MASC UPTOWN

Municipal Association of South Carolina

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Deadline set to submit local body-camera policies

State and local law enforcement agencies have until March 7 to submit their body-worn camera policies to the South Carolina Criminal Justice Academy for approval. All agencies must develop a policy regardless of when they plan to roll out body cameras to their officers.

In June, South Carolina became the first state to pass legislation requiring state and local law enforcement officers to wear body-worn cameras while performing their duties. However, the mandate to supply officers with cameras does not become effective until the state provides full funding.

The legislation, conceived and introduced by Senator Gerald Malloy and championed by Senator Marlon Kimpson, initially struggled to pass a Senate Judiciary subcommittee until the tragic police officer-involved shooting of a motorist in North Charleston drew the nation's attention and galvanized the legislature.

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Officer wearing a front-facing body camera

The new law requires the state's Law Enforcement Training Council within the Criminal Justice Academy to create guidelines for the use of body-worn cameras. These guidelines will then be used by state and local law enforcement agencies to create their own body camera policies.

On December 7, the Training Council officially adopted its statewide guidelines. The guidelines address which officers must wear body cameras, when they must be worn and activated, when officers are restricted from recording, and when officers may deactivate their cameras.

The guidelines also make it clear that officers are not required to seek permission from the party being recorded, and they lay out in greater detail the circumstances under which video created by the body camera may be released to the public or reviewed by the officer.

Law enforcement agencies are not required to release body-camera video through an FOIA request. However, the video may be obtained by someone involved in criminal or civil litigation, and by court order.

Agencies that have already rolled out body cameras are also under the mandate to institute policies based on these new guidelines or make any changes to existing policies to ensure they are consistent with the new guidelines.

Once the Criminal Justice Academy approves the local body-camera policy, officials can apply to the Public Safety Coordinating Council within the Department of Public Safety for funds to cover the cameras' costs. The General Assembly established a fund to cover the initial cost of equipment, replacement, maintenance and data storage related to the body cameras. It also covers reimbursement for agencies that have already started using cameras.

When applying for funds, officials should take into consideration projected costs over at least several years because it is unlikely, without an increase in state funds allocated, that grantees will receive funding on an annual basis.

Forward local body-worn camera policies to James Fennel, general counsel of the South Carolina Criminal Justice Academy, at jfennell@sccja.sc.gov.

RMI graduates

The South Carolina Municipal Insurance Trust and South Carolina Municipal Insurance and Risk Financing Fund recognized nine graduates of the Risk Management Institute.

The Institute is a continuing education program for municipal staff with responsibilities related to risk management. Some of the topics covered in the Institute include employment liability, driving safety, public works risk management, fire policies, special events liability and public safety.

The nine graduates are Barbara Denny, Town of Clover; Jeffrey Hooper, Town of Fort Mill; Brian Lorick, City of Cayce; Rebecca Mejia-Ward, City of Hartsville;

Gina Tiller, City of Hartsville; Daniel Moore, City of North Augusta; Sherron Skipper, City of Hartsville; Joe Turner, City of North Myrtle Beach; and Alicia Williamson, City of Greer.

To successfully complete the Institute, individuals must participate in eight classes over a two-year period.

SCMIT provides self-funded workers' compensation coverage to its member cities. SCMIRF provides all lines of property and casualty coverage including tort liability and automobile coverage for its members. The Municipal Association sponsors both programs.

For more information about the Institute, visit www.masc.sc (keyword: RMI).

2016 Achievement Awards

Final days to enter 2016 Achievement Awards

The 2016 Achievement Awards submission deadline is February 10 for both online and hand-delivered submissions. Mailed entries must be postmarked by February 10. The online Achievement Awards brochure and entry form are available at www.masc.sc (keyword: achievement awards).

The "fill-in-the-blank," application provides an easy-to-use format to highlight a project's key points. Judges will look for projects that show effective partnerships, innovation, adaptability to other hometowns, efficient use of resources and quantifiable results.

The main contact person for each entry will receive an email confirmation by February 17 from the Association noting it has received the entry.

For more information, contact Ashleigh Hair at 803.933.1288 or ahair@masc.sc.

Are you ready for a storm?

February is the peak of the ice storm season in our state. Is your city prepared for an ice storm, hurricane or other severe weather event?

Major ice storms and severe weather events occur infrequently in South Carolina, but when they do, municipalities face the challenge of delivering emergency services, determining how to clear roads, disposing massive volumes of debris and figuring out how to pay for the added costs.

In February 2014, the last significant winter weather event to strike the state, 22 counties were declared federal disaster areas. The storm generated more than a million cubic yards of debris statewide. At its peak, 364,000 people were without power.

Prior preparation is the key to recovering storm-related emergency service costs and accelerating the recovery process. This is particularly true when storm damage is significant and wide-spread enough to result in a presidential disaster declaration, which triggers the availability of the Federal Emergency Management Agency's Public Assistance Grant Program. Advance planning should include having a debris removal plan in place and a basic understanding of how the Public Assistance Program operates.

Under the PA program, affected state and local governments can apply for federal grants to pay 75 percent of approved costs for emergency services resulting from a storm, and the repair or replacement of damaged public utilities, facilities and infrastructure. Debris removal costs incurred during the first 30 days after a disaster are eligible to be reimbursed at 85 percent. The amount decreases to 80 percent of costs incurred up to 60 days after the event, and 75 percent thereafter.

