MARCH 2019

MASC Municipal Association of South Carolina

UPTOWN

a publication of the municipal association of south carolina

Advocate From 'Where the Rubber Hits the Road'

City and town leaders can make their voices heard at the State House in large part because they have the credibility of working directly with residents to solve problems every day. Columbia Mayor Steve Benjamin became the first to articulate this theme when he welcomed the more than 530 people who gathered in Columbia for Hometown Legislative Action Day on February 5.

"We have the responsibility of representing cities and towns — natural organisms, living, breathing organisms — and we have to listen to all of our citizens," he said. "We are on the ground with them every single day, at the grocery market, at church or at the synagogue. I tell people I get good advice at the traffic light, whether I want it or not. We are on the ground. It's where the rubber hits the road."

Municipal Association Board of Directors President and Florence Councilmember Octavia Williams-Blake emphasized the value of coordinated advocacy from the local leaders who work on "the front lines" in everything from sanitation to public safety and recreation.

"We do not have the luxury of refusing to compromise. In South Carolina, from the State House to city hall, it is everyone's responsibility to work together to improve the quality of life for every resident," she said.

Advocate, page 2 >

In This Issue

Attracting and Retaining City Workforce Page 6

Understanding the SC Tort Claims Act Page 8

Special Section: Open Government

Building Trust with FOIA Page 11

Keeping Digital Public Records on the Record Page 12

In this ISSUE

MEO, Advanced Institute Graduate 99 3

Are Your City Boundaries Correct and Correctly Reported? 4

Planning for a Rainy Day 5

Municipal Elected Officials Institute of Government Monthly Quiz 5

Attracting and Retaining City Workforce 6

Ethics Tip: Payments and Expenses for Speaking Engagements 7

Understanding the SC Tort Claims Act 8

Association Highlight: SC Business Licensing Officials Association ... 8

Funding South Carolina's Retirement Systems 9

New DHEC Requirements for Water Withdrawals 10

Special Section: Open Government

Building Trust with FOIA 11

Keeping Digital Public Records on the Record 12

Social Media Archiving 13

Keeping Up to Date with FOIA .. 14

Procedure to Add Item to a Public Meeting Agenda Within 24 Hours of the Meeting 15

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***Advocate,* from page 1 >**

Gov. Henry McMaster gave the keynote address at HLAD, celebrating the state's economic growth while calling for local officials to support his education reform proposals, including a $100 million Rural School District Economic Development Closing Fund.

"If we collaborate, if we communicate and cooperate, we can think big," he said. "Remember, there's no power in a small idea. Think big or go home."

Gov. Henry McMaster described his education reform proposals during Hometown Legislative Action Day.

Advocacy Initiatives

The Municipal Association's advocacy team briefed attendees on the remarkable progress seen in the General Assembly for the Association's Advocacy Initiatives, although they cautioned that individual efforts from cities and towns are always needed, and success requires ongoing, patient work in the background. Director of Governmental Affairs Tiger Wells likened the process to watering bamboo for years before it first shoots up.

Local Government Fund predictability

H3137 would have the fund mimic the way the state budget is forecast, so that the fund will match the growth rate estimated for General Fund, up to 5 percent. This could help city councils gain a sense of how much funding is available before completing their budgets.

Flexibility with hospitality and accommodations tax revenue

Both the House (H3132) and Senate (S217) introduced legislation to allow cities and towns to use this revenue for flooding and drainage at tourist destinations. Melissa Carter, research and legislative liaison, noted that the flexibility bill that passed the House last year unfairly provided it only for Horry and Georgetown counties.

"I daresay that there are probably only a handful of cities in South Carolina that do not have some form of flooding or drainage issues," she said.

Reducing wait times for new hires at the Criminal Justice Academy

At a time when police departments across the state are reporting recruitment difficulties, the Criminal Justice Academy cannot graduate officers fast enough to replace those leaving the profession. Wells described the possibility of moving away from a funding model where more than 60 percent of the academy's funding comes from fine and fee revenue to one where there is a recurring line item in the state's budget. This could allow the academy to broadcast some classes to new hires across the state, reducing the amount of time the recruits would need to study in Columbia and significantly increasing the rate of graduations.

Heather Hoopes-Matthews led a panel discussing crisis communication with Florence Police Chief Allen Heidler, Conway Fire Chief Phillip Hendrick Jr. and Darlington Police Chief Kelvin Washington.

MEO, Advanced Institute Graduate 99

The Municipal Elected Officials Institute of Government and Advanced Institute together graduated 99 municipal elected officials during Hometown Legislative Action Day on February 5. Graduating from the MEO Institute requires officials to complete courses, including two daylong sessions and five other courses that they can take in person at any of the 10 offices of the councils of governments. They can also take any of those five courses online.

The next in-person session is "Basic Budgeting and Municipal Finance," taking place at the councils of governments Tuesday, March 19, from 9:30 a.m. to 12:30 p.m. The deadline to register online is Friday, March 8.

Graduating from the Advanced MEO Institute requires participants to complete four of the six courses offered. Sessions are held in person annually in February and October. This fall's in-person session is scheduled for Wednesday, October 16, from 9 a.m. to 4 p.m. at the Columbia Marriott. The deadline to register online is Monday, October 7.

Visit www.masc.sc (keyword: newsroom) to see a complete listing of MEO Institute and Advanced Institute graduates.

Top:The winter 2019 MEO Institute graduates completed seven required courses.
Bottom: The 2019 Advanced Municipal Elected Officials Institute graduates finished the four of six courses offered after graduating from the Municipal Elected Officials Institute of Government.

