proven in support of its claims ***and*** the defendant establishes that plaintiff could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. *See Cardinale v. Westmoreland, et al.*, 2023 WL 2491898 (Ga. Ct. App. Mar. 14, 2023); *Department of Human Resources v. Crews*, 278 Ga. App. 56, 628 S.E.2d 191 (2006). In evaluating a motion to dismiss, all pleadings must be viewed in the light most

[9] Interest on the liquated refund owed is continuing to accrue at the legal rate of 7% per annum, or $5,149.85 per day, since Named Plaintiffs' filing of their Motion for Summary Judgment on June 30, 2025, setting forth the undisputed interest amount at that time of $2,790,509.43. *See T-Mobile, South, LLC*, 305 Ga. App. at 475, 699 S.E.2d at 810 (citation omitted) ("A taxpayer is entitled to recover prejudgment interest on wrongfully collected taxes from the date it demands a refund."). *See also Eastern Air Lines, Inc. v. Fulton Cn'ty*, 183 Ga. App. 891, 892 (1987) (superseded by statute as to State as stated in *Georgia Dept. of Corrections v. Couch*, 295 Ga. 469 (2014)) (recognizing taxpayers' entitlement to recover prejudgment interest at the rate of 7% per annum on tax refund from the date the claim becomes due or is demanded until the date of recovery); O.C.G.A. §§ 7–4–2, 7–4–15.

favorable to the plaintiff, all well-pled allegations in the complaint must be viewed as true, and all denials set forth in the answer must be viewed as false. *See PV Holding Company v. Poe, et al.*, 360 Ga. App. 381, 382, 861 S.E.2d 265, 266 (2021).[10]

Summary judgment, on the other hand, is appropriate where "the documents, affidavits, depositions, and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff's case" and the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. *Williams v. Truett*, 251 Ga. App. 46, 46-47, 553 S.E.2d 350, 351 (2001); O.C.G.A. § 9–11–56(c); *accord Lau's Corp. v. Haskins*, 261 Ga. 491, 405 S.E.2d 474 (1991). The party opposing a motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in [O.C.G.A. § 9-11-56], must set forth specific facts showing that there is a genuine issue for trial." O.C.G.A. § 9–11–56(e). If he does not so respond, summary judgment, if appropriate, shall be entered against him. *Id.* Indeed, in the absence of any genuine issue of material fact, the Court can apply the appropriate legal principles and define the legal rights of the parties. *See Caldwell v. Mayor and Alderman of City of Savannah*, 101 Ga. App. 683, 684, 115 S.E.2d 403, 404 (1960).

---

[10] Defendant asserts the same arguments in its Motion for Judgment on the Pleadings and Motion to Dismiss: (1) that taxes in a Special District do not have to be *ad valorem* and (2) that legal precedent indicates that a county may charge a fee or an assessment for fire protection. Defendant also includes argument that the Fire Fee does not violate due process or equal protection. However, no claim for due process or equal protection violation exists in Named Plaintiffs' Complaint as amended. As an initial matter, the Court notes that the Court denied Defendant's previous Motion to Dismiss in its March 11, 2024 Order which addressed the same operative facts and underlying legal arguments. While Defendant has added additional argument and citation in support of its arguments, such does present the opportunity for a second bite of the apple addressing the same operative facts and fundamental legal arguments. *See Williams v. DeKalb County*, 364 Ga. App. 710 (2022)) (*vacated on other grounds by Williams v. Dekalb County*, 371 Ga. App. 341 (2024) (finding the trial court erred in granting a motion for judgment on the pleadings after a prior motion to dismiss had been denied, as the operative facts had not changed despite the filing of amended pleadings); *Cain v. Phillips*, 212 Ga. 329, 330, 92 S.E.2d 303, 304 (1956) ("if a defendant by demurrer calls into question the sufficiency of a petition and the court renders a decision, whether right or wrong, holding that the petition sets out a cause of action, the defendant is precluded from again challenging the sufficiency of the petition so long as that decision stands unreversed"). Nonetheless, the Amended Complaint is not subject to dismissal or judgment on the pleadings for the reasons asserted by Defendant as addressed by the Court hereinafter.

DISCUSSION

Ultimately, the outcome of this case turns on three key issues: (1) whether the Fire Fee is a tax on real property; (2) whether a tax on real property in a Special District must be *ad valorem*. and (3) whether the Refund Statute provides a remedy to obtain tax refunds in the matter. Based on the undisputed facts and existing Georgia law and precedent, the Court finds; (1) the Fire Fee is a tax on real property; (2) taxes on real property, even those assessed in a Special District, must be *ad valorem*; and (3) Named Plaintiffs and all class members are entitled to recover refunds under the Refund Statute.

I. The Fire Fee is a tax on real property.

Foreshadowing a case like this one, Fulton County Superior Court Judge Barnes, finding that a stormwater "fee" was actually a tax, stated that:

> Here the City has effectively taken an item which was once paid for by the general fund and recharacterized it as a separate and distinct "fee" without a corresponding decrease in taxes. The City has done so without the protections afforded for taxpayers through the taxing and budgetary processes provided in the Constitution and without the public scrutiny which surrounds the budgetary process and property tax increases. **The Court can easily envision a day when the City [or a County] would take other core governmental functions, such as police and fire protection, and assess each landowner a "fee" for this "service" rendered. A tax is a tax, regardless of the innocuous, euphemistic title applied to it ...**

Fulton County Taxpayers Association v. City of Atlanta, 1999 WL 1102795, *4 (Fulton Cty. Supr. Ct. Sept. 22, 1999) (Emphasis supplied). Thus, "[t]he distinction between a tax and a fee is not one of names but of substance." *McLeod v. Columbia County*, 278 Ga. 242, 244, 599 S.E.2d 152 (2004). "Given the inherent danger that legislative bodies might circumvent constitutional constraints by levying charges that, while officially labeled something else, possess all the basic attributes of a tax, courts must look beyond a charge's official designation and analyze its core nature by focusing on its purpose, design, and function in the real world." 16 McQuillin Mun.

Corp. § 44:24 (3d ed.).

Starting with taxes and fees, "[a] tax is an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes, and not as payment for a special privilege or a service rendered." *Gunby v. Yates*, 214 Ga. 17, 19, 102 S.E.2d 548 (1958). Under this well-established definition, taxes pay for overall public goods and benefits like "sewers ... [and] paved streets and sidewalks." *Hayden v. City of Atlanta*, 70 Ga. 817, 824 (1884); *see also Dunlap v. Tift*, 209 Ga. 201, 209 (1952) (describing roads as public benefits); *Fulton Cnty. Taxpayers Ass'n*, 1999 WL 1102795, at *4 (describing police, fire, and stormwater management services as public benefits). In contrast, fees are a charge for a particular service provided, based on the payer's contribution to the problem, *McLeod*, 278 Ga. at 244, 599 S.E.2d 152, and are generally described as having two critical elements: a *voluntary* payment made for a *particular* "*privilege*," unique "*benefit*," or "*service*[]." *Luke v. Ga. Dept. of Nat'l Res's.*, 270 Ga. 647, 648 (1999).