To be reimbursed for labor, equipment and materials, the municipality must accurately document the hours worked and equipment used to complete the work. Labor costs for eligible emergency storm-related work, for both straight-time and overtime, is reimbursed based on the employee's hourly rate.

FEMA uses its hourly rate schedule to reimburse for equipment. The rates are designed to cover costs for the operation, depreciation, maintenance and fuel for equipment. For additional details, review FEMA Public Assistance Tools and Resources at www.fema.gov/public-assistance-resources-and-tools.

If a municipality chooses not to tackle the debris removal in-house, local officials can contract with a private company using a FEMA-compliant contract. The municipality is responsible for ensuring the work performed and billed is eligible for assistance. The state Emergency Management Division and/or the county emergency manager can help ensure the contracts comply with FEMA regulations.

Another option for cities is to participate in an existing debris removal contract issued by the county or the SC Department of Transportation. This approach relieves the municipality of direct contract oversight. It also eliminates the need to tie up city funds while waiting for FEMA or state reimbursement.

SCDOT has preapproved contracts for debris removal on public roads. During both the 2014 ice storm and October flood recovery, using SCDOT contactors proved to be an effective way to remove debris.

The best ways to accelerate recovery and reduce a municipality's exposure to unreimbursed storm-related costs are to have a plan already in place and understand FEMA's reimbursement process before a storm strikes.

The Uber of accommodations rentals

A quick check of the Airbnb.com website tells the story of the company's explosive growth—including into towns and cities throughout South Carolina.

A private bedroom in a townhouse near the University of South Carolina is offered for $30 a night; a studio apartment in Mount Pleasant advertised as a $6 Uber ride to Shem Creek for $89 a night; a Hilton Head condo for $110 per night; and $100 for a private room in a lakeside cottage in Chapin.

It's another chapter in the sharing economy. What Uber has done for transportation, Airbnb is doing for accommodations. It's a business model built on allowing people to rent out rooms or entire apartments and cottages on a short-term basis.

The concept started in 2008 when two people had space to share and hosted three travelers looking for a place to stay. Now, according to Airbnb's website, millions of hosts and travelers create free accounts to list space and book accommodations in 34,000 cities in 190 countries. Guests pay Airbnb when they book a room, and the company releases the money to the hosts 24 hours after the guests check in.

The rub comes in how the rentals are regulated and taxed, their affect on the neighborhood and whether it's a level playing field for both the new, sharing economy renters and the traditional hoteliers and rental companies.

The key is to know your community. "The first step is to look closely at what the city's current ordinances and regulations allow." said Melissa Carter, research and legislative liaison for the Municipal Association. "The next step is developing a decisive plan for how the city will regulate and tax accommodations businesses such as Airbnb. The accommodations sharing economy is not a flash in the pan. This is changing the marketplace."

Mount Pleasant's Planning Director Christiane Farrell said her department started looking at changing regulations and making modifications to its zoning code in 2015, mostly to deal with tourist homes and bed-and-breakfast inns. Around the same time, Farrell said she started to hear about how cities around the country were dealing with the accommodations sharing economy, led by Airbnb.

"How to address these companies is unique to each community, and it really depends on the policymakers. You might have a community with low regulation or one with a high level of regulation," she said. "Mount Pleasant is probably in the middle."

The first thing to consider is what the municipality's policymakers believe is best for their town. "There is not a uniform solution to the whole thing," said Farrell.

Some cities go to great lengths and regulate everything from the spacing between Airbnb rentals to allowing only a certain number in a neighborhood, while others are concerned only with ensuring business license, sales and accommodations taxes are collected appropriately and parking issues are addressed.

Often neighborhoods are split, with some people supporting the idea of using an extra room or two in their homes to make a little extra cash, while others are concerned about changing the character of their neighborhood and worried about who is staying next door.

"In Mount Pleasant, we are still feeling our way through it. Definitely some folks have raised some concerns, but from code enforcement, we don't get a lot of calls or complaints about it," Farrell said.

The big question often revolves around the collection of taxes—which includes city and state taxes.

In 2014, South Carolina enacted a new law to crack down on homeowners who rent properties to tourists but do not collect accommodations and sales taxes. The Fairness in Lodging Act gave cities and counties additional enforcement authority to ensure homeowners renting homes through online sites, such as Airbnb and Vacation Rentals by Owner, are submitting state and local accommodations taxes appropriately.

"We anticipate legislation to be introduced this year that would require a third party—in this case Airbnb—to be responsible for collecting the taxes," commented Carter.

In pursuit of parking solutions

The City of North Augusta has plans for a riverfront development that include a baseball stadium, condominiums, retail, restaurants, hotel and convention center, and office space. Increased economic development usually comes with parking concerns. North Augusta officials had to consider the challenges of providing enough parking for events while allowing sufficient parking for restaurants, retail and the hotel.

Downtown parking can have a major impact on businesses and the local economy. Successful parking solutions allow residents and visitors to easily come downtown to shop, dine or play. Many cities are looking at different ways to address their parking needs in an efficient and affordable manner.

For North Augusta, the solution involved building three parking decks, according to City Administrator Todd Glover. "To create a walkable downtown, you must have available parking within a reasonable distance of your central business district. Large quantities of surface parking in a downtown occupy too much valuable land that could be used for a business," he said.

Structured parking is very expensive, ranging from $15,000 to $22,000 per space, Glover said. The most efficient and effective use of any structured parking is to have daytime and nighttime uses for the deck, he said. By moving the location of a planned parking deck about 300 yards up the road, North Augusta was able to leverage that parking to attract the Medac headquarters, an anesthesiology billing company.