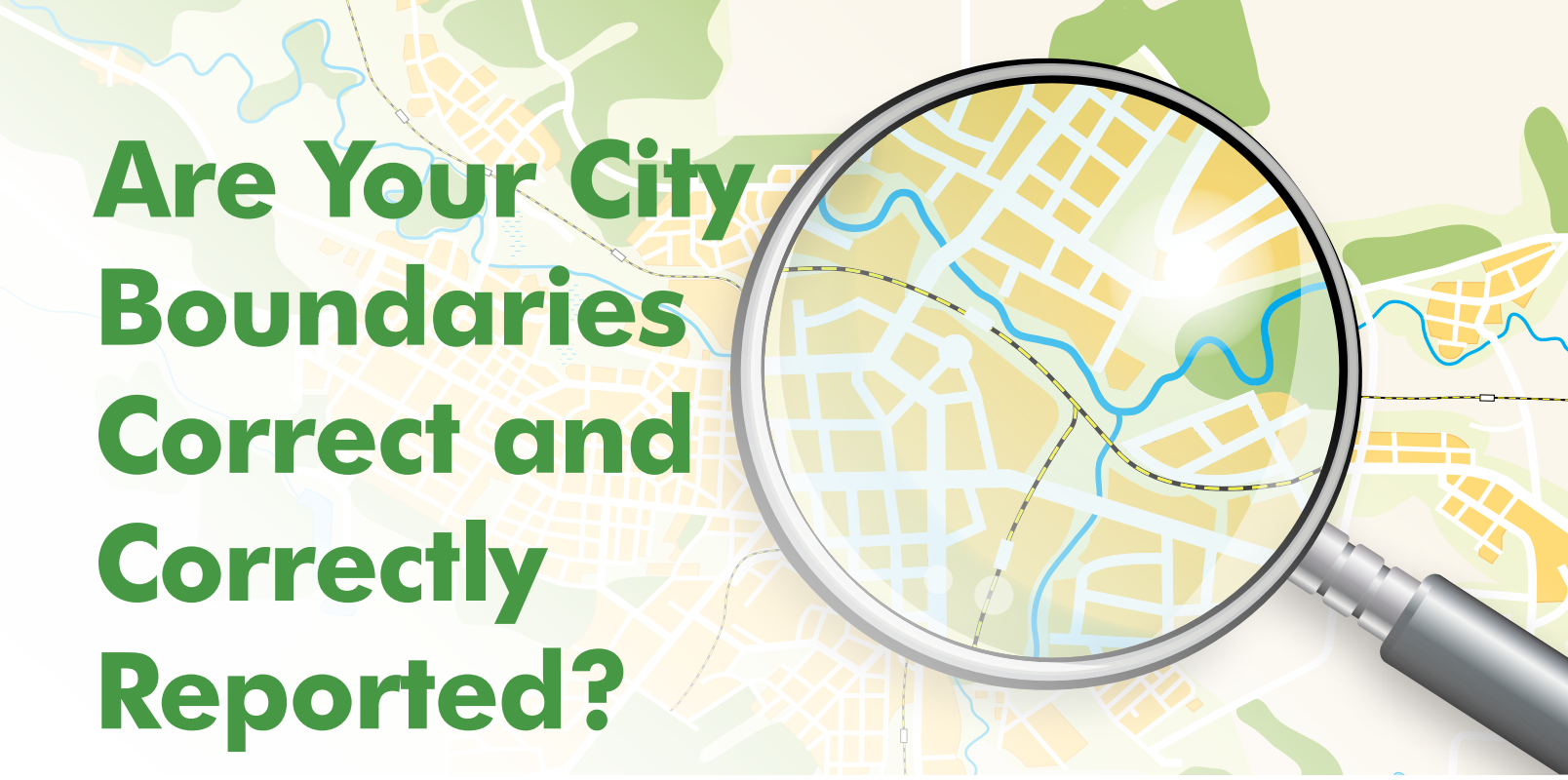
NEWS BRIEFS

The towns of **Blackville, Gray Court, Hollywood, Pendleton, Santee, Summerville** and cities of **Greer, Inman, Lake City, Union, Wellford** have been recognized for the Municipal Elected Officials Institute of Government's 2019 Honor Roll. The Honor Roll recognizes annually the city councils that can count all members of their sitting council as graduates of the Municipal Association's MEO Institute.

Alfred Mae Drakeford, mayor of the **City of Camden**, was recently appointed to serve as the chair of the National League of Cities Small Cities Council. This council is open to those municipal officials who represent NLC member cities that have populations of no more than 50,000 residents.

The South Carolina Municipal Insurance Trust and the South Carolina Municipal Insurance Risk Financing Fund boards of directors recognized members that reduced their total costs and kept employees safe while delivering better public services. The 2018 Risk Management Services award winners were **Town of Fort Lawn, City of Walhalla** and **City of Greenwood** (SCMIRF members) and **Town of McClellanville, City of Union** and **City of Conway** (SCMIT members).

Are Your City Boundaries Correct and Correctly Reported?



The exact location of a city or town seems like a matter beyond dispute — it's every part of the area enclosed by municipal boundaries. The location of those lines governs everything from tax revenue to representation and responsibility for governmental services, but discrepancies sometimes exist among the maps used by different entities.

Technology-driven changes to commerce have made the issue more important. The growth of transportation network companies like Uber and Lyft has created new local assessment fee revenue for a city when rides originate in that city. The Supreme Court's *Wayfair v. South Dakota* decision means that online retailers now owe sales tax to cities when a purchase is delivered to an address in that city, and the SC Department of Revenue began collecting sales tax from sellers without a physical presence on November 1, 2018.

State law requires municipalities to notify four entities of every annexation of property:

- The Secretary of State, which issues certificates of incorporation;
- The Department of Transportation, which needs information on maintenance responsibility for any given road;
- The Department of Public Safety; and
- The Revenue and Fiscal Affairs Office, which uses the information to draw lines for election districts and to determine Local Government Fund disbursements.

Historically, the Revenue and Fiscal Affairs office has maintained the most accurate database of GIS boundary mapping of boundaries in South Carolina. RFA posts its database of city and county boundaries on its website in an accessible format.

