



# UPTOWN

a publication of the municipal association of south carolina

## Drawing Visitors Through Branding and Marketing

The City of Travelers Rest has a story very familiar to other Upstate communities. The textile mill closed in 1988, taking its economic vitality with it and leaving a community lacking in identity. Another loss from the same era pointed to the future, though — the Greenville and Northern Railway, also known as the Swamp Rabbit Railroad, had its tracks pulled up.

In 2009, the first portion of what is now known as the Prisma Health Swamp Rabbit Trail opened on the old rail route, better connecting Travelers Rest to Greenville, Furman University and beyond. Aiming to make the most of an opportunity that has now greatly transformed Travelers Rest, the city worked to invest in its downtown and in connection points throughout the community.

“We recognized that if we wanted to be the place, we needed to build the place. We needed to invest in our placemaking, we needed to invest in the connections to get people from point A to point B,” City Administrator Eric Vinson said.

Vinson spoke at the “Place Branding and Economic Development” panel during Hometown Legislative Action Day. He was joined by Catherine Dority, director of marketing for Explore Charleston, who shared how her organization works with a tourism industry that employs more than 40,000 people and has an economic impact of \$8.1 billion in the region.

A destination marketing organization, Explore Charleston operates four visitor’s center locations around the Charleston region. Dority explained how her organization creates photo and video content to push out through magazine publications as well as online and through social media. Explore Charleston has a graphic designer to create print materials and also has a full-time social media manager.

She encouraged cities and towns to all get involved in their regional tourism offices. The SC Association of Tourism Regions divides the state up into 11 regions. Dority also advised the audience to be willing to promote whatever asset they have, from natural amenities to artist communities.

“Look around and see what you can promote,” she said. “You don’t have to be the next Greenville or Beaufort.”

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(Above) Donald Walker completed the "Transformation" mural in Lake City during the 2019 Artfields. Photo: Visit Lake City, SC.



(Left) The Charleston Visitor Center is one of four regional centers operated by Explore Charleston. Photo: Explore Charleston.

### Branding, from page 1 >

For Travelers Rest, Vinson also explored the branding process the city undertook. Residents had long discussed whether or not it was acceptable to refer to the city as "TR." The branding consultants, he said, "convinced us to own who we were." They adopted a logo with a lowercase "tr," and used the abbreviation with the "It Starts With tr" ad campaign.

The theme of outdoor opportunities is also pervasive in the city's projects. Trailblazer Park, located on the Swamp Rabbit Trail, is home to concerts, market events and movie nights, and in 2018 it became the location of the city's municipal complex.

The panel also highlighted marketing and development in Lake City. Seth Kines, executive director of Visit Lake City SC, noted that at first, his presentations on Lake City were overwhelmingly about the iconic Artfields festival. Artfields brings in 30,000 visitors over nine days, which in many ways matters more to local businesses than the holiday shopping season. Now, Kines only discusses Artfields briefly before moving on to all of the other things happening there.

"I think that's a testament to the power of Artfields, and what a festival can do for your community," he said.

Once visitors were in town, an additional challenge presented itself: small business owners often lack the staff to cover full and consistent business hours. The Greater Lake City Community Development Office therefore developed some incentives for longer and more consistent hours. One project was a facade improvement program, in which the storefront facelift was provided for selected businesses who committed to 40 or more hours of business each week. A workforce development program provided trainees that businesses could hire and receive reimbursement for part of their wages.

Lake City's efforts have garnered some significant recognition. In May 2019, *Travel + Leisure* magazine named it among the best places to visit, alongside such places as London and Stockholm.

Kines echoed Dority's call for focusing on existing assets. In Lake City's case, that included a tour map highlighting public art locations, such as murals, for visitors. Public art, he noted, is free to visit and never closes.

The art installations, he noted, "were already there ... but if you aren't marketing and branding them, then what good does it do?"



# New Federal Overtime Rule Effective in 2020

Jobs that are governed by the federal Fair Labor Standards Act are considered to be either exempt from the law's overtime rules or nonexempt. Nonexempt employees can receive overtime pay. Effective January 1, 2020, \$35,568 per year, or \$684 per week was set as the new threshold for exemption from the overtime pay rules.

The Fair Labor Standards Act, the same law that sets the federal minimum wage, indicates that nonexempt employees who work more than 40 hours in a work week must receive overtime pay equal to at least 1 ½ times their regular hourly pay. Previously, an exemption to this was available only for those employees who make \$23,660 per year, or \$455 per week. The Department of Labor estimated that more than 1 million employees nationwide would become eligible for overtime under the new rule.

The salary threshold is one part of the process of defining employees as exempt from overtime pay rules. Section 213(a)(1) of the FLSA indicates that exemptions apply to “any employee employed in a bona fide executive, administrative, or professional capacity.” The Department of Labor has in the past established tests to apply to both an employee’s compensation and duties to determine whether a so-called “white-collar” exemption exists.

Employers need to review what employees fall below the threshold and

who therefore may become entitled to overtime as nonexempt employees. When an employee is nonexempt for overtime, the number of hours the employee works per week must be tracked. For those employees who are now below the threshold, be sure to understand how their duties could affect their status as nonexempt employees and their eligibility for overtime. Once the impacts are understood, employers are in a better position to know what kind of budget changes or job structure changes they may need to make. They will also need plans for managing the number of overtime hours that newly nonexempt employees may incur.

The Department of Labor’s website, [www.dol.gov](http://www.dol.gov), offers guidance documents to help employers determine if an employee is exempt or nonexempt. The information available on the site also helps to explain other critical details about overtime. For example, the FLSA does not limit the number of overtime hours that can be paid. It also does not call for extra pay for weekend, night or holiday work, but only for work weeks of more than 40 hours for nonexempt employees.

