

UPTOWN



a publication of the Municipal Association of South Carolina

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Cover photo: **The City of Clemson has
had a public tree ordinance for decades
and is home to more than 300 acres of
green space, including Gateway Park.
Photo: Ken Scar.**

Final Reminders

for 2024 Hometown Legislative Action Day

The Municipal Association of SC Hometown Legislative Action Day will be at the Columbia Marriott on Tuesday, February 6. Here are some final details that attendees need to know:

Municipal Association app

The Municipal Association's app isn't just for events, but it does offer plenty of HLAD information. Through the app, users can view the meeting agenda and decide on which session among the concurrent sessions they want to attend. The app also gives users information on speakers, attendees and sponsors.

Download the app from either the App Store or Google Play by searching for "Municipal Association of SC."

Parking and shuttle service

In recent years, finding parking at the Marriott in Columbia has become more difficult during the Municipal Association's Hometown

Legislative Action Day, and this year, the City of Columbia will not have designated parking for the event.

Those not staying at the Marriott can park at another downtown parking facilities. Those looking for a guaranteed spot can park at the deck next to Segra Park in the BullStreet District. A complimentary shuttle will run from the garage to the Marriott on February 7 from 7 a.m. to 8 p.m. Plan to arrive early to allow extra time to get from the remote garage to the Marriott.

For those registered for the Municipal Elected Officials Institute of Government sessions on Wednesday, February 7, remote parking and a shuttle will not be provided. Plan to arrive early to find a parking space if needed.

Find more information about Hometown Legislative Action Day at www.masc.sc (keyword: HLAD).

Last call for 2024 Achievement Award Entries

The deadline for the Municipal Association of SC 2024 Achievement Awards is Wednesday, February 7.

The awards provide a way to showcase the hard-to-see projects that local governments undertake to make their operations run smoothly and enhance their communities. The awards recognize excellence in local government programs and help share ideas among municipal officials and staff.

Categories

The Municipal Association accepts award submissions each year in either a population category or one of five subject categories: communications, economic development, public safety, public service or public works.

Municipalities with a population of 20,000 or fewer — as counted in the 2020 census data — can compete in either a population

or subject category. Municipalities with a population greater than 20,000 can compete only in one of the five subject categories. Each city or town can only submit one entry and select one category.

Projects need to be substantially complete to be eligible and can be submitted only one additional time if they do not win.

Applications

The applications, due by February 7, are available at www.masc.sc (keyword: Achievement Awards). Cities submitting in the subject categories must make an oral presentation at an assigned time on February 26 or 27. The Municipal Association will recognize award winners at the Annual Meeting in July.

For more information, contact Meredith Houck at 803.933.1215 or mhouck@masc.sc.

American Rescue Plan Report *Due by April 30*

In 2022, the U.S. Department of the Treasury began requiring local governments receiving American Rescue Plan's Local Fiscal Recovery Funds to submit a Project and Expenditure Report. The annual deadline for all cities and towns to submit this report is April 30.

The Department of the Treasury has a Self-Services Resource to assist recipients with questions about reporting, technical issues, eligible uses of funds and other items. This resource can be found at www.treasury.gov by searching "recipient compliance and reporting responsibilities."

All reporting must be done in the Department of the Treasury's reporting portal, which will open about 30 days before the reporting deadline. Access to the portal is only available to those who were assigned the role of Account Administrator, Point of Contact for Reporting or Authorized Representative for Reporting when submitting the last report. If either of these roles have changed, staff should update these roles within the portal. Instructions on doing this can be found at <https://home.treasury.gov/system/files/136/Updating-User-Roles-Portal.pdf>.

By law, all ARP funds received by cities and towns must be obligated for specific projects by December 31, 2024, and must be spent by December 31, 2026.

The Municipal Association maintains a webpage, available at www.masc.sc (keyword: American Rescue Plan) connecting officials with extensive guidance on handling federal ARP reporting requirements, including user guides, recorded webinars and presentations.

The Association does not have access to the Department of Treasury's ARP reporting portal, but its field services managers, Charlie Barrineau, Ashley Kellahan and Naomi Reed, can assist local officials as they submit their report.

For general American Rescue Plan questions, contact Municipal Association Legislative and Public Policy Advocate Erica Wright at ewright@masc.sc or 803.354.4793.

Municipalities can contact their specific Municipal Association field services manager by visiting www.masc.sc (keyword: Request Municipal Assistance).



NEWS BRIEFS

The SC Association of Stormwater Managers elected its new board of directors. Its members are President **Angela Crockett**, Lancaster County; Vice President **Chris Wannamaker**, Charleston County; Secretary/Treasurer **Brandon Wagner**, Horry County; Member at Large **Stephen Thun**, Kimley-Horn and Associates, Inc.; and Immediate Past President **Mark Johnson**, Town of James Island.

The SC Human Resources Association elected its new board of directors. They are President **Hilary VanOrsdel**, City of Goose Creek; First Vice President **Lynn Smith**, City of Conway; Second Vice President **Mark Putnam**, City of Mauldin; Member at Large **Patrice Mattison**, City of Anderson; and Past President **Leonard Lowery**, Town of Kingstree.

Johnny Alimohamed, business license manager for the City of Spartanburg and **Melody Dangerfield**, business license official for the Town of Mount Pleasant, received the Master in Business Licensing designation from the SC Business Licensing Officials Association.

City of Columbia Mayor **Daniel Rickenmann** participated in the United Nations' Climate Change Conference, or Conference of the Parties of the United Nations Framework Convention on Climate Change, in Dubai in December 2023. He took part in the Local Climate Action Summit.

Municipal Law FAQs



Sometimes, research into legal questions does not lead to definitive conclusions. An issue might fall into an area where case law or guidance from the Office of the Attorney General has not caught up with circumstances as they exist in practice.