"The first of the three decks (the one utilized by Medac) is already having a positive impact on existing businesses and creating a great deal of interest from service-related businesses," Glover said. "It is much easier for those employees to run errands during lunch on foot than to drive out of the deck to another location."

The City of Rock Hill also is in the

process of planning a third parking deck to handle the growing demand for parking as development continues downtown.

This new parking deck will be built within existing surface parking areas. The move to structured parking comes with direct impacts on supply and demand, according to David Lawrence, Knowledge Park development manager for the City of Rock Hill.

"As development moves forward, we are adding demand while taking away supply with buildings replacing existing surface parking lots," he said. "Parking decks are not developed in a quick fashion as they are prohibitively expensive. For a 250-space parking structure, the cost to Rock Hill could be about $3.8 million using the construction rate quoted."

The city also has turned to other means to address parking issues.

About two years ago, Rock Hill began using an automated device for parking enforcement. The parking enforcement officer enters a license plate into the handheld system, which references a database of parking violations incurred during the previous two years. Based on the number of times that license plate has been cited in the past, the device will generate a warning or ticket. It is customizable to say how many violations result in a warning, and the amount of fine based on the number of previous violations, Lawrence explained.

With the addition of the first new downtown residential units in decades, Rock Hill officials created a parking license which gives residents reserved parking spaces during off-peak hours (5 p.m. to 8 a.m. Monday to Friday and at all times on the weekend). This license gives residents some certainty that they will find parking after work or when returning for the night, but frees up the parking supply during peak daytime hours, Lawrence said.

The City of Greenville has 10 parking facilities in the downtown area, with two more garages under construction, one garage expansion in the works and two lots in the early stages of construction. Yet the city still faces parking challenges, according to Brittany Moore, utility program marketing coordinator with the Department of Public Works.

11AM-6PM

The City of Columbia launched a new pay-by-phone parking app in 2015. The app allows smartphone users to pay online for any of the city's 5,000 parking spaces.

One problem is that during weekdays, parking spots are limited in many of the garages due to the amount of monthly parkers and various parking agreements with businesses, Moore said. Another challenge is the public's ability to identify available parking, especially parking garages.

"Many of our garages do not look like parking garages," she said. "So, we found it beneficial to use pavement markers outside of the garages, along with street banners pointing drivers to nearby parking."

Many cities are finding creative ways to address parking issues.

In an effort to reduce traffic and keep residents active, both the Greenville and Charleston areas have bike-sharing programs, which allow people to check out bicycles at stations around town. The Greenville B-Cycle program is a partnership between Upstate Forever and the Greenville Health System. Charleston's program offers free bike rentals to College of Charleston students, faculty and staff as a healthy and sustainable way to get around campus and the city.

The City of Columbia launched a new pay-by-phone parking app in late July. The app allows smartphone users to pay online for any of the city's 5,000 parking spaces.

Columbia Parking Director John Spade said they currently are averaging more than 800 transactions a day with revenues over $1,000 daily. In the future,

he said, the program will be expanded to include pre-sales of parking for events at the Convention Center and the University of South Carolina's Colonial Life Arena.

"We are seeing a reduction in the number of citations written as customers now can pay through the app and not worry about having change. The app relieved the city from having to invest in what would be a very expensive program to purchase and run meters which take credit cards. The city still utilizes Smart-Cards at all its meters and continues to take coins and tokens," Spade said.

Customers purchase SmartCards loaded with $20, $50, $75, $100 or $150. Once they deplete the original amount, they can add more money to it at the Parking Services Department's Customer Service Office or at the Pay by Space machines in Columbia's City Center Garage.

The City of Greenville also has incorporated technology with parking. Earlier this year, the city purchased handheld credit card terminals for use during special event parking. Previously, those wanting to park during special events could only pay with cash. City officials also have found that social media helps significantly in making the public better aware of parking locations and prices.

"Keeping parking relevant and keeping parking in a positive light are important," Moore said.

Main Street SC names newest members

Aiken and Moncks Corner are the newest members of Main Street South Carolina, a program that offers technical support and training to help bring new life to downtowns around the state. The first three years of membership is labeled Boot Camp to show the intensity of hard work expected from these new members and the Municipal Association staff working with them.

Main Street South Carolina uses the National Main Street Center's four-point approach, a strategy focused on building a strong organization for downtown, promoting the central business district, enhancing downtown buildings through good design and upkeep, and diversifying the downtown's economic base. While each city determines its own goals, training and support from Main Street SC includes architectural services, focus-group facilitation, training and technical assistance.

John Klimm had experience working with the Main Street program in two other states before becoming Aiken's city manager in 2015. He said he knew the city could benefit from the technical assistance and approach of Main Street South Carolina. While Aiken does not need a major overhaul, Klimm explained, city leaders wanted to look at areas such as the lack of downtown housing, as they try to attract millennials and young retirees.

"There's a desire to return to downtown to live, work and play, but we are not positioned well in that regard," Klimm said. "Aiken is a hidden jewel. There is so much to offer seasonal visitors and weekend visitors that we can promote. Unfortunately, there are downtowns across the country that really face challenges. That's not Aiken. Aiken has a wonderful downtown that could be even better. What's missing is the technical expertise that the Main Street Program can provide."

Beppie LeGrand, manager of the Main Street South Carolina agreed, "This is a great opportunity for Aiken to build on the many wonderful resources that currently exist."