Assessments, on the other hand, are less defined as the case law over the years has blurred the line between fees and assessments, making it difficult to ascertain the difference and affirmatively state when a charge is a fee or assessment. It is sufficient, for purposes of this case, to focus on that which the Georgia appellate courts have made abundantly clear. First, "assessments are not burdens but equivalents, and are laid for local purposes upon local objects, and are compensated for to some extent in local benefits and improvements, enhancing the value of the property assessed." *City of Winder*, 318 Ga. at 562, 899 S.E.2d at 168 (citing *Hayden v. City of Atlanta*, 70 Ga. 817, 822-23 (1884)). Assessments are "special payment[s]", *id.*, for "local benefits and improvements [which] enhance the value of the property assessed." *Hayden*, 70 Ga. at 822-23. Stated differently, assessments are charges against a property for some service or

improvement that "result[s] in some special advantage to the particular owner in which the general public does not participate..." *City of Atlanta v. Hamlein*, 96 Ga. 381, 23 S.E. 408, 408 (1895). Second, assessments include "special assessments" for local capital improvements, such as street improvements, drainage installation, and the laying of a sewer line. *See, e.g., Hayden v. City of Atlanta*, 70 Ga. 817 (1884); *City of Atlanta v. Hamlein*, 96 Ga. 381, 23 S.E. 408 (1895). Lastly, "assessment", as used in the Special Districts Clause, is "the act of charging a special payment *but not to include fees and taxes*." *City of Winder*, 318 Ga. at 562, 899 S.E.2d at 168–69 (emphasis added). Basically, "'assessments' *refer to any assessment that is not otherwise classified as a tax or fee*", including, but not limited to, "special assessments" for local improvements. *Id.* (emphasis added) Thus, if a charge meets the definition of a tax, not only is it not a fee, but it is also not an assessment. As such the only issue for determination by the Court is whether the Fire Fee is a tax.

Georgia courts generally consider four (4) criteria when attempting to decipher whether a charge is a tax, defined by the Georgia Supreme Court as:

> (1) a means for the government to raise general revenue based on the payer's ability to pay (i.e., income or ownership of property), without regard to direct benefits that may inure to the payer or to the property taxed; (2) mandatory; (3) not related to the payer's contribution to the burden on government; and (4) not resulting in a "special benefit" to the payer different from those to whom the charge does not apply.

Bellsouth Telecommunications, LLC v. Cobb Cnty., 305 Ga. 144, 146–47, 824 S.E.2d 233, 236–37 (2019) (citing *McLeod*, 278 Ga. at 244-245, 599 S.E.2d 152, and *Homewood Village, LLC v. Unified Govt. of Athens-Clarke County*, 292 Ga. 514, 515, 739 S.E.2d 316 (2013) (the "*Bellsouth* Factors" or "*Bellsouth* Criteria").

Applying such criteria, Georgia courts routinely find charges similar to the Fire Fee to be taxes, not fees. For instance, the Georgia Supreme Court applied the tax versus fee factors in *Bellsouth* and held that a charge assessed on telephone subscribers to offset the cost of 911 services

was a tax, not a fee. Specifically, Cobb and Gwinnett County imposed a monthly "911 charge" on each telephone subscriber served by their respective 911 systems to offset the cost of operating the 911 systems. The Bellsouth court reasoned that:

(1) The 911 charge was "assessed based on the extent to which a person or business subscribe[d] to telephone service, not the extent to which a person c[ould] or in fact d[id] summon emergency services." *Bellsouth*, 305 Ga. at 147, 824 S.E.2d 233. The 911 charge, the Court noted, was "not charged to persons who ha[d] access to phone service paid for by someone else, such as a house phone in a hospital lobby or a homeless shelter. And the assessment d[id] not depend on whether a person actually call[ed] 911." *Id.*

(2) The 911 charge was mandatory as people could not opt out of or avoid the charge by subscribing to an alternate phone service. *Id.* at 148.

(3) There was no relationship between the obligation to pay the 911 charge and the burden the payer placed on emergency services systems, and those who paid the charge received no special access to emergency services. Specifically, "[a] person who pa[id] the charge year after year might well never make a 911 call on the associated telephone line, while another person [could have] use[d] a public phone or borrowed phone to summon emergency services (or others [could have] summon[ed] emergency services on their behalf) on a regular basis", and "a visitor to the state [could have] easily dial[ed] 911 and summon[ed] emergency service on her cell phone (or a public or borrowed phone), even though she [was] not subject to the charge." *Id.* at 149.

(4) Those who paid the charge received no special access to emergency services. Emergency services were available to all within a given emergency services area regardless of payment of the 911 charge. *Id.*

Thus, the Court found the 911 charge possessed all the recognized characteristics of, and consequently was, a tax.

Likewise, the Georgia Court of Appeals recently applied the *Bellsouth* Criteria and rationale in an analogous context to the case at bar in *Lincoln Cnty. v. Serenity Builders & Dev., LLC*, 373 Ga. App. 395, 908 S.E.2d 663 (2024), cert. denied (Mar. 18, 2025). There, Lincoln County imposed a "water availability charge" against the owners of all real property lots or parcels to which water service was available (meaning that a water service connection was installed and the water line and/or system approved by the county engineer) but not actually connected or used.

The Court applied the *Bellsouth* Factors and determined that "the water availability assessment ha[d] all of the features of a tax and none of the features of a fee." *Id.* at 400, 668. Specifically, the Court found that the water availability assessment was assessed based on property ownership, intended to cover the general cost of maintaining the County's water infrastructure, and "imposed regardless of the fact that no direct benefit (*i.e.*, water) inure[d] to the persons and properties against which it [wa]s assessed. *Id.* at 400, 908 S.E.2d 663. Additionally, the Court reasoned that the water availability assessment was mandatory as the payors had no ability to reduce the amount of the assessment and, significantly, the County was authorized to impose a lien directly against the property of those who failed to pay the charge. *Id.* And finally, the water availability assessment, the Court held, was imposed regardless of the burden, if any, that owners of undeveloped lots without water service connections placed on the County and resulted in no special benefit to the payer of the assessment different from those to whom the charge did not apply. *Id.* at 400. "Those who pa[id] the water availability assessment receive[d] no water from Lincoln County. Likewise, those to whom the water availability assessment d[id] not apply receive[d] no water from Lincoln County." *Id.* The water availability assessment was, therefore, "a tax, specifically ***a tax on real property***, and, as it was imposed on a per-lot basis and ***not ad valorem***, was illegal." *Id.* at 402 (emphasis added).

As discussed in detail below, applying the *Bellsouth* Criteria to the Fire Fee involved here reveals that the Fire Fee, like the 911 charge in *Bellsouth* and the water availability assessment in *Serenity Builders*, is a tax assessed against Named Plaintiffs and the prospective class members, not a fee or assessment.

A. The Fire Fee is a means for the County to raise general revenue based on the payer's ability to pay.

First, the Fire Fee is a means for the County to raise general revenue based on the payer's

ability to pay – that is, the payer's ownership of property – without regard to direct benefits that inure to the payor or to the property taxed. Indeed, the explicit language of the Fire Fee Ordinance provides that *only persons and entities owning property in the Fire Service Area* are assessed the Fire Fee, stating that "[a]ll properties within the Fire Service Area are subject to [the Fire Fee]..." and the owners thereof are responsible for the payment of the Fire Fee. *See* Plaintiffs' Motion for Summary Judgment ("Pl. MSJ"), Exhibit ("Ex.") B at §§21-1205(1), 21-1208(1)(b), (g); *see also* Pl. MSJ, Ex. C and D at §§21-1205(1), 21-1208(1)(f).[11] The Fire Fee Ordinance then goes on to state, and the County has confirmed, that the purpose of the Fire Fee is to fund fire protection services in the Fire Service Area and "allocate the cost of maintaining a constant state of availability, readiness and preparedness to provide fire protection services among the owners of property in the Fire Service Area..." *See* Pl. MSJ, Ex. A-D at §21-1201(1)(g).[12] When plainly asked whether the purpose of the Fire Fee is to raise revenue to fund fire protection services, the

[11] Counsel for Named Plaintiffs conducted the County's 30(b)(6) deposition on March 27, 2025, and deposed the County's designated agents, Linda Cramer, the County Manager, Amy Davis, the County Finance Director, and Allen Cantrell, the County Auditor. At such deposition, said representatives testified that the Fire Fees are billed only to property owners. No one else is subject to the Fire Fee:

> **Q.** The fire fee -- under the ordinance, it's -- it's based on property ownership; correct?
> **MS. CRAMER:** It is billed to property owners.
> **Q.** Yeah. So if you own the property, then you pay the fire fee?
> **MS. CRAMER:** Yes.
> **Q.** And if you don't own property, you don't pay a fire fee?
> **MS. CRAMER:** Yes.
> ...
> **Q.** If you're a tenant -- if you're a tenant in a place, then Chatham County is not coming after you for failure to pay a fire fee?
> **MS. DAVIS:** No.
> **Q.** Okay. Only the owners?
> **MS. DAVIS:** Yes.