At the Annual Meeting of the SC Municipal Attorneys Association in December, Municipal Association General Counsel Eric Shytle and attorney Lawrence Flynn of Pope Flynn LLC discussed some of the more persistent issues they have heard from cities and towns.

As Shytle noted, “These are questions to which there is really no easy legal answer,” but even so, they are worthy of consideration and caution among municipal leaders.

Records retention

South Carolina’s Public Records Act, found at SC Code 30-1-10, establishes a misdemeanor for destroying public records, defined as “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.”

The SC Department of Archives and History offers general record retention schedules, found at <https://scdah.sc.gov/records-management/schedules>, which municipalities can use unless they opt to establish specific schedules themselves.

While the state’s retention schedules set the length of time that cities must hold

onto particular kinds of records, they only received their last updates in 2003. As such, the retention schedules do not substantially address types of electronic records that have become more prevalent since then, and which are considered public records — emails or social media posts. Text messages of officials or staff conducting government business are considered public records, and they can be challenging to preserve and access.

Municipalities should watch out for records not being preserved in accordance with established retention policy, Flynn said.

“One thing to take away from the discussion today is to go back and ask your community, ‘do we have a full records retention policy? Have we worked with the Department of Archives to be able to maintain it?’” he said.

Indemnification

Indemnification provisions, or a “hold harmless” clause, are a common feature of contracts in which one party agrees to pay expenses on behalf of the other party for issues like claims or disputes. Opinions of the SC Office of the Attorney General have repeatedly affirmed that neither the state government nor its subdivisions, including municipalities, have any authority to enter into indemnification agreements.

The difficulty is that many common types of contracts that municipalities use, such as software licenses, payment processing services or bond purchase agreements,

will have indemnification provisions, and the company offering the service will not negotiate the clause out of its contract.

When the issue arises, Shytle said it could be helpful to “have somehow documented outside the contract, either in a legal opinion or in correspondence, ‘please be on notice that indemnification provisions are not enforceable in South Carolina.’”

Development and street maintenance

South Carolina’s growing population has not only increased the traffic strain on its roads, Shytle said, but has also led “to a lot of interesting questions about the degree to which counties can control growth and development inside municipalities.”

This includes cases of county governments not accepting a municipality’s new subdivision streets into their road systems for ongoing funding when the developments do not meet the county’s density requirements.

Cities may want to be mindful of their county government’s concerns when making planning decisions, Shytle said, communicating with their county and focusing on the impacts of growth in their comprehensive plans.

The SC Municipal Attorneys Association provides an annual training session and access to a listserv for municipal attorneys. The training session is approved by the SC Supreme Court Commission on CLE and Specialization. Learn more at www.masc.sc (keyword: MAA).

Complete the Statement of Economic Interest by March 30

The State Ethics Commission's required Statement of Economic Interests forms aim to promote transparency for any potential benefit that a person's service in a public position might create.

Under SC Code Section 8-13-1110, public officials must use SEI forms to report their income as well as any economic interest in real, personal or business property.

Who must complete an SEI form?

Several types of officials must complete an SEI form:

- Public officials who are elected or appointed to office
- Anyone appointed to fill the unexpired term of a state or local elected official
- Candidates for state and local public office
- The chief administrative official of each political subdivision, including water and sewer districts; as well as city administrators, managers, supervisors or chief administrative official, by whatever title
- The chief finance and chief purchasing official of each agency, institution, or facility of state government, and of each county, municipality, or other political subdivision

SC Code Section 8-13-1110 specifies that any public official who has not completed an SEI cannot be sworn into office.

What is an economic interest?

South Carolina's Ethics Reform Act, found at SC Code Section 8-13-100(11)(a), defines an economic interest for SEI purposes as "an interest distinct from that of the general public in a purchase,



sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit" in an amount of \$50 or more.

What must be disclosed?

Public officials must disclose any real estate interest they or their immediate family have if it can be reasonably expected to create a conflict of interest. They must also disclose the economic interest if there has been \$200 or more of public improvements, such

as streets, lighting or water systems, made on their property or adjoining properties.

Public officials must report any real or personal property sold, leased or rented by a public official or immediate family member to the state or any other public agency.

They must also report the name and relationship of every business or other entity in which the public official or immediate family member has a 5% or greater economic interest in the entity's value, so long as the value of the interest exceeds \$100,000.

If the public official's municipality contracts with a business where the public works, has an ownership interest or investment in, or has any other association, the official must disclose the relationship and compensation received from the business.

A 2017 change in the law required that all those completing an SEI form to include income, both source and type, of members of the official's immediate family. This includes spouses, children residing in the household, and anyone else claimed as a dependent. Reportable income for these people includes anything of value reported on an IRS form.

SEI forms are due by electronic filing by noon on March 30. File the form online at www.ethics.sc.gov.

Association Highlight:

Municipal Officials and Legislative Directory

Every year, the Municipal Association of SC publishes a municipal directory that can help anyone seeking to contact any one of the 271 city and town governments around the state.

Beyond basic contact information, the directory lists the specific form of government for each city and town, the regular schedule of council meetings and the names of all elected officials and certain staff positions.

The directory is available in print, but it is also available as an online resource that allows users to search for municipalities based on characteristics like the county in which the municipality is located, its population, or which state representatives and state senators serve it. The website also offers a Legislator Online Directory, which allows users to see which municipalities that state representatives and senators represent, as well as all representatives and senators who serve any portion of a particular municipality.

Find the online directory at www.masc.sc (keyword: municipal directory).

Hot Liquids, Chemicals and Electrical Hazards Need the Right Equipment



Personal protective equipment, commonly known as PPE, is the last line of defense to protect employees from injury. Occupational Safety and Health Administration standard 1910.132, available through www.osha.gov, provides requirements for PPE to help prevent burns from various hazards such as hot liquids, chemicals or electrical hazards.

