



UPTOWN

a publication of the municipal association of south carolina

Advocating From the Local Level

Hometown Legislative Action Day Spotlights Business Licensing, Other Key 2020 Issues

Hometown Legislative Action Day on February 4 brought together about 475 representatives of cities and towns around South Carolina. They heard from state senators on many issues impacting the state and local level, most notably business license legislation. In the afternoon, they headed to the State House to engage with their delegations.

State Senate President Sen. Harvey Peeler gave the keynote address, calling attention to the importance of the relationship between the General Assembly and local officials. He outlined critical topics for the current legislative session, including education reform, the future of Santee Cooper and the \$1.8 billion budget surplus, and closed with a reminder of the importance of the 2020 Census.

“If you’re going to do one thing for your cities and towns, make sure that the people are counted,” he said.

A senate panel discussion brought together Sens. Tom Davis, Shane Massey, Ronnie Sabb and Katrina Shealy. They dug into



many of the same key issues as Peeler, and discussed the possibilities for H4431, the bill that would change the methods by which a business license tax is calculated, collected and enforced.

Sen. Marlon Kimpson spoke during lunch. He covered such topics as affordable housing as well as past and current legislative preemption efforts in areas such as wages, vaping and plastic bag bans.

Advocating, page 3 >

In This Issue

New Local Government Fund Distributions for FY 2020-2021

Page 4

Spreading the Word on Economic Development

Page 8

Special Section: Open Government

Handling Quorums Correctly

Page 14

Take Care With Executive Session Procedures

Page 15

In this *ISSUE*

MEO, Advanced Institutes
Recognize New Graduates 2

New Local Government
Fund Distributions for
FY 2020-2021 4

Cleaning Up the Town..... 5

Association Highlight: Handbook
for Municipal Officials in South
Carolina 7

Spreading the Word on Economic
Development..... 8

Municipal Elected Officials
Institute of Government
Monthly Quiz 9

Special Section:
Open Government

Stay Up to Date With FOIA.....10

Statements of Economic
Interest Due March 30..... 11

A Day in the Life of
a FOIA Officer 12

Handling Quorums Correctly.... 14

Take Care With Executive
Session Procedures..... 15

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The winter 2020 MEO Institute graduates completed seven courses.

MEO, Advanced Institutes Recognize New Graduates

At Hometown Legislative Action Day on February 4, the Municipal Elected Officials Institute of Government and Advanced Institute together graduated 88 municipal elected officials.

To graduate from the MEO Institute, officials must complete two daylong sessions and five other courses that they can take online or in person at any of the 10 councils of governments area locations.

The next in-person session, taking place on Tuesday, March 24, is “Basic Budgeting and Municipal Finance.” This course will be held at all the regional councils of governments area locations.

The registration deadline is Monday, March 16.

Graduation from the Advanced MEO Institute requires completion of four of the six available courses. The institute offers in-person sessions every year in February and October. This fall’s in-person session is an all-day event on Wednesday, October 14, from 9 a.m. to 4 p.m. at the Columbia Marriott. The sessions are “Advanced Municipal Economic Development” and “Public Safety and Administration.” The registration deadline is October 1.

For a complete listing of MEO Institute and Advanced Institute graduates, visit www.masc.sc (keyword: newsroom).



The winter 2020 Advanced MEO Institute graduates finished four of six courses offered after graduating from the MEO Institute.



Left: Mayor Cornelius Huff of Inman, president of the Municipal Association of SC. Center: State Senate President Sen. Harvey Peeler. Right: Sen. Marlon Kimpson.

Advocating, from page 1 >

“The reality is that the people on city council, and the people in Inman, Georgetown, Spartanburg, Greenville, and all the towns are in a better position than me to determine whether or not plastic bags are an issue in your jurisdiction,” he said.

Cornelius Huff, mayor of Inman and president of the Municipal Association of SC, also touched on the value that local government brings when protecting residents and local businesses.

“We are the government closest to the people making decisions that affect our residents’ basic quality of life every day. We are listening to the concerns from residents about plastic bags in creeks and rivers. We are listening to the concerns from residents about vape shops located near schools and churches,” he said. “And guess what? We are taking action. We are answering those concerns with action and changes at the local level.”

Municipal Association Executive Director Todd Glover discussed his experiences with the Municipal Association’s legislative



team since he came to the Association in late 2019. He noted that the advocacy staff is knowledgeable and experienced, but nonetheless encouraged local officials to take their concerns directly to their legislators.

“If you ask any of our advocacy team, they will tell you that there’s nothing like a call from home,” he said.

Both Glover and the legislative team focused on the message that business license standardization is a way to provide fair treatment to both businesses and cities. The message was summed up to the slogan, “Standardization: Fair for All,” which appeared in handouts and stickers provided to HLAD attendees.