Scott Slatton, legislative and public policy advocate for the Municipal Association, identified other entities that cities should provide with up-to-date boundary information:

- All municipal departments, preventing incorrect assumptions by any city staff about whether a given property is inside the city;
- The county government, which helps with the proper coordination of services, especially emergency services;
- The county board of voter registration, which allows it to assign election districts to new annexations; and
- Utility franchises, so that franchise fees can be levied correctly.

Tiger Wells, the Association's director of governmental affairs, stressed the importance of maintaining proper documentation so that city staff can immediately produce the relevant ordinance if questions exist about where the boundary falls.

"If there is an annexation, before getting to the point of giving notifications, make sure everything is consistent — plat and narrative description — keep it all together in case you ever have to prove it," he said.

In addition to updating governmental users, many cities also work to keep updated maps available to the general public through their websites. Cassie Davis, the GIS coordinator for the City of Anderson, has worked to provide up-to-date mapping through the city's website. When her boundary data is updated through GIS because of an annexation, that information then becomes available online.

Anderson's interactive maps go deeper as well, illustrating land use, zoning and even bus routes. Both the website and Davis' contact information are linked on the state GIS contacts page of the South Carolina GIS website, www.gis.sc.gov, increasing the likelihood that the available data will get to engineers, contractors and any member of the public who needs it.

Officials can find the RFA boundaries database at rfa.sc.gov/mapping/tncmaps. Report any discrepancies to Will Roberts, program manager, at will.roberts@rfa.sc.gov or 803.734.8923.

Planning for a Rainy Day:

Asset Management Helps Cities Optimize Stormwater Service

The systems that drain stormwater away can be hard to visualize. Many times, older stormwater infrastructure has little to no documentation, and without it, no one can know exactly where all the pipes are placed.

Whether a local government knows the location of every piece of its stormwater infrastructure, it will find out eventually when those elements age, deteriorate and finally, if they are not maintained, fail. Increasingly, municipalities and counties are pursuing a process of stormwater asset management, which plans for the regular maintenance, repair or replacement of infrastructure in a way that minimizes cost and maximizes the reliability of service.

Sheri Armstrong, president of the SC Association of Stormwater Managers Board of Directors, is the stormwater manager for Lexington County. The county's department of public works, with the help of a consultant, is in the process of inventorying every stormwater asset for which it is responsible — "every inlet, pipe and outfall," she said.

Asset management is a large topic to explore, Armstrong said. Since more people are now paying attention to the lifespan of stormwater infrastructure and the need to replace it, SCASM, an affiliate of the Municipal Association of South Carolina, built its spring meeting around the topic of asset management.

Once a department knows of everything it needs to maintain and the condition of those assets, it can create a maintenance schedule.

"You can predict when it's going to need to be repaired because of the lifespan of a system. You can allocate the funding during your budgeting process," Armstrong said.

The Town of Summerville is working toward inventorying all its public works assets, including stormwater, with the goal of gathering everything together in a geographic information system, more commonly known as GIS. Existing records can be found in varying locations like paper records or in older software. A map of everything in GIS can help the town evaluate the system and plan for routine improvements, said Bonnie Miley, Summerville's assistant town engineer and SCASM vice president.

By its nature, asset management is a proactive strategy, and sometimes it can be difficult for staff to carve out the time to gather together information to use in the future while still handling routine tasks which need their immediate attention. Still, as Miley notes, asset management can help prevent a stormwater system from losing its ability to function as designed.

The first quarter meeting of the SC Association of Stormwater Managers is March 7 at Seawell's in Columbia. For more information, visit www.masc.sc (keyword: stormwater).

MEO Municipal Elected Officials Institute of Government

Testyourselfmonthlyquiz

True or False: **The notice for a public hearing on a municipality's budget must be published in a newspaper of wide circulation no less than 15 days prior to the hearing.**

Answer: True

The notice for a public hearing on the budget must be published in a newspaper of wide circulation no less than 15 days prior to the hearing. Follow the guidelines outlined in SC Code of Laws Section 6-1-80.

The Municipal Elected Officials Institute of Government offers in-person and online courses. Elected officials who complete all of the required coursework graduate from the institute and are eligible to participate in the MEO Advanced Institute. The next in-person MEO Institute course, "Basic Budgeting and Municipal Finance, will be March 19. The next Advanced MEO Institute sessions will be October 16: "Municipal Utility Policy and Administration" and "Advanced Advocacy and Intergovernmental Relations."

Attracting and Retaining City Workforce

Recruitment and retention of employees is increasingly on the minds of city human resource directors, with cities promoting strong benefit packages and creating incentives as a way to market themselves to potential employees.

Michelle Clyburn, the human resources director for the City of Spartanburg, said job stability, as well as medical and retirement benefits are what often attract people to public sector jobs.

"As other organizations were rolling out high-deductible plans and passing on costs to the employees, we were looking at the root causes of those cost drivers and implementing programs to help contain costs while still offering a competitive benefits package. We designed our health plan to improve access to healthcare for our employees and made it easy for them to get the resources they needed to improve health and manage chronic conditions," Clyburn said.

The situation is similar in Clinton, where Robin Entrekin, director of risk management and human resources, said the city works to sell applicants on a benefit package that is routinely better than what can be found in the private sector.

"It often becomes a choice of high wages or benefits. So, we try to do a cost analysis to show those high wages may not be as attractive when you reduce the take-home pay by having to purchase benefits that are often offered by municipalities free or at a minimal cost to the employee," he said.

Mardi Valentino, recently retired director of human resources and benefits administrator in West Columbia, said her city's decision to pay the employee premium for health and basic dental coverage saves employees nearly $1,200 a year.

"When I onboard new employees most people are amazed at how low their insurance premiums are compared to their previous employers. West Columbia has been able to recruit successfully in the Midlands area because we pay the employee's insurance premium. People are reluctant to leave jobs when their benefits are robust and, dollar-wise, very visible," she said.