Hot liquid hazards

OSHA requires PPE for exposure to hot liquids. This can include gloves, helmets, face shields, boots and aprons. Employees can wear a completely insulated environmental suit that would protect them from high temperatures when appropriate. Supervisors must consider the heat stress that the employee faces while wearing this PPE.

The danger of live steam has no appropriate or acceptable PPE, and so workers must use lockout/tagout procedures to eliminate steam from equipment. Supervisors should ensure that all exposed steam and hot water pipes within 7 feet of the floor or working platform must be covered with insulating material or guarded to prevent contact.

Chemical hazards

Chemicals that present a hazard to employees have a Safety Data Sheet that indicates what PPE employees must wear, such as neoprene aprons, gloves, goggles, respirators and face shields, among other items. Standards also require an

eyewash station and shower to be located within 25 feet of locations with chemical hazards, with no stairs or doorways in the way.

Unlike electrical and hot liquids, workers could still have chemical exposure even after exiting the area where they encountered the hazard. As a result, employers must train workers on how to put on and take off PPE properly, so they will not face chemical exposure while working or afterward.

Electrical hazards

Electrical hazards involve working on or near energized equipment within the “approach boundaries” identified in the National Fire Protection Association 70E toolkit available through www.nfpa.org, each boundary restricting different activity. There are the flash-protection boundary, limited-approach, restricted-approach and prohibited-approach boundaries. Arc-rated PPE is needed within the arc flash boundary.

All PPE used around electrical hazards needs to be approved for use around electrical hazards must be tested and maintained according to the manufacturer's instructions. All exposed employees need to wear under layers of clothing made from natural fibers such as cotton, wool or silk, among others.

There are two relatively new electrical safety standards for electrical hazard PPE available through ASTM International's website, www.astm.org — ASTM F3258

Arc Rated Electrical Protector Gloves and "ASTM F3502 Cloth Face Coverings. These two new standards offer testing for many factors, such as the dangers posed by cuts, punctures or arc flashes, that older standards did not.

Equipment maintenance and training

Workers need to keep all PPE maintained in a safe and reliable condition. They must also regularly inspect or test it as required by the manufacturer and the OSHA Code of Federal Regulations 1910.137. When facing burn hazards, employees must not use any PPE that is contaminated with grease, oil, or liquids that are either flammable or combustible.

All employees exposed to any kind of burn hazards must receive training that addresses several points:

- ◆ What circumstances require PPE, and what kind of PPE they require
- ◆ How to properly put on, take off, adjust and wear the PPE
- ◆ The protection limitations of the PPE
- ◆ The proper inspection and maintenance of the PPE

Employees also need further training when they handle jobs that need additional or new types of PPE, or when they indicate that they do not understand or follow proper PPE procedures.

Why Annexation Matters

AnneXation counts among the hottest policy issues that municipalities face, attracting attention, speculation and packed city council chambers. It's a complex issue as well, since it impacts finances, infrastructure construction, emergency services planning and even the layout of council districts.

Annexation can increase a city's population and broaden its tax base, making municipal services more affordable for residents and giving more people a say in the governance of their community. It can also reduce the significant confusion that enclaves create over what government has jurisdiction at a given address, and who is responsible for services.

Long-term benefits come with short-term costs, however. Establishing city services in new areas can expand the financial needs of the municipality in ways that new tax and fee revenues cannot offset. Councils need to study whether an annexation is in the city's best interest each time they consider one. During the public hearing necessary for a 75% petition and ordinance method of annexation, for example, state law requires the city to formally state what services it will provide, the cost of new services, and when the city will provide them.

For property owners, the annexation process is often misunderstood. Some property owners fear that a municipality will forcibly annex their property, even though the 100% petition and ordinance method, the most commonly used annexation method in South Carolina, requires the agreement of all property owners involved.

Annexation opponents often cite worsening traffic congestion among the reasons they stand against it, since residents often equate annexation with accelerating development in high-growth areas. However, the opposite is true. Higher-density development closer to existing infrastructure and services actually reduces trip distances and time spent in traffic. Furthermore, developers petitioning a city to annex their property often state that they will move their projects forward with or without annexing into a city, so annexation gives a city its only opportunity to regulate new growth and set higher development standards using planning and zoning tools.

Annexation Handbook

To help local officials navigate the considerations and the requirements of annexation, the Municipal Association of SC offers guidance through its *Annexation Handbook*, available at www.masc.sc (keyword: Annexation Handbook).

The handbook covers the three methods of annexation available to South Carolina municipalities: the 100% petition and ordinance method, the 75% petition and ordinance method and the 25% petition and election method. It provides checklists, includes sample petitions, and explains the other documents to be assembled when enacting an annexation.

It also helps with many other technical issues:

Defining contiguity. Properties can be annexed only when they are contiguous to municipal boundaries. The handbook addresses cases where roads, railroads or waterways intervene between a property inside the municipal boundaries and one outside.

Examining policy considerations. In addition to weighing the financial requirements of expanding services, cities need to consider issues like the zoning or rezoning of parcels as they are annexed, the legal issues involved in requiring annexation agreements as a condition for providing services outside the city, as well as incentivizing annexation through tax relief.

Following rules for annexing certain property types.

State law has varying rules for annexation of property owned by the municipality, the county, state or federal government or a school district, among others.

Annexation series

Upcoming issues of *Uptown* will explore some of the key issues involved in annexation, including the impact analyses and processes involved, as well as the communications that cities and towns undertake both to explain the processes and the implications of annexation and to dispel the misconceptions that often surround annexation.

The Principles of Good Development Agreements

When developers come to a town with plans for a housing development or a large commercial project, a development agreement can be a critical tool to protect both the city and the developer.