That feeling was echoed by David Jameson, president and CEO of the Greater Aiken Chamber of Commerce. "Aiken has a strong downtown but knows that it cannot become complacent. The Main Street SC program will help us sharpen our focus. We want to build a downtown that is the envy of the Southeast."

Jameson said the downtown provides an excellent mix of businesses for baby boomers and older people, but he would like to see an additional focus on gifts, dining, services and affordable housing to appeal to the growing population of young professionals. He predicts existing businesses will enthusiastically support the downtown revitalization program if they are on the ground floor in helping develop the plan.

"We all love Aiken and will work to build the best product available," Jameson said. "People in Aiken believe that if you're lucky enough to live in Aiken—you're lucky enough. The Main Street SC program will be another initiative to help us prove our point."

In Moncks Corner, town leaders hope to use tools from the Main Street SC program to prepare and take advantage of the anticipated growth coming to Berkeley County.

"We are a rapidly growing community," Mayor Michael Lockliear said. "It is vitally important that we create an environment in the downtown area that is conducive for a focal point of the town. Downtowns are the cornerstones of any community, and it is imperative that we make ours a gathering place."

Moncks Corner was part of the state Main Street Program once before, and growth is the reason leaders applied again.

"As a long-time resident, Main Street business and property owner, and elected official for our town, I have slowly watched our Main Street become a liability and not the asset that it could and should be to

Pinwheel Garden, Moncks Corner

Downtown Aiken

our town," Lockliear wrote in the town's application to join the Main Street SC program.

"Our town is on the cusp of tremendous opportunities for growth, with the recent announcement of Volvo locating in Berkeley County," said Lockliear. "Great times and great things are upon us, yet I personally feel that our downtown area, specifically the Main Street Business and Historic District, does not have the curb appeal that will enable us to attract new businesses and community activities to this area."

"Moncks Corner is a beautiful South Carolina small town with many assets," said LeGrand. "Geographically the town is uniquely positioned in the Lowcountry, and the timing is right to grow and revitalize the local economy."

A town survey of downtown stakeholders found that vacant and dilapidated buildings, neglect of building maintenance, and a lack of building aesthetics were the leading threats to the long-term economic health of the central business district.

"We could not have been selected at a better time than this to be a participant in the program," Lockliear said. "We are looking forward to a long-term relationship with the Municipal Association in carrying out this program to shape and develop downtown Moncks Corner for generations to come."

Being chosen as a Main Street member is a competitive process with a limited number of spots available each year. The Municipal Association anticipates having four slots available for 2017. Interested cities must submit an application to be considered.

For more information about Main Street SC, visit www.masc.sc (keyword: Main Street SC).

Bond issuers must be mindful of their disclosure requirements

For many novice investors, the securities market has always been a scary place where varying levels of volatility and general uncertainty combine to create an environment that is less than confidence inspiring. Up until recent years, the government bond market, which includes municipal bonds, was a relative bright spot of stability and consistency for those investors. However, that changed following the start of the Great Recession.

After Detroit's bankruptcy and with talking heads issuing "the sky is falling" warnings of widespread municipal insolvency and the threat of an impending flood of municipal bankruptcy, this longtime bastion of relative reliability was called into question.

"It was perhaps as a result of this newfound uncertainty and the potential impact of a growing lack of investor confidence that regulatory agencies, like the U.S. Securities Exchange Commission, ratcheted up their scrutiny of municipal market participants and the advisors that facilitate their entry into the market, including underwriters," explained Tiger Wells, the Municipal Association's government affairs liaison.

In March 2014, the SEC launched its Municipalities Continuing Disclosure Cooperation Initiative to address potential violations of federal securities law.

The SEC offered consideration for entities that self-reported a violation and agreed to a number of actions aimed at ensuring future compliance, including establishing appropriate policies, procedures and training related to continuing disclosure obligations.

While the window to self-report violations closed in December 2014, an SEC representative encouraged municipal attorneys attending the December meeting of the SC Municipal Attorneys Association to not leave the meeting with a belief that the SEC would now double back and play a game of "gotcha" with those issuers who may have missed the opportunity to self-report.

Robbie Mayer, senior counsel with the SEC's Municipal Securities and Public Pension Unit within the Commission's Division of Enforcement, served on MAA's continuing disclosure panel with bond attorney Bill Hirata of the Law Offices of William L. Hirata PLLC.

Noting that her comments and opinions were her own and not that of the SEC, Mayer said she felt that the SEC, despite the expired self-reporting period, would continue to view positively those issuers that disclose those occurrences that they should have shared previously. The SEC's primary goal is compliance, according to Mayer.

She shared that continuing disclosure filings increased 45 percent since the SEC began its MCDC Initiative.

When issuing municipal bonds that are then resold on a secondary market, the city must submit information about the entity's financial condition and commit to providing continuing disclosure, including information about its financial condition. Issuers must also commit to give notice of any changes in credit rating or a change in credit worthiness or risk.

In addition, any final official statement prepared in connection with a sale of municipal bonds must contain a description of any instances in the previous five years in which the issuer failed to comply with any previous commitment to provide that continuing disclosure.

Municipal officials who issue misleading financial information or fail to disclose financial information on a timely basis run the risk of being charged with securities fraud. The risk extends beyond that of the municipality. Local officials could be held personally liable.

Local officials should consult with appropriate legal counsel to determine whether their municipalities' existing disclosure policies and procedures are sufficient. Officials should then follow those policies and procedures to avoid violations.