> "…People are reluctant to leave jobs when their benefits are robust and, dollar-wise, very visible."
>
> *– Mardi Valentino, recently retired director of human resources and benefits administrator in West Columbia*

Another key to holding onto employees is making sure they know they are appreciated by the residents and city leaders.

"A few years ago, we had a 'One Team' boot camp in which all employees participated," Clyburn said. "The purpose of our 'One Team' initiative is to educate our employees so they can see firsthand how their jobs impact the success of our city and help them understand they all play a vital role in making Spartanburg a great place to live and work. We did walking tours to see our development projects and had members of neighborhoods and businesses come speak and engage with our employees in small group settings."

Police retention

"Typically, turnover has always been higher in the law enforcement industry as a whole, but as the pressure and demands of law enforcement have increased, we have seen attrition rates rise as the economy and job market improves," Clyburn said.

In the pursuit of more work-life balance, the Spartanburg Police Department reworked schedules to allow some officers to work four 10-hour work days, meaning they could have more consecutive days off to rest, decompress and spend time with their families, Clyburn said.

In July 2018, West Columbia revamped its compensation levels for all police positions, from entry-level to lieutenants, to be more competitive with the region's other agencies. City council supported the move as a way to keep and hire quality officers, Valentino said. West Columbia also instituted a $1,500 signing bonus for new recruits and a $500 referral bonus to any employee who successfully recruits a new officer.

Skilled labor retention

Human Resources directors say employees with commercial driver's licenses, properly certified water plant and sewer workers, and skilled trades such as mechanics are among the toughest to retain.

"Water plant operators are becoming a rare breed. I conducted an age analysis on our water plant employees a few years ago and discovered the average age

to be around 55 years, which is quite a lot of people at or near retirement age," Valentino said. "Water plant operators provide an extremely important service to residents and businesses, but there seems to be a general lack of awareness, especially among younger generations, of the fulfilling careers available in water plant operations. West Columbia provides entry-level opportunities to 'grow our own' operators."

And then there are the millennials, the young adults born between the early 1980s and the early 2000s. Clyburn said in Spartanburg, young professionals on average leave after working for the city for two or three years. While pay is important to them, it often isn't the chief motivator. They are looking for work-life balance, flexibility and the chance to do meaningful work.

"Often times, there is a misconception that millennials are lazy, but I don't think that is always the case. They are ambitious and passionate," Clyburn said. "Frontline supervisors need to be mindful of the differences in what motivates this new generation entering the workforce. If managers resist new ideas or technology and are not willing to be flexible, then they will hinder growth and success."

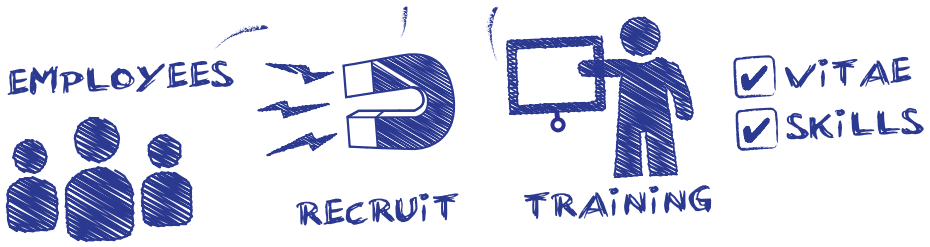
Entrekin said while many millennials are tech-driven, many city government positions are not attractive because they aren't solely technology based.

"Our customers expect police and firefighters to respond to calls; water and sewer systems to be installed, repaired, maintained and work correctly; clean, safe, potable water to drink; customer service reps to take their payments and answer their questions; and trash to be picked up. Those positions do not offer the ability of flex time, work from home, or work from a computer or cellphone," he said. "Although technology does play a role in all those positions, it is still manual labor where the rubber meets the road that gets the job done. Millennials tend to shy away from getting their hands dirty."

Advice for keeping employees

"Stay current with our ever-changing market," Clyburn said. "Celebrate successes both internally and within the community. Listen to the needs of your employees and involve them in the decision-making processes. Increase your digital presence so potential candidates can see the great things your organization is doing to improve your community and hopefully they will want to be a part of it."

"Focus more on benefits and less on salary, particularly those benefits that offer a higher level than your competitors," Valentino said. "Make sure potential applicants know about designated holidays, Christmas bonuses and gift cards, free or reduced gym memberships, employee health fairs, and annual employee luncheons or cook-outs. Promote your municipality as a stable, long-term employer less affected by market swings and economic downturns so prevalent in the private sector. I tell on-boarding employees they now are part of the West Columbia work family and they can have a place with us for many years to come."



Ethics Tip: Payments and Expenses for Speaking Engagements

Municipal elected officials and other public officials subject to the State Ethics Act may not accept payment, including an honorarium, for speaking in their official capacity before public or private groups. Speakers may accept a meal if incidental to the speaking engagement and the same meal is offered to all participants at the event. Actual incurred and reasonable expenses related to the speaking engagement may be reimbursed.

For more information, refer to Section 8-13-715 of the Ethics Reform Act.

Understanding the SC Tort Claims Act

At one time, South Carolina cities and towns could not be sued when an individual was injured. Also, their employees could not be sued for any action taken 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.

South Carolina residents then gained the ability to bring suit against their state, county or municipality, but only in certain circumstances, and only for limited amounts of money. Currently, an individual 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 claimants are involved.

The caps have remained at their present level since 1997. In the current legislative session, lawmakers have proposed increasing the caps. A proposal currently filed in the SC Senate would increase the limit of a loss to one person from a single occurrence to $1 million, and would increase the total limit for a loss arising out of a single occurrence to $2 million.

The Municipal Association has used SC Municipal Insurance and Risk Financing Fund data to estimate the potential impact of increases. The $1 million/$2 million increase, for example, is projected to cause a total of a 9.5 percent premium increase as a result of increased losses and reinsurance.