Development agreements — a legal, binding agreement between a local government and property owner for the long-term development of a large piece of property — can spell out everything from a timeline for construction to financial assistance and to how much land will be set aside for civic uses. The SC Local Government Development Agreement Act lays out the rules and requirements for them — for example, the development has to be at least 25 acres, and the agreement can last for only five years.

“What makes a good development agreement? Details and collaboration with the developer. That’s the key,” said Lee Bailey, the city manager in Woodruff. “It has to be realistic. And you also have to structure the agreements to protect the local government.”

Woodruff knows something about planning for new development, particularly with the current construction of BMW’s new high-voltage battery assembly plant just northwest of the city’s downtown.

“We’ve got 5,000 new rooftops coming. We’ve got BMW coming to town,” Bailey said. “Downtown is being transformed. Part of that has been these development agreements to make it happen. Development agreements are just a small, but key, piece in the whole puzzle.”

Bailey said some developers come to the city looking to develop a project, while the city seeks out others to help fill a need.

“With the development agreements, the devil is in the details. You’ve got to have the details of everything spelled out to protect the city,” Bailey said. “That means, if the developer comes in and says they are going to do X, we hold their feet to the fire to be sure they are going to do X.”

Chris Story, the city manager in Spartanburg, said one of the most important things a development agreement does is clarify expectations.

“Oftentimes, particularly with higher-profile or complex projects, different stakeholders have different wants and wishes. And sometimes the public perception of what is happening can be different than how it is perceived by the stakeholders,” Story said. “Bringing clarity to all of that is important in a development agreement.”



In Bluffton, the Buckwalter Place development is home to restaurants, shops and recreation facilities. Photo: Town of Bluffton.

A development agreement spells out what the developer is going to build and when it will be completed, while addressing myriad other concerns such as financing, location and how the project relates to broad city goals.

“We’ve had things in development agreements that relate to employment, that relate to small business or minority business development opportunities,” Story said. “We’ve had carveouts for workforce housing components. We’ve had aspects touch on public amenities like infrastructure, extension of trail networks, inclusion of parks-and-rec-type amenities. It’s a broad spectrum of things that can be included in there.”

On the other side of the equation, the agreement should specify what the city is doing in return that might go beyond the basics of regulatory requirements. That can include land contributed or sold to the developer at a below-market value, tax and fee concessions, or a commitment to build infrastructure such as streetscaping or parking.

While some cities may have specific criteria for development agreement, Spartanburg leaders follow a more project-specific approach.

“We don’t necessarily compare one to another and rely on precedent,” Story said. “We believe each project is unique and each moment in the city’s evolution is unique. The impact of a certain project is greater in some locations than it is in others. The need for certain types of projects is different now than it will be a year from now. The financial viability of each project is different.”



The Hub, a mixed-use commercial development in Spartanburg's Northside neighborhood, broke ground in 2021. Photo: City of Spartanburg.

Setting the expectations in a legal agreement helps all parties.

“The worst thing that can happen is to have expectations that are not documented,” he said. “That can work poorly from the developer’s perspective and for the city staff. It can result in disconnects with the public. The public reads media coverage and makes assumptions about the projects. If that doesn’t align with what’s in writing, there can be disappointment there.”

In fast-growing Bluffton, Heather Colin, the assistant town manager, and Aubrie Giroux, the special projects and programs administrator, stressed the importance of making sure everything is clearly defined in a development agreement — from timeframes when construction will happen, when roads will be built, when the property is dedicated to the public, when fees get paid and who is responsible for what.

Bluffton has seven large development agreements covering a large swath of the town. These agreements help make clear the amount of expected development, allowing schools, utilities and other entities the opportunity to plan for future growth.

“I’m a planner, and a development agreement is just good planning,” Colin said. “If you’ve ever been to Bluffton you’ll go down some of our major parkways and you’ll see these driveway

entrances to nowhere. But we have plans for that. We know exactly how many units are expected to be built. We know how many square feet of commercial are planned.”

That planning helps the town meet its current and future needs, by making sure things like rights-of-way for streets and land for parks, schools and libraries are dedicated to the town on the front end.

Bluffton also puts all of its development agreements on the town’s website, allowing for transparency and easy access.

“They are all recorded documents, all public information,” Colin said. “So, when someone is buying or planning to develop property, you can pull out those plans and say, ‘okay, there are trees behind here today, but that’s approved to be 100,000 square feet of commercial at some point.’ It may never happen, it may happen tomorrow or it may happen next year. But it is putting all that information out there so people are well informed of what has already been approved by town council and the developer.”

While Colin and Giroux said it is important for development agreements to be specific, they also noted the importance of flexibility.

Over the years, definitions of terms such as residential, mixed-use and institutional buildings may change, so it is important to spell out exactly what the city and the developer mean in a development agreement, Colin said. For example, some of Bluffton’s older development agreements reference details as specific as the type of lighting allowed in a development. As technology has changed, some of the lighting types addressed are now outdated and unavailable.

“If you’re crafting a new one, take your time,” Giroux said. “Take an extra few months to really think through it, look through what other municipalities have done, and help craft a really great one.”



Growth and development in Woodruff has come to the downtown and elsewhere. Photo: City of Woodruff.

Canopy Management Creates Strong Cities

Larry W. Abernathy Waterfront Park, located on Lake Hartwell, provides an example of the City of Clemson's tree canopy. Photo: Ken Scar.

Perhaps some of the most overlooked natural assets in the Palmetto State have been its trees, but city leaders have increasingly understood their role in making a community livable and resilient.

Municipalities across the state are taking the initiative to sustain and preserve their tree canopies, and educate the public about the vital importance of green spaces. The City of Clemson and the City of Columbia are leading by example by emphasizing trees in their city planning.

The City of Clemson boasts more than 300 acres of green space and a 48% canopy coverage. With a high concentration of urban forest, a dedicated team of seven passionate city employees oversees all of the city's greenspaces in the newly formed Urban Park Land Management Department, headed by arborist Tony Tidwell.