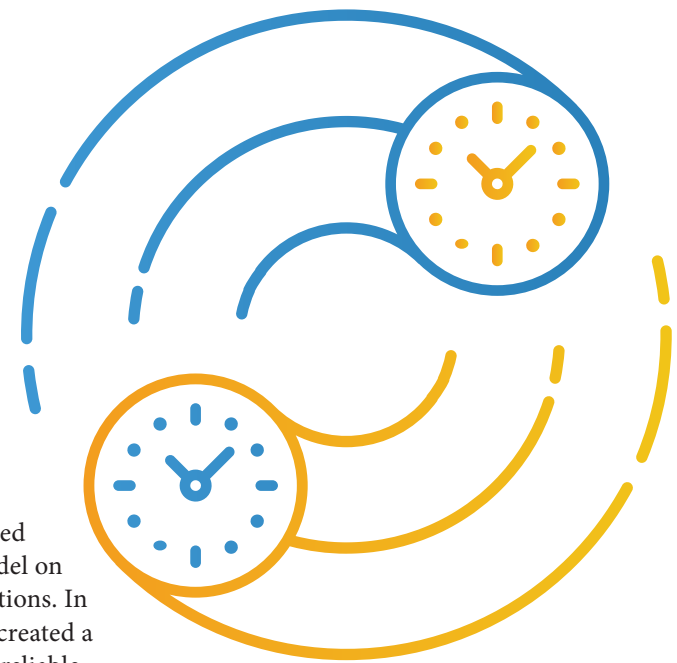
Glover discussed the ways that the Association has promoted business license standardization in recent years,

leading up to the discussion on H4431 during the current session. The Association has promoted standardization of due dates as well as the passage of the model business license ordinance, which has happened in about 130 municipalities. The business license renewal portal recently developed by the Association is another key part. The software, currently being tested in the City of Greenwood and the City of Greer, will allow businesses to calculate what they owe to each municipality they operate in and submit a single payment.

Other HLAD sessions included “Place Branding and Economic Development,” highlighting efforts in Charleston, Lake City and Travelers Rest. The SC State Election Commission provided a presentation on issues seen in recent election cycles and demonstrated the new voting system it began using in 2019. Articles covering both of these sessions will appear in the April issue of *Uptown*.

Materials from the day’s presentations are posted at www.masc.sc (keyword: HLAD).

New Local Government Fund Distributions for FY 2020-2021



Changes made to the Local Government Fund formula by the General Assembly in 2019 mean that distributions to both municipalities and county governments are updated going forward. The transformation changes the way that the amounts are calculated beginning with FY 2020-2021.

SC Code Section 6-27-30 now requires that the Local Government Fund increase or decrease every year by the same percentage that the state general fund is projected to increase or decrease. The amount of change cannot, however, exceed 5% compared to the appropriation of the previous fiscal year. Before now, the funding mechanism was backward-looking, meaning that it was based on the previous fiscal year of the state's general fund revenue.

The General Assembly based the new, forward-looking model on the next year's revenue projections. In doing so, the state legislature created a formula that provides a more reliable funding level for cities and towns. Greater LGF reliability was one of the Association's Advocacy Initiatives for the 2019 – 2020 legislative session

The new calculation represents a significant change from the pattern that began in 2009, when the General Assembly decreased the LGF funding in response to the Great Recession. For the next decade, funding was unpredictable and generally trended toward either little or no growth. This trend remained the case even as the state's economy grew.

In May 2019, the General Assembly approved the FY 2020-2021 state budget.

That budget included the addition of \$11.1 million to the LGF base amount, creating a new base amount of \$233.7 million.

The SC Revenue and Fiscal Affairs Office has compiled the LGF distributions available to each of the state's 271 municipalities. Find this list at www.masc.sc (keyword: local government fund) where the estimated amounts for FY 2020-2021 are available for each municipality. The list also includes a comparison to the FY 2019-2020 appropriations. The LGF webpage includes a history of distributions since 1991.