*The FLSA also has specific rules governing compensation for volunteer firefighters. Learn more at [www.masc.sc](http://www.masc.sc) (keyword: volunteer firefighters).*

## NEWS BRIEFS

The SC Department of Disabilities and Special Needs presented its Silver Palmetto Award to the cities of **Greenville** and **Rock Hill** at the Municipal Association’s 2020 Hometown Legislative Action Day. This award thanks municipal governments for their leadership and actions that support people with disabilities and special needs.

**City of Columbia** Councilwoman Tameika Isaac Devine was appointed to serve on the National League of Cities’ 2020 Board Finance Committee. She was also appointed to serve as the board liaison to the Council on Youth, Education and Families. In 2019, Councilwoman Isaac Devine was elected to serve a two-year term on the board of directors for the National League of Cities. She was also reelected to serve as a member of the Board for Women in Municipal Government and the National Black Caucus of Local Elected Officials.

The **SC Business Licensing Officials Association** awarded 10 individuals with the Master in Business Licensing designation: Fran Adcock, Municipal Association of SC; April Bigham-Akins, Town of Hilton Head Island; Caitlin Cothran, Municipal Association of SC; Jestin Gilliard, City of Georgetown; Nicole Kindzia, Town of Surfside Beach; Joy Krutek, Dorchester County; Lindsey Newton, City of Clemson; Naomi Diane Quattlebaum, Town of Harleyville; Lakesha Shannon, City of Columbia; and Kathy Teague, City of Union.

# SC State Election Commission Discusses Voting Processes

The first statewide uses of South Carolina's new voting system will take place in 2020. The new system moves the state toward a paper-based system, which will be a significant change for some voters, according to the SC State Election Commission Executive Director Marci Andino. Electronic systems were first introduced in some locations in 1986.

"Some voters that are 50 years old or younger have never voted on paper," she said.

Andino presented the new system, first piloted in October 2019, during Hometown Legislative Action Day. Its paper trail exists for security and auditing purposes. The new voting machines are known as ballot marking devices, since they do not tabulate votes themselves as the previous machines did. Voters feed their paper ballots into these devices before voting electronically. The device then prints their choices on the paper, after which voters take the paper ballot and feed it into a scanner. South Carolina now has 13,779 of these ballot marking devices and 2,500 scanners.

Andino described the importance of election security. Although she said it has always been a consideration, the 2016 election brought about concerns over foreign election interference and hacking,

The SC State Election Commission exhibited the state's new voting system during Hometown Legislative Action Day.



as well as the spread of disinformation through social media. The U.S. Department of Homeland Security now classifies election processes as critical infrastructure for national security.

She also took a look at the state of municipal elections. About 143 of the 271 municipalities have transferred authority to conduct their elections over to their county voter registration and election commissions. Some have transferred all authority, and some have retained their right to hear election protests. When authority is entirely transferred, the city or town no longer has the need to maintain a Municipal Election Commission.

Andino said that transferring authority places the election process in the hands of full-time officials. This can be important, she said, both because of the increasingly technical requirements of voting and because of the 2018 change to SC Code Section 7-13-190(E), which now requires elections to take place even when only one candidate files to run. She added that transferring authority helps to ensure that all election results are available through the SC Election Commission's website, [www.scvotes.org](http://www.scvotes.org).

She also encouraged standardization of election dates, suggesting more municipalities follow the trend of staging

elections in November of odd-numbered years. About 90 municipalities have elections at various other times throughout the year.

"A lot of them are concentrated in the spring, and just about every Tuesday there's an election somewhere," she said.

Moving municipal elections to the time of general elections during November of even-numbered years creates its own problems, according to Andino. Municipal offices at that time appear at the bottom of the ballot, below major national and state races, which she said leads to a drop off in the number of voters casting ballots in those races.

City and town councils who change election schedules do so by passing ordinances. They have to choose whether to shorten or lengthen the terms of sitting councilmembers who are affected.

Moving to November of an odd year, as many have done, "creates a municipal election day," Andino said.

"Come the first Tuesday in November, voters are accustomed to going to the polls," she said. "[In November of odd years] you're going to get more media coverage, voters are expecting to go to the polls then. It reduces voter confusion, not knowing if they have an election or not, and voter fatigue."



# Association Highlight:

## Municipal Finance Officers, Clerks and Treasurers Association

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

The SC Municipal Finance Officers,

Clerks and Treasurers Association offers training programs covering the diverse responsibilities of its members. All of the training sessions qualify for a combination of continuing education credits for certified municipal clerks, certified public accountants and certified

public treasurers. MFOCTA sponsors the Municipal Clerks and Treasurers Institute with the Municipal Association and the College of Charleston's Joseph P. Riley Jr. Center for Livable Communities.

*Learn more about MFOCTA at [www.masc.sc](http://www.masc.sc) (keyword: MFOCTA).*



## Test yourself monthly quiz

**True or False:**

The main policy-making power of local governments is the authority to adopt local ordinances and to set fines and penalties for the enforcement of those ordinances.

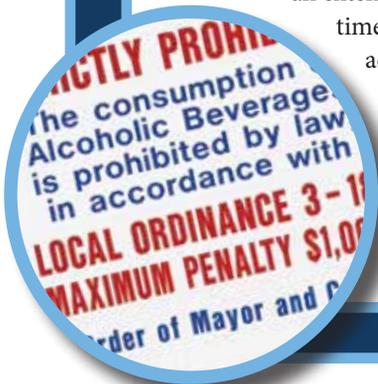
**Answer: True**

City and town councils use ordinances to adopt rules or policies that will have a significant effect for an extended period of time. There are 15 actions of a municipal council that require a local ordinance to be adopted to have the power of law:

adopting budgets and levying taxes; setting salaries; adopting council rules of procedure; conducting municipal elections; amending or repealing any adopted ordinance; adopting a comprehensive plan; procurement/purchasing; adopting administrative codes; establishing municipal departments; granting, renewing or extending franchises; authorizing the borrowing of money; establishing fines or penalties; selling, leasing or

contracting; adopting standard codes; and annexing property.