A 15-year city official serving most recently as the city's horticulturalist, Tidwell spearheads the department's deep-rooted commitment to managing and preserving the tree canopy and greenspaces.

"We have had a public tree ordinance that has been on the books since 1988," he explained. "When we were developing this new department, we were developing standards and guidelines – what was going to be our professional truth – and we started going through this public tree

ordinance. There's a whole lot of great things to stand on in that ordinance."

Tidwell emphasized that the ordinance acknowledges the economic, social and environmental benefits trees provide to the community.

"We try to incorporate that into a maintenance strategy so that sustainability is built into what we're doing every day."

After receiving a grant from the South Carolina Forestry Commission, the City of Clemson embarked on an urban tree canopy assessment study in partnership with the Green Infrastructure Center, which identified some of the city's heat islands and potential for canopy growth. Findings from the study concluded that Clemson's existing canopy has the potential to grow to 53%, with 189 acres of potential planting area.

While most of the canopy coverage falls on private property, the department can only control what's on public land, Tidwell said, noting that no ordinances or city regulations are in place to control the tree canopy on private property. The department implemented several programs and educational events, including a tree planting campaign, "#GrowAGreenerClemson."

"We started with a tree giveaway in January of [last] year, and we gave away 362 trees," he said.

Tidwell listed several emphases for the effort: promoting the planting of new trees, replacing some of the older trees that are cycling out, as well as getting the word out about bolstering the existing canopy.

"It's one thing to have that canopy map and that percentage and feel good about it," Tidwell said. "Well, it only takes a day of clearing to wipe out 1 or 2% of that canopy, so it's very important that we get out the information of why it's important for us to maintain that canopy, and so we wanted to do an ecological service study on the benefits of that canopy."

Another study conducted in June 2023 detailed the positive environmental impacts of the tree canopy ecosystem, looking at categories such as stormwater, air quality and heat islands.

"This study took the canopy and it showed us the health of our watersheds, it showed us where our heat islands are, it showed us the impacts of tree loss, it showed us our surface temperature in the City of Clemson, and a lot of that is where there are no trees," Tidwell said.

It also indicated potential planting areas, Tidwell said, noting that a lot of those are in low-income areas and around the city's schools.

"This tree planting can mitigate a lot of the heating days [in South Carolina] over that period of time, not to mention

all of the stormwater benefits,” Tidwell continued. “We’re mitigating 11 million gallons of stormwater per year with our tree canopy, and that’s helping us economically not have to build more infrastructure for that stormwater capacity.”

Clemson’s existing tree canopy sequesters 12,078 metric tons of carbon and mitigates 79,577 pounds of air pollutants per year, according to the June 2023 study findings.

“The trees are doing a tremendous amount of work for us right now, and really, they are a utility, just like our water and sewer lines — they are our air filters that are making this a healthy place to live,” Tidwell said.

In terms of canopy protection amid widespread development, he said that the Planning and Codes Department has established programs and land regulations voted into action by the city council that require all new developments to help maintain canopy coverage.

“Right now, new developments are required to meet 25% canopy coverage and planned developments are required to meet a 30% canopy coverage,” Tidwell said.

For developments that cannot meet that requirement, Tidwell said that they’re required to pay a fine that goes towards a city tree credit fund, which allows future trees to be planted as well as tree giveaways at events.

The employees of the relatively new Urban and Park Land Management Department, Clemson Mayor Robert Halfacre said, are a dedicated group who are “. . . intentional everyday, and use best management practices to ensure a better future for all.”

“This is a citywide initiative to make a transformational impact to conserve our natural assets for future generations through well-planned land use practices,” Halfacre said. “We are very proud of our efforts under their leadership and our engaged and informed community.”

The Midlands has its fair share of foliage, from loblolly pines to magnolias to live oaks. For the City of Columbia, tree maintenance is a public works concern. There, Deputy Public Works Director Sara Hollar, who has a degree in horticulture from Clemson University, decided to pursue urban tree care as a career and has been with the city for 19 years.

“I think [this passion] probably started when I was little. I remember in first grade, somebody coming in and talking about Arbor Day and giving all the kids a seedling to take home. I took mine home and convinced my parents to plant it in the front yard and I remember thinking how big it was when we moved from that house,” Hollar said.

The City of Columbia’s Public Works includes the Forestry and Beautification



Department, for which Hollar was superintendent for 12 years. The department is in charge of maintaining the city’s trees, greenspaces and landscaping, and works in conjunction with the Tree and Appearance Commission.

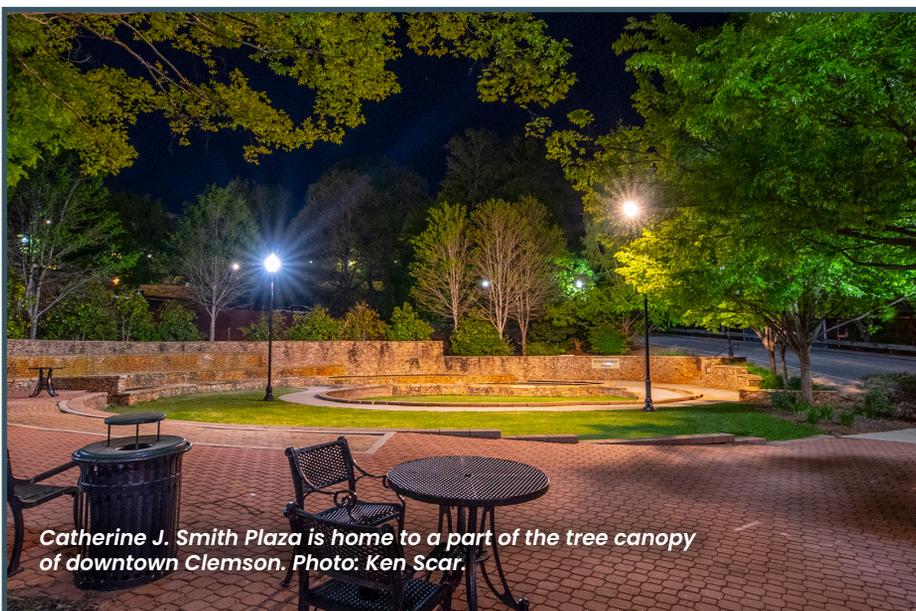
The Superintendent of the Forestry and Beautification Department attends all of the commission meetings and acts as a liaison to the city, said Hollar.