NEWS BRIEFS

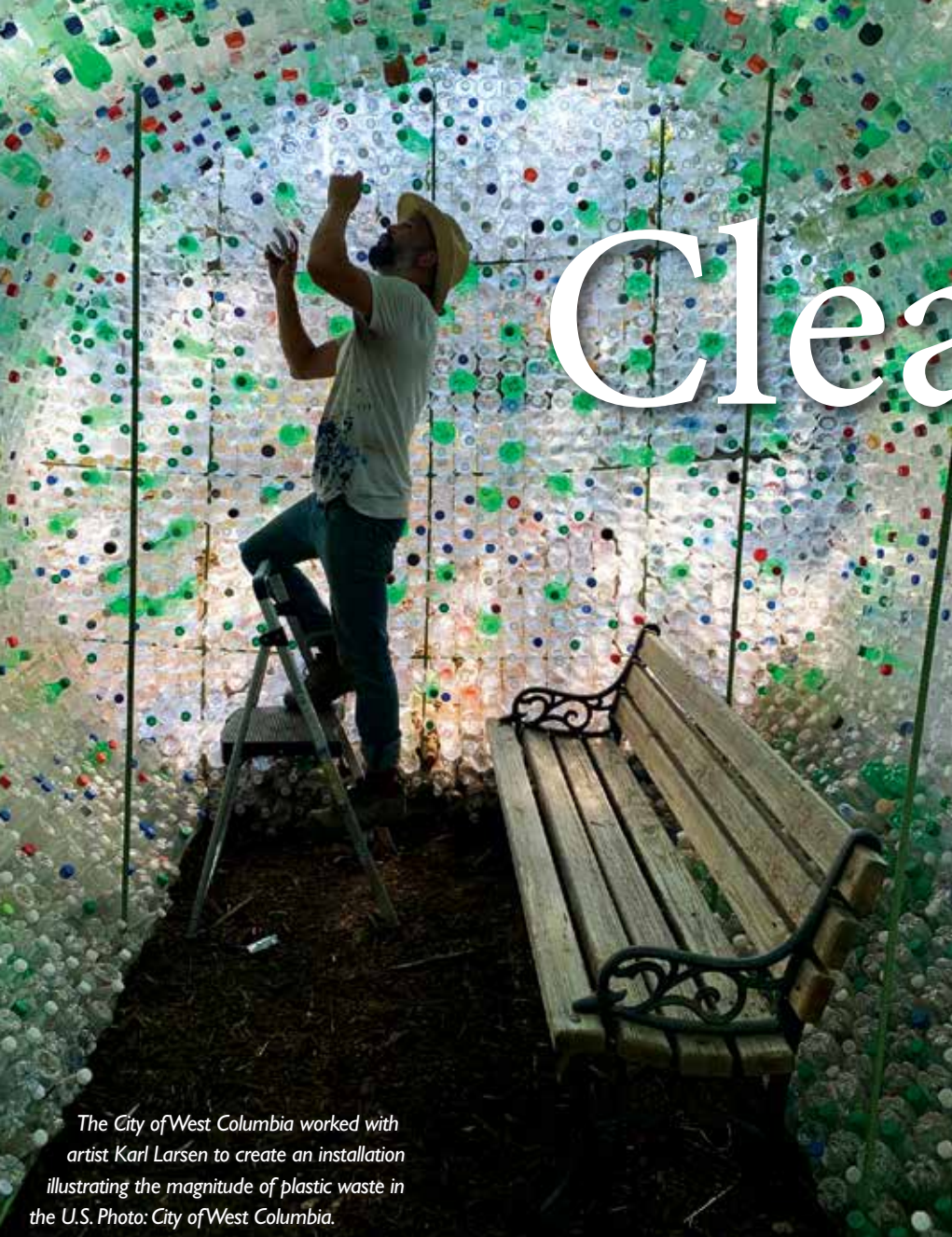
The towns of **Calhoun Falls, Cheraw, Jonesville, Prosperity, Santee** and **Summerville** and cities of **Cayce, Lake City, Newberry, Union** and **Wellford** have been recognized for the Municipal Elected Officials Institute of Government's 2020 Honor Roll. The Honor Roll recognizes annually the city councils that can count all members of their sitting council as graduates of the Municipal Association's MEO Institute.

City of Newberry Fire Chief Keith Minick was recently sworn in as the president of the SC State Firefighters' Association.

The 2019 America in Bloom National Awards Program honored the **City of Greenwood** with the "Coolest Place for Kids" award at their 2019 awards celebration.

Where to Retire magazine recently named the **City of Sumter** as a top retirement destination in a feature titled "8 Tax-Friendly Towns."

The **City of Hartsville** received the 2019 Platinum International Aquatic Safety Award from Jeff Ellis & Associates in recognition of the safety standards demonstrated at Neptune Island Waterpark.



Cleaning Up the Town

Cities Build Partnerships to Reduce Litter

The City of West Columbia worked with artist Karl Larsen to create an installation illustrating the magnitude of plastic waste in the U.S. Photo: City of West Columbia.

Across South Carolina, cities and towns are joining forces with their counties and the state to fight litter. From Keep America Clean to PalmettoPride to local efforts like Twin the Bin, Grab a Bag, and Clean & Green, many levels of government are working to support clean-up efforts with limited resources.

Most efforts rely on volunteers, including the Adopt-A-Highway program or local school programs. Others use a provision in state law allowing communities to put those sentenced by a judge to community service — especially those convicted of littering — to work along the roadways.

All litter campaigns come with some cost, whether it is the city employee who

has to monitor the community service workers, or funding the equipment — bags, gloves, safety vests and trash grabber tools.

While the state can enforce hefty fines for littering, in addition to the cleanup requirement for the violation, enforcement is difficult and can be costly for small towns with limited policing resources.

For the Town of Batesburg-Leesville, hiring part-time employees to pick up roadside trash has been a significant help. Much of the litter problem for the town, which has major pass-through roads, comes from unsecured loads in the back of trucks, according to Town Manager Ted Luckadoo.

“What you see on the roadside when it’s piled up with litter, that is not people

throwing stuff out the windows as much as that’s from unsecured loads,” Luckadoo said. “The trucks are going to the dump or they’re going to the landfill to dispose of it, but they have not secured their load and a complete garbage bag flies out of the back and bursts open.”

Last summer, the town hired two high school students to work part-time picking up trash in the town during the summer.

“We hired the part-time employees to see what kind of impact we could have — how much we could collect,” Luckadoo said. “They were able to pick up 57 huge bags of trash, over 50 tires, a list of bulk items — mattresses, box

Litter, page 6 >



Rock Hill Clean & Green pushes for volunteer cleanup events in the spring of each year. Photo: City of Rock Hill.

springs, sofas down in creeks and things like that.”