The $1 million/$2 million increase would also represent an amount much greater than what would occur if the $300,000/$600,000 amounts were adjusted for inflation. Factoring in inflation from the time the caps were set in 1997 through late 2018, the amounts would be approximately $473,000/$945,000.

Many times, claims amounts do not come close to reaching the existing limits. In the last 24 years, only 54 claims against cities and towns have amounted to $250,000 or more, according to data from the SC Municipal Insurance and Risk Financing Fund.

"Given the estimated total number of settlements in that time period," Tigerron Wells, director of governmental affairs for the Municipal Association, said, "this frequency rate works out approximately to two large claims out of 470 settlements occurring each year. In other words, only 0.4 percent of claims handled by the SC Municipal Insurance and Risk Financing Fund are in amounts at or approaching the $300,000-per-individual cap."

SC Senate proposal for tort cap increase:

- $1 million for loss to one person from single occurrence
- $2 million total limit for a loss from a single occurrence

Association Highlight:

SC Business Licensing Officials Association

The SC Business Licensing Officials Association promotes best practices for administering and enforcing local business license taxes to its members. It uses rigorous training sessions to help its members learn the skills and practices that will make the licensing process in their cities and towns more efficient and business-friendly.

BLOA offers its members an opportunity to achieve the Accreditation in Business Licensing. To sit for this accreditation's exam, members must first complete the three-year BLOA Training Institute, for which BLOA offers one of the three sessions each spring. Course A covers the responsibilities and procedures of business license officials; Course B adds rates and fees, the Freedom of Information Act and communication skills; and Course C addresses enforcement and personal development.

BLOA also offers a Masters in Business Licensing, achievable through a system of experience points. Members can earn points in a number of ways, including attending the BLOA Advanced Academy. The Advanced Academy for this spring will cover:

- A panel discussing the impact on business licensing of technological development that blurs the lines between the traditional economy and the digital economy;
- Regulation of small wireless facilities, which are growing in number; and
- A panel of licensing officials discussing how their cities and towns recently moved to the Municipal Association's model business license ordinance.

The BLOA Spring Training Institute and Advanced Academy will take place Wednesday April 3 at Seawell's in Columbia. The registration deadline for the meeting is Friday, March 22. Find registration information at www.masc.sc (keyword: BLOA).

Funding South Carolina's Retirement Systems

South Carolina's pension plans, and more specifically the need for funding to maintain these plans, appears in the news periodically. The concepts below can help city officials and the public make sense of this complex issue.

Defined benefit plan, defined contribution plan

The state's pensions are known as defined benefit plans. When eligible participants retire through service credit or because of disability, they can receive a monthly retirement benefit payment for life. This is unlike defined contribution plans like 401(k)s, in which the amount of money accumulated in the account represents the entire benefit the plan will provide the retiree. Funding for defined benefit plans comes from monthly contributions from the employee and employer, as well as investment income.

Defined benefit plans were once common, but these plans have become increasingly rare. The value and security that a pension offers can be a powerful recruitment tool for employers who have them.

South Carolina Retirement System

With nearly 200,000 active, contributing members and more than 140,000 retirees and others receiving benefits, the South Carolina Retirement System is the largest pension plan operated by the SC Public Employee Benefit Authority.

The system is open to employees of state agencies, colleges and universities, public school districts, and is open to many municipal and county elected officials and employees.

South Carolina's Retirement System Investment Commission manages the investment of assets for this and the other state pension plans.

Police Officers Retirement System

The Police Officers Retirement System has more than 27,000 contributing members and nearly 18,000 people receiving monthly benefits. Its name reflects the employee group it first served, but it has other types of public employees participating as well, like firefighters and magistrates.

PORS has contribution rates and retirement eligibility rules that differ from SCRS, and local governments can choose to join the system.

Unfunded liability

Pension plans maintain funds intended to pay their obligations to retirees and other beneficiaries. The amount the plan will need to eventually pay participants can grow to be greater than the amount currently available. The difference is known as the unfunded liability, and it is often used as a measure of a plan's sustainability.

As an example, SCRS had an actuarial liability, or amount expected to be paid in future benefits, of approximately $48 billion as of July 1, 2017. It had an actuarial value of assets of $27 billion. This leaves an unfunded actuarial liability of $21 billion as of that date. The unfunded liability of South Carolina's plan is the result of investment underperformance, the granting of unfunded benefits like the Teacher and Employee Retention Incentive program, and cost-of-living adjustments, according to the SC Public Employee Benefit Authority.

Pension plans in many states have sought to find ways to reduce their unfunded liabilities in recent years, especially since the Great Recession. In 2012 and in 2017, the SC General Assembly enacted legislation designed to improve funding and shrink the unfunded liability. The legislation changed both the funding process and the benefits available to employees hired after July 1, 2012. Further changes could occur, but the obligation to pay benefits which have previously accumulated remains set in the state's constitution and in the South Carolina Code of Laws.

New DHEC Requirements for Water Withdrawals

In July 2016, Aiken County Council passed a resolution asking the SC Department of Health and Environmental Control to designate portions of Aiken County as a Capacity Use Area, a designation that requires water users to receive a permit to withdraw large amounts of groundwater. As the resolution put it, "fresh drinking water is a precious natural resource that must be protected for future generations, economic development and agricultural use."

In November 2018, DHEC created a new Capacity Use Area, but it turned out to be a much bigger change than Aiken County requested: the entirety of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington and Orangeburg counties — a heavily agricultural part of the state, much of which is located in the Edisto River basin.