“A lot of what we’re currently working on now is renovating some of the designated areas that we maintain that [became worn] out a little bit, so we’re trying to spruce those up with replacements,” Hollar said. “We’ve got a bunch of new [planter] pots around City Hall and 1800 Main Street, [and] we’ll be adding some more pots at some other city facilities.”

She noted that the Department of Forestry and Beautification has a landscape design technician who generates the ideas for the planters, which are implemented after review and approval. Planter pots change with the seasons to provide color throughout the year. Hollar said that the city is looking to add more pots and continue to infill streetscape projects in the right-of-way.

The city’s Landscape and Tree Ordinance mostly deals with private property. A certified arborist herself, Hollar said that the department has several certified arborists on staff, adding that the Department of Planning and Development oversees and manages trees on private property, while her department manages trees in the right-of-way.

“If there’s a project coming through, we’ll look at what they have planned for



Special Section: Planning and Zoning

the right-of-way, make sure that we think it's going to work, and that some of the requirements get met."

"We do get calls on occasion where someone is trying to cut down a tree in the right-of-way, and that is something that we stop if we can. The trees in the right-of-way really belong to the city – they're the responsibility of the city if we planted them and we like to try to keep the canopy, although if it meets our guidelines for removal, we will remove it and look at replacing it," Hollar said.

The city, working with the nonprofit Columbia Green, obtained a U.S. Department of Agriculture grant for education and to give away trees for people to plant on private property.

The grant, Hollar said, can help those planting trees "know how to do it, know what to do, get the actual tree, know how take care of it, and know what to look out for."

In terms of protecting Columbia's existing canopy, Hollar states that the goal has always been to maintain it.

"The city plants 500 trees in the right-of-way every year; some of those are replacement trees, so you might have gone from a large canopy to a currently small canopy that over time will grow and fill in," she said.

With their abundance of trees, municipalities across South Carolina are adopting sustainable approaches to tree preservation and management, planting the seeds for a greener future.



The City of Columbia's focus on planters has included those it maintains on Main Street. Photo: Amy Wright.



Tree coverage towers over Columbia's Soda City Market on Main Street.

Planning and Zoning Officials Must Take Training Courses

South Carolina law requires every board, committee and commission appointee involved with local planning and zoning to complete mandatory training sessions. The requirement applies to all planning-related staff members as well.

Officials who do not fulfill this requirement can face removal from their position. Boards or commissions with untrained members can also open the city or town to legal challenges of their decisions.

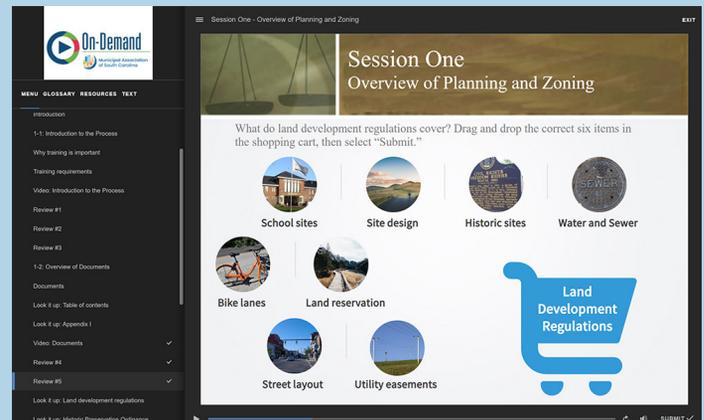
For several years now, the Municipal Association has offered an online version of the six-hour orientation course to help officials fulfill the training requirement. There is no charge for the training, and no need for in-person proctors or facilitators.

The South Carolina Planning Education Advisory Committee approved this curriculum, which teaches the tools necessary for officials and staff to perform their duties responsibly and effectively. The online training comes in the form of six, one-hour sessions. It includes video exercises to complete using the *Comprehensive Planning Guide for Local Governments*, knowledge-check quizzes and other reinforcement activities.

Each of the sessions provides its own completion certification. After participants complete all six one-hour sessions, they can view and print a certified transcript to submit to the municipal clerk, verifying their completion of the entire course.

State law also requires officials to complete three hours of continuing education training each year to remain compliant. The SCPEAC approved several of the Municipal Elected Officials Institute of Government courses to count toward this requirement, including "Forms of Municipal Government," "Municipal Economic Development" and "Freedom of Information Act in SC." The SC Association of Counties developed videos that can count toward the requirement as well.

Learn more about available planning and zoning training, as well as other resources, at www.masc.sc (keyword: *planning and zoning training*).



Avoiding Planning and Zoning Lawsuits

Development projects can transform the character of a city, creating economic opportunities for residents and businesses. In many cases, though, they can stoke fears that the community's character will be diminished. Residents often have passionate feelings about what kind of new developments appear near their homes, their schools and along the roads they use.

Land use planning and zoning highlights the challenge of balancing individual property owners' rights and protecting the community's rights as a whole. The decisions a city makes about the community's future can lead to lawsuits, but there are steps they can take to help avoid litigation.