The town then decided to hire someone to work about 20 hours a week throughout the year, picking up trash. Luckadoo said there has been plenty to keep the employee busy.

“By the time he picks a road up and another few weeks go by, he’s got to go back to that road,” he said.

A recent trash pickup event with athletes from the local high school netted nearly a half-ton of garbage, including some televisions and tires, but largely bagged garbage.

“I don’t know if there is a solution to litter other than campaigning for people not to do it,” Luckadoo said.

The City of Rock Hill is banking on community pride as a solution.

“Rock Hill is becoming known for sports tourism, and we’ve got a lot of visitors from all over,” said Elizabeth Morgan, who has been the city’s environmental educator for the past 14 years. “We’ve got the world coming to Rock Hill, and we want to look our best.”

Morgan said she works closely with the county and with the city’s Clean & Green board to keep a steady flow of volunteers picking up trash. Once a

month, a city employee works on a Saturday to oversee the court-ordered, community service trash collectors. The city also provides equipment, such as bags, gloves, safety vests and trash grabbers, to both groups. While there is some enforcement through the county, the city’s efforts focus on prevention and individual cleanup efforts.

“The Great American Cleanup is in March, and Rock Hill has a big festival in April,” Morgan said. “We push for the March-through-May timeframe to be when we try to get groups to spruce up for spring.”

Morgan’s office uses various communications channels, especially social media. The city also seeks out volunteers and works with nearby Winthrop University to get college students involved.

Morgan focuses her litter prevention education efforts on schoolchildren, starting with first graders and talks about the importance of litter prevention, recycling and water quality.

From her vantage point, the biggest trash offender is cigarette butts.

“We have done outreach campaigns and put ash cans around town, trying to combat the idea that cigarettes aren’t litter,” Morgan said.

Greenwood County and the City of Greenwood took litter abatement efforts to a new level last summer with a full-time employee who works partly for the city and partly for the county. Litter Prevention Coordinator Maggie McMahon coordinates both education and cleanup efforts.

“I tell people ‘I deal with trash all day every day. That’s my one job,’” McMahon said.

She implements a three-part approach to the problem: educate, motivate and encourage.

Education includes young people, but also teaching adults the penalties for littering and the impact litter has on the environment, not just its unsightly appearance. On the county side, officers are making a stronger effort to enforce the laws by identifying who is dumping trash illegally.

She also motivates people to get out and clean up problem areas. McMahon has created a litter hot-spot map so folks who want to participate in the “#grababag” social media campaign promoted by the SC Department of Transportation can see where the biggest problems are. McMahon also makes equipment available for individuals or groups who want to clean up.



Greenwood County and the City of Greenwood have partnered to create a full-time litter prevention coordinator position. Photo: Greenwood County, City of Greenwood.

Litter collection efforts in Batesburg-Leesville include pickup events with high school students. Photo: Town of Batesburg-Leesville.

West Columbia took on its litter issues with a solid waste and recycling grant from the SC Department of Health and Environmental Control. The grant allowed the city to install more than 20 sets of trash and recycling bins in areas with high foot traffic and high litter.

The city also worked with artist Karl Larsen to create an art installation, “Three Seconds and Counting ...” of locally sourced plastic bottles to show the amount of plastic waste that occurs in the United States every three seconds.

Using billboard advertising and social media campaigns, West Columbia worked to educate people about litter penalties. It also stepped up its enforcement efforts and partnering with Keep the Midlands Beautiful to coordinate pickup days for those convicted of littering.

“Although we still have litter in these areas, you can visually tell there has been a reduction,” said Anna Huffman, West Columbia’s communications and technology director. “There have also

been noticeable increases in the amount of trash and recycling in the bins.”

Litter challenges are often numerous, and available resources are usually limited. Even so, partnerships and creativity among local governments and other entities always have the ability to make an impact on their community’s litter problems.

Learn more about how cities and towns can operate litter prevention efforts through the SC Litter Commission’s Best Practices Guide for Community Service, available at www.dppps.sc.gov.

Association Highlight:

Handbook for Municipal Officials in South Carolina

The Municipal Association of South Carolina offers city officials and staff access to publications covering a wide variety of local government topics. This includes the *Handbook for Municipal Officials in South Carolina*, which is the primary reference for the Municipal Elected Officials Institute of Government.

When residents are elected to municipal office, they often enter into a world of unfamiliar state laws governing how councils, departments, boards and

commissions operate; how local governments are financed; and how human resources concerns for staff are managed. This handbook explains many of these concerns. Other key topics covered in the handbook include elections, ordinances, tax revenue, municipal debt, SC Freedom of Information Act, public utility operation, municipal courts, risk management, as well as planning and annexation.

Find the handbook at www.masc.sc (keyword: municipal officials handbook).





Tom Finnagan, left, and James Bakker, center, discuss the development of the Montgomery Building for a podcast with Spartanburg Communications Manager Christopher George. Photo: City of Spartanburg.



The City of Goose Creek created new branding for itself in 2018. Photo: City of Goose Creek.