Seven significant U.S. Supreme Court cases for local governments

By Lisa Soronen, State and Local Legal Center

That same-sex couples have a constitutional right to marry and the Affordable Care Act remains intact will forever outshine every other decision from the U.S. Supreme Court's last term which ended on September 30, 2015. But the Court issued many decisions affecting local governments—most of which had unfavorable outcomes. Below is a summary of the top seven cases.

Content-based sign codes unconstitutional

In *Reed v. Town of Gilbert,* the Court held unanimously that Gilbert, Arizona's sign code, which treated various categories of signs differently based on the information they convey, violates the First Amendment.

Gilbert's sign code treated temporary directional signs less favorably (in terms of size, location, duration, etc.) than political signs and ideological signs.

Content-based laws are only constitutional if they pass strict scrutiny—that is, if they are narrowly tailored to serve a compelling government interest.

Gilbert's sign code failed strict scrutiny because its two asserted compelling interests—preserving aesthetic and traffic safety—were "hopelessly underinclusive." Temporary directional signs are "no greater an eyesore" and pose no greater threat to public safety than ideological or political signs.

Many, if not most communities, like Gilbert, regulate some categories of signs in a way the Supreme Court has defined as content-based. Communities will need to change these ordinances.

Hotel registry searches need subpoenas

In *City of Los Angeles v. Patel,* the Court held 5-4 that a Los Angeles ordinance requiring hotel and motel operators to make their guest registries available for police inspection without at least a subpoena violates the Fourth Amendment.

The purpose of hotel registry ordinances is to deter crime—drug dealing, prostitution and human trafficking—on the theory that criminals will not commit crimes in hotels if they have to provide identifying information.

According to the Court, searches permitted by the city's ordinance are done to ensure compliance with recordkeeping requirements. While such administrative searches do not require warrants, they do require "precompliance review before a neutral decisionmaker." Absent at least a subpoena, "the ordinance creates an intolerable risk that searches authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests."

In dissent, Justice Scalia cited the State and Local Legal Center's amicus brief, which notes that local governments in at least 41 states have adopted similar ordinances.

It is likely following this decision that other record inspections done by governments outside the hotel registry context will also require subpoenas.

Fair Housing Act disparate impact claims recognized

In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project,* the Court held 5-4 that disparate impact claims may be brought under the Fair Housing Act.

In a disparate impact case, a plaintiff is claiming that a particular practice is not intentionally discriminatory but instead has a disproportionately adverse impact on a particular group.

The Inclusive Communities Project claimed the Texas housing department's selection criteria for federal low-income tax credits in Dallas had a disparate impact on minorities.

In prior cases, the Court held that disparate impact claims are possible

under Title VII (prohibiting race, etc. discrimination in employment) and the Age Discrimination in Employment Act relying on the statutes' "otherwise adversely affect" language. The FHA uses similar language—"otherwise make unavailable"—in prohibiting race, etc. discrimination in housing.

This decision more or less continues the status quo for local governments. Nine federal circuit courts of appeals had previously reached the same conclusion. But, Justice Kennedy's majority opinion contains a number of limits on when and how disparate impact housing claims may be brought.

Reasons for cell tower denials must be in writing

In *T-Mobile South v. City of Roswell,* the Court held 6-3 that the Telecommunications Act requires local governments to provide reasons when denying an application to build a cell phone tower.

The reasons do not have to be stated in the denial letter but must be articulated "with sufficient clarity in some other written record issued essentially contemporaneously with the denial," which can include council meeting minutes.

The TCA requires that a local government's decision denying a cell tower construction permit be "in writing and supported by substantial evidence contained in a written record."

Local governments must provide reasons for why they are denying a cell tower application so that courts can determine whether the denial was supported by substantial evidence. Council meeting minutes are sufficient. Because wireless providers have only 30 days after a denial to sue, minutes must be issued at the same time as the denial.

Following this decision, local governments should not issue any written denial of a wireless siting application until they (1) set forth the reasons for the denial in that written decision, or (2) make available to the wireless provider the final council meeting minutes or transcript of the meeting.

No dog sniffs after traffic stops

In a 6-3 decision in *Rodriguez v. United States,* the Court held that a dog sniff conducted after a completed traffic stop violates the Fourth Amendment.

In *Illinois v. Caballes,* the Court upheld a suspicionless dog search conducted during a lawful traffic stop stating that a seizure for a traffic stop "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation. Officers may lengthen stops to make sure vehicles are operating safely or for an officer's safety. A dog sniff, however, is aimed at discovering illegal drugs not at officer or highway safety.

Objectively unreasonable is the standard for pretrial detainee excessive force claims

In *Kingsley v. Hendrickson,* the Court held 5-4 that to prove an excessive force claim a pretrial detainee must show that the officer's force was objectively unreasonable, rejecting the subjectively unreasonable standard that is more deferential to law enforcement.

Pretrial detainee Michael Kingsley claimed officers used excessive force in transferring him between jail cells.

The objective standard applies to excessive force claims brought by pretrial detainees because in a previous case involving prison conditions affecting pretrial detainees, the Court used the objective standard to evaluate a prison's practice of double bunking. The objective standard applies to those who, like Kingsley, have been accused but not convicted of a crime, but who unlike Kingsley, are free on bail.

A standard more deferential to law enforcement applies to post-conviction detainees, who are housed with pretrial detainees, making this ruling difficult for jails to comply with. Following this decision it will be easier for pretrial detainees to bring successful excessive force claims against corrections officers.

Tax on internet purchases

In *Direct Marketing Association v. Brohl,* Justice Kennedy wrote a concurring opinion stating that the "legal system should find an appropriate case for this Court to reexamine Quill."