See Pl. MSJ, Ex. N at p. 58-59.

[12] According to the Fire Fee Ordinance, monies collected by the assessment of the Fire Fee were to be "dispersed only for fire protection capital, operating and non-operating costs, lease payments and debt service of bonds or other indebtedness for fire protection purposes." *Id.* at §21-1201(j). The costs for which the Fire Fee could be used included "the payment of debt obligations, lease payments, operating expenses, contractual obligations, capital outlays, non-operating expenses, provisions for prudent reserves and other costs as deemed appropriate by the governing body of [the] County." *Id.* at §21-1205(4).

County's designated agent and finance director, Amy Davis, responded "[y]es." *See* Pl. MSJ, Ex. N at p. 60.[13]

The Fire Fee is therefore imposed to cover not only the cost of providing fire protection services but also the general cost of ensuring such services are available and, similar to the *Bellsouth* 911 charge, "is assessed based on the extent to which a person or business [owns property located in the Fire Service Area], not the extent to which a person can or in fact does summon emergency services." *Bellsouth*, 305 Ga. at 147. All persons residing in or passing through the Fire Service Area are welcome to summon the County's fire protection services despite having never paid the Fire Fee, and the County, as discussed in further detail below, is obligated to respond to all calls for service, regardless of payment or nonpayment of the Fire Fee. The explicit language of the Fire Fee Ordinance and Defendant's deposition testimony accordingly establish that the Fire Fee is a means for the County to raise general revenue and maintain the readiness and availability of its fire protection services, and that such Fee is based on the payor's ability to pay – that is, the payor's ownership of property – without regard to direct benefits that inure to the payor or to the property taxed.

Defendant, other than to simply state that the Fire Fee is a charge for a service (that service being the *availability* of fire protection services) and claim that the Fire Fee, because it is held in a special fund, cannot be a tax, makes no real, discernible argument that the Fire Fee is not a means to raise general revenue based on property ownership, and the Court finds no basis to conclude otherwise. As the Georgia Supreme Court noted in *Bellsouth*, "requiring a governmental charge to

[13] Where the Georgia Supreme Court has found that purported "fee revenue" was "not for the purpose of compensating the ordinary for a service rendered, but [rather] for the purpose of raising revenue for the expenses" of government operations, it was deemed a tax without further review. *Gunby*, 214 Ga. at 19; *see also Richmond Cnty. v. Richmond Cnty. Bus. Ass'n.*, 225 Ga. 568, 570-71 (1969) (deciding a license fee was a tax because it was intended to raise revenue and not regulate); *Bellsouth*, 305 Ga. at 149 (considering other factors but still deciding that a payer "may be able to [obtain the government service] more easily than one who does not [pay]" but if the service is still available to all, it is likely a tax).

be deposited in a special purpose fund does not make it not a tax." 305 Ga. at 148. The Fire Fee is a means for the County to raise general revenue based on the payer's ability to pay.

B. The Fire Fee is mandatory.

Next, and critically, the Fire Fee is mandatory for all owners of property located in the Fire Service Area. In considering whether a charge is mandatory, Georgia courts "consider[] not whether someone may theoretically continue to live a lawful existence without using a particular service at all, but whether someone may obtain that service by way of an alternate route that avoids paying the charge." *Bellsouth*, 305 Ga. at 148, 824 S.E.2d 233 (finding the 911 charge mandatory where people could not opt out of the emergency services system by subscribing to an alternative phone service); *Serenity Builders*, 373 Ga. App. at 400, 908 S.E.2d 663 (water availability assessment a tax because property owners had no ability to reduce the amount of the charge and the county could impose a lien directly against the property of those who failed to pay the charge); *compare McLeod*, 278 Ga. at 245, 599 S.E.2d 152 (utility charge not a tax because property owners could reduce the amount of the charge by creating and maintaining private stormwater management systems, and ordinance did not permit imposition of a lien directly against the property of those who fail to pay the charge); *Luke v. Ga. Dept. of Natural Resources*, 270 Ga. 647, 648, 513 S.E.2d 728 (1999) (fee for participation in underground storage tank trust fund not a tax given that storage tank owner may demonstrate evidence of financial responsibility as required by statute by means other than participation in fund).

Here, Fire Service Area property owners may not obtain fire protection services "by way of an alternate route that avoids paying the charge", *Bellsouth*, 305 Ga. at 148, nor can they "reduce the amount of the charge". *McLeod*, 278 Ga. at 245, 599 S.E.2d 152. By the plain language of the Fire Fee Ordinance, all properties within the special fire district must pay the Fire Fee. *See* Pl.

MSJ, Ex. A-D, Fire Fee Ordinance § 21-1205(1) ("[a]ll Properties within the Fire Service Area are subject to an annual Fire Protection Service Fee assessment effective July 1, 2022…").

Further evidencing the mandatory nature of the Fire Fee, the Fire Fee Ordinance provides no mechanism for a property owner to opt out of the Fire Fee, and should a property owner fail to pay the Fire Fee when due, the Fire Fee Ordinance authorizes the County to assess the property owner "[a] late charge penalty of the greater of $25 or ten percent (10%) of the amount due", as well as all costs of collection, including attorney's fees and court costs; "collect[] [the Fire Fee] by any means allowed under law, including but not limited to filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby, including enforcement of any lien resulting from any such judgment"; and punish nonpayment through fines and community service. *See* Pl. MSJ, Ex. B at §§21-1205(1), 21-1208(1)(b), (g); Pl. MSJ, Ex. C and D at §§21-1205(1), 21-1208(1)(f). This portion of the Fire Fee Ordinance makes, and as acknowledged by the County was intended to make, payment of the Fire Fee mandatory and leaves property owners in the Fire Service Area with no alternative means of receiving fire protection services. *See* Pl. MSJ, Ex. N at p. 52-53 (Q. "And this ordinance -- this portion of the ordinance was basically to -- to make it mandatory for the payment of the fire fees?" MS. CRAMER: "Yes."). And pursuant to such authority, the County may obtain judgments and writs of fieri facias against those property owners failing to pay the Fire Fee. *See Serenity Builders*, 373 Ga. App. at 400 (noting the county's imposition of liens against property of those who failed to pay the water availability charged confirmed the mandatory nature thereof). The Fire Fee is accordingly mandatory.

Defendant's argument that the Fire Fee is not mandatory because "the County has numerous other fire districts and residents can opt out [o]f [the Fire Service Area] and join a

different fire district to receive their services from either a volunteer fire department or a municipal fire department" is unavailing. Such assertion is contrary to the plain language of the Fire Fee Ordinance and Defendant's sworn testimony. As admitted by Defendant, the Fire Fee Ordinance requires every property located in the Fire Service Area be serviced by a "certified fire department." *See* Def MSJ at p. 28. Defendant states that the County will remove a property from the Fire Service Area, if the property owner demonstrates that his property will be serviced by another certified fire department, such as a municipal or volunteer fire department. *See* Pl MSJ, Ex. N at p. 67-69. There is no authority for such proposition under the language of the Fire Fee Ordinance. Moreover, such "option" to remove a property from the Fire Service Area is illusory as a precondition to any such removal is the availability of a municipal or volunteer fire department to service the removed property. Clearly, if there were other municipal or volunteer fire departments with the capacity or ability to service every property in the Fire Service Area, there would have been no need for the County to "save CES", create the Fire Service Area, and take over the provision of fire services therein. In fact, by Defendant's own admission the entire purpose for creation of the Fire Service Area and the Fire Fee Ordinance was that CES was the only fire protection service provider in the Fire Service Area and without the financial support of all the affected property owners and the involvement of the County, the area would be left without fire service. *See* Def Resp. to Pl MSJ at p. 2.