*The Municipal Elected Officials Institute of Government offers in-person and online courses. To register for the on-demand courses, go to [www.masc.sc](http://www.masc.sc) (keyword: MEO) and log in with your user identification number and password. The on-demand courses can be accessed 24/7 from any computer, tablet or mobile device that has internet connection and may be taken in any order.*





# CBD Oils Bring HR Considerations

**C**annabidiol, or CBD, has a visibly growing presence in South Carolina. CBD shops in many cities now sell the product in a variety of forms. The relationship of the product to marijuana can be a source of confusion, and it can also create major human resources considerations.

As a chemical compound, CBD differs from tetrahydrocannabinol, or THC, the critical intoxicating compound found in marijuana. Both CBD and THC come from cannabis plants, but CBD does not produce the intoxicating effect of THC. CBD oils are advertised for such conditions as depression, anxiety and pain.

CBD products can contain trace amounts of THC, however. Because CBD is not regulated, there is no clear consensus on how much THC defines impairment. An employee can frequently use CBD oil in high concentrations and test positive for THC during a screening.

“City officials should start reviewing their existing drug and alcohol policies and educate managers and employees,” Heather Ricard, director of the Municipal Association’s Risk Management Services, said. “People have access to CBD products in South Carolina, and many of them do not realize they could test positive for marijuana during a pre-employment, post-accident or reasonable suspicion drug screening.”

At a time when laws on marijuana are changing and labor markets are tight, some employers have removed marijuana testing from pre-employment screenings, or removed it for non-safety-sensitive positions altogether. Recently, the state of Nevada and New York City enacted laws making it illegal for employers to conduct pre-employment marijuana tests for non-safety-sensitive positions.

## **What should cities and towns do now?**

- Conduct an annual review of the city’s existing drug and alcohol policy with administration and a labor attorney.
- Review the city’s drug testing panel. Know what drugs are included in the drug testing panel. If the city has commercial licensed drivers, the federal testing requirements could differ from the city’s drug testing policy.
- Make sure the drug testing vendor has a medical review officer in place. The role of the medical review officer is to review positive results and interact with the employee and city to confirm the results.
- Identify what positions in the city are safety sensitive. These are positions with functions that could cause harm to the employee or the public. Review this list with a labor attorney, as public employers have stricter guidelines for drug testing compared to private employers.
- Train managers, supervisors, and employees. Employees should clearly understand the drug testing policies and management should know what to do if they suspect an employee is using drugs. Training should point out the physical and behavioral characteristics that may indicate impairment.
- Provide access to an Employee Assistance Program for employees. EAP programs are designed to help employees and their families navigate critical situations that can help prevent drug and alcohol use. City officials can also refer employees who test positive to an EAP program for drug rehabilitation counseling.

During the 2019 annual risk assessment of the SC Municipal Insurance Trust, only 53% of members complied with requirements for SCMIT’s drug and alcohol policy guideline.



## Census Day Has Arrived

The new census will be a measurement of the U.S. population as of Wednesday, April 1, 2020. The Census Bureau is also scheduled to release its estimates of 2019 population numbers in April. Follow-up work aimed at ensuring an accurate count will continue through July. In South Carolina, many local governments created Complete Count Committees intended to improve response rates.

In South Carolina, the statewide population is estimated to have grown from 4.6 million in 2010 to 5.1 million in 2018. Official 2020 Census numbers will come at the end of the year. The Census Bureau will deliver apportionment counts from the 2020 Census in December, and then redistricting counts by March 31, 2021.

Census data drives a huge number of important decisions, including the apportionment of legislators and the drawing of district lines. The data helps to determine who receives billions of dollars in federal funding each year for everything from transportation to education and healthcare. In South Carolina, the new data will determine Local Government Fund allocations. The official numbers for each community also inform decisions made outside of government, for example, businesses deciding where they will locate or expand.

*Find more information on the 2020 Census, including the timeline for the rest of the year and information about Complete Count Committees at [www.2020census.gov](http://www.2020census.gov).*

# Get Ready for the Annual Meeting Registration



As COVID-19 continues to impact cities and towns around the world, the Municipal Association of SC is evaluating the current situation and making decisions based on the latest information. The Municipal Association of SC Annual Meeting is planned for July 15 – 19 at the Charleston Place Hotel. In an effort to ensure the safety of members and staff, this meeting timeline may change.

### Here is the registration timeline:

- **April 7** – The agenda and registration information posted online. Registration brochures are mailed.
- **April 22** – The Association conducts a drawing of cities and towns to determine the order of registration appointments. This provides a fair process for all those interested in attending. Staff announces results.
- **May 26, 27 and 28** – Cities and towns with a phone appointment register on one of these days. During the appointments, an Association staff member will call the city representative to start the online registration/reservation process. A city's representative must have completed registration forms in hand, including housing and meal ticket requests, for each person to be registered during the city's call. During the online process, the city representative will use a Visa or MasterCard to make hotel reservations and register municipal attendees for the meeting. The representative must make sure the credit card has a sufficient credit limit and per-transaction limit.
- **May 29** – Online meeting registration opens for cities and towns without appointments, as well as nonmunicipal officials.
- **June 12** – Deadline to make hotel reservations.
- **June 29** – Deadline to register for Annual Meeting.
- **July 15 – 19** – Annual Meeting.

## Tax Withholding Estimator Can Help with New W-4

The Internal Revenue Service's Form W-4, also known as the Employee's Withholding Certificate, allows employers to withhold funds from employees' pay for federal income tax. The IRS created a new version of this form for 2020, which generally replaced the worksheets found on older versions of the form with a series of questions. The new W-4 has also done away with withholding allowances.

To accommodate the new version of the form, the IRS has created a new version of its Tax Withholding Estimator, available at [www.irs.gov](http://www.irs.gov). The IRS encourages employees to use this tool as a way of

avoiding unexpected tax bills or penalties at the end of the tax year. The estimator has a five-step process, asking its users how they are filing as well as questions about income, adjustments, deductions and tax credits. Users can also select a target refund amount for their taxes, and the tool also provides specific recommendations on how to complete a W-4 based on the user's results.

