What Is Business License Rebalancing?

A ct 176, the SC Business License Tax Standardization Act, was signed into law in September 2020. This law requires every local government with a business license tax to administer the tax in the same way across the state starting January 1, 2022. It also seeks to prevent cities and towns from receiving a revenue windfall in the first year of implementation as a result of the required changes.

To comply with Act 176, many cities and towns need to immediately begin making a number of adjustments to their current business license ordinances, schedules and practices.

First, each city and town should adjust its current business license year to the new license year, May 1 through April 30. In some cases, this will require shortening or lengthening the jurisdiction's current license year.

Changing the license year requires action by city or town council. Once the license year is changed, cities and towns should alert their businesses of the change prior to and during the license renewal process.

Next, city and town staff must assign each of their business license records a correct 2017 North American Industry Classification System code, or NAICS code. Using six-digit numbers, NAICS bundles individual businesses into similar industry groups. Every business that applies for a local business license should list its NAICS code on the business license application.

Once city and town staff has assigned each of their license records a NAICS code, they should ensure each business is assigned to the correct, state-mandated rate class using the 2021 Class Schedule. The Municipal Association prepares the standard class schedule, which cities and towns can obtain by contacting their business license standardization liaison at the Association.

Cities and towns must also rebalance their business license tax rates to ensure revenue neutrality during the 2022 business license cycle. The Municipal Association suggests a specific format for the order of the data, which will help during this

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rebalancing process. Staff should export all of their business license records into a Microsoft Excel spreadsheet. The purpose for exporting the records is to ensure the data within each of the records is accurate. In the process, staff should ask these questions:

- Does each record have a six-digit 2017 NAICS code?
- Are the gross income amounts correct?
- Is each business assigned to a rate class?
- Are there data formatting errors?

Once the data is deemed accurate, staff should begin reviewing the license tax rate for each class and suggest changes to the rates, if necessary to achieve a revenue-neutral result. The purpose of this "rebalancing" is to ensure the city or town does not collect more business license tax revenue in 2022 than it did in the 2020 license year. However, if a city or town projects it might lose revenue as a result of rebalancing, it may adjust its rates to ensure that does not happen.

For cities and towns that haven't regularly updated their class schedules, changes in rates for some individual businesses could be significant. Municipal Association staff are available to all cities and towns for assistance in rebalancing, which can pose challenges for those with outdated class schedules. To simplify the rebalancing process, the Association developed an Excel-based rebalancing template which reclassifies the businesses and assists with modeling rate options.

After rebalancing, cities and towns should repeal their existing business license ordinances and adopt new ordinances that comply with Act 176. The Municipal Association strongly suggests adopting its 2022 model business license ordinance that fully complies with the law.

Finally, by the end of 2021, cities and towns must set up an account with the state-mandated Local Business License Renewal Center, which allows businesses to renew their business licenses online with any city or town in the state. The SC Revenue and Fiscal Affairs Office hosts and manages the Renewal Center, with the Municipal Association of SC providing support.

The Municipal Association is available to assist anyone that needs help in complying with Act 176. For more information and to find a city or town's business license standardization liaison, visit www.masc.sc (keyword: standardization).

Find Guidance on the American Rescue Plan

H.R. 1319, better known as the American Rescue Plan, was officially signed into law on March 11. The $1.9 trillion emergency relief bill provides $65.1 billion to municipal governments to respond to the COVID-19 public health emergency, offset revenue losses, bolster economic recovery and provide premium pay for essential workers.

The Municipal Association of SC is continuing to learn about and evaluate the ARP as the federal government releases details. Find guidance on ARP funds as the information becomes available at www.masc.sc (keyword: American Rescue Plan).

Donated Properties and Due Diligence

Cities and towns sometimes find themselves on the receiving end of donated property when the owners of an unused parcel or other property aim to contribute it for the public good. The properties can seem like free gifts, full of potential, and so councils are often eager to accept them. First, however, they need to consider the possible risks inherent with the property and determine whether the benefits outweigh those risks.

City-owned properties can be a source of premises liability claims. For a municipality to protect itself against these claims, it must be able to demonstrate that it exercised reasonable care to protect individuals from harm resulting from known conditions. This also applies to conditions of which the municipality should have had knowledge.

Cities can protect themselves from significant liabilities if they establish criteria for when to accept property and then follow the criteria consistently. The procedure for accepting property should include a determination of potential problems that exist. Common concerns about donated properties include whether the property is vacant and whether it has environmental hazards such as asbestos and underground storage tanks. Many donated buildings are vacant or partially occupied, and have damage resulting from fire, natural elements, vandalism or a lack of utilities.

The property donation procedure should also evaluate the property for its utility to the city, and determine whether there is any deferred maintenance on the property, such as windows or roofs in need of replacement. If so, the city will need to take steps to address the deferred maintenance immediately.

As the city evaluates the property, it can gain useful insight and identify concerns by involving several staff members:

- the city attorney,
- the staff member responsible for risk management or liability claims, and
- the head of the department that would take over the property.

Cities should also consult with their property and liability insurer to determine what coverage exclusions or limitations may apply.

Although cities may want to accept a donation with plans to modify the property, renovation or demolition of most properties is subject to state and federal asbestos regulations, as well as Occupational Safety and Health Administration standard 1926.1101. Although Environmental Protection Agency and Consumer Product Safety Commission regulations have banned many uses of asbestos, some materials remain legal for sale and use. The materials that are not banned include materials where asbestos fibers are generally well bound in the material, which can include many flooring, insulation, and roofing products. Officials should not assume that a donated property is free of asbestos, no matter its age or condition. Contact the SC Department of Health and Environmental Control for a list of certified property inspectors.