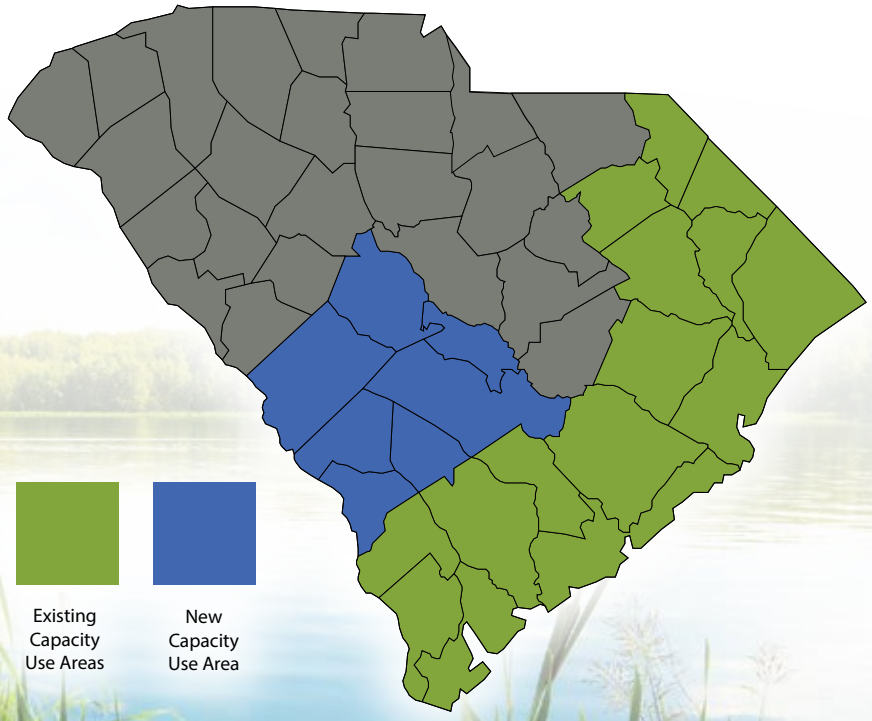
This was the first time this type of regulation, which is intended to conserve aquifers and has been around since the 1970s, came this far inland. Before this, four Capacity Use Areas existed, covering 15 of the counties closest to the coast. In these designated areas, any entity withdrawing more than 3 million gallons of groundwater per month needed a permit.

Ahead of creating the new area, DHEC issued a report of groundwater conditions of the seven counties in question. It noted that for some of the area's aquifers, or layers of water-bearing rock, groundwater level declines had been recorded in amounts of up to 15 feet since 2001. During this time, the area saw growth in the number of high-capacity wells constructed, the report said, and growth in groundwater demand was expected to continue into the foreseeable future.

While more of the state is now in a Capacity Use Area, the remaining counties that have no restrictions on withdrawing water still have reporting requirements for water withdrawals. In those counties, users must register wells or well systems that will use more than 3 million gallons monthly. All groundwater withdrawers everywhere in South Carolina must report annual water usage to DHEC.

For surface water withdrawals, it doesn't matter where the user is located — all of them must seek permits if withdrawing more than 3 million gallons monthly and register if they use less than this amount. All of them must also report annual usage.

Learn more about groundwater use reporting and permitting, and find requirements for each county and annual withdrawal reports, at www.scdhec.gov (keyword: groundwater use).



Building Trust with FOIA

SC Freedom of Information Act Brings Opportunities As Well As Challenges

Charlie Funderburk, Tega Cay's city manager, has a saying: "If people don't know what's going on in Tega Cay, it's because they don't want to know."

That's because, he said, the city works hard to communicate its activities, plans and policies through multiple platforms to reach everyone in Tega Cay. City council meetings appear in live broadcasts and are replayed three times a day on the local government cable channel. The broadcasts are also uploaded to the city's website to watch anytime. Once meeting minutes are approved, the city posts those on the website as well. Residents can get a weekly recap of news by email on Saturday mornings.

Those actions go a long way in answering questions and fulfilling a city's responsibility to be transparent. But while cities work proactively to make information easily available, they must also provide information by responding to Freedom of Information Act requests.

The SC Freedom of Information Act is designed to guarantee that the public has access to public records "prepared, owned, used, in the possession of, or retained by a public body." Anyone — the media, residents or businesses — can request public records, and governments must respond within 10 days in cases where the document is less than two years old.

While responding to FOIA requests can be challenging, releasing documents can help build trust and collaboration between the city and the residents it serves.

"We believe that the FOIA helps the media do a job that we ultimately feel benefits the city and its residents," said Frank Johnson, the public information officer and annexation coordinator for the City of Goose Creek. "We are committed to being transparent and helpful, and view the local media as a partner in providing information to our residents."

Goose Creek also keeps its website updated with the latest meeting agendas of city council and city commissions, including access to agenda packets.

"This, coupled with a transparent and helpful attitude towards media requests, creates a feeling of partnership with local media," Johnson said.

Sometimes, the public's desire for information must be weighed against topics such as privacy, legal issues and criminal investigations.

"There are obviously times — such as when our police are protecting the identity

FOIA, page 12 ➤

FOIA, from page 11 ➤

of a crime victim, or if the release of information would have a negative effect on an ongoing investigation — when we need to be careful about how much information is released. For the most part, however, we want to release information — and do so in a quick and easy way," Johnson said. "There are many instances when we could insist on a FOIA request but bypass that step. Again, unless there's a really good reason not to provide information to the public, we're going to do it."

Funderburk said he believes the growth of social media and educating the public about the information available on the city website has caused the number of FOIA requests to drop in recent years.

Several years ago, Funderburk said Tega Cay hired a firm that provides municipal web design and software built for local governments. Now, residents can easily access city information and can sign up to receive specific pieces they are interested in. For example, if they opt in to the system and say they are interested in the work of the planning commission, they will receive emails alerting them to commission agendas and other news.

The City of Goose Creek live-streams city council meeting video and provides archived meeting videos.