Withholding updates need to be made using the new version of the W-4. Those who are not looking to make any changes to existing withholdings do not need to fill out a new form.

This bike lane on Broad Street in downtown Greenville uses parked cars to separate bicycles from car traffic. Photo: Michael Dantzler.



# Bike and Pedestrian Plans Drive Safety, Fairness

**T**ransportation planners across South Carolina are looking at ways to encourage more people to leave the car in the garage and bike or walk to work, the grocery store or their favorite restaurants. Planners and advocates say that safety is the key for more pedestrian- and bike-friendly routes.

In 2017, more than 6,000 pedestrians and bicyclists were killed and more than 100,000 were injured in traffic accidents in the U.S., according to the National Highway Traffic Safety Administration. South Carolina came in fifth among states for pedestrian deaths, with just over three deaths per 100,000 residents.

One solution to address this alarming statistic is to improve the points where car

and bike/pedestrian traffic cross with better signage and clearer delineation of the lanes of travel. But cities have found that the safest routes are those removed from car traffic as much as possible.

In larger cities like Greenville and Charleston, as well as smaller towns like Batesburg-Leesville, planners are looking for safety in routes completely removed from roads and, sometimes, along railways. Efforts start at the point of making these routes as safe as possible as the key of getting more people to use them.

“Most pedestrians in South Carolina are indeed commuting, with small kids in tow, to and from the grocery store, often before or after a transit trip,” said Amy Johnson Ely, executive director of the Palmetto Cycling Coalition. “This is sometimes a recreational issue, but it is far more often a basic human services issue of transportation. Making our streets more walkable and bikeable to those using it now with modest income will eventually make them more accessible to people of all incomes.”

## Greenville

In Greenville County, the Prisma Health Swamp Rabbit Trail has become one of the most popular bikeways in the state. The trail runs from Travelers Rest south to downtown Greenville along a former railway line. A five-mile expansion is planned that will take the trail from Cleveland Park near downtown Greenville east to Clemson University’s I-CAR campus near Interstate 85.

“This new extension will be going through an area that’s pretty heavily populated already, there are a lot of nearby neighborhoods, and there is also a good bit of commercial development in the area,” said Kevin Howard, economic development project manager for the City of Greenville. “We’re getting a lot of inquiries about redevelopment in that area.”

In response, the city has put together a master plan around the trail expansion to better connect those residents to the trail.

“As the trail develops, we hope to be setting up things that residents will want to utilize,” Howard said. “While they may not be walking or biking the trail to work, if they need to run to a restaurant or go to a small market, they could use the trail for it as opposed to getting in a car.”

The expansion of the trail will generally follow the Laurens Road corridor — a



A Greene Street bicycle lane travels around the outside of a gate post on the University of South Carolina's campus in Columbia. Photo: Palmetto Cycling Coalition.



The 2019 Complete Streets training at the Charleston Metro Chamber of Commerce brought together staff from the City of Charleston, Charleston County, SC Department of Transportation and others. Photo: City of Charleston.

five-lane highway with cars speeding along at upwards of 40 miles per hour.

"It's not somewhere a pedestrian would be interested in walking along, much less crossing," Howard said. "As part of this plan, we're identifying some areas where we can improve those intersections by identifying what those key crossings are. Then, once we get people across Laurens Road, what sort of spurs do we need to get them back down to the trail itself?"

### **Batesburg-Leesville**

Helping walkers and bikers avoid dangerous thoroughfares is the key to Batesburg-Leesville's plan to span the roughly four-mile gap between their two historic downtown areas. U.S. Highway 1 runs down the middle of both districts, as does a parallel railroad track.

Currently, the railroad right of way is leased by the town from Norfolk Southern. Mostly, it is used for auxiliary parking for folks visiting downtown businesses.

"We hope to utilize this lease agreement to build that rail trail," said Ted Luckadoo, Batesburg-Leesville town manager. "The railroad doesn't want new buildings built within their right of way, but with the rail trail, we can build an asphalt path from one end of town to the other."

That plan came out of a study conducted by the Central Midlands Council of Governments.

"It's going to be a process, it's not going to be done overnight," Luckadoo said, adding that the town recently implemented a hospitality tax that could help pay for the bike and pedestrian path, something he thinks could draw people from the rural area surrounding the town.

"We could become a central area for people who want to get out and get exercise and be able to do that safely," he said. "It would be a way to bring people into our community as well as tie the two downtowns together."

Batesburg-Leesville is also working on improving its sidewalks on U.S. 1, some of which are 50 years old and not suitable for wheelchair access. The town has used an annual allotment from Lexington County of \$30,000 to repair and replace many of those sidewalks. Luckadoo said the town also has been awarded \$786,000 in grant money from the SC Department of Transportation to add sidewalks on a second main thoroughfare, SC Highway 23, where there aren't any sidewalks, and to extend the sidewalks along U.S. 1.