Liability for local governments

Municipalities have three roles in land use matters:

- **Legislative role** – State law requires those cities and towns with planning commissions to adopt local comprehensive plans containing several required elements, as described in SC Code Section 6-29-510. Councilmembers also plan for development through the passage of zoning ordinances.
- **Quasi-judicial role** – Municipal staff review project proposals to make sure they are consistent with comprehensive plans and relevant ordinances. Staff then make recommendations to planning and zoning boards and commissions.
- **Enforcement role** – Both staff and board or commission members implement the city's development vision by making sure that approved projects comply with applicable laws and conditions imposed.

A local government is not liable for losses resulting from legislative, judicial or quasi-judicial action or inaction or for loss from discretionary action or inaction (SC Code Section 15-78-60).

Liability for officials

Zoning officials as well as members of a planning commission, board of zoning appeals or board of architectural review are all considered to be government employees subject to the SC Tort Claims Act (SC Code Section 15-78-10).

While the Act preserves sovereign immunity for government employees who commit a tort while acting within the scope of their official duties, the immunity is not available if the "conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude."

Reducing litigation risk

Mayors, councilmembers, board and commission members, and staff should follow these steps to help avoid litigation.

- Council should ensure it has adopted both a zoning ordinance and a comprehensive plan that addresses all state requirements.
- Periodically, council should update the comprehensive plan and applicable ordinances to reflect any changes in state law. South Carolina Code Section 6-29-510(E) requires that the local planning commission review the comprehensive plan no less often than every five years. It also requires the commission to update all elements of the comprehensive plan no less often than every 10 years.
- Municipal staff, as well as commission or board members, should always follow the municipality's zoning ordinance or comprehensive plan when reviewing project requests. They should deny any request that is inconsistent with the comprehensive plan and zoning ordinance.
- Commission and board members should consider all information submitted with requests. They should note in their meeting minutes that material has been submitted and reviewed.
- Council, staff and commission or board members should make all decisions in an objective and consistent manner.
- Staff as well as commission and board members should document the decision-making process accurately and completely. The basis for zoning decisions should be clear in the minutes of meetings.
- Staff should review all decisions with an attorney who is familiar with zoning issues, ordinances and public meeting requirements, and applicable state and federal laws.
- Council, staff and commission or board members should follow all requirements for meetings found in the SC Freedom of Information Act.

Learn more about planning liability in the Municipal Association's Comprehensive Planning Guide for Local Governments at www.masc.sc (keyword: planning guide).

Planning Commissions and Boards Need Space to Work

Groups appointed by a city or town council, like the planning commission or board of architectural review, are often involved in recommendations and decisions on the critical issues of how a city develops, including its land uses, its density and its appearance. The public interest this work can attract — and the potential controversy it can create — means that city councilmembers will themselves often take an interest in the groups' actions.

Even so, the process runs the most smoothly when councilmembers avoid involvement at the level of the appointed group's work — avoiding participating in its meetings and avoiding making public comments before the council considers any recommendations it has received.

Some types of involvement violate state law. SC Code Section 8-13-740(A) (5) prohibits municipal officials from representing a person before any component of the municipality such as appointed boards. For example, imagine that a councilmember works for a development firm. That developer then seeks approval from the architectural review board for a project. The councilmember may not represent the developer in the board's meeting.

Even in scenarios without official representation, the councilmember should avoid involvement in the board's meetings and decisions. In the case of a local planning commission, the commission

members make recommendations to be voted on by council. By waiting until the group's recommendations come before the council for a decision, councilmembers can help avoid distractions and foster a better sense of impartiality.

Here are planning-related boards and commissions for which councilmembers should avoid involvement:

Local planning commissions

Municipalities that regulate land development must establish a planning commission. Under SC Code Section 6-29-340, the commission is empowered to

- create and revise a comprehensive plan for the municipality and recommend its adoption to council;
- make recommendations to the council on how to implement the comprehensive plan through ordinances, regulations, policies or procedures; and
- administer the land development regulations adopted by council by approving or disapproving submitted plans and plats.

Boards of zoning appeals

A municipality that adopts a zoning ordinance may create a board of zoning appeals to enforce the ordinance. The powers of such a board, described in SC Code Section 6-29-790, include

- making decisions on appeals that arise from the administrative decisions of the municipality's zoning administrator; and
- granting or denying applications for variances or special exceptions from zoning ordinances.