Contamination from underground storage tanks may also increase the city's liability exposure. Conduct an assessment to determine if underground storage tanks are present, and if removal or cleanup is required. Cleanup must be done by companies that are certified by DHEC.

Taking these steps as part of a city's decision-making process to accept or decline a donation can prevent harm to residents and city staff and save the city effort, time and liability costs.

The renovation of the Rock Hill's Cotton Factory became an early success in Rock Hill's drive to redevelop the former textile manufacturing district of the city. Photos: City of Rock Hill.

Updating the Textiles Communities Tax Credit

Once a central piece of South Carolina's economy, textile mills began to decline in the 1970s, and left behind large, empty buildings. Although these properties decayed over time, they offer meaningful opportunities for revitalization and historic preservation. In 2008, the General Assembly passed the Textile Communities Revitalization Act, establishing tax credits that could make redeveloping these site feasible.

Redevelopment tax credits often come with complex criteria that properties must meet. For the textile mill credits, the law does not allow properties to be considered as a single site for eligibility purposes when intervening connectors — things like railways and waterways — pass through the site. Based on input from the City of Rock Hill, removing the intervening connector stipulation from the law became one of the Municipal Association's 2021-2022 Advocacy Initiatives.

Rock Hill is no stranger to mill redevelopment, often with help from the tax credit. The redevelopment of the Cotton Factory became an early success, when the once-deteriorated historic structure received a renovation, allowing for office space and retail. Later examples of refurbishment and adaptive reuse have been mixed-used developments like The Thread and University Center, where development is ongoing. More former mills have become affordable housing.

Rock Hill's Director of Economic & Urban Development Jennifer Wilford said the city acts as a facilitator during textile mill redevelopment. This involves communication about incentives — the city has growth management incentives that rebate impact and building permit fees in targeted areas, including the mills — and preparatory environmental work, all of which can help with the financial uncertainties faced by the developer.

"When you think about an old textile mill, there are a lot of unknowns," she said. "What we generally try to do is take as much mystery out of it as possible."

She said that the mill projects, generating jobs and other economic impacts, largely stand in a critical corridor for the city: between downtown and Winthrop University.

"Getting them back into productive reuse has really started to provide that critical linkage between those two areas," she said.

Wilford noted that the textiles communities' credit can be a critical layer in financing structures, and so broadening the applicability of the law by removing the intervening connector issue can improve the feasibility of more projects. The history of textile mills — how they operated and how they moved cargo — makes intervening connectors in the area likely.

"When you think about why these textile mills located where they did, it was because of their access to things like waterways and railroad tracks," she said.

Find out more about the specific requirements of the tax incentive in the article "Economic Development Tools: Textiles Communities Revitalization Credits," found in the August/September 2019 issue of Uptown*, at www.masc.sc (keyword: textile revitalization). Also, visit the website to find the full list of Advocacy Initiatives (keyword: Advocacy Initiatives).*

Association Highlight
SC Business Licensing Officials Association

Many municipal job positions have specific training and networking needs, and the Municipal Association of South Carolina's affiliate associations offer opportunities to meet those needs.

The SC Business Licensing Officials Association helps its members remedy issues associated with administering and enforcing the local business and professional license ordinances. BLOA offers the BLOA Training Institute, which is designed to improve the professional and administrative skills of business licensing officials. The Institute's most recent session included a focus on the SC Business License Standardization Act, which adds many specific standardization requirements for the cities and towns that administer this tax. Learn more about the standardization process in 2021 at www.masc.sc (keyword: standardization).

Graduates of the institute who pass an exam receive the Accreditation in Business Licensing designation. Those with this designation may then pursue a Master in Business Licensing designation by completing BLOA's Advanced Academy.

BLOA also hosts a Joint Academy with the SC Municipal Finance Officers, Clerks and Treasurers Association to explore topics relevant to both groups.

Learn more about the SC Business Licensing Officials Association at www.masc.sc (keyword: BLOA).

MEO Municipal Elected Officials Institute of Government

Testyourselfmonthlyquiz

True or False: In the council-manager form of government, councils are permitted to direct employees under the supervision of the city manager.

Answer: *False.*

In the council-manager form of government, as described in SC Code Title 5, Chapter 13, the manager serves as the chief executive officer and head of the administrative branch of the municipal government. As such, the manager is responsible to the council for the proper administration of all affairs of the municipality. The mayor and council set policy and employ the city manager.

The mayor and councilmembers are forbidden by law from dealing with employees or interfering with the operation of the departments, offices and agencies under the direction of the manager. For example, council may not have direct involvement in the hiring or firing of the employees under the manager or directly dealing with or giving orders to those employees.

The Municipal Elected Officials Institute of Government offers online courses. In-person classes will resume when COVID-19 activity drops to safe levels. To register for the online courses, participants should go to the Municipal Association's website at www.masc.sc and log in with their user identification number and password.

Keeping Eyes on the Road

Busy schedules and workloads can leave drivers with the temptation to try to multitask while driving a moving vehicle, and the confidence that they can do it safely. The National Safety Council, however, notes in its guide on driver distraction, that people "cannot accomplish more than one cognitively demanding task in the same time frame with optimal focus and effectiveness given to each task. One task is primary and the other is secondary."