### **Charleston**

Of all of South Carolina's cities, Charleston probably has the greatest amount of foot traffic, largely on account of tourists and a lack of parking on its peninsula. The city is always looking for ways to reduce car traffic on its narrow

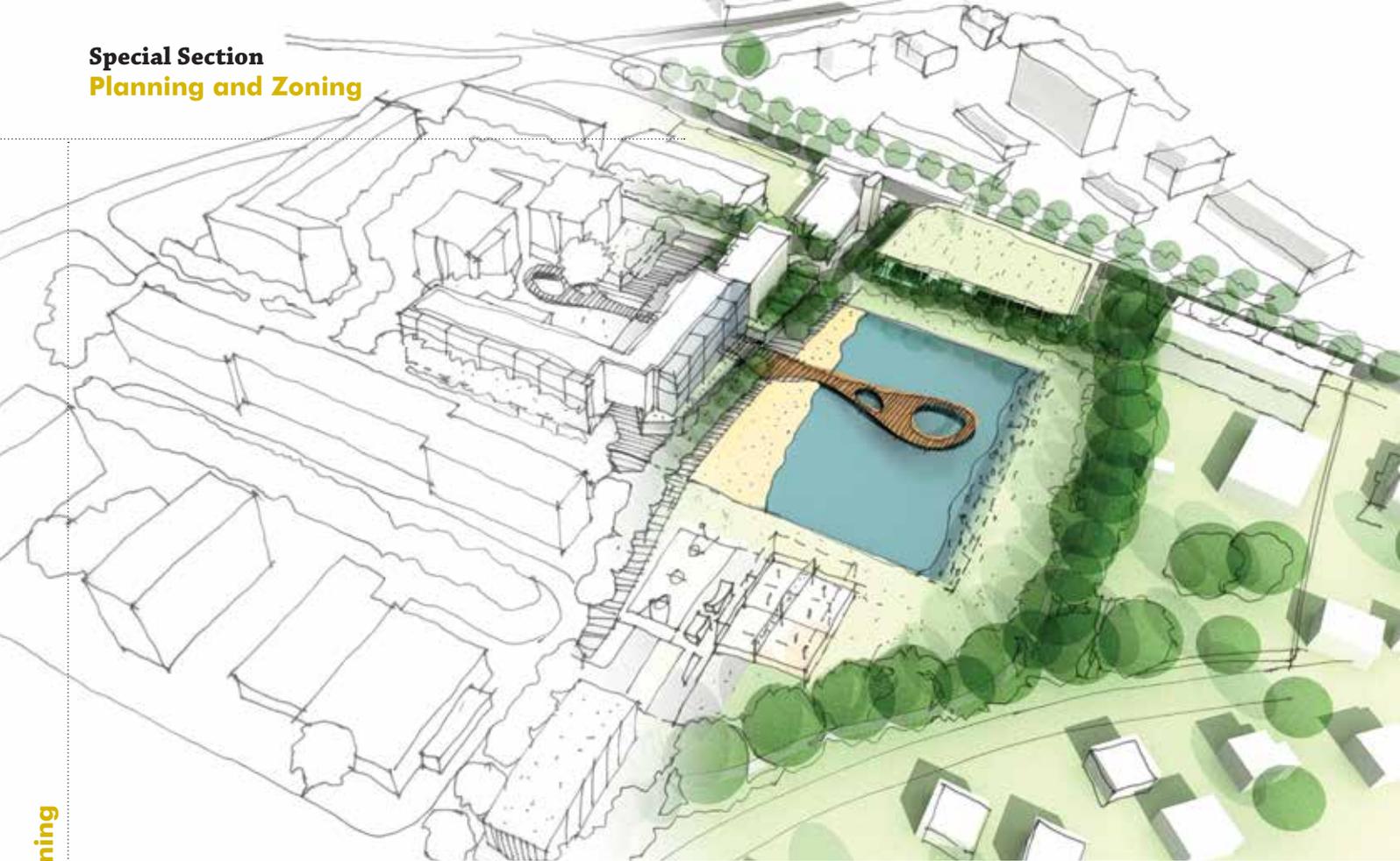
historic streets, and encourage commuters to bike and walk to work. Many people who work on the peninsula don't live on it, and commuting often involves crossing over a body of water, alongside thousands of motor vehicles.

"Our citizens have been asking for these types of things for some time, when you look at surveys from 10 years ago, 20 years ago," said Keith Benjamin, director of traffic and transportation for the City of Charleston. "84% of people who live in West Ashley leave every day in a car and 60% of those say they would use other transportation if it was affordable and safe and reliable."

That is the goal of the city's plan to build a biking and pedestrian bridge across the Ashley River, just south of where U.S. Highway 17 crosses the river. The city has received an \$18.1 million grant from the U.S. Transportation Department for the project.

Benjamin said a very important piece of the route will include safety improvements at intersections along the entire biking and walking commute to the part of the peninsula that is home to a medical center that has about 70,000 total jobs within a 20-minute walk.

"We are thinking through the equity lens, for people who don't have options," Benjamin said. "It's hard to tell people to choose another mode of transportation when it's not safe to do so."



# Understanding Planning Board Authority

State law empowers municipalities to create both a planning commission as well as two types of planning-focused boards: a board of zoning appeals and a board of architectural review. Each of these has unique functions, abilities and limitations, explained in the SC Local Government Comprehensive Planning Enabling Act, found in the SC Code of Laws Title 6, Chapter 29.

Each of the boards must operate with a meaningful degree of separation from city or town councilmembers. South Carolina Code Section 8-13-740 (A)(5) provides that municipal public officials and public employees may not represent a person before any component of that

municipality for which the public official or public employee has official responsibility. Advisory opinions issued by the SC State Ethics Commission have made clear that the authority to appoint is an official responsibility. Therefore, councilmembers and municipal staff generally may not represent another person in planning commission, board of zoning appeals, or board of architectural review matters. In 2006, the SC State Ethics Commission's Advisory held that this prohibition extended to a "city council member's firm." In response to that advisory opinion, the General Assembly amended the law to provide that only the councilmember herself was barred from representing

another person, not the entire firm for which she worked.

## Local Planning Commission

Municipalities that regulate land development must establish a planning commission. The commission is charged with continuous planning efforts for physical, social and economic development in its jurisdiction.

Powers include:

- Creating and revising a comprehensive plan which must "promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy" of its territory (SC Code Section 6-29-340). The plan must include specific elements named in the law. It must also "be based upon careful and comprehensive surveys and studies of existing conditions and probable future development."
- Making recommendations to a city or town council on how to implement the comprehensive plan through ordinances, regulations, policies or procedures. Powers also include making recommendations on capital improvement programs and development impact fees.

- Administering the land development regulations that have been adopted by council by approving or disapproving submitted plans and plats.