Spreading the Word on Economic Development

When city leaders in Goose Creek looked at the explosive population growth that their Lowcountry community has recently experienced, they decided that a rebranding project would help them more accurately reflect what the city has come to offer. The results of that effort, including a refreshed logo and style book as well as a “Creek Rising” campaign, won Goose Creek a 2019 Municipal Association of SC Achievement Award.

“We think the change alone got us some attention, and it got us in some conversations that we may have not been in before,” said Matt Brady, economic development director for Goose Creek.

Goose Creek has an economic development web landing page, www.creekrising.com, that features city-based business incentives, site selection and relocation data and information on the Goose Creek Local Branded program, which has an interactive map of local businesses.



The redevelopment of the Montgomery Building has been a major topic of discussion in the redevelopment of downtown Spartanburg. Photo: City of Spartanburg.

Brady also spoke of the value of emphasizing the city’s role in proactively pursuing economic development. He stressed the importance of having something to say “every time you get a win — if you get a new company, you get an expansion or something like that, [it’s important to push out] your press releases and social media, amplifying if however you can.”

Brady described the project as part of a panel discussion on economic development messaging during a Communications Workshop at the Municipal Association. He was joined by Anna Huffman, communications and technology director for the City of West Columbia and Christopher George, communications manager for the City of Spartanburg.

Huffman described the city’s communication pushes at a time when it opened multiple quality-of-life projects, including its Interactive Art Park as well as the Art on State project. For communications, she said the city capitalized on every aspect of the projects from groundbreaking to the actual opening. The projects aim to further the economic development of West Columbia by making it a more attractive place to live and work.

“All the parks have art installations that are interactive. So, we keep pushing the message out, ‘come, check out our parks, interact with the art, things are always changing,’” Huffman said.

The art installations have been opening at the same time as new private development and parking expansions

in the city's riverfront area, and Huffman said that areas on Meeting and State streets as well as Triangle City are ready for infill development.

"We're seeing a lot redevelopment and restaurant investment and nightlife, so we're really promoting that on our social media, trying to get people over the river to see what's going on in West Columbia, to eat here, to hang out," she said.

George described Spartanburg's development-focused projects receiving attention from his department including streetscaping, recreational trails and parking. Sometimes, he said, messages really need repeating. A major development of a downtown hotel caught the attention of detractors, he said, and so the city repeatedly made the case that market growth really created demand for those hotel rooms. The city even has residents who he said are "active defenders" of specific efforts on social media, and hearing from neighbors on social media does create authenticity.

"Residents take it a lot better if it comes from the neighbors, but I don't



Public art, including this alleyway mural and the new Interactive Art Park, are part of the redevelopment of West Columbia's riverfront. Photo: City of West Columbia.

think we would have gotten that if we hadn't been pretty assertive and aggressive in the beginning in saying, 'hey, good stuff is coming,'" he said.

Spartanburg has a website, www.seespartanburgrise.com, with an interactive map that tracks downtown development projects and cumulative investment amounts since 1996. George said the city

works with outside partners on communicating about projects, giving the example of the restoration of the historic high-rise Montgomery Building. The city published videos of the project in various stages and had the developers come on as guests for the city podcast.

"We made it our business to tell that story in all sorts of ways," George said.



Test yourself monthly quiz

True or False:

Adding documents online like minutes of council meetings, city code of ordinances, the annual budget, as well as the monthly financial statements and reports increases the amount of Freedom of Information Act requests that a municipality receives.

Answer: False

In recent years, many cities and towns have started putting as many public information and documents online as possible. Because of this practice, those municipalities have seen a

significant drop in written requests for public documents. Making the documents more easily accessible reduces the staff time needed to respond to routine FOIA requests. The types of documents most often placed online include city code of ordinances, meeting schedules, agendas, minutes, board and committee members, the annual budget, the annual audit, and the

monthly financial statements and reports.

The Municipal Elected Officials Institute of Government offers in-person and online courses. The next in-person course, "Basic Budgeting and Municipal Finance," will take place March 24 the regional councils of governments area locations. Learn more at www.masc.sc (keyword: MEOI).





The SC Freedom of Information Act received its most recent update in 2017. Some of the changes create a meaningful difference in how to handle FOIA requests. Here are some critical considerations from the current version of the law.

Notice on the prohibition of commercial solicitation

The availability of public information can create the temptation to use FOIA requests to obtain sales leads. The law forbids using FOIA this way, according to SC Code Section 30-2-50. The 2017 changes expanded this prohibition to include information received from local governments.

The law requires local governments and political subdivisions to give notice that information obtained through FOIA cannot be used for commercial solicitation. This notice should go into either the initial response or when providing

the actual information. Consider this example language: "SC law provides that it is a crime to knowingly obtain or use personal information from a public body for commercial solicitation."

Timeline changes

One of the most widely noted changes in 2017 was the reduction in time given for making the initial response to a FOIA request. The initial response to a request states whether the information is available and whether an exemption exists on disclosing the information.

Previously, the deadline was 15 business days, and the General Assembly reduced this to 10. An exception exists for documents more than 24 months old, which has a deadline of 20 business days.