And even for those limited properties that may potentially receive service from another municipal or volunteer fire department, the only way a property owner may avoid paying the Fire Fee and exercise the purported "option" to remove its property from the Fire Service Area is if Defendant (not the property owner) literally changes the contours of the Fire Service Area (a special service district) and removes the owner's property from the special district. Thus, it is

ultimately Defendant's choice and is not an option for a property owner to opt out of payment of the Fire Fee.

Defendant's sole claim that the Fire Fee is not mandatory is consequently without merit, and the provisions of the Fire Fee Ordinance undeniably demonstrate that payment of the Fire Fee is mandatory.

C. The Fire Fee is not related to the payer's contribution to the burden on the County.

Thirdly, there is no relationship between the obligation to pay the Fire Fee and the burden, if any, the payors place on the County's fire protection services. If a charge is based on property ownership and not the property owner's contribution to the burden on the county, the charge is likely a tax. *Bellsouth*, 305 Ga. at 149, 824 S.E.2d 233. Such is the situation involved here as the Fire Fee is based on property ownership, arbitrary, and created without any consideration of the *actual* burden a property places on the County. The Fire Fee is assessed only against the owners of real property and, whether looking at the method of calculation required under the June 2022 Amendment or the June 2023 Amendment, includes, at the very least, a flat fee of $100.00 on vacant land, *no matter the size, nature, use, or characteristics of the property assessed*, and for improved properties a fee for all structures located thereon, the amount of which increases with the square footage of such structures. The Fire Fee rate for improved properties, like vacant land, is the same *regardless of the size of the land itself or the nature, use, or characteristics of the property*. A one (1) acre, vacant lot cleared of any timber is assessed the same flat fee as a vacant lot comprised of twenty (20) acres of timber. Similarly, a one (1) acre lot including a 1,200 square foot residence is assessed, under the June 2022 Amendment, the same $125 Fire Fee or, under the June 2023 Amendment, the same $0.14 per square foot of burnable structure as a fifteen (15) acre lot including a 1,999 square foot commercial or industrial plant. *Id.*

The amount of the Fire Fee is therefore based on a general perceived increase in the resources needed to suppress a fire on property improved with larger structures but neglects to consider how the size, nature, use, and characteristics of a property may impact the *potential* resources needed to combat a fire on a property, even if vacant. Moreover, as acknowledged by the County's representatives, the obligation to pay the Fire Fee and the amount thereof is based on just that, the *potential* burden a particular property *may* place on the County *should* the need for fire services arise:

> **Q.** You would agree that you could pay a fire fee year after year and never actually use any fire services?
>
> **MS. CRAMER:** Yes.
>
> **Q.** ...the fire fee is not based on the actual consumption or use of fire services?
>
> **MS. CRAMER:** Correct.
>
> ...
>
> **Q.** The system the County came up with is based on the potential burden that each property owner's land may have on the fire service, not the actual burden; correct?
>
> **MS. CRAMER:** Yes.
>
> **Q.** Yeah, because the actual burden is measured by which places had fires and when you got to go and put the fires out; right?
>
> **MS. CRAMER:** Yes.
>
> **MR. CANTRELL:** Correct.

Pl. MSJ, Ex. N, at p. 61-62. Indeed, when developing the overall Fire Fee structure, Ms. Cramer and the County's Auditor, Allen Cantrell, conceded that the County merely selected a system that allows it to collect the amount of money needed for fire services generally without any meaningful analysis of even the *potential* burden, let alone any consideration of the *actual* burden, a particular property places on the County:

> **Q.** And what did you use to come up with the [Fire Fee] options [presented to the Board of Commissioners]? Where did the numbers come from?
>
> **MR. CANTRELL:** So these are all based on the assessment -- the board of assessors, square footage, data, and I would pull the properties in by the size of their land or square footage. And based on kind of the risk of what that square footage may be required as far as response from fire is kind of why we developed the brackets to increase as more square footage became part of it.

Q. When you say "the risk," you just mean that the larger the square footage in your -- in your –

MR. CANTRELL: The more response that may be required.

Q. *Yeah, in your opinion. But that's not based on any sort of fire data, anything? It's just, you know, you're using old common sense; right?*

MR. CANTRELL: *Yes.*

Q. You're basically -- and you were also really just trying to come up with proposals -- here's how much money we need, what are the different ways to come up with that amount of money?

MR. CANTRELL: Yes, in an equitable fashion.

Id. at p. 87-88.[14]

Thus, the Fire Fee being based on nothing more than property ownership and the County's subjective, unsupported perception of an "equitable" way to assess the Fire Fee, there is no relationship between the Fire Fee and any burden the payor places on use of the fire services.

In contradiction of such above quoted testimony, Defendant contends that its flat fee and variable square footage rates used to calculate the Fire Fee results in a "fair and equitable apportionment of costs…[which] *should* correlate to the fire protection services made *available* to properties." *See* Def MSJ at p. 24 (emphasis added). In support of such argument, Defendant relies on *Cherokee Cnty. v. Greater Atlanta Homebuilders Ass'n, Inc.*, 255 Ga. App. 764, 566 S.E.2d

---

[14] Tellingly, and despite evidence indicating the heightened need of fire protection services for vacant land, the County adopted a fee structure whereby vacant landowners paid a flat fee of $100, regardless of the property's size, nature, or characteristics, while the owners of improved properties shouldered the vast majority of the burden:

Q. So for the rate structures, where did the number, $100 flat fee, come from?

…

MS. CRAMER: The $100 -- the -- another part of that was that CES said there was a lot of land –

MR. CANTRELL: Almost 50% of their –

MS. CRAMER: -- fires on vacant -- there were fires on vacant properties that they had to go and respond to.

MS. DAVIS: Grass fires.

Q. So almost 50% of the fires they responded to were vacant land?

MS. CRAMER: Yes.

MS. DAVIS: Were grass fires or something similar.

Q. And under the rate structure that was adopted, the majority of the fire fees collected were based on improved structures?

MS. CRAMER: Correct.

Id. at p. 80-81.

470 (2002), for the proposition that the square footage model for assessing fees has been upheld or approved. *Greater Atlanta Homebuilders* is, however, inapposite. *Greater Atlanta Homebuilders* involved a developer's *due process* claim that Cherokee County improperly based the calculation of its impact fees, fees statutorily authorized under O.C.G.A. § 36-71-1, *et seq.*, on the square footage of the infrastructure (such as fire and police departments) needed to accommodate and serve the county's increasing population as opposed to workload, response time, and other matters driven by numbers of personnel needed to so accommodate and serve the county's increasing population. Finding that "impact fee calculations focus not on needed personnel but on needed facilities to accommodate the new growth," *id.*, 255 Ga. App. at 771, 566 S.E.2d at 477, the county, the Court held, "had a *rational basis* for using facility square footage" to determine impact fees. *Id. Greater Atlanta Homebuilders* consequently did not involve a tax vs. fee analysis, nor did it contain any discussion whatsoever concerning a particular property owner's contribution to some "problem."