Planning commissions cannot grant variances or exceptions to a municipality's zoning ordinance. These functions are reserved exclusively for a second planning board: the Board of Zoning Appeals.

### **Board of Zoning Appeals**

A municipality that adopts a zoning ordinance may create a board to be known as the board of zoning appeals. The purpose of this board is to serve as an administrative mechanism to enforce the zoning ordinance.

Powers include:

- Making decisions on appeals that arise from the administrative decisions of the city's or town's zoning administrator.
- Granting or denying applications for variances from zoning ordinances, or granting or denying applications for special exceptions.

- Remanding matters to the zoning administrator if the board has not received adequate information for its review.

The board's decisions are subject to appeal only to a circuit court.

### **Board of Architectural Review**

Municipalities can create these boards when their zoning ordinances make specific provisions for the protection of historic and architecturally valuable neighborhoods or significant or natural scenic areas.

For the purposes of the board of architectural review, the zoning ordinance must name any restrictions that apply to the designated areas. This includes conditions for building, demolishing or altering the appearance of buildings in the areas. The board may then use the powers that the zoning ordinance expressly grants to approve or deny projects, while also operating within the limits stated by ordinance. Clear language in the ordinance explaining powers and limits is critical for the board's operations.

### **Education requirements**

Since 2003, the SC Comprehensive Planning Act has required planning and zoning officials to take both orientation and continuing education courses. Failing to do this can cause appointed officials to be removed from office, and professional employees to be suspended or removed from their positions.

Full information on approved training can be found through the website of the SC Planning Education Advisory Committee, [www.scstatehouse.gov/SCPEAC](http://www.scstatehouse.gov/SCPEAC). The Municipal Association of South Carolina and South Carolina Association of Counties offer the only state-approved resources for orientation training. Learn more about the resources at [www.masc.sc](http://www.masc.sc) (keyword: planning and zoning training).

*Find information on a large variety of planning and zoning topics in the Municipal Association's Comprehensive Planning Guide for Local Governments at [www.masc.sc](http://www.masc.sc) (keyword: planning guide).*



## **Rules for Councilmembers Appearing Before Boards**

The SC Ethics Act prohibits municipal elected officials from representing a person in front of a body over which the elected official has official responsibility. "Represent," under the law, means to make "an appearance, whether

gratuitous or for compensation, before ... a local or regional government office, department, division, bureau, board, or commission." And "official responsibility" means "the direct administrative or operating authority ... to approve,

disapprove, or otherwise direct government action." The SC Ethics Commission has interpreted this term to include the authority to appoint members.

The general rule is that elected officials should not appear before boards or commissions over which their council has the appointment authority. It does not matter whether the elected official is being paid for the representation, or even whether the official has discussed the matter with the involved parties.

There are some limitations and exceptions. The technical term "appear" means to actively speak on an issue under consideration, and likely doesn't prohibit the elected official from simply attending the meeting. Elected officials can represent themselves in purely personal affairs or those of immediate family. Finally, the elected official can appear before a subordinate board or commission in performing his official duties. That is, if the elected official is appearing as required by law or official function, the Ethics Act does not apply.



The revitalization of the Tolly Furniture building in downtown Anderson used abandoned building tax credits as well as state and federal historic tax credits. The project reworked the interior into space for a Groucho's Deli. Photo: Rogers Lewis Jackson Mann & Quinn, LLC.

# Abandoned Buildings Credits Can 'Bring New Life'

For people growing up in Myrtle Beach in the 1950s and '60s, downtown was the destination to buy groceries, shop for furniture or get a haircut. But for decades, the original downtown — the Main Street and Broadway at the Beach area near where U.S. 501 empties into the tourist city — has been home to abandoned, deteriorating buildings.

"We can call it downtown all we want, but it certainly doesn't have the characteristics of a downtown. We know we're a top destination for tourism, but we also know there are people who live here permanently. We want to create that place that's special for our locals," said Lauren Clever, the director of the City of Myrtle Beach's Downtown Development Office. "That's the conversation that started all this: How do we create the downtown that locals want to come to?"

Myrtle Beach recently had its downtown placed on the National Register of Historic Places and has created an Arts and Innovation District as part of the city's master plan, hoping to spur revitalization of its downtown. Two major renovation projects are being planned for

previously abandoned downtown buildings — a construction company's business headquarters and a craft brewery.

Like other cities and towns around the state, Myrtle Beach leaders are stressing the importance of tax credits and abatements that developers can use to bring new life to historic or abandoned buildings.

Part of that push includes taking advantage of the South Carolina Abandoned Buildings Revitalization Act, passed in 2013 and then extended by the legislature through 2021. The law allows developers to receive tax credits for rehabilitating empty or underutilized buildings.

Under the law, 66% of the building has to be abandoned for five years to be eligible for a credit. The developer can choose to use either a state income tax credit, which applies automatically if the developer satisfies the statutory requirements; or a property tax credit, with the consent of the affected taxing entities. The income credits are more typically used. The state income tax credits cannot be sold, but in practical terms they can be monetized through a partnership with one or more investors, according to Will Johnson, an

attorney with Haynsworth Sinkler Boyd in Columbia who heads the firm's economic development practice group.

Combining the Abandoned Buildings Revitalization Act tax credits with other state and federal historic rehabilitation credits can be a big plus. For example, a taxpayer could have a potential total credit equal to 70% of qualified rehabilitation expenses — 20% federal historic preservation, 25% state historic preservation and 25% abandoned building credit.

"All of this is a public sector commitment to save buildings of character, buildings that have had substantial impact on communities," said Fred Delk, executive director of the Columbia Development Corporation, which helps economic development in the capital city through public-private partnerships and business development. "The alternative is to tear the building down and start over. In many cases that leads to typical suburban-type development that certainly doesn't create a great deal of community character. These historic buildings, these are the things that make a community unique."