NSC data showed that about 276,000 people in the United States suffered injuries in 2018 because of distracted driving. In the same year, 2,841 deaths resulted from distracted driving. One in five of those fatalities were pedestrians or bicyclists, according to the National Highway Traffic and Safety Administration.

Distracted driving is older than mobile communication devices. Even so, the growing use of such devices by drivers has brought increased awareness to distracted driving. Many think of distracted driving as involving texting or using a handheld device, but it can be any activity that diverts attention away from the road. The South Carolina Municipal Insurance and Risk Financing Fund reported a 17% increase in those motor vehicle accidents that were indicative of distracted driving in 2020.

Safe driving requires full attention, and distractions can come in three forms: visual, manual and cognitive.

Visual distractions

Visual distractions are those that take the driver's eyes off the road. Examples include looking at the radio to make an adjustment, shifting attention to an object or activity on the roadside, consulting a map or reading a text message.

A driver who is traveling 55 miles per hour and reads a text message for 4.6 seconds will travel the length of a football field without looking at the road. Functionally, this could be like driving that length blindfolded, with no ability to see the road ahead or to identify potential hazards. A driver should maintain a proper lookout and know the surroundings at all times while operating a vehicle.

Manual distractions

Safe driving requires both hands on the steering wheel. Any activity that takes either hand off the steering wheel is a manual distraction. Some examples are changing the radio station, going through the console, reaching into the passenger seat, eating, drinking, smoking, applying makeup or grooming, or using a mobile device. When both hands are not on the wheel, drivers may have delayed responses to hazards, reducing their ability to drive defensively.

Cognitive distractions

Cognitive or mental distractions occur when the driver is thinking about something other than driving — possibly lost in thought. Examples of cognitive distraction include thinking about something upsetting, daydreaming, conversing with a passenger, talking to someone on a handheld or even hands-free device, or thinking about other tasks requiring attention. Even singing or listening to an audiobook can cause cognitive distraction. When drivers are thinking about something else, then their full attention is no longer on driving. Mental activities that take the mind away from driving can be just as dangerous as visual or manual distractions.

Reducing distractions

Cities and towns can encourage safe driving by doing the following:

- Make sure employees know the dangers of distracted driving. This can be accomplished by encouraging participation in the National Safety Council's Defensive Driver Course. Risk Management Services' loss control staff offers the four-hour course to SCMIT and SCMIRF members.
- Establish a distracted driving policy banning all employee use of cell phones or mobile devices while driving, including use of hands-free and voice command systems.
- Keep awareness at a high level by discussing safe driving strategies in team meetings and safety meetings.
- Participate in Distracted Driving Awareness Month each year in April to reinforce the distracted driving policy and encourage employees to take the messaging home to their families and friends.

Driver awareness not only reduces the potential of causing an accident, but it enables drivers to take evasive action to avoid a collision when another driver makes a negligent maneuver. If drivers must engage in an activity that requires taking their eyes off the road, their hands off the steering wheel, or their mind off driving, then pulling over in a safe location is the best practice.

Liability Cap Increase Proposed

At one time, South Carolina's cities and towns could not be sued when a person was injured. Municipal employees also could not be sued for any action they took while performing an official duty. This protection, known as sovereign immunity, ended in 1986, when the General Assembly replaced it with qualified, limited liability by passing the SC Tort Claims Act.

The law gives South Carolinians the ability to bring suit against their state, county or municipality, but only in certain circumstances, and only for limited amounts of money. Currently, a person suing over a single occurrence of negligence cannot recover damages of more than $300,000. The total damages recovered from the government for any single occurrence can be no more than $600,000. These liability caps remain in place no matter how many individual claimants are involved.

The caps were set at their present level in 1997. In the current legislative session, lawmakers have proposed increasing the caps. A bill being debated this legislative session, S82, would increase the limit of a loss to one person from a single occurrence to $500,000. It would increase the total limit for a loss arising out of a single occurrence to $1 million.

For the 130 municipalities in South Carolina that are SC Municipal Insurance and Risk Financing Fund members, the bill is projected to serve as a factor that would increase premiums if it passes. In recent years, premiums have been affected by an increase in catastrophic events since 2015, as well as increasingly expensive reinsurance markets. These trends are expected to continue. Reinsurance the process by which insurers share risks to help reduce the costs of major claim expenses, is an important and necessary way to protect cities and towns from catastrophic loss. Some of SCMIRF's peers in other states have experienced as much as 50% increases in reinsurance costs.

S82 was prefiled in the Senate in December 2020 and is being debated during the 2021-2022 session of the General Assembly. For the latest action on S82, visit the Association's Legislative Tracking System at www.masc.sc (keyword: tracking system). Keep up with legislative action that impacts cities and towns by subscribing to the From the Dome to Your Home *weekly report at the Association's website (keyword: Dome).*

Proposal for tort cap increase under S82

$500,000 for loss to one person from single occurrence

$1 million total limit for a loss from a single occurrence

Why Strong Passwords Aren't Enough:

Three Tips for Better Password Policy

By Joe Howland, chief information security officer, VC3

We recently heard an anecdote from a security executive that illustrates the need for much stronger password policies at municipalities. We altered the details to protect our source.

"An organization in South Carolina has 1,000 employees. During a security audit, 117 employees were found to be using the password 'Gamecocks2019.' Immediately, the security executive implemented a stronger password policy that caused employees to reset their passwords and eliminated the chance of such a common password from being used in the future."

What's interesting is that each employee selected a password individually, thinking it was unique. None of the 117 people knew about anyone else's "unique" password.