"A lot of the time Joe Citizen doesn't understand what they can readily get and that it's already out there for them. We try to educate them on that side of things. We show them where they can find the information on their own without a FOIA request," he said. "You train your populace over time on where to find that information. We take another minute on the phone and say, 'Are you in front of computer? Let me show you how to find this information.'"

When cities do get formal FOIA requests, they are often handled by municipal clerks or another employee designated as a FOIA coordinator, who then work with department heads. After the city determines if it has the information, the resident will be told the projected cost.

"If we have the information and it's public, we say, 'Sure, here it is,'" Funderburk said. "As I told my IT guy, 'We don't have the nuclear launch codes here.'"

Keeping Digital Public Records on the Record

The General Assembly has amended the SC Freedom of Information Act repeatedly since it came to life in 1978, but the examples of public records that the law gives, even now, are all media formats that wouldn't be out of place in the 1970s: "all books, papers, maps, photographs, cards, tapes, recordings."

The language that legally defines public records concludes with a catchall that can cover all types of media developed over the years: "other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body."

As Clark Cooper, virtual chief information officer with VC3, notes, the spirit of that final part of the definition means that the documents that are covered by FOIA can include digital records ranging from email to social media and text messages — even text messages on a personal cell phone in which city business is conducted.

Jessica Hills, an electronic records analyst with the SC Department of Archives and History, put it another way in a presentation to the SC Municipal Attorneys Association: "It's based on content and not medium."

The SCDAH's archives and records management division has retention schedules for public bodies in South Carolina, including one for municipal records. When records are created, cities and towns are responsible for holding on to them in accordance with the schedules. In some cases, new categories of records may not fit into the standard rules, and so SCDAH collaborates with the local government to create a specific retention schedule.

South Carolina government records stretch back centuries, so in the timescales of archive management, digital records are still very new, and they bring very different challenges than paper files. Hills has some advice for city and town officials managing their records, saying that the greatest challenge is hardware and software obsolescence. She sometimes asks people to imagine how they could attempt to access data on a decades-old floppy disk.

"You absolutely cannot put electronic records on a CD or a USB key, then put them on a shelf and ignore them for 20 years," she said. "20 years down the line, you will not have access to them."

She said officials need to plan for migrating or converting files as technology changes. She recommends that public bodies sample their records every year by attempting to open them. Any difficulty in this can "sound the alarm if they're losing the ability to access the material," and show that there is now a need to convert information.

Like, Follow and Archive:
Recording a City's Social Media Presence

Social media is seemingly free to use, and that's a significant part of its appeal. Facebook, Twitter, Instagram or YouTube accounts, which cost nothing, can give cities and towns a way to communicate with residents and the media, as long as they take the time to cultivate a following on those platforms. But what if the municipality receives a Freedom of Information Act request for social media records, and those records are nowhere to be found?

The platform itself may not have the records, especially if they were deleted. Services that archive social media records are available paid subscription.

When considering the possibility that a local government will need to be able to produce records, Clark Cooper, virtual chief information officer with VC3, stresses the need of getting coverage through an archiving solution when using social media. Governments using social media, he said, should understand that "it comes with cost."

For the City of Greer, a solution was available through a service it was already using. The city used GovQA to create its Greer Connect portal for users to report issues and ask questions and later launched online FOIA requests with GovQA. In 2016, they began using it for social media archiving, and that service has since been transferred to PageFreezer. Real-time archiving of 17 social media accounts have now created an archive of more than 25,000 posts, according to Steve Owens, communications manager for Greer.

"The module works automatically in the background, requiring little effort by account owners," he said. "Although we have had just one FOIA request for social media records since installing the system, we were able to respond quickly to provide the requested information. Social media FOIA requests may currently be a small fraction of the city's overall FOIA requests, but it's comforting to know that we are in compliance with open records law and are able to fulfill records requests for social media."

The City of Greenwood, meanwhile, uses ArchiveSocial for all of its social media accounts, said Steffanie Dorn, Greenwood's finance director and municipal clerk. She noted that when staff need to delete a post that violates the city's policies, the service keeps the record archived.

Keeping Up to Date with FOIA

The South Carolina Freedom of Information Act has received periodic updates, most recently in May 2017. Here are some key aspects of the law which came out of the most recent amendment.

Less time to respond

Public bodies have 10 business days to give the initial response to a request. Before 2017, the deadline was 15 days. The initial response doesn't have to produce the information, but instead simply needs to indicate whether the public body will fulfill the request. If the record requested is more than 24 months old, the deadline is 20 business days.

After an initial response that it will provide the information, the public body has 30 calendar days to do so. If the fulfillment requires a deposit from the person or entity making the request, the 30 calendar days begin from the time of this payment. Records that are at least 24 months old have a longer deadline: 35 calendar days.

Keep in mind that some records must be provided on request during business hours with no written request or waiting period: meeting minutes, meeting packets, police incident reports and information on who is being held in jail.

Charging for records

Public bodies do not have to charge for FOIA responses. They must, however, develop a fee schedule for the actions that go into providing a response, like searching, retrieving, redacting and copying records. Charging for time spent redacting is a new addition to the 2017 law.

Although fees need to be uniform, public bodies with fee schedules can provide documents for free or for a reduced fee when the body determines that the furnishing of the information is in the interest of the general public. Providing information to news media can be an example.

Several restrictions exist for charges. The bodies cannot charge rates greater than the hourly wage of the lowest-paid employee who has the skills needed to fulfill the request. For copying, they cannot charge more than the prevailing commercial rate for producing copies.