SC Press Association Executive Director Bill Rogers described the shortening of the time limit as something that has had "a positive effect on the public getting information from local governmental bodies."

Rogers noted that the other change in timeframes is more important — the creation of a deadline for providing the documents. This deadline goes into effect on the date of the initial response. If there is a deposit requirement, the clock starts on the date on which the requestor pays a required deposit. The timeframe is 30 calendar days for documents less than 24 months old, and 35 days otherwise.

The Freedom of Information Act requires that certain records to be made immediately available for those who appear in person, without a written request, during business hours. These records include minutes on the meetings of a public body for the previous six months, as well as basic reports on crimes and people being held in jail in the previous three months, such as police incident reports.

The 2017 changes, in SC Code Section 30-4-30(D), added to the list of

documents with immediate availability “all documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period.”

Fee structure

Before 2017, the law simply indicated that a public body must keep its deposit requirements “reasonable” for searching and making copies of records.

SC Code Section 30-4-30(B) now indicates that the deposit can be no more than 25% “of the total reasonably anticipated cost for reproduction.” FOIA also requires that the allowable rates for the searching, retrieving and redaction of records cannot exceed the hourly wage of the lowest paid employee on staff who has the skill and training to fulfill the request.

For FOIA compliance, city and town councils must pass ordinances establishing a fee schedule consistent with these requirements.

Applicability of FOIA

The 2017 changes did not change the list of entities subject to FOIA. SC Code Section 30-4-20(a) names municipalities among applicable public bodies. The definition of “public bodies” includes all “committees, subcommittees, advisory committees, and the like of any such body by whatever name known,” which means that all municipal boards and commissions are equally subject to FOIA. Rogers noted that this is a meaningful consideration for local governments when they give money to support organizations, because those organizations then may become subject to FOIA.

FOIA also names information exempt from disclosure, including trade secrets, unreasonable invasions of privacy or certain law enforcement records that would interfere with law enforcement proceedings. After 2017, the law now allows a public body to request a hearing when it is unable to make a good-faith determination about whether to exempt information from disclosure. It also allows a third party, like a business or individual whose information is included in requested records, to request a hearing if it has an interest in exempt information that may be released for a FOIA request.

Learn more in the document “Changes to the Freedom of Information Act from H3352,” found at www.masc.sc (keyword: FOIA). Find the Public Officials Guide to Compliance with the S.C. Freedom of Information Act at www.scpres.org.

Statements of Economic Interest Due March 30

The State Ethics Commission’s mandatory Statement of Economic Interest forms aim for transparency on any potential personal benefit that a public position could create. Officials must use the forms to report income as well as any economic interest in real, personal or business property.

For the purposes of the SEI, the Ethics Reform Act (SC Code Section 8-13-100(11)(a)) defines an economic interest as “an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.”

Officials must disclose any real estate interest they or their immediate family have if it can be reasonably expected to create a conflict of interest. They must also

disclose the interest if there has been \$200 or more of public improvements, such as streets, lighting or water systems, made on the property or adjoining properties.

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

Finally, the public official must report the name and relationship of every business or other entity in which the public official or immediate family member has a 5% or greater interest in the entity’s value, so long as the value of the interest exceeds \$100,000. If the municipality contracts with a business where the public official works, has an ownership interest or investment in, or has any other association, the official must disclose the relationship and compensation received from the business.



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

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



A Day in the Life of a

FOIA Officer

Freedom of Information Act requests come in to city hall for everything from crime reports to building permits. They come from the media, law firms and the general public. Typically, the request lands on the desk of a public information officer, town clerk or city attorney.

Fulfilling a Freedom of Information Act request can be a time-consuming task, but the staff responsible for replying to the requests have the same advice: take all of the FOIA requests seriously and respond to each one promptly.

“One lesson that I’ve learned from fulfilling Freedom of Information Act requests is starting the process of fulfilling them as soon as possible,” said Justin Lee Campbell, community relations specialist for the City of Simpsonville. “Given that I have a myriad of other job duties and responsibilities, and that I can’t predict how many other future requests I’ll receive, addressing requests early by researching, consulting with staff or asking follow-up questions right away is paramount to completing requests in a timely manner.”

In 2017, South Carolina set a shorter deadline for public bodies to respond after receiving the request. Mark Kruea,

public information director for the City of Myrtle Beach, said the timeline makes it important for municipalities to follow a standardized process for requests.

“With a shorter response clock — 10 working days in most cases — you can’t afford to let even one day go by,” Kruea said. “Likewise, keeping track of the due

something that can be provided, to locate the information and to take the necessary steps to fulfill the request.

“A lack of organization and standardization can lead to bad record keeping and confusion,” Campbell said. “The process doesn’t have to be complicated, though: read the request, research it before responding if needed, respond

with a memo, fulfill the request, request payment if needed, and provide the requested information with a memo and paperwork closing out the request, such as a copy of the internal-use-only form that details the process for fulfilling it. If the process is going to be standardized, I recommend making all FOIA requests flow through one person to avoid confusion, create continuity

and prevent redundant work.”