In 1992 in *Quill Corp. v. North Dakota,* the Court held that states cannot require retailers with no in-state physical presence to collect use tax.

To improve tax collection, Colorado began requiring remote sellers to inform Colorado purchasers annually of their purchases and send the same information to the Colorado Department of Revenue. The Direct Marketing Association sued Colorado in federal court claiming that the notice and reporting requirements are unconstitutional under *Quill*.

The question the Court decided was whether this case could be heard in federal court (as opposed to state court). The Court held yes unanimously. This case is significant for local governments because the Court's most influential justice (Kennedy) expressed skepticism about whether *Quill* should remain the law of the land.

Fire Services

Questions to ask your
Fire Chief

1. How does our department treat the standards that are published by the National Fire Protection Association and the Insurance Services Office—as requirements or as guidelines?

2. Are all fires reported to the National Fire Incident Reporting System? What other statistical reports does the department produce on its response time performance and the extent of local fire losses? How do we make these reports available to the public?

3. Fire and EMS are dangerous occupations and generate significant internal and external litigation. How do we evaluate and mitigate both safety and legal risks associated with providing these services?

4. What is our ISO rating for fire protection? Has the rating changed? If we spent money to improve the fire department, how much of that money would come back to taxpayers through lower insurance premiums?

Response times

5. How long does it take for firefighters to get on the road once they are notified they have an alarm (turn-out time)?

6. What is the chief's personal expectation of how many minutes will pass from the time an emergency is reported to the time that a fire engine or ambulance arrives at the scene? Does the department have a response time goal? How close is it to the chief's expectations? What factors went into setting the goal (i.e., fire loss data, areas of greater fire hazard, water supply)? What percentage of the time does the department meet that goal right now?

7. What are the residents' expectations? Are they acceptable/reasonable?

8. Are there areas of the community where there are frequently longer response times? Which parts of the community?

9. Are stations in the right locations to optimize our response capabilities and resources? Does the department use GIS (computer mapping) to evaluate current and future station locations?

Staffing

10. What is the department's staffing goal for a fire response? What percentage of the time do we meet that goal?

11. How are the stations staffed—by volunteers, part-time personnel and/or full-time personnel? If we rely on volunteer or paid on-call firefighters, how many respond to an alarm for a mid-day house fire? For a fire at night? How many volunteers live or work outside of town? How many volunteers do we have compared with 10 years ago?

12. How much down time do our fire and EMS personnel have while waiting for calls? Do we have 12- or 24-hour shifts? How do we evaluate the "right" number and schedules for staffing?

13. What kind of mutual aid agreements do we have in place? What kind of automatic aid agreements are in place?

Services

14. What services does the department offer to the public (i.e., fire prevention, public education, fire investigation, technical rescue, hazardous materials, disaster planning)?

15. How many calls, broken down by type of call, did the department handle 10 years ago? Last year?

16. What level of service does the department provide for emergency medical service? Is it basic or advanced life support?

17. How many response resources is the "right" amount for fire calls? For medical calls? What tells us that this is correct? Do we send a fire engine to all medical calls? Is it necessary?

18. What strategies could we use to improve efficiency? How can we be assured that the processes, procedures and protocols used to manage our fire/rescue services reflect current best practices? Where are we getting our information?

Budget

19. How does the performance and cost of our service objectively benchmark against other fire departments with similar call volumes and demographics?

20. Are our physical resources (i.e. fire stations, training facilities, fire apparatus, personal protective safety equipment) adequate to meet the level of risk in this community? How do we know?

21. Do we have adequate training and personnel safety programs? What kind of training do our personnel receive? How many fire academy certified instructors do we have?

22. What is the plan to pay for the repair or replacement of fire apparatus? Are we conducting the recommended annual testing for equipment (i.e., hoses, ladders, pumps, self-contained breathing apparatus)?

23. Fire/rescue services represent a large percentage of our city's budget. How do we show the taxpayers we are getting the best value for the dollars we spend?

24. Nationally, fire-related responses are declining significantly. When are the numbers low enough to consider consolidating or contracting with another community? Are there other alternatives to having our own fire department?

This article is excerpted from an International City-County Management Association's InFocus issue, "Making Smart Choices about Fire and Emergency Medical Services in a Difficult Economy" and the Commission on Fire Accreditation International's "Fire and Emergency Service Self-Assessment Manual."

The changing face of volunteer firefighters

Volunteer firefighters historically have been the backbone of fire departments, particularly in smaller towns and rural areas. Of the 17,500 members of the South Carolina State Firefighters' Association, 11,500 are volunteer firefighters.

But changes in the economy and demographics coupled with extensive training regulations have caused the ranks of volunteer firefighters nationally to drop substantially, amounting to a 13 percent decrease since 1984. Plus, volunteer firefighters are aging. The number of volunteers aged 50 and older increased nearly 100 percent between 1987 and 2012.

The declining numbers are having a significant impact on fire departments. About 85 percent of fire departments across the country are staffed entirely or mostly by volunteers. Ninety-five percent of all volunteer firefighters are providing fire protection to communities of 25,000 or less people.

There are plenty of reasons fewer people are interested in becoming volunteer firefighters and emergency responders, according to Bryan Riebe, recruitment and retention grant coordinator with the S.C. State Firefighters' Association.

The economy and family dynamics have changed, with many workers now facing a longer commute to their full-time jobs, meaning it is tougher to leave their jobs and quickly respond to fire calls.