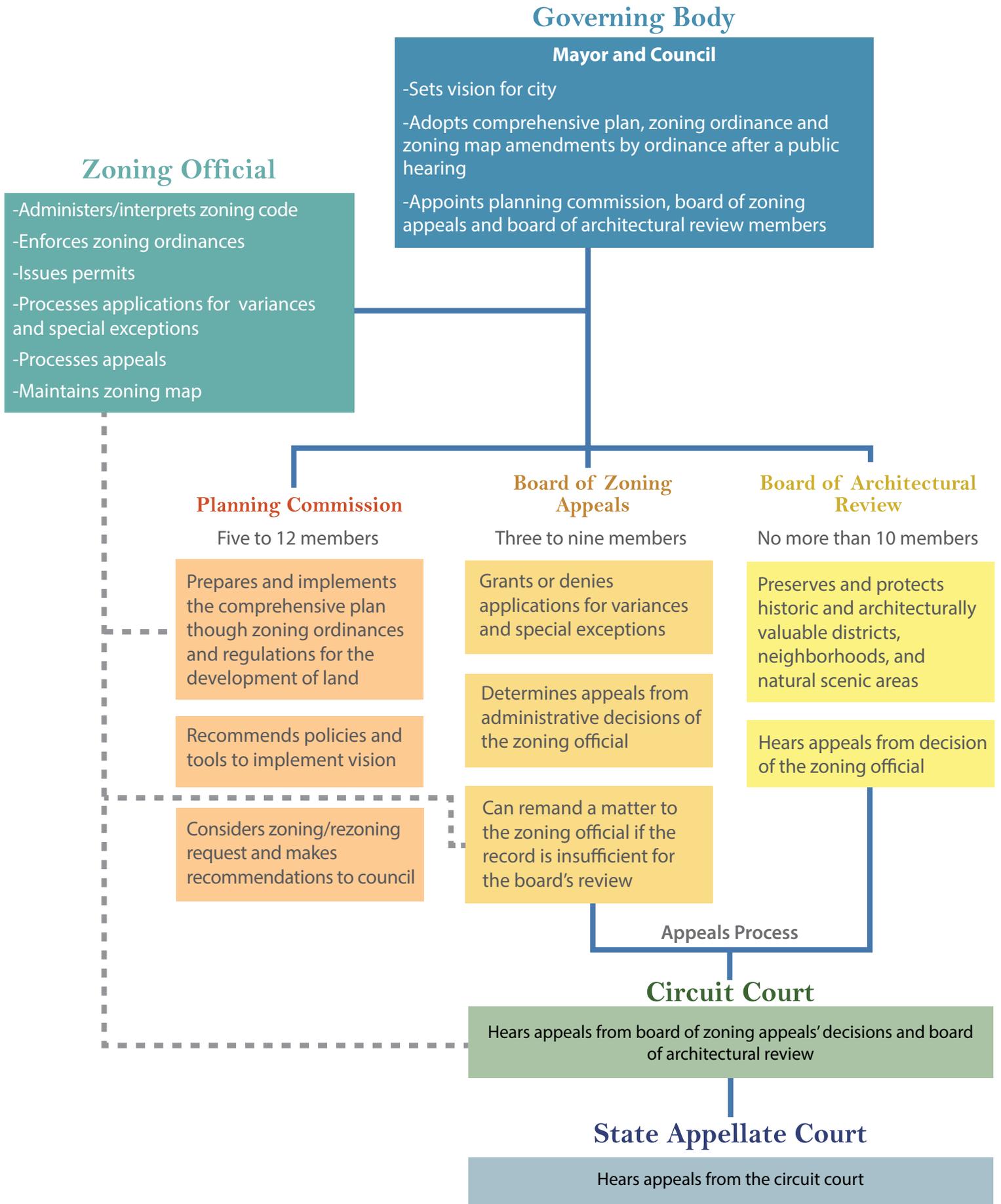
The board's decisions are subject to appeal only to a circuit court, not to the council.

Boards of architectural review

Councils can establish boards of architectural review within zoning ordinances that make specific provisions to protect historic and architecturally valuable neighborhoods, as well as scenic areas. As SC Code Section 6-29-880 notes, all of these boards' powers derive from the zoning ordinance.

When crafting such an ordinance, the council should name any restrictions to the areas under the board's jurisdiction, such as the conditions required for building, demolishing or altering the appearance of buildings. Clear language explaining the board's powers and limits is critical for its operations. Its decisions can be appealed to the board of architectural review and to circuit court, but not to council.

*Find information on planning and zoning boards in the Municipal Association's Comprehensive Planning Guide for Local Governments at www.masc.sc (keyword: *planning guide*).*





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Calendar

For a complete listing of the Association's training opportunities, visit www.masc.sc to view the calendar.

FEBRUARY

- 6 Hometown Legislative Action Day.** Marriott Columbia. Topics include civility in politics, an economic outlook, a legislative briefing, as well as Act 57 and affordable housing. Find more information on page 2.
- 7 Municipal Elected Officials Institute of Government.** Marriott Columbia.
- 7 SC Other Retirement Benefits Employer Trust Annual Members Meeting.** Municipal Association of SC, Columbia.
- 20 – 21 Municipal Court Administration Association 101 Session C.** Municipal Association of SC, Columbia. Topics include court financials.
- 21 Main Street South Carolina First Quarter Managers' Training.** SC State Emergency Operations Center, West Columbia.
- 27 Risk Management Services Hazard Identification and Assessment Training.** Cooperative Conference Center, Columbia.

- 29 SC Association of Municipal Power Systems Associate Member Lunch.** Cooperative Conference Center, Columbia.

MARCH

- 6 SC Business Licensing Officials Association Spring Academy.** Cooperative Conference Center, Columbia.
- 7 SC Association of Stormwater Managers First Quarter Meeting.** Cooperative Conference Center, Columbia.
- 11 – 13 SC Utility Billing Association Annual Meeting.** Marina Inn at Grande Dunes, Myrtle Beach.
- 19 Municipal Elected Officials Institute of Government: Basic Budgeting and Municipal Finance.** Regional Councils of Governments locations.
- 20 – 22 Municipal Clerks and Treasurers Institute.** Hilton Garden Inn/Home2 Suites, Columbia.
- 21 Municipal Technology Association of SC Spring Meeting.** Cooperative Conference Center, Columbia.
- 26 Risk Management Services: Defensive Driving Course.** Municipal Association of SC, Columbia.

APRIL

- 12 Municipal Court Administration Association of SC Spring Meeting.** Cooperative Conference Center, Columbia.
 - 16 Risk Management Services: OSHA 10-Hour Training.** Municipal Association of SC, Columbia.
 - 17 Risk Management Services: OSHA 10-Hour Training.** Municipal Association of SC, Columbia.
 - 18 SC Municipal Finance Officers, Clerks and Treasurers Association Spring Academy.** Cooperative Conference Center, Columbia.
 - 25 SC Municipal Human Resources Association Spring Meeting.** Cooperative Conference Center, Columbia.
- ### MAY
- 8 – 10 SC Community Development Association Annual Meeting.** Cambria Rock Hill – University Center, Rock Hill.
 - 14 Risk Management Services: Law Enforcement Training.** Cooperative Conference Center, Columbia.