Relevant to this lawsuit or at least Defendant's arguments, *Greater Atlanta Homebuilders* accordingly recognizes that statutorily authorized impact fees calculated on a square footage basis satisfy the Due Process Clause's rational basis test. Nothing more. It certainly does not stand for the proposition that calculating fire fees on a flat fee and square footage basis corresponds to a property owner's contribution to the burden on the service provider for purposes of a tax vs. fee analysis. Thus, no Due Process or Equal Protection claims being present in the instant action, *Greater Atlanta Homebuilders* does not affect the Court's analysis. The Fire Fee being based on nothing more than property ownership and the County's subjective, unsupported perception of an "equitable" way to assess the Fire Fee, there is no relationship between the Fire Fee and any burden the payor places on use of the fire services.

D. The Fire Fee does not result in a "special benefit" to the payer different from those to whom the Fire Fee does not apply.

Lastly, those who pay the Fire Fee receive no special benefit or access to fire protection services. "[User] fees share common traits that distinguish them from taxes: they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society." *Fulton Cnty. v. T-Mobile, S., LLC*, 305 Ga. App. 466, 471, 699 S.E.2d 802, 807 (2010) (citing *State v. City of Port Orange*, 650 So.2d 1, 3 (Fla.1994); *Mcleod*, 278 Ga. at 244, 599 S.E.2d 152 ("A charge is generally not a tax if its object and purpose is to provide compensation for services rendered.") (citation omitted). The benefit purportedly conferred on the payor of the fee must be "*recognizable*...to [such] payor", and the *mere availability* of a service is not a recognized benefit. *Monticello, Ltd. v. City of Atlanta*, 231 Ga. App. 382, 387, 499 S.E.2d 157, 162 (1998) (emphasis added). Indeed, a local government "cannot impose a fee without a corresponding benefit by asserting that the sheer existence of a...service provides to all its citizens *an inchoate opportunity to take advantage of the service at some future date*." *Id.* (emphasis added). Accordingly, where the payor of a charge receives no benefit, access, or service not received by the general public, the charge is routinely held to be a tax, not a fee.[15]

[15] *See, e.g., Serenity Builders*, 373 Ga. App. at 400, 908 S.E.2d 663 (water availability assessment was a tax – "Those who pay the water availability assessment receive no water from Lincoln County. Likewise, those to whom the water availability assessment does not apply receive no water from Lincoln County."); *Bellsouth*, 305 Ga. at 149, 824 S.E.2d 233 (911 charge was a tax where payors received no benefit not received by the general public and all members of the public could access the 911 system); *T-Mobile, S., LLC*, 305 Ga. App. at 471, 699 S.E.2d 802 (same); *Gunby v. Yates*, 214 Ga. 17, 19, 102 S.E.2d 548 (1958) (one dollar for each marriage license sold in the state, in addition to the regular license fee, to be allocated to the probate judges' retirement fund, "was not for the purpose of compensating the ordinary for a service rendered, but was for the purpose of raising revenue for the expenses of operating the retirement board and paying benefits to retired ordinaries," and was thus an unconstitutional tax"). *Compare, e.g., McLeod*, 278 Ga. 242, 99 S.E.2d 152 (monthly stormwater utility charge assessed against owners of developed property within a designated area based on the amount of impervious surface area located on their property was a fee and not a tax as the properties assessed received a service and special benefit – the control and treatment of stormwater contributed by the properties); *Levetan v. Lanier Worldwide*, 265 Ga. 323, 454 S.E.2d 504 (1995) (charges for removing and disposing of garbage are merely a fee for special services); *Crestlawn Mem. Park v. City of Atlanta*, 235 Ga. 194, 195, 219 S.E.2d 122 (1975) (assessment for removal of trash and refuse from streets abutting cemetery is not a tax).

In this case, payment of the Fire Fee results in no special benefit or access to the payor of the Fire Fee not enjoyed by the general public. To the contrary, those who pay the Fire Fee receive fire protection services from the County, and those to whom the Fire Fee does not apply likewise receive fire protection services from the County. In fact, the County is obligated to respond to *all* calls for fire protection service, regardless of payment or nonpayment of the Fire Fee:

> **Q.** And at that time, once this contract [with the County] went into effect, if someone called 911 and said they had a fire, would CES check to see if they were someone who had paid the fire fee?
>
> **CHIEF KEARNS:** No.
>
> ...
>
> **Q.** So whether you were a payor of the fire fee or not a payor of the fire fee, if -- if CES responded to the fire, there was no charge?
>
> **CHIEF KEARNS:** Correct.
>
> ...
>
> **Q.** So if a -- if a motorist was driving through Chatham County and they were in the service district and their car caught on fire, CES would respond; correct?
>
> **CHIEF KEARNS:** "Yes."
>
> **Q.** And they would not send a bill to that motorist?
>
> **CHIEF KEARNS:** Correct.
>
> **Q.** Personal property, if it caught on fire, CES would respond and put out that fire even though that person had not paid a fire fee for that personal property?
>
> **CHIEF KEARNS:** Yes...
>
> **Q.** ...So a tenant -- if a tenant called and they had a fire, CES would respond; correct?
>
> **CHIEF KEARNS:** Yes.
>
> **Q.** And they would not send that tenant a bill?
>
> ...
>
> **CHIEF KEARNS:** That's correct.

Pl. MSJ, Ex. E at p. 13, 18-20.[16] Additionally, when asked specifically if payors of the Fire Fee receive any benefit different from non-payors, County Administrator Cramer stated that no such benefits are conferred:

> **Q.** You would agree that the benefits that named plaintiff gets from having this fire protection service are the same as everyone else who pays the fire fee?

[16]When asked at the County's 30(b)(6) deposition whether the County's response to prior discovery "that the County could refuse to provide service to those who had not paid the fire fee" was incorrect, the County Manager, Linda Cramer, responded, "Incorrect; the County -- the County would -- in the services agreements told CES that they had to respond to all parties." Pl. MSJ, Ex. N at p. 72; *see also* Pl. MSJ, Ex. G at p. 3 ("CES will not charge any citizen or property owner of unincorporated Chatham County a 'readiness' fee or any other fire fee during the term of this agreement.").

MS. CRAMER: Yes.
Q. And the same as everyone who doesn't pay a fire fee?
MS. CRAMER: Yes.

Pl. MSJ, Ex. G, at p. 61-62.[17] For the fiscal years 2023 and 2024, no charges were issued by CES to anyone who summoned fire or emergency services. A tenant or motorist who paid no fire fee could summon fire emergency services and receive no bill just as a payor of the Fire Fee. *See* Pl. MSJ, Ex. E at 13, 19-21; Pl. MSJ, Ex. F at 21-22. If anything it is the non-payer who receives the special benefit – *i.e.*, the availability of fire services at no cost.

Accordingly, and directly analogous to the 911 charge in *Bellsouth*, a property owner "who pays the [Fire Fee] year after year might well never [summon fire protection services to the assessed property], while another person [or entity renting property in the Fire Service Area may]...summon [fire protection] services (or others may summon [fire protection] services on their behalf) on a regular basis." *Bellsouth*, 305 Ga. at 149. Moreover, "a visitor to the [Fire Service Area] can easily...summon [fire protection] service" in response to, for instance, a vehicle fire, "even though she is not subject to the [Fire Fee]." *Id.* Simply put, "those who pay the [Fire Fee]...receive no benefit not received by the general public, because all members of the public may access the [County's fire protection services]" regardless of payment of the Fire Fee. *Fulton County v. T-Mobile South, LLC*, 305 Ga. App. at 471, 699 S.E.2d 802. Indeed, Named Plaintiff

---

[17] CES Chief Kearns agreed with the County representatives that those who pay the Fire Fee receive no special benefit or access to fire protection services different from those to whom the Fire Fee does not apply:

> **Q.** So would you agree with me that there -- that during this period when CES was operating under the contract with Chatham County, there was no difference in the fire services available for payors of the fire fee versus non-payors?
> **CHIEF KEARNS:** Yes.
> **Q.** So there was really -- there was no benefit enjoyed by the payors of the fire fee that non-payors didn't get?
> **CHIEF KEARNS:** Yes.