"With jobs taking people away from home, there's a loss of the sense of community," Riebe said. "Studies have shown a connection between religious affiliation and public service. With local fire departments and churches no longer the hub of activity in an area, volunteers do not exist,"

The training requirements have also become more stringent. For example, volunteers must receive the same training as career firefighters to get Firefighter II certification. To be certified, a volunteer must commit to more than 250 hours of training, he said.

Riebe listed other factors involved in the drop of volunteers including the increased call volume and the growing type of calls departments must respond to, including hazardous material incidents,

confined space and high-angle rescues, chemical and biological events, and active shooter situations.

It all adds up to a more difficult job attracting volunteers. That's especially troubling when looking at cost issues and department budgets. Reibe explained that volunteer fire departments and volunteer firefighters around the country are estimated to save taxpayers $139.8 billion annually. The communities realizing those savings are often not in a financial position to fully or partially fund a fire department.

A 2009 study indicated that the number of volunteer firefighters in South Carolina needed to double—bringing the number to 23,000—to fully comply with national standards, he said.

So what should a small fire department that relies on volunteers do to meet the community's need?

"Previous research shows that retaining volunteers is managed best by providing adequate, knowledgeable leadership, creating alternative methods of meeting the training needs, engaging family members in the process, and

Fire Services

Members of the Ridgeland Fire Department's cadet program.

offering a simple 'thank you' to those serving," Riebe said.

Some departments are trying to regain the feeling of community that was integral to the volunteer firefighting experience in the past. Some are sprucing up their stations with game rooms, large screen televisions, work-out gyms and sleeping quarters for the volunteer firefighters.

"Departments are trying to attract volunteers, trying to get them to want to come to the station, hang out and be ready," said Todd Williams, public safety loss control consultant with the Municipal Association of South Carolina.

Another effective strategy is introducing high school students to the firefighting profession. The State Firefighters' Association has relied on several Department of Homeland Security Staffing for Adequate Fire and Emergency Response grants to implement a curriculum taught in comprehensive high schools and career and technology centers across the state.

The classes started in 2014-2015 with 12 programs. Currently, there are 24 South Carolina schools teaching the curriculum to 255 students. Students who successfully complete the written and practical portions of the program are fully certified as a Firefighter II and can volunteer or be employed at departments around the state and nation, he said.

The Firefighters' Association has also used grant dollars to design an online course for volunteer fire department leadership; to bring leadership experts from around the nation to conduct training and to provide grants to the schools teaching the fire program.

Getting young people interested is key to growing the ranks of volunteers and career firefighters. Many departments have Explorer and Junior Firefighter programs that allow departments to recruit 16- and 17-year-olds for programs and training.

Ridgeland Fire Chief John Mingledorff's department has a mixture of paid and volunteer firefighters along with a handful of cadet firefighters. He started the cadet program in 2008, assigning high school students to shifts at the fire department. The students learn about the firefighting profession in addition to learning about character, professionalism, respect and community involvement.

Ridgeland's cadet program requires the students to keep up their grades and show the same type of respect at home, school and in the community that they show at the fire station. Cadets can begin the program at the station at age 14. At 16, students can start going to classes and can earn firefighter certification at age 18.

"It's blossomed into an excellent program," Mingledorff explained. "Four or five of those cadets are career firefighters now. This program is about them taking things seriously, having good character and being respectful. They are not able to work calls, but they see some of what we see. It gives them a different perspective of what you should and shouldn't do and what the consequences are."

"The majority of our paid firefighters came through the volunteer system," Mingledorff said. "The volunteers are the future of our fire departments."

HR considerations for volunteer firefighters

- Volunteers do not need to complete an Employment Eligibility Verification Form I-9.
- In accordance with the Fair Labor Standards Act, volunteer cannot be paid compensation. They can receive reimbursement for expenses, receive reasonable benefits and/or receive a nominal fee. In an August 2006 opinion letter, the U.S. Department of Labor explained that "generally, an amount not exceeding 20 percent of the total compensation that the employer would pay to a full-time firefighter for performing comparable services would be deemed nominal."
- Volunteers cannot be paid an hourly rate at any time. Paying them an hourly rate or issuing them a 1099 violates the FLSA.
- Volunteers cannot be used as part-time employees to cover when a full-time employee is absent. If used as a part-time employee, the volunteer must be issued a W-2.
- Volunteers should sign a disclaimer for the fire policies and procedures that is different from the disclaimer used for full–time employees. The disclaimer should specify that it is a volunteer disclaimer.

- Paid firefighters cannot volunteer the same services for the same public agency for which they are employed. Other city employees can be considered volunteer firefighters because they do not provide the same service for which they are employed.
- Paid firefighters cannot respond to an incident while off-duty as a volunteer for no pay. They must be compensated for hours worked based on their salary.
- Paid firefighters can volunteer the same services for a separate and independent public agency.

Information taken in part from "Managing Volunteer Firefighters for FLSA Compliance: A Guide for Fire Chiefs and Community Leaders" *produced by the International Association of Fire Chiefs.*

Evolving fire services affect bottom line

The days when a firefighter's main job was responding to a structure fire are gone. While safety education and improved fire codes have helped cut the number of structure fires, the scope of what a fire department does has expanded.

Traditional firefighting has been replaced by a combination of medical calls, hazardous material incidents, vehicle rescues, wildland fires and agricultural accidents. And the list is growing.

While the expanded role results in safer communities, the new services may require changes in equipment, training and staffing, which in turn increases the cost to run the department.