Beverly Coleman has worked for the City of Clemson for 20 years. She serves as the city clerk, business license officer and records manager. She also handles all FOIA requests. When she receives a request, she notifies the department where those particular records are housed and asks how long it will take to respond to the request. She also lets the person who filed the FOIA request know the cost to fulfill the request and



date for a FOIA request is important. Share that information when you send out the request so that everyone knows the deadline for responding. It still can be a challenge to get details and documents back in a timely manner, but having a team relationship is vital.”

Some municipalities have website forms to allow people to file FOIA requests electronically. Public information departments typically act as a clearinghouse to determine if the request is for



Justin Lee Campbell is the community relations specialist for the City of Simpsonville. Photo: City of Simpsonville.

requires a deposit to be paid before the work is completed.

“Until four or five years ago we received maybe three FOIA requests a year. Now, we receive about five FOIA requests a month,” Coleman said. “When the requests became more frequent and FOIA rules changed, we updated our policy, created a request form [and] put procedures in place so that all departments know how to handle them. We typically turn them around quickly. I have a FOIA file both digitally and physically, and monitor or track the requests to make sure they are completed.”

The number of FOIA requests is even higher in larger cities. The City of Myrtle Beach, for example, receives about 400 FOIA requests each year, and that number does not include requests going directly to the police department. Kruea said most requests are for “run-of-the-mill documents,” such as certificates of occupancy, building permits, planning and zoning files, and travel reports for city council members, while the police department receives a number of requests for surveillance camera footage.

“When a request comes in, we study it for details and then forward the request via email to any department likely to have responsive documents. We generally give a ‘must respond by’ time, in keeping with the schedules set

forth in the FOIA. The departments will then send their responsive materials, if any, back to [the] Public Information [Department], and we will send out the official answer to the request,” he said.

In Simpsonville, 27% of requests are for police department incident reports and records, while 24% are for permits and licenses, Campbell said. Requests from the news media make up just 15% of requests, with most inquiries coming from the general public and law firms.

The Freedom of Information Act requires public bodies to create a fee schedule for fulfilling requests and post it online.

“If a request appears to be labor-intensive or likely will involve a large number of files, we alert the requestor that we will calculate the actual hourly cost of the staff time involved, along with a per-page cost, and ask for a deposit of 25%, as allowed under the SC FOIA. If we send documents out to be copied, we charge the actual cost of that third-party service,” Kruea said.

Responding to the public’s questions takes time, but it is a responsibility that municipal staffers understand and take seriously.

“We need to remember that we fulfill FOIA requests not only because the law requires us to do so; more importantly, we fulfill FOIA requests because transparency is a cornerstone of a functioning democracy because transparency allows for accountability,” said Justin Lee Campbell of Simpsonville. “The public and media are, indeed, entitled to public records because government and elected officials are accountable to the public. If you process FOIA requests, you’re the gatekeeper to information, and therefore it is your responsibility to ensure access to that information so that we have an informed public.”



Beverly Coleman serves as City of Clemson's city clerk, business license officer and records manager. Photo: City of Clemson.



Handling Quorums Correctly

City councils, town councils, and really any governing body of a public entity, cannot perform official actions in the absence of a quorum, or minimum number of members present. Except in unusual cases, a majority of the entire body is necessary to constitute a quorum. Determining whether a quorum exists, then, is usually straightforward: A simple majority of the members of the governing body constitute a quorum and can act as the body. For a seven-person body, at least four members must be present to make a quorum.

Public bodies with an even number of members

Most public bodies have an odd number of members. For an even number, the requirement of a majority means that bodies cannot establish a quorum with only half of the members in attendance. For an eight-person body, then, at least five members must be present to constitute a quorum.

Vacancies

Vacancies generally do not affect the quorum requirement. For example, a seven-member body with two vacancies will still require the presence of four members to constitute a quorum. The only situations in which a vacancy has been determined to alter the quorum requirement are actual, persistent vacancies in which there is no foreseeable time at which the vacancy will be filled. This is not an issue for councils, because

state law requires elections to fill vacant council seats. It can happen on boards or commissions, for example, in the event of a member's death.

Under South Carolina law, a member of a public body generally continues in office until a successor is selected and qualified. Because of this, many perceived vacancies are not actual vacancies. The South Carolina Attorney General's office has repeatedly noted that a resignation does not automatically create a vacancy. Instead, the resigning member remains nominally "in office" until a successor is qualified.

Abstentions

A member who is physically present but who abstains or fails to vote counts in establishing a quorum. For example, if four members of a seven-member body are physically present, but one abstains, the four-member quorum requirement is still satisfied. Note, however, that the question may be more complex if the stated basis for abstention is a conflict of interest, discussed below.

Conflicts and recusals

A member who has a conflict of interest but still votes does not count in establishing a quorum. If four members of a seven-member body are physically present, and one has a conflict of interest but still votes, the four-member quorum requirement is not satisfied. This rule was reaffirmed recently in *Anderson County v. Preston* where the court determined

that four members of a seven-member body had a conflict of interest in a specific matter, and that the body therefore lacked a quorum to act on that matter.