Pl. MSJ, Ex. E at p. 20. Further, when asked whether payors of the Fire Fee receive a special benefit in the form of lower homeowner's insurance premiums, Chief Kearns testified that not all insurance companies consider the ratings issued to local fire departments by the Insurance Services Office ("ISO"), and there is no guarantee that a lower ISO rating will result in a lower insurance premium. *See id.* at p. 23.

and the prospective class members' payment of the Fire Fee merely funds fire protection services in the Fire Service Area to ensure such services are available and provides all citizens of and visitors to the Fire Service Area, not just the payors of the Fire Fee, "*an inchoate opportunity to take advantage of the service at some future date*", if needed. *Monticello, Ltd.*, 231 Ga. App. at 387, 499 S.E.2d 157 (emphasis added). The Fire Fee therefore provides the same *recognizable* benefit to payors thereof as the water availability assessment provided to undeveloped lot owners in *Serenity Builders* – "none." *Serenity Builders*, 373 Ga. App. at 401, 908 S.E.2d 663. The Fire Fee therefore results in no special benefit to the payor different from nonpayers.

Defendant, relying on *McCorkle, et al. v. McDuffie County*, 21CV0462, Superior Court of McDuffie County, Georgia, argues that the payors of the Fire Fee receive a particular service, that being the *availability* of fire protection services, and claims that payment of the Fire Fee and the availability of fire protection services results in benefits to all properties located in the Fire Service Area, such as increased value, reduced risk to life and property, and reduced insurance premiums. *McCorkle* is, however, unpersuasive and not binding on this Court, and the supposed "special benefits" bestowed upon payors of the Fire Fee are directly belied by Defendant's prior testimony in this case and referenced hereinabove. As sworn to by Defendant's representatives, the County is obligated to respond to all calls for fire protection services, regardless of payment or nonpayment of the Fire Fee; property owners are not guaranteed to receive a lower homeowner's insurance premium simply because fire protection services are available; renters paying insurance premiums on property would receive the same benefit if any; and payors of the Fire Fee receive no benefit different from the general public.

The Fire Fee, based on the relevant factors, is consequently a tax.[18]

E. Defendant's contract with CES is of no consequence.

Defendant argues that its contract with CES changes the outcome of the analysis above. It does not. While referencing *Mesteller v. Gwinnett Cnty.*, 292 Ga. 675, 740 S.E.2d 605 (2013), Defendant contends that its contract with CES and corresponding assessment of the Fire Fee "is an issue of first impression" in Georgia and supports its argument that taxation of real property in special districts need not be *ad valorem* and/or that it is not actually providing the fire protection services but rather acting as a middleman of sorts. *See* Def Resp to Pl MSJ at p. 10, 4-5, 7, 15; Def MSJ at p. 8, 10, 18. Again, Defendant is incorrect. Local government contracts with third parties for the provision of services is nothing new and certainly not an issue of first impression. Moreover, the existence of such a contract does not alter a local government's obligation to comply with the laws of this State and the Constitution when taxing residents nor does it convert a government service to a non-government service. Indeed, in *Mesteller*, Gwinnett County contracted with five (5) private waste management companies to provide garbage and solid waste collection and disposal services to its citizens. To pay for such services, the county collected fees

[18] Notably, the Court is aware of no instance in which the Georgia Supreme Court upheld a charge as a fee unless it was both voluntary and payment of the charge afforded the payer a "direct and exclusive" benefit not shared with the general public. *See* Avi Brisman, Considerations in Establishing A Stormwater Utility, 26 S. Ill. U.L.J. 505, 520 (2002) (describing Georgia law as a jurisdiction where benefits from fees "must profit the particular person on whom the fee is imposed and... not ... the general public"); *see also Gunby*, 214 Ga. at 19.

It is further worth noting that other jurisdictions are in agreement that the type of charge involved here provides no special benefit but rather benefits the public as a whole and is a tax. *See City of Bromley v. Smith*, 149 S.W.3d 403 (Ky. 2004) (flat fee on every residential unit or lot and business unit for the provision of life squad or other emergency, non-fire-related services was an unconstitutional tax); *Emerson College. City of Boston*, 391 Mass. 415 (1984) (charge for the provision of fire protection services was a tax as the payer's received no benefit apart from those received by the general public); *Barber v. Commissioner of Revenue*, 674 S.W.2d 18 (Ky. Ct. App. 1984) (finding a charge for fire services to be a tax and noting that fire protection benefits all residents and is not comparable to a sewer service charge or solid waste disposal charge which may be based on use); *Kessler v. Hevesi*, 45 A.D.3d 474, 846 N.Y.S.2d 56, 57 (N.Y.App.Div.2007) (911 charge is a tax as it pays for services received by the general public); *Bay Area Cellular Tel. Co. v City of Union City*, 162 Cal. App. 4th 686, 695-699, 75 Cal.Rptr.3d 839 (Cal. Ct. App. 2008) (911 charge a tax given that it "inures to the benefit of the public as a whole, not to any particular group within the public," and "is not charged for use of the 911 system, but for access to the system, whether or not a resident ever places an emergency call").

through its annual tax assessment notices. The plaintiff argued that the county's assessment and collection of the fee, particularly through tax bills, violated the Georgia Constitution in that the County, by contracting with private waste management companies to collect solid waste, was not, in fact, providing solid waste collection services within the meaning of the relevant authorizing statute, and therefore was not authorized to place the collection fee on the tax bills. *Id.*, 292 Ga. at 676, 740 S.E.2d at 607. The Court disagreed – "in choosing the option of contracting with private solid waste collection companies, *the County is, through that method, providing solid waste collection services to Gwinnett County property owners*...; the fact that the individuals performing that service are not County employees, but employees of private contractors, *is of no moment*..." *Id.*, 292 Ga. at 677, 740 S.E.2d at 607-08 (emphasis added). The Court then went on to address the application of various Constitutional provisions to the solid waste fee as well as the plaintiff's argument that the fee was actually an unlawful tax.

Accordingly, the County's contract with CES is not an issue of first impression, and there is no case law supporting Defendant's contention that its election to contract with a third-party to provide fire protection services, as opposed to employing its own firefighters and owning its own equipment, alters Defendant's obligation to comply with the laws of this State and the Constitution when taxing residents, resulted in CES, as opposed to Defendant, actually providing the fire protection services, or somehow converted the County's act of making fire protection services available into the actual provision of a service. For all of the foregoing reasons, the Fire Fee is a tax, and particularly a tax on real property.

II. The Fire Fee is an invalid and unlawful tax as it is not *ad valorem*, and the fact that it is assessed in a special district does not change this result.

It being established that the Fire Fee is a tax on real property and not assessed at *ad valorem*, it is illegal. The County "can only exercise the power of taxation as conferred upon it

either directly by the Constitution or by the General Assembly when authorized by the Constitution." *DeKalb Co. v. Brown Builders*, 227 Ga. 777, 778, 183 S.E.2d 367, 369 (1971) (internal citations omitted). Longstanding precedent plainly establishes that taxes on real and tangible personal property must be *ad valorem*:

> Taxation on all real and tangible personal property subject to be taxed is required to be ad valorem – that is, according to value, and the requirement in the Constitution that the rule of taxation shall be uniform, means that all kinds of property of the same class not absolutely exempt must be taxed alike, by the same standard of valuation, equally with other taxable property of the same class, and coextensively with the territory to which it applies; meaning the territory from which the given tax, as a whole, is to be drawn.