Many employees know not to use "password" anymore, but other problems persist. Sports teams, TV shows, celebrities, pet names and children's names don't make strong passwords, since they are too common.

Here are three ways tips for a better password policy — from good to better to best.

Good: Password Strength

Enforcing the use of strong passwords avoids the issue of employees choosing common or easily hackable words and phrases. Strong passwords may be

- **Passphrases:** A passphrase is a long phrase that is easy for you to remember — such as "Theredh0rseis2fast!" — but hard for hackers to guess. The longer a password, the more difficult it becomes to hack. You would still need to mix in a few numbers and symbols for good measure.
- **Complex passwords:** While not as memorable as a passphrase, a complex password involving a string of letters, numbers and symbols can also still work as a harder-to-guess password.

Strong passwords are a good tactic, but hackers can still crack them with enough effort.

Better: Password Managers

Password managers are services that generate strong passwords, remember all your passwords and encrypt them. Once implemented, the managers tend to work smoothly in the background and make your life easier.

Some benefits include

- **Automated generation of strong passwords:** A password manager can automatically generate strong complex passwords for you and encrypt them.
- **Shoring up employee password weaknesses:** With a password manager, employees cannot use weak passwords or reuse the same password across multiple accounts.
- **Easier password policy adoption:** With password managers, implementing a password policy becomes easier for employees, resulting in a policy that's actually used and enforced.

Best: Two-Factor Authentication

Despite what you may hear about its inconvenience, two-factor authentication, also known as "2FA," dramatically increases your login security.

- **Ease of use:** 2FA works when you get a code through text messaging or an easy-to-install app (such as Duo Mobile or Microsoft Authenticator) that gives you a randomly generated code every 30 seconds or a "push notification" where you just press OK to confirm your login.
- **Large reduction in the chance of getting hacked:** In 2018, a Verizon Data Breach Investigations Report noted that 81% of company data breaches occur because of poor passwords. With 2FA, you add an extra step that makes it much, much more difficult for a hacker to succeed. While 2FA isn't hacker-proof, it places an additional barrier — physical access to your smartphone — in front of the hacker to overcome.
- **No IT investments or infrastructure needed:** 2FA is cheap. It's often baked into existing applications and the implementation generally involves receiving a text or installing a free app on a smartphone.

We encourage you to explore these options and implement the strongest password policies possible. Weak passwords put your city or town at risk.

Joe Howland is the chief information security officer at VC3, the Municipal Association's technology partner.

Procurement FAQs

Are municipalities in South Carolina required to adopt a procurement code?

State law requires municipalities to adopt a procurement code. According to SC Code Section 11-35-5320 "all political subdivisions of the state shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement." The law does not require municipalities to adopt state procedures.

Are there any model ordinances or procedures available?

Yes. The same law from 1981 requiring a procurement code also established a state task force to develop a model ordinance for political subdivisions including cities and towns. That model ordinance is available at the State Fiscal Accountability Authority's Procurement Services website, www.procurement.sc.gov, under "Political Subdivisions." This ordinance is most suitable for larger municipalities with a full-time purchasing staff.

To assist smaller municipalities, the Municipal Association of SC developed a simplified model purchasing ordinance, found at www.masc.sc (keyword: model purchasing ordinance). Municipalities

should adapt the model ordinance to meet local needs and operating requirements.

Can a municipality establish preferences in its procurement code?

Yes. State law only requires that the procurement codes adopted by cities and towns "embody sound principals of competitive procurement."

Including preferences is a local policy decision, and state and federal courts have upheld properly constructed and applied

geographic or socioeconomic preferences. Examples include awarding bids to minority-owned businesses or to local businesses if its bid is within a defined percentage — for example, 5% — of the next lowest bid.

Generally, a procurement code specifies the percentage of preference in a schedule that varies with the value of the purchase. The percentage is often capped on purchases over a defined value. Cities that are considering procurement preferences should consult the city or town attorney before adopting the policy.

What determines the method used to solicit and advertise for bids?

The local procurement code adopted by the council should specify the dollar threshold or thresholds that trigger implementation of bid procedures. The code should also indicate what methods must be used in each procedure and whether advertising is required. The dollar values in the Municipal Association's model ordinance are suggested amounts which can be altered to meet the specific needs of the municipality and its form of government.

Find the Association's model purchasing ordinance at www.masc.sc (keyword: model purchasing ordinance).

Professional Municipal Clerks Week Arrives in May

The municipal clerk stands as the only staff role that South Carolina law requires of every city and town, no matter its size or form of government. The International Institute of Municipal Clerks marks Professional Municipal Clerks Week every year to call attention to clerks. The 52nd annual observance will take place May 2 – 8. The role of clerks often does not gain attention, but they fulfill a crucial function for local government.

Responsibilities for clerks include preparing the agendas for council meetings and then creating minutes of the meetings. Clerks also maintain the

records of a city's ordinances and council's resolutions, as well as the records of appointed commissions and committees. Many clerks also serve in financial and administrative roles.

Clerks must also keep up with the technological needs of local government, and that aspect of their work has taken on a major new dimension during the COVID-19 pandemic since many councils have gathered remotely in electronic meetings for the first time. Clerks played a critical role in working out the many technical and training issues of ensuring that councilmembers can participate in these meetings and that the public can

watch them and even take part in public hearings.

The SC Municipal Finance Officers, Clerks and Treasurers Association provides training for each of those professions, and it is a cosponsor of the Municipal Clerks and Treasurers Institute. It's a three-year program that counts toward the International Institute of Municipal Clerks' Certified Municipal Clerks designation.