Electronic records

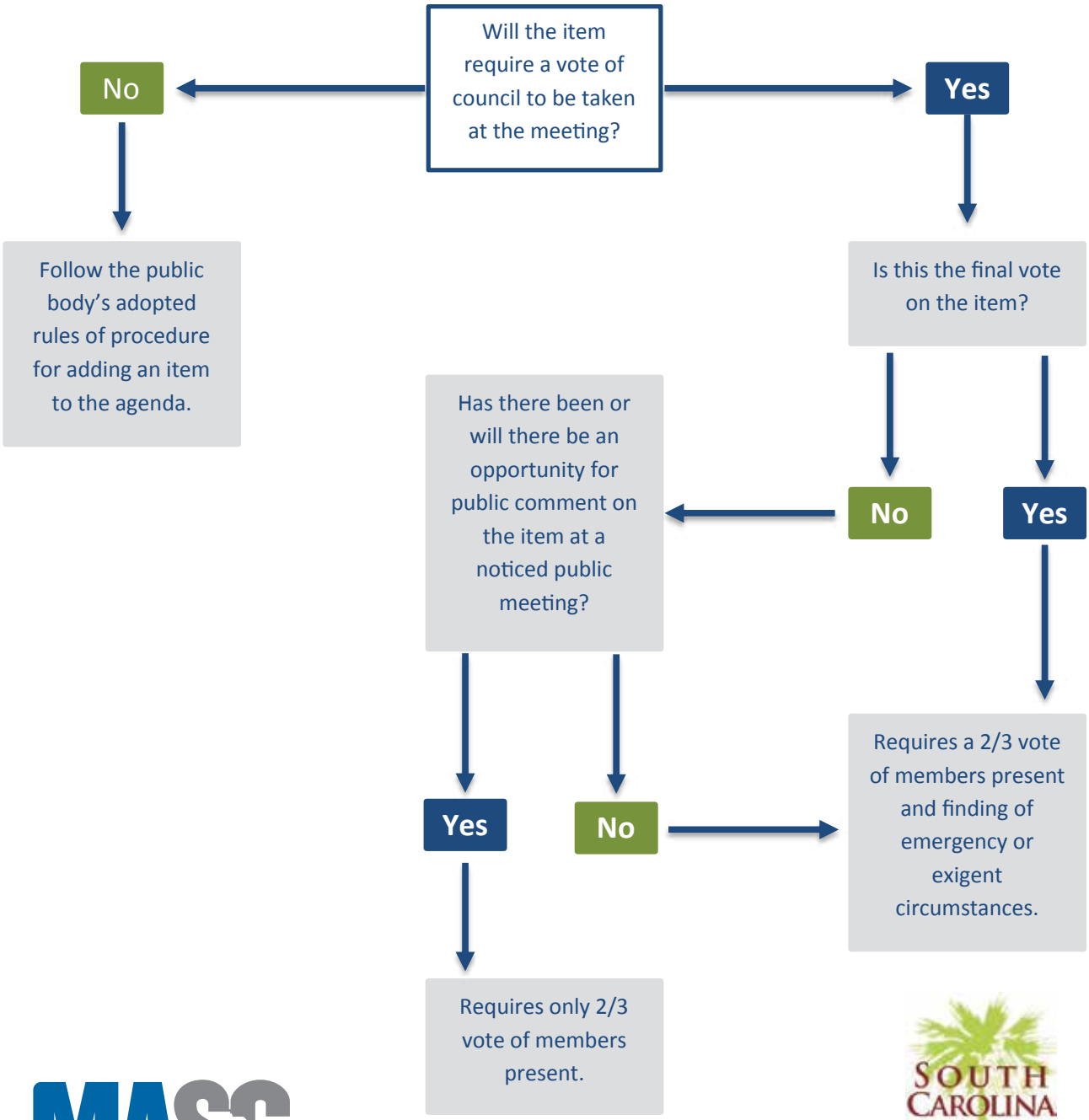
The law states that those making requests have the right to receive public records electronically. However, public bodies are not required to create an electronic version of a public record if one does not exist or modify the electronic record to a format preferred by the requestor.

Improper requests and commercial solicitation

Usually, FOIA lawsuits involve an individual who made a request suing a public body for denying the release of information. However, the law also allows the public body to go to court "to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests."

Also, the law now establishes that knowingly obtaining personal information from the state or any local government for the purpose of commercial solicitation is a crime. It further states that public bodies "shall take reasonable measures" to keep this from happening and must provide notice in their FOIA responses that state law criminalizes this activity.

Procedure to add item to a public meeting agenda within 24 hours of the meeting



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Calendar

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

MARCH

6 You've Been Elected, Now What? Municipal Association of SC. Topics include an overview of conducting effective meetings; complying with laws governing public service and state laws such as the SC Freedom of Information Act and the SC Ethics Act; and programs and services provided by the Municipal Association.

7 SC Association of Stormwater Managers First Quarter Meeting. Seawell's, Columbia. Topics include an update from the SC Department of Health and Environmental Control, how to develop a stormwater asset management program, a case study outlining a successful asset management program and outlining the right tools to make an asset management program easier and more efficient.

10 – 12 SC Utility Billing Association Annual Meeting. Embassy Suites by Hilton Charleston Airport Hotel and Convention Center. Topics include communication in the workplace, professional and personal awareness, electronic payment security, ethics and harassment.

13 – 15 Municipal Clerks and Treasurers Institute Spring Session – Year 1, Session A. Hyatt Place Columbia/ Downtown/The Vista. Topics include the role of the municipal clerk, records management, interpersonal skills and forms of government.

19 Municipal Elected Officials Institute: Basic Budgeting and Municipal Finance. Regional councils of governments locations.

20 SCMIT and SCMIRF Risk Management 101. Municipal Association of SC.

20 SC Association of Municipal Power Systems Legislative Breakfast. SC State House. Cohosted with Piedmont Municipal Power Agency.

21 Municipal Technology Association of SC Spring Meeting. Newberry Firehouse Conference Center. Topics include best practices for establishing technology-related polices, SC Law Enforcement Division's Criminal Justice Information Services updates, disaster recovery and future technology trends.

28 SC Municipal Finance Officers, Clerks and Treasurers Association Spring Academy. Seawell's, Columbia. Topics include legislative updates, overview of programs by the State Treasurer's Office, cyber security, office health and leadership.