Hutchins, et la. v. Howard, et al., 211 Ga. 830, 89 S.E. 2d 183, 186 (1955). *See also* Ga. Const. Art. VII, § I, ¶ III ("All taxes shall be levied and collected under general laws and for public purposes only...all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."; Ga. Const. Art. VII, §II, ¶ I ("Except as authorized in or pursuant to this Constitution, all laws exempting property from ad valorem taxation are void."). A tax on real property that is non-ad valorem violates the Uniformity Clause of the Georgia Constitution. *See Heron Lake II Apartments, LP v. Lowndes Cnty. Bd. of Ass'rs.*, 299 Ga. 598 (2016) (statute excluding tax credits from consideration of fair market value created a subclass of tangible property not permitted by constitution and violated uniformity provision).

Thus, any taxes levied on real property by a County must be *ad valorem*, and to the extent they are not, they are illegally assessed in that they are not authorized by general law or the Constitution. Indeed, the Georgia Court of Appeals recently applied the Georgia Constitution and the Georgia Supreme Court's precedent to find as much in *Serenity Builders*. After applying the factors set forth in *Bellsouth*, the *Serenity Builders* Court determined the "water availability charge" was a tax, specifically ***a tax on real property***, and, as it was imposed on a per-lot basis and ***not ad valorem***, was illegal. *Serenity Builders*, 373 Ga. App. at 402 (emphasis added).

Defendant, however, argues that in the context of a special district, the long-standing Georgia constitutional precedent that all taxation of real and tangible personal property is required to be *ad valorem* does not apply. Essentially, Defendant claims that charges to fund traditional government functions provided in a special district can be extracted in any manner the local government chooses and makes the unsupported assertion that "the Special Districts Clause granted an ***unqualified*** power (unqualified at least by its own express terms) to the counties to levy 'fees, assessments, and taxes within such districts to pay, wholly or partially, the cost of providing such services therein…'" *See* Def. 8/8/25 MTD at p. 9 (citation omitted). Defendant is incorrect. Nowhere in the Special District Paragraph or any case law interpreting it is any statement or indication that a different rule applies to the taxation of real property in a Special District than in counties generally.

Rather, binding precedent makes it abundantly clear that the distinction between fees, taxes, and assessments is highly relevant in the context of the Special Districts Paragraph. Indeed, the Supreme Court of Georgia recently interpreted the Special Districts Paragraph and found that each funding source listed therein – "fees", "assessments", and "taxes" – are different in kind. "[O]therwise, there would have been no need to list 'fees, assessments, and taxes' separately and on equal terms in the constitutional text." *City of Winder v. Barrow County*, 318 Ga. 550, 562, 899 S.E.2d 157, 168 (2024). Further, and as noted above, longstanding precedent plainly establishes that taxes on real and tangible personal property must in fact be *ad valorem*. *Hutchins*, 211 Ga. 830, 89 S.E. 2d at 186; Ga. Const. Art. VII, § I, ¶ III; Ga. Const. Art. VII, §II, ¶ I.

The cited constitutional provisions and requirement that taxation of real and tangible personal property must be *ad valorem* have been applied and referenced numerous times both before and after the promulgation of the Special District Paragraph and remain the law of this state.

See Colvard, et al. v. Ridley, et al., 218 Ga. 490, 128 S.E.2d 732 (1962); *Griggs, et al. v. Green, et al.*, 230 Ga. 257, 197 S.E.2d 116 (1973), *abrogated on other grounds by SNJ Properties, LLC v. Fulton County Bd. of Assessors*, 296 Ga. 793, 770 S.E.2d 832 (2015); *Martin v. Ellis*, 242 Ga. 340, 343 (1978) (analyzing Article IX, Section IV, Paragraph II of the Constitution of 1976, the precursor to the current Supplementary Powers Clause and Special Districts Clause, and establishing that the Uniformity Clause imposes limitations on the Special Districts Clause); *Youngblood v. State*, 259 Ga. 864, 865, 388 S.E.2d 671, 673 (1990) (addressing hotel/motel taxes and noting application of the Uniformity Clause in special districts). Significantly, the Georgia Supreme Court analyzed the *ad valorem* tax vs. fee distinction for charges against real property located in a special district in *McLeod,* 278 Ga. 242, 243 (2004). There, the Supreme Court addressed whether a stormwater charge imposed against property in a special district was an unlawful tax as it was non-*ad valorem* or a valid fee. Ultimately, the Court held that the stormwater charge was a valid fee; however, *McLeod* clearly indicates that the rule that all taxation of real property must be *ad valorem* applies in special districts.

Given the rule that the taxation of real property and tangible personal property must be *ad valorem* has remained in effect both before and after the adoption of the Special District Paragraph and for the span of at least two iterations of the Georgia Constitutions (1976 and 1983) and that Georgia courts have explicitly acknowledged the application of the Uniformity Clause and its *ad valorem* requirements in special districts, such rule is very much a part of the Georgia Constitution. Certainly, "where a constitutional provision has received a settled judicial construction and is afterwards incorporated into a new or revised constitution, or amendment, it will be presumed to have been retained with a knowledge of the previous construction." *Elliott v. State*, 305 Ga. 179,

186, 824 S.E.2d 265, 271 (2019).[19]

Moreover, when interpreting a constitutional provision, such as the Special Districts Paragraph, "it is a basic rule of construction that a...constitutional provision should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part, as it is not presumed that the drafters intended that any part would be without meaning." *Camden County v. Sweatt, et al.*, 315 Ga. 498, 509, 883 S.E.2d 827, 836 (2023) (internal citations and punctuation omitted); *see also Brown v. Liberty County, et al.*, 271 Ga. 634, 635, 522 S.E.2d 466, 466 (1999). The Special Districts Paragraph must accordingly be read in harmony with other Constitutional provisions. In addition to the requirements of Article VII, Section I, Paragraph III and Article VII, Section II, Paragraph I that taxation of real and tangible personal property must be *ad valorem*, Article IX, Section IV, Paragraph I(a) further provides that "the governing authority of any county...may exercise the power of taxation *as authorized by this Constitution or by general law*." Ga. Const. Art. IX, §IV, ¶I(a) (emphasis supplied). The Home Rule for Counties Section of the Constitution likewise provides counties "the legislative power to adopt clearly reasonable ordinances...relating to local government for which no provision has been made by general law and *which is not inconsistent with this Constitution...*" Ga. Const. Art. IX, §II, ¶I(a) (emphasis supplied). Such power "shall not be construed to extend to...adopting any form of taxation *beyond that authorized by law or by this Constitution.*" Ga. Const. Art. IX, §II, ¶I(c) (emphasis supplied).