Learn more at www.masc.sc (Keyword: Municipal Clerks Week). The web page includes a sample resolution that city and town councils can use in May to recognize their clerks' work.

Preserving South Carolina's
Unique Downtowns

Tourism, one of South Carolina's major economic drivers, faced a major challenge as the coronavirus pandemic shut down many traditional tourism activities. Recognizing the need to harness a new approach to boost the local economy, communities such as Sumter, Moncks Corner and Williamston shifted their focuses from out-of-state visitors to their own residents by embracing the "love where you live" movement.

Sumter

The City of Sumter is known for its U.S. Air Force base and its nationally-recognized historic business district. Encompassing more than 60 historic structures dating from 1880 to 1912, Sumter's downtown has grown into a vibrant destination with restaurants, a hotel and a brewery. This was not the case 20 years ago, when abandoned and underutilized buildings dominated downtown. The transformation required a collective, holistic reinvestment.

Embracing their most fundamental anchors like The Opera House in the heart of downtown, Swan Lake Iris Gardens, and proximity to two state parks, community leaders expanded their focus on Sumter's arts, entertainment and dining options. Sumter now offers a full-day downtown experience with live concerts, more than 20 restaurants and overnight stays.

The downtown, said Leigh Newman, Downtown Sumter coordinator, is now "more well-rounded, with lots to offer both locals and out-of-town visitors."

Even during last year's pandemic disruptions, the Opera House continued to entertain. Small groups rent the 500-seat venue for private movie events.

Sumter's extraordinary downtown turnaround has three critical elements: city leadership embraced its role in revitalizing the commercial district, private local investors renovated key buildings and residents began to support downtown's business community regularly.

Highly successful years of major investment and activity are great, but Newman also acknowledged that slow, incremental progress is just as important.

"Quiet years lay the foundation for future achievements," she said.

With the positive developments such as a brewery, hotel and a four-star restaurant, more work lies ahead, especially as Sumter continues to address its empty buildings. Preserving historic buildings is always a major goal, but the updates needed to make them functional for new businesses are not always possible. For example, the Sumter Original Brewery, which has a rooftop bar, is an entirely new build that replaced a compromised historic structure.

"We still have a long way to go," Newman said. "As long as you've got empty buildings, you've got opportunity."

Moncks Corner

Seventy miles south of Sumter, the "Lowcountry's Hometown" of Moncks Corner has rapidly grown in both population and economic development prospects. One of Moncks Corner's valuable assets is located just outside of its downtown: the town's state-of-the-art Regional Recreation Complex. Its location has helped downtown thrive by providing a hub for sports, and it also serves as the venue for a farmers market and events.

Catalytic projects like the recreational complex have further ignited community-wide developments.

"One of our greatest successes has been the growth in the number and in the quality of businesses," said Doug Polen, community development director for the Town of Moncks Corner. "When we became a Main Street community, we began a comprehensive approach to business retention and recruitment. And now there's a lot more to do downtown."

A semi-permanent food truck vendor is serving takeout five nights a week and two new restaurants are slated to open. Molly Willard, Main Street director and public information officer, continues to focus on stimulating economic development downtown while Polen facilitates neighborhood developments. This team approach to attract, expand and retain development is what developers and small businesses value most, said Polen.

"You get me and my department to help guide the process," he said.

In a five-year span, the town's population increased nearly 30%. This growth surge is both a challenge and an opportunity, Polen said. Part of Willard's job is to strategically reach these residents and remind them that Moncks Corner's commercial downtown has a lot to offer.

"Thousands of Moncks Corner residents commute daily to work in Charleston and Goose Creek, and many have never even been to Moncks Corner's downtown. They don't know it's here," Polen said.

Left: Moncks Corner's revitalizing downtown is located in an region experiencing strong growth overall. Photo: Town of Moncks Corner.
Right: Williamston is aiming to expand its in-town shopping options. Photo: Town of Williamston.

Williamston

Far to the northwest in the Upstate, Williamston is also working to celebrate its small town sense of place and local pride by bringing activity back downtown. Originally a bustling resort town known as "The Saratoga of the South," Williamston's resort hotel industry declined in the 19th century. While that industry is unlikely to rebound, Williamston is home to one of the nation's oldest public parks, Mineral Springs Park, which sits adjacent to its downtown core.

Embracing the Mineral Springs Park as its major asset, the town is working to connect to nearby biking and walking trails to become a bicycle- and pedestrian-friendly community. Lisa Cope, Williamston's Main Street director, noted that downtown's compactness is its draw.

"You can walk from one end to the other and not break a sweat. Pretty soon we'll have a trail system that will blend recreation and shopping," she said.

Cope hopes to grow local foot traffic with enough business diversity that residents do not need to go elsewhere. The city has the goal of attracting new business and help residents see the potential of Williamston.

"We are so close to having everything in town — to the point where you don't need to leave town to shop. The promise of having everything that the average

family shopper or recreational visitor needs in the downtown area is exciting," she said.

Focusing on the distinctive

Communities that capitalize on the very assets that characterize their downtowns, like distinctive architecture, pedestrian-friendly environments and unique senses of place, ensure that their downtowns are vibrant, said Jenny Boulware, manager of Main Street South Carolina.

"Not everyone has an opera house or a signature park, but everyone has something that people can't find elsewhere," she said. "Cities should encourage residents to rediscover the best parts of their hometown. Spend a day, a weekend, or even a whole week playing tourist. Visit the museums, local attractions, shops and restaurants that you usually only bring visitors to see. This can help you see more clearly how to capitalize on the things that make South Carolina's downtowns distinctly different."