In Columbia, Delk said the first building that used historic property tax credits

First built in about 1910, the Tolly Furniture building now houses a Groucho's Deli. Photo: Rogers Lewis Jackson Mann & Quinn, LLC.



was renovated 22 years ago. “Now in Columbia we’ve done dozens and dozens of these projects. Many of the developments along Main Street have been done using the tax credits.”

Columbia also uses the Bailey Bill, a property tax abatement that allows developers and taxpayers to pay city and county taxes on the prereshabilitation value of a historic building for 20 years after the building has been renovated.

Amy Moore, preservation planner with the City of Columbia, says the Bailey Bill has been used for more than a dozen projects just on Main Street. Also, being able to layer different credits on top of each other can be key in making a project financially feasible. Those tax credits and abatements allow developers to renovate buildings that were considered too costly or impossible to redevelop. One of those buildings was the Palmetto Compress development in Columbia, where tax incentives and abatements were used to help turn a historic but dilapidated cotton warehouse into popular upscale apartments.

Developers may be skeptical at first, but once a project is proven successful, it clears the path for more to follow.

“Multiple cities across the state and across the country demonstrate the movement of people back into city centers,” Johnson said. “Suburbanization led to a lot of great old city centers being neglected. If those cities can land that first big project, it can lead to a wave of additional investment. You can look at downtown Florence, Columbia and Spartanburg as examples of communities that have used this program with a lot of success to jumpstart the downtown development everyone wants.”

For cities, it’s important to be proactive — to understand the incentives available, and to know what buildings in their communities that would be potential sites for redevelop-

ment. Cities could identify and publicize buildings that would qualify for the Abandoned Buildings Revitalization Act in advance, clearing the way for developers to take advantage of tax incentives and abatements.

“Make sure commercial real estate brokers who work in your area know if you have evaluated buildings that meet the criteria for tax credits,” Johnson said.

“Keep in mind that other tools are available as well, particularly for historic properties. If you have a historic building that’s abandoned, you can use abandoned building credits, you can use federal and state historic credits, and potentially you could use the Bailey Bill for property tax relief. That would be the grand slam in terms of downtown redevelopment — to be able to use all four of those tools on one project.”

Once a developer or two takes advantage of these incentives and successfully renovates these old buildings, more projects become viable. But the first person is taking the most risk.

The craft brewery that plans to move into an abandoned building in Myrtle Beach is taking that chance, Clever said.

“There’s nothing here, but they know their business model and their vision. Any city that’s had a brewery come in to a dilapidated area, it’s been a catalyst for success. Other businesses start popping up because there’s a success story there,” Clever said. “Cities need to look at what you can offer a business to help them get their foot in the door. Knowing that in 10 years it’s going to look completely different than what it looks like right now.”

And now is the time to take advantage of these tax credits and abatements.

“We’re fortunate in South Carolina right now. If instituted and used by developers, we have the best financial opportunity to use these tools to rehabilitate historic buildings, maybe in the country,” Delk said. “It’s really quite extraordinary.”

*Learn more about the Abandoned Buildings Revitalization Act tax credit and other tax credits at [www.masc.sc](http://www.masc.sc) (economic incentives toolkit).*



The Rainwater Building in downtown Florence, an example of an abandoned building tax credit project, is now home to Med-Enroll.

# Take Action to Reduce Planning Litigation Risks

Planning and zoning work can be some of the most exciting activity happening in municipal government, since new developments can transform the character of a community and the opportunities available to residents and businesses.

Even so, many people have strong feelings about what kind of new developments appear near their homes, their children's schools and along the roads they use. Resolving disputes on land usage can be difficult, and it's usually front-page news, so planning and zoning can be as challenging as it is exciting. Land use planning and zoning bring into sharp focus the delicate balance between preserving individual rights and protecting the community's rights as a whole. As a result, the decisions made about the community's future can make a municipality vulnerable to a lawsuit.

## Liability for local governments

Municipalities have three roles in land use matters:

- Legislative role – State law requires those cities and towns with planning commissions to adopt local comprehensive plans containing several required elements, as described in SC Code Section 6-29-510. Councilmembers also plan for development through the passage of zoning ordinances.
- Quasi-judicial role – Municipal staff review project proposals for consistency with relevant comprehensive plans as well as ordinances. Staff then make recommendations to planning and zoning boards and commissions.
- Enforcement role – Both staff and board or commission members

implement the city's development vision by making sure that approved projects comply with applicable laws and conditions imposed.

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

## Liability for officials

Both zoning officials as well as members of a planning commission, board of zoning appeals or board of architectural review are considered to be government employees subject to the SC Tort Claims Act (SC Code Section 15-78-10). While the Act preserves sovereign immunity for government employees who commit a tort while acting within the scope of their official duties, the immunity is not available if the "conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude."

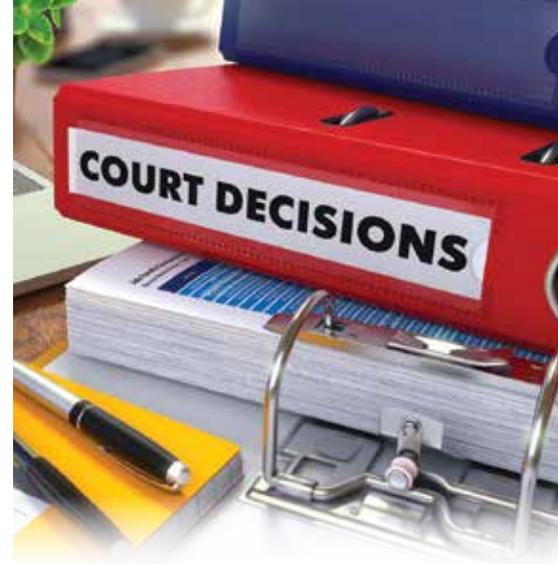
## Reducing the risk of litigation

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

- Council should make sure that it has adopted both a zoning ordinance and a comprehensive plan that encompasses state requirements.
- Periodically, council should update the comprehensive plan and applicable ordinances to reflect any changes in state law. South Carolina Code Section 6-29-510(E) requires that the local planning commission review the comprehensive plan not less often than every five years,

and to update the comprehensive plan, including all elements of it, not less often than every ten years.