And lastly, Defendant explicitly acknowledges that the Special District Clause is subject to the Uniformity Clause of the Georgia Constitution. *See* Def. 8/8/25 MTD at p. 10 (citing *Martin*

[19] "[A] written constitution itself has a meaning that is fixed upon ratification and cannot change absent a constitutional amendment. Thus, when a court engages in judicial review, the court does not supply the Constitution with a meaning the Constitution does not already have, but instead attempts to discern the meaning of the Constitution through interpretation so it can, among other things, resolve conflicts between the Constitution *itself* and the statutory law." *State v. SisterSong Women of Color Reprod. Just. Collective*, 317 Ga. 528, 533, 894 S.E.2d 1, 6 (2023). Once a court interprets the constitution, such interpretation becomes an integral part of the constitution. *See Gulf C. & S. F. R. Co. v. Moser*, 275 U.S. 133, 136, 48 S.Ct. 49, 50 (1927).

v. Ellis, 242 Ga. 340, 343 (1978) (establishing that the Uniformity Clause imposes limitations on the Special Districts Clause)). The requirement that all taxation of real property be *ad valorem* arises from the Uniformity Clause. *See Hutchins v. Howard, supra.* Accordingly, a tax on real property that is non-*ad valorem* violates the Uniformity Clause of the Georgia Constitution.[20] *See Heron Lake II Apartments, LP v. Lowndes Cnty. Bd. of Ass'rs.*, 299 Ga. 598 (2016) (statute excluding tax credits from consideration of fair market value created a subclass of tangible property not permitted by constitution and violated uniformity provision). Thus, by conceding the fact that the Uniformity Clause applies within special districts (which is of course the established law), Defendant has unknowingly conceded that even in a Special District, any taxation of real property must be *ad valorem.*

Reading the Special Districts Paragraph in harmony with the referenced provisions of the Constitution, any taxes levied in a Special District on real property pursuant to the authority granted under the Special Districts Paragraph must be *ad valorem*, and to the extent they are not, they are illegally assessed in that they are not authorized by general law or the Constitution. Thus, the Fire Fee, like the *Serentiy Builders* water availability charge, is a tax on real property as it is "levied on the owners of real property within the [District]"; is imposed on a per-lot or per-square footage basis and not *ad valorem*; and is consequently an illegal tax imposed in violation of

---

[20] [T]he Constitution creates "tangible property" as a single class of property. *See* Art. VII, Sec. I, Par. III(b). "Tangible property" includes real and personal property, and the General Assembly has no authority to establish different classes or subclasses of tangible property other than as fixed by the Constitution. The types of tangible property that may be separately classified and subclassified by the General Assembly under the [taxation uniformity provision] are listed in subsection (b) of Article VII, Section I, Paragraph III.

Blevins v. Dade Cty. Bd. of Tax Assessors, 288 Ga. 113, 114, 702 S.E.2d 145 (2010) (punctuation omitted). Notably absent from the list of exclusions from the uniformity clause is any reference to real property in special districts, and the Special District Clause contains no such exclusion. *Compare* Article VII, Section I, Paragraph III to Article IX, Section II, Paragraph VI.

Uniformity Clause of the Georgia Constitution.[21]

III. The Refund Statute provides a remedy.

Where a taxpayer has demonstrated that a tax has been illegally or improperly assessed, she may avail herself of the procedure set forth in O.C.G.A. § 485-5-380 to obtain a refund. Specifically, a taxpayer may file suit seeking a refund and prejudgment interest, and "each county and municipality shall refund to taxpayers any and all taxes and license fees...[w]hich are determined to have been erroneously or illegally assessed and collected from the taxpayers under the laws of this state or under the resolutions or ordinances of any county or municipality..." O.C.G.A. § 485-5-380(a)(1). As demonstrated above, the Fire Fee is a tax illegally assessed on Named Plaintiffs and the prospective class members in years 2022-2024. Accordingly, Named

[21] Defendant's argument that *City of Winder* and *Green County Board of Commissioners v. Higdon*, 277 Ga. App. 350 (2006) require a different result is unavailing. The *City of Winder* Court did not, contrary to Defendant's contention, in any way indicate a departure from the long-standing rule set forth in *Hutchins v. Howard*, 211 Ga. 830, (1955), that the "taxation of real and personal property subject to be taxed is required to be *ad valorem*". And *Higdon*, unlike the instant action, did not seek a refund of taxes under O.C.G.A. § 48-5-380 but was instead one of many equal protection and due process challenges against certain local government assessments by taxpayers asserting a violation because they received no or less benefit than others. Under equal protection and due process analysis (which has no application whatsoever to the instant action) deference is given to government actions and judgment in certain contexts. *See Speer, et al. v. Mayor, etc. of Athens*, 85 Ga. 49, 11 S.E. 802 (1890). The *Higdon* Court simply held that in the context of equal protection and due process the question of benefit conferred is not a matter for the courts to decide and applies equally to challenges to assessments as it does to challenges to taxes. *See Higdon*, 277 Ga. App. at 353 (quoting Speer, 85 Ga. 49). Accordingly, a careful reading of *Higdon* indicates that it merely reaffirmed what the law has been in Georgia for over 100 years – that in the context of an equal protection or due process challenge, the question of benefit, whether general or special, is left to the legislative discretion, and except in extraordinary cases where the legislative branch exceeds its constitutional authority, it is not a matter of enquiry for the courts. Most importantly, the *Higdon* holding has no bearing on whether a charge is an illegal tax, making *Higdon* completely irrelevant.

Additionally, Defendant cites other cases which have no direct bearing on the Court's analysis or outcome of this matter. *Jekyll Island-State Park Auth. v. Jekyll Island Citizens Ass'n*, 266 Ga. 152, 464 S.E.2d 808 (1996), did not discuss the tax vs. fee distinction or assert a claim under the Refund Statue. Rather, the case alleged that O.C.G.A. § 12-3-235(23) was unconstitutionally vague. Notably, O.C.G.A. § 12-3-235(23) at issue in that case, requires that the "annual fee charged to any person...shall not exceed the annual amount which would be levied by the County of Glynn in the form of *ad valorem taxes* if such services had been provided by the County of Glynn." (emphasis added). Obviously, no such *ad valorem* limitation is present in the Fire Fee Ordinance.

Defendant further cities *Banks v. City of Albany*, 83 Ga. App. 640 (1951), asserting that "the Court upheld fire fees by cities for fire protection services provided to people outside of the city." Def MSJ at p. 6, 19. This is not the holding of *Banks*. *Banks* was a negligence claim addressing whether the provision of fire services was a ministerial or governmental function for the purpose of determining whether the City could be held liable for the negligence of its officers. The case did not address the validity of the charge or the tax vs. fee distinction.

Plaintiffs and the class members are entitled to a refund of all such illegally paid taxes. Specifically, as reflected in County records submitted by Named Plaintiffs, refunds totaling $26,852,778.90 plus prejudgment interest[22] are due to Named Plaintiffs and the class members.

CONCLUSION

For the foregoing reasons, Named Plaintiffs' Motion for Summary Judgment is **GRANTED** and Defendant's Motion to Dismiss, Motion for Judgment on the Pleadings, and Motion for Summary Judgment are **DENIED**. Judgment is entered for Named Plaintiffs and the class members in the amount of $26,852,778.90 principal, $ 3,274,595.33 prejudgment interest[23], and post judgment interest as allowed by law.

SO ORDERED this 2nd day of October, 2025.

JOHN R. TURNER, SENIOR JUDGE
Presiding by Appointment

Prepared by:
Roberts Tate, LLC
2487 Demere Road
Suite 400
St. Simons Island, Georgia 31522
Attorneys for Named Plaintiffs

[22] "A taxpayer is entitled to recover prejudgment interest on wrongfully collected taxes from the date it demands a refund." *T-Mobile, South, LLC*, 305 Ga. App. at 475, 699 S.E.2d at 810 (citation omitted). *See also Eastern Air Lines, Inc. v. Fulton Cn'ty*, 183 Ga. App. 891, 892 (1987) (superseded by statute as to State as stated in *Georgia Dept. of Corrections v. Couch*, 295 Ga. 469 (2014)) (recognizing taxpayers' entitlement to recover prejudgment interest at the rate of 7% per annum on tax refund from the date the claim becomes due or is demanded until the date of recovery); O.C.G.A. §§ 7–4–2, 7–4–15.

[23] To calculate the full prejudgment interest at the time the Court enters its order, interest on the liquated refund owed is continuing to accrue at the legal rate of 7% per annum, or $5,149.85 per day, since Named Plaintiffs' filing of their Motion for Summary Judgment on June 30, 2025. As of June 30, 2025, the principal ($26,852.778.90) and prejudgment interest ($2,790,509.43) amounted to $29,643,288.33.