Main Street South Carolina is a technical assistance program for communities seeking to revitalize their historic downtown commercial districts. Main Street SC offers several community membership levels ranging in cost and requirements. Learn more at www.masc.sc *(keyword: Main Street).*

Planning and Zoning

Treating Religious Land Use Equally

Land use issues involving religious institutions can often arise when a municipality regulates its planning and zoning. This can be especially true in a downtown district, where limited space is available for competing concerns such as business operations and parking.

The First Amendment to the United States Constitution protects the free exercise of religion and prohibits the government from establishing an official religion. In addition, under the Religious Land Use and Institutionalized Persons Act, a federal law enacted in 2000 known as RLUIPA, cities and towns face specific restrictions on their ability to regulate land use for religious purposes.

The law prohibits governments from imposing a land-use regulation that would create "a substantial burden" on religious activity. The law allows an exception to this restriction in cases where the government demonstrates that the regulation serves a "compelling governmental interest," and that the regulation is the least restrictive way of achieving that end.

RLUIPA further disallows land-use regulations that would:

- place religious institutions on unequal terms with other institutions,
- discriminates based on religion or religious denomination,
- completely exclude religious assemblies from a jurisdiction, or
- unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.

In the two decades since the passage of RLUIPA, the U.S. Department of Justice has remained involved in its enforcement. The U.S. DOJ reported in September 2020 that it had opened a total of 485 RLUIPA land-use investigations of local and state governments, and filed 25 RLUIPA land-use lawsuits.

Here are some examples of RLUIPA land-use cases:

- *United States v. City of Waukegan*: Waukegan, Illinois excluded places of worship in districts that allowed clubs, lodges, meeting halls and theaters, and notified small churches in these districts that they violated the regulations. The DOJ sued, leading to a consent decree requiring the city to treat religious institutions equally with other places of assembly.

- *Albanian Associated Fund v. Township of Wayne*: After an application to build a mosque had remained active for three years, the Township of Wayne, New Jersey took the property in question by eminent domain. The DOJ filed a statement of interest indicating that the township's actions were a deliberate effort to keep the mosque from being built, and the court ruled that using eminent domain to overcome zoning regulations could be a RLUIPA violation.

- *United States v. City of Hollywood*: The DOJ sued the City of Hollywood, Florida, claiming that it had denied a permit to a synagogue in a residential neighborhood — an area where permits for other religious uses had been approved — because of discrimination against Orthodox Jews. This led to a consent decree that allowed the synagogue to remain at its location and expand.

- **Douglas County, Georgia:** When a church attempted to build a new sanctuary at its existing property of 2.8 acres, the county imposed a 3-acre minimum for church developments, but not for nonreligious assemblies. After the DOJ opened an investigation, the county changed its code to treat churches and other assemblies equally.

Learn more about the RLUIPA at www.justic.gov/crt/rluipa.
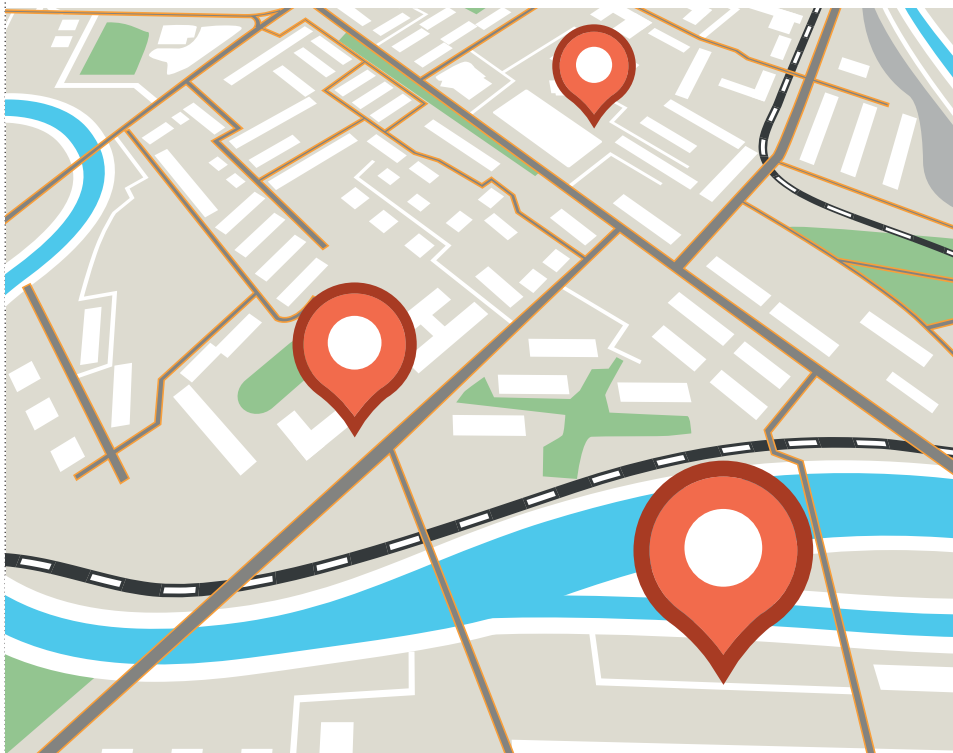
Is Your Planning Board Operating Legally?

The open meetings rules found in the SC Freedom of Information Act most often arise in discussions about city council meetings. However, the requirements of FOIA apply to all those public bodies defined in SC Code Section 30-4-15, meaning that they apply to such groups as planning commissions, boards of architecture review and boards of zoning appeals.