- Staff as well as commission or board members should always follow the municipality's zoning ordinance or comprehensive plan when reviewing project requests. They should deny any request which is inconsistent with the comprehensive plan and zoning ordinance.
  - Commission and board members should consider all information submitted with requests. They should note in the minutes of their meetings that material has been submitted and reviewed.
  - Hearings must not only be fair but also should be free from even the appearance of unfairness.
  - Council, staff and commission or board members should make all decisions in an objective and consistent manner.
  - Staff as well as commission and board members should document the decision-making process accurately and completely. The basis for zoning decisions should be clear in the minutes of meetings.
  - Staff should review all decisions with an attorney who is familiar with zoning issues, ordinances and public meeting requirements, and applicable state and federal laws.
  - Council, staff and commission or board members should follow all requirements for meetings found in the SC Freedom of Information Act.
- Learn more about planning liability in the Municipal Association's Comprehensive Planning Guide for Local Governments at [www.masc.sc](http://www.masc.sc) (keyword: *planning guide*).*



# Using a Development Moratorium Correctly

South Carolina is growing fast. In some parts of the state, residents may feel that growth is happening far too quickly. That perception has led some municipalities to impose moratoria on at least some types of new construction. Although imposing a moratorium is a useful tool to pause the pressures of new development, there are guidelines that councils should follow in imposing them.

The most important rule is that a municipal council may impose a development moratorium only by ordinance. This rule arose from *Simpkins v. City of Gaffney*, a case in which the city council passed a motion placing a city-wide moratorium on the issuance of building permits or construction of duplexes and multifamily dwellings. The court reasoned that because the development rights arose under the city's zoning ordinance, the moratorium was effectively a suspension or an amendment of that ordinance. Under the so-called equal dignity rule, an ordinance may be suspended or amended only by a new ordinance.

Implicit in the *Simpkins* rule is the idea that a moratorium is supposed to allow council time to consider amendments or updates to the underlying zoning ordinance, not simply to stop development. Although the South Carolina courts have never explicitly established criteria for a valid moratorium, a leading case from Minnesota provides that a moratorium is valid if:

- it is for the purpose of researching and implementing changes to the zoning ordinance or comprehensive plan,
- it is of limited duration, and
- the government acts promptly to research and implement such changes.

The best practices that have evolved in South Carolina are consistent with these



guidelines. First, in announcing a moratorium, the council should specify that the purpose of the moratorium is to research and implement amendments to its zoning ordinance or comprehensive plan. The council should not simply declare a moratorium without also detailing what it intends to do during the pause.

Second, the moratorium should be of limited duration. There appears to be no strict limitation on what is a reasonable time period, but the consensus among practitioners is that six months is a presumptively reasonable length for a moratorium. Some ordinances also have included the ability for council to extend the moratorium a single time, by resolution, for no more than an additional three months. A longer period might be upheld, but clearly an indefinite or excessively prolonged moratorium would be invalid.

Third, once the council imposes a moratorium, it should promptly begin to research and implement the desired amendments to the zoning ordinance. If

a frustrated developer were to challenge a moratorium, it seems likely that a court would not look kindly on a municipality that simply sat on its hands during the pause in development activity.

One question that frequently arises is whether, under the equal dignity rule, the council must follow the notice and public hearing requirements that apply to the actual amendments to the zoning ordinance. Neither the South Carolina courts nor the South Carolina Attorney General have addressed this question. The better interpretation, however, seems to be that the municipality is not required under state law to provide notice or public hearings before imposing a development moratorium. On the other hand, if the municipality determines during the moratorium to go forward with amendments to its zoning ordinance or comprehensive plan, then those amendments would be subject to the ordinary notice and public hearing requirements.



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# Calendar

For a complete listing of training opportunities, visit [www.masc.sc](http://www.masc.sc) to view the calendar.

## APRIL AND MAY

Please note that all Municipal Association events are canceled through at least May 31 as a COVID-19 precaution.

## JUNE

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

**4 SC Association of Stormwater Managers Second Quarter Meeting.** Seawell's, Columbia.

**10 – 12 Main Street SC Directors Retreat.** Beaufort, SC.

**17 Risk Management Services Orientation.** Municipal Association of SC, Columbia.

**23 – 24 Municipal Court Administration Association 101 – Session B.** Municipal

Association of SC, Columbia. Topics include dispositions, finalization and an introduction to court financials.

## JULY

**15 – 19 Municipal Association of SC Annual Meeting.** Charleston Place Hotel, Charleston.

**28 Setoff Debt Collection Program Mandatory Training Session for Interested Participants.** Municipal Association of SC, Columbia.

**30 Setoff Debt Collection Program Mandatory Training Session for New Employees of Current Participants.** Municipal Association of SC, Columbia.

## AUGUST

**2 – 5 SC Association of Municipal Power Systems Annual Meeting.** Embassy Suites Kingston Plantation, Myrtle Beach.

**5 SCMIT and SCMIRF Workers' Compensation Nuts and Bolts.** The Phillips Market Center, West Columbia.

**11 Main Street South Carolina New Director Orientation.** Municipal Association of SC, Columbia.

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

**26 – 28 Municipal Court Administration Association of SC Annual Meeting.** Hyatt House Charleston.

## SEPTEMBER

**3 SC Association of Stormwater Managers Third Quarter Meeting.** Seawell's, Columbia.

**9 – 11 Municipal Clerks and Treasurers Institute – Year 2, Session B.** Hyatt Place Columbia/Downtown/The Vista.

**22 Municipal Elected Officials Institute of Government: Municipal Economic Development and Forms of Municipal Government.** Regional councils of governments area locations.