Fire officials have been forced to be creative and think strategically about the best way to respond to calls.

For example, Chief Herbert Williams with the Mount Pleasant Fire Department, where more than 65 percent of the calls are for medical emergencies, has changed how his 122 paid personnel respond.

"My business has seen a big change in the past seven to 10 years," said Williams, who has been chief for 10 years and with the department for 30. "About eight years ago, I put paramedics on all vehicles."

Those vehicles have changed, too. While his department has three ladder trucks and nine engines, he has added two quick response vehicles, with a third expected this year. The smaller SUVs are able to respond quickly and easily to medical calls, and have resulted in savings to the department. "I can outfit one of those vehicles for $75,000 to $90,000, compared to $500,000 for an engine," he said.

The QRVs use less fuel, can easily maneuver through traffic and are able to be parked easily when responding to a medical call. Plus, dispatching them instead of an engine helps relieve costly wear-and-tear on the big trucks. The department's two QRVs handle about 60 percent of the medical calls made to the department. Chief Williams said that number should increase to 80 percent when the third vehicle arrives later this year.

That's significant, because an aging population results in an increase in medical calls each year. "Those medical calls are everything from a broken finger to having to cut someone out of a vehicle," Chief Williams said.

The equipment on fire vehicles has changed dramatically, too. Computers on fire trucks now can help firefighters determine where an airbag, electric car battery and other features are located on a specific car involved in a vehicle accident. In addition, equipment for a vehicle extraction—the "jaws of life"—has changed as cars have changed.

"Extraction tools are quicker, better, stronger and lighter weight," according to Todd Williams. Now, one firefighter can pick it up, maneuver it and not incur a back injury. "They've made the tools better and safer, but that also drives the price up."

Departments are also looking at where and when personnel is needed to help best serve the public and balance budgets.

Some departments, like the beach community of Isle of Palms, use part-time personnel and volunteers to help answer the increase in calls during the tourist season, said Chief Anne Graham. Also, she moved some of her firefighters off the fire engines and put them in an outfitted pickup truck to respond to many calls.

Graham and other fire chiefs said personnel need a much broader range of training than in the past, which results in a significant amount of overtime costs.

Gaffney employs 33 full-time firefighters, 10 part-timers and three administrative staff in the fire department. As demands increase, budgets dwindle and costs rise, Fire Chief James Caggiano said departments must rely more on receiving grants (which are dwindling), reducing variable costs by being more efficient, watching expenditures and participating in mutual aid agreements with other fire departments.

Joe Palmer, director of the S.C. State Firefighters' Association, said expectations for fire departments will continue to change and evolve.

"The evolution of services can be catalogued rather succinctly," Palmer said. In the 1960s, many nonmunicipal fire suppression delivery systems organized in South Carolina. In the 70s, fire training standards and expectations of services were formalized. In the 80s, fire departments added hazardous materials response to services offered and in the 90s added rescue events, such as confined space and trench rescues. Because of the events of 9/11, fire departments began training on terrorism response and emergency preparedness in the 2000s. Finally in the 2010s, fire departments began providing a higher level of emergency medicine services.

Palmer said society's expectations are higher than ever. When the public sees what's possible on TV or through social media, they want that service in their community. Sometimes that isn't practical.

Palmer predicts that municipal fire departments will be faced with the challenge of analyzing service expectations and capabilities with available resources to meet those needs. "This will foster frank conversations with the public about safety and local choices about what can and can't be done."

Calendar

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

MARCH

2-4 SC Utility Billing Association Annual Meeting. Wild Dunes Resort, Isle of Palms. Topics include team dynamics, verbal judo to de-escalate situations, cash handling and cybersecurity.

3 SC Association of Stormwater Managers First Quarter Meeting. Columbia Conferencee Center. Topics include disaster response and lessons learned from the October 2015 flood, and annual reporting for MS4s.

9-11 SC Municipal Clerks and Treasurers Institute – Year 1, Session A. Hyatt Place Columbia Downtown, Topics include forms of government, records management, procurement, meeting administration and the role of the municipal clerk.

17 SC Municipal Elected Officials Institute of Government. Council of Governments' offices. Course offered: "Basic Budgeting and Municipal Finance."

17 SC Municipal Finance Officers, Clerks and Treasurers Association Spring Academy. Columbia Conference Center. Topics include workplace wellness, election management, requirements of boards and commissions, ordinances and resolutions, competitive purchasing procedures and financial policies.

24 Municipal Technology Association of SC Spring Meeting. Columbia Conference Center. Topics include disaster recovery and assessment, Microsoft Office 365 and Windows 10, and a professional development session on bridging the age gap among employees.

APRIL

6 SC Association of Municipal Power Systems Legislative Reception. Columbia Marriott.

8 Municipal Court Administration of SC Spring Meeting. Columbia Conference Center. Topics include bond estreatments, and protecting and releasing criminal justice information.

20 SC Business Licensing Officials Association Spring Training Institute and Advanced Academy. Columbia Conference Center. Topics include statewide business license portal for renewals, licensing contractors, and the duties and responsibilities of a business licensing official.

27 SC Association of Municipal Power Systems Linemen Training. Pine Island, Columbia. Repeated on April 28.

28 SC Municipal Human Resources Association Spring Meeting. Columbia Conference Center. Topics include unemployment insurance, generational diversity, attracting millennials to the workforce, workplace violence response plans, Family Medical Leave Act, and Americans with Disabilities Act.

29 Managers/Administrators Fall Forum. Columbia Conference Center.