Here are several legal requirements to remember for planning boards:

Annual notice

At the beginning of every year, public bodies must give written notice of their regularly-scheduled meetings, including the date, time and location for each of the meetings. The notice must appear on a bulletin board in a publicly accessible place at the meeting space. If the city or town has a website, then the public body must also post the annual notice there.

Meeting notices

FOIA also regulates what the boards must do when posting the agendas of individual meetings. They must publicize the agenda at least 24 hours in advance of the meeting, providing it to all those individuals, news outlets and organizations who request that the public body send the agendas to them. As with the annual notice, boards must post the agenda in a publicly accessible place at the site of the meeting. They must also post it on a website, if one exists.

Executive session limitations

Executive sessions occur during city and town council meetings, but they are available for use by other public bodies as well. SC Code Section 30-4-70 narrowly defines the instances in which a public body may enter executive session. Not all of the allowable reasons are circumstances likely to apply to a planning board, but the list includes receipt of legal advice, which occurs with planning boards.

Before entering executive session, the public body must vote to do so, stating the purpose as specifically as possible along with the FOIA code section allowing it. The public body may not take action during the executive session, except to return to public session or adjourn. Learn more in the March 2020 *Uptown* article "Take Care With Executive Session Procedures" at www.masc.sc (keyword: Executive Session).

Education requirements

The SC Local Government Comprehensive Planning Enabling Act, which authorizes local governments to create

planning boards, also requires planning and zoning officials to take orientation and continuing education courses. If the officials on planning boards do not complete these requirements, they may be removed from office. Similarly, professional employees engaged in planning activities who do not complete these education requirements may be removed from their positions.

The Municipal Association of South Carolina and South Carolina Association of Counties offer the only state-approved resources for orientation training. Learn more at www.masc.sc (keyword: planning and zoning training).

More resources

The American Planning Association provides a cost-effective means for planning board members to stay current with the legal issues and best practices of the planning field, offering online and onsite education as well as publications. At current prices, entities that pay an annual $121 participation fee can sign up planning board members and elected officials for $68 each. Learn more at www.planning.org/commissioners.

Learn more about FOIA in The Public Official's Guide to Compliance with the Freedom of Information Act *at www.masc.sc (keyword: publications).*

Planning and Zoning

Planning and Zoning

The Questions of
Annexation

This article is the first in a series on the three methods of annexation allowed in South Carolina law.

Annexation — the process by which a city or town expands its boundaries — is among the most frequently discussed policy subjects in municipal government. Questions related to annexation range from eligibility of properties to methodology, costs, city council districts and utility services for out-of-town customers.

Annexation requires properties to be contiguous to existing municipal boundaries as defined in SC Code Section 5-3-305. The properties must touch other properties already inside the municipality before the city or town can annex them. In the three methods of annexation provided for under South Carolina law, all or some of the affected property owners or electors must petition for the property in question to be annexed.

Municipal leaders in many cases support annexation. It allows for the expansion of city services, and grows the population and the tax base. Annexation also permits more people to have a say in decisions about the community's policies, future planning and development and the services provided. Even so, officials must consider the best interests of their city every time they annex a property.

The long-term benefits of annexation will often outweigh the short-term costs. Even so, the establishment of new services can at times create a financial burden that cannot be offset by new revenues, taxes and fees generated in the annexed area. For each proposed annexation, councils must weigh all of the factors so they can

Advocacy on municipal enclaves

Municipal enclaves, also known as doughnut holes, in areas completely surrounded by city limits can create great confusion over governmental services such as police, fire and sanitation. The Municipal Association's 2021 – 2022 Advocacy Initiatives call for an annexation process to close enclaves, as discussed during Hometown Legislative Action Week. Learn more and find the video at www.masc.sc (keyword: Hometown Legislative Action Week).
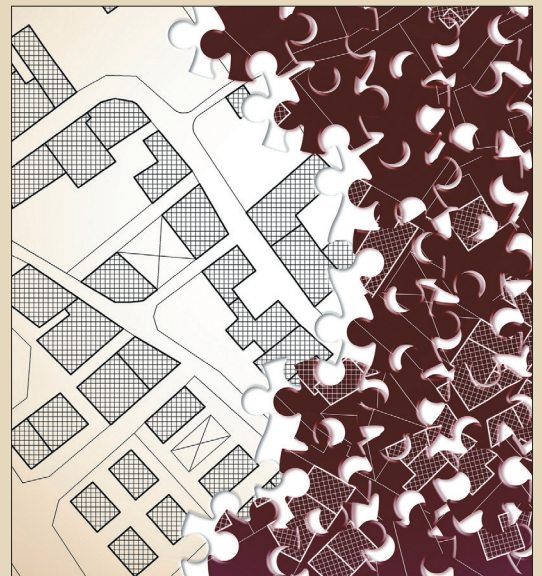
make an informed decision. A formalized policy for evaluating annexations can be helpful.

For property owners, opinions are more mixed, ranging from those who would like municipal services to those who vigorously oppose additional government in their lives. Because annexation has a public relations element, many municipalities create dedicated communications efforts to explain the benefits and costs of annexation, including taxes and service charges, which can correct misinformation. An April 2019 *Uptown* article, "Crunching Numbers for Annexation Costs," examined websites and interactive annexation calculators used by several cities and towns. The article is available at www.masc.sc (keyword: annexation costs).