The South Carolina Ethics Commission has long advised that members who recuse themselves because of a conflict of interest, should physically leave the room. Members who do this do not count towards establishing a quorum. For example, if four members of a seven-member body are present, and one declares a conflict of interest under the ethics rules and physically leaves the room, the four-member quorum requirement is not satisfied.

The South Carolina Court of Appeals explained in 2017 in the case *Anderson County v. Preston* that "[u]nlike in the case of a recusal – in which a member physically leaves the room to avoid participation – when a member properly abstains, it does not have the effect of defeating a quorum because the member is still physically present."

In the outlying case in which it is impossible to get a quorum without counting the conflicted members, the members should properly recuse themselves under the State Ethics Act. They should remain physically present for the vote, and state clearly on the record that their only reason for doing so is to preserve the quorum.

For more information, see the Handbook for Municipal Officials in South Carolina at www.masc.sc (keyword: Handbook for Municipal Officials).



Take Care With Executive Session Procedures

Executive session is the name given to the portion of a city or town council meeting that is closed to the public. Although the SC Freedom of Information Act generally requires meetings to be open to the public, several exceptions exist to allow for confidentiality that promotes the overall public good.

Councils should use executive sessions only when necessary, and in accordance with the exceptions listed in SC Code Section 30-4-70:

1. Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee, or an appointment to a public body. There is no requirement to name the person or entity being discussed.
2. Discussion of negotiations incident to proposed contractual arrangements, discussions of a proposed sale or purchase of property, receipt of legal advice, settlement of legal claims or discussions of the public agency's position in adversary situations. In the 2015 South Carolina Supreme Court

case *Donohue v. City of North Augusta*, the court ruled that announcing that a "proposed contractual matter" was the basis for executive session was insufficiently specific.

3. Discussion regarding the development of security personnel or devices.
4. Investigative proceedings or allegations of criminal misconduct.
5. Discussion of matters concerning the proposed location, expansion or provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

Entering into executive session

Before going into executive session, the council must vote, in open session, to enter executive session and state the specific purpose and open meeting exception for the closed door meeting. Councils must be as specific as possible without compromising the issue.

The motion to enter executive session should be specific. For example, the

presiding officer can announce a specific purpose "to go into executive session to discuss applications for employment within [a specific department]" or "to discuss negotiation of a contract and receipt of legal advice related to a building project."

Avoiding action during executive session

Votes and informal polling of members may not take place in an executive session. The only action that can be taken in an executive session is to adjourn or return to public session. As noted in SC Code Section 30-4-70(b), councilmembers "may not commit the public body to a course of action by a polling of members during executive session." SC Code Section 30-4-70(c) specifically states that "no chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of" the SC Freedom of Information Act.

Consequences of misusing executive sessions

Misuse of executive session is a violation of state law and can result in injunctive relief, civil fines, awards of attorney's fees and invalidation of official actions related to the violation. Misuse can come in several forms, such as an executive session without properly advertising the meeting, or taking a vote to enter executive session. Also, voting on an item in executive session is a misuse of the process. Beyond the legal consequences, improper use or overuse of executive session can greatly erode public trust in government. If residents see their councilmembers frequently entering into executive session, they are likely to assume that their elected officials are aiming to hide their actions.

The Freedom of Information Act in SC is one of the topics for the May 19 session of the Municipal Elected Officials Institute of Government, and is also one of the on-demand courses offered online. Learn more at www.masc.sc (keyword: MEOI).



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Calendar

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

MARCH

4 You've Been Elected, Now What?

Municipal Association of SC, Columbia. 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.

5 SC Association of Stormwater Managers First Quarter Meeting. Seawell's, Columbia. Topics include stormwater legal issues, an update from the SC Department of Health and Environmental Control and advocating for stormwater programs.

11 SC Business Licensing Officials Association Spring Training Institute and Advanced Academy. Seawell's, Columbia. Topics include a "What would you do?" session of case studies.

16 - 18 SC Utility Billing Association Annual Meeting. Beach House Resort, Hilton Head Island. Topics include picking your battles, First Amendment audits, policy and procedure best practices, roundtable discussions, violence in the workplace and ethics.

24 Municipal Elected Officials Institute of Government: Basic Budgeting and Municipal Finance. Regional councils of governments area locations.

25 SC Association of Municipal Power Systems Legislative Breakfast. Blatt Building, Columbia.

26 Municipal Technology Association of SC Spring Meeting. Seawell's, Columbia. Topics include a global cybersecurity update; speed dating with various topics; hosted vs. nonhosted phone service;

GIS services offered by local councils of governments; and updates from SC State Law Enforcement Division, including audits and local cybersecurity updates.

APRIL

1 Main Street South Carolina Second Quarter Training. Laurens, SC.

15 SC Association of Municipal Power Systems Lineman Training (repeated on April 16). Pine Island Club, Columbia.

16 SC Association of Municipal Power Systems Lineman Training (repeated on April 15). Pine Island Club, Columbia.

17 Municipal Court Administration Association of SC Spring Meeting. Seawell's, Columbia. Topics include SC Court Administration updates, reminders from the Setoff Debt Collection program, bond estreatments, SC Department of Motor Vehicles updates, records retention schedules and a personal development session on stress management.