There are three methods of annexation available in South Carolina law:
- the 100% petition and ordinance method – SC Code Section 5-3-150(3);
- the 75% r petition and ordinance method – SC Code Section 5-3-150(1); and
- the 25% petition and election method – SC Code Section 5-3-300-315.

Upcoming issues of *Uptown* will explore the rules and processes of each of these three methods. Information on the methods is also available in the Municipal Association's *Annexation Handbook*, found at www.masc.sc (keyword: annexation).

Including All Elements of the Comprehensive Plan

South Carolina's Comprehensive Planning Enabling Act, found in SC Code Title 6, Chapter 29, provides cities and towns with authority to undertake planning and adopt zoning and land use regulations as tools to guide their communities' development.

The law does not require local governments to implement a planning program, but those who do must establish and operate a local planning commission. The commission is responsible for developing a comprehensive plan, specifically addressing 10 planning elements. It must also reevaluate the municipality's comprehensive plan every five years and update the plan by resolution every 10 years and submit it to the city or town council. The council must then have a public hearing on the plan and adopt it by ordinance every 10 years.

The law leaves local governments to pursue the 10 comprehensive plan elements in a way that best meets their communities' needs. However, for each element, the law specifies that the planning process should include an inventory of existing conditions, a statement of the local government's needs and goals and implementation strategies with timeframes.

The 10 elements are these:

1. Population element

The plan should consider the historic population trends, anticipated growth as well as demographic specifics, like the size and number of households, education levels and income.

2. Economic development element

This should address the characteristics of the available workforce, where workers live and other aspects of the local economy. Useful considerations can be manufacturing, tourism or revitalization.

3. Natural resources element

What kind of water bodies, parks and recreation areas, agricultural land, forest land and wildlife habitats, does the area have? This element also needs information on the area's flood plains.

4. Cultural resources element

These can be historic buildings and sites; unique commercial, residential or natural areas; and educational, religious or entertainment institutions.

5. Community facilities element

Community facilities include many assets necessary for development. This can include water, sewer and wastewater services; solid waste disposal; fire protection; as well as medical, governmental and educational facilities. The local government must adopt this element before adopting any subdivision or other land development regulations.

6. Housing element

What are the locations, types, ages and conditions of existing housing? How many are owner-occupied or renter-occupied? What is the cost of developing a sufficient amount of affordable housing, and what regulations may prevent that?

7. Land use element

This element should consider the municipality's current and future land uses in categories such as residential, commercial, industrial, agricultural, undeveloped and others. The local government must adopt this element before adopting zoning ordinances.

8. Transportation element

This element considers road improvements, new road construction as well as pedestrian and bicycle projects. The transportation element should coordinate with the land use element to provide planning for sufficient transportation options for the current and future land uses.

9. Priority investment element

This is an analysis of projected federal, state and local funds for infrastructure and facilities in the next decade, and recommended projects for those funds.

10. Resiliency element

This element, added in 2020, considers the impacts of flooding, high water, and natural hazards on individuals, communities, institutions, businesses, economic development, public infrastructure and facilities, and public health, safety and welfare.

Planning guide

The *Comprehensive Planning Guide for Local Governments*, a publication of the Municipal Association of SC, explores the comprehensive plan process. It explains how planning commissions can develop and revise the 10 elements of the comprehensive plan, and how councils should adopt it. The handbook also explains the organizational structures and functions of planning commissions and boards of architectural review as well as the process of crafting a comprehensive plan. Find the handbook at www.masc.sc. (keyword: planning guide).

Planning and Zoning

Calendar

Scheduled in-person meetings are subject to change based on COVID-19 restrictions in place at the time of the meeting. Information about events and how members can access the virtual events will be updated on the Association's website.

APRIL

8 SC Municipal Finance Officers, Clerks and Treasurers Association Spring Academy. Cooperative Conference Center, Columbia.

16 Municipal Court Administration Association of SC Spring Meeting. Seawell's, Columbia.

20 SCMIT/SCMIRF Hazard and Analysis Mitigation Training. Walterboro Wildlife Center.

21 SCMIT/SCMIRF Hazard and Analysis Mitigation Training. Newberry Fire House Conference Center.

22 SCMIT/SCMIRF Hazard and Analysis Mitigation Training. Dillon Wellness Center.

29 SC Municipal Human Resources Association Spring Meeting. Seawell's, Columbia.

MAY

2 – 5 Building Officials Association of South Carolina Annual Meeting. Embassy Suites Myrtle Beach.

3 – 5 SC Community Development Association Annual Meeting. Sonesta Resort Hilton Head Island.

19 SCMIT/SCMIRF: Fair and Impartial Policing: Understanding Bias and Duty to Intervene. Cooperative Conference Center, Columbia.

20 SC Municipal Finance Officers, Clerks and Treasurers Association Municipal Clerks and Treasurers Institute: Year 2, Session B. Cooperative Conference Center, Columbia.

JUNE

3 South Carolina Association of Stormwater Managers Second Quarter Meeting. Seawell's, Columbia.

8 South Carolina Business Licensing Officials Association ABL Exam. Municipal Association of SC, Columbia.

13 – 16 SC Association of Municipal Power Systems Annual Meeting. Sonesta Resort Hilton Head Island.

JULY

22 – 24 Municipal Association of SC Annual Meeting. Hilton Head Marriott.

AUGUST

3 SC Business Licensing Officials Association ABL Exam. Municipal Association of SC, Columbia.

10 SCMIT/SCMIRF Diversity and Inclusion Training. Moncks Corner Train Depot.