



# UPTOWN

a publication of the municipal association of south carolina



## HLAD speakers: Press for change

A small-town elected official can make a difference in the decisions that take place inside the S.C. State House. Just ask Wayne George.

Years ago, he was the mayor of the City of Mullins when state lawmakers were debating changes to the Local Government Fund, recalled George, addressing nearly 500 municipal officials at the 2018 Hometown Legislative Action Day. So George called his representative, a member of the powerful Ways and Means Committee, who happened to be on the House floor at the time.

“I told him about the importance of our Local Government Fund, explained a couple things,” said George. “And he switched his vote that day.”

George, who became the Municipal Association’s executive director in January, has also been on the other side of the conversation, serving from 2012 to 2016 in the S.C. House of Representatives.

“When I was in the General Assembly, the first calls I returned were to my local elected officials,” said George. “You bet I picked up my cellphone and called them back.”

This year’s HLAD drew local officials from all corners of the state to learn about a variety of topics, such as the opioid epidemic, infrastructure funding and flexibility, the outlook for the Local Government Fund, changes to the state retirement system, the 2020 census count and the latest tax law that Congress passed.

### Flexibility for infrastructure

The Town of Edisto Beach has incurred repeated damage from storms in recent years, leading Mayor Jane Darby to wonder: Why not allow cities and towns to spend their accommodations and hospitality taxes the best way they see fit?

“We had hospitality and accommodations tax funds in accounts,” said Darby, during a discussion with Rep. Craig Gagnon, R – Abbeville, moderated by Greer Mayor Rick Danner.

“However, that is so restricted that we could not put our town back together. How are you going to have visitors, which

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(Left to right inset) Rep. Todd Rutherford, D - Columbia; Inman Mayor Cornelius Huff; and Representatives Kirkman Finlay, R - Columbia; Mike Anthony, D - Union; and Mike Sottile, R - Isle of Palms, debate revenue options to shore up the state retirement system.

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hospitality and accommodations taxes are intended for, if you can't get them there? And then you cannot sustain life for them while they are there."

She asked how the Legislature could give towns more latitude to make spending decisions.

"I do agree that when we do have a disaster in different areas of the state, the state needs to step up and do those things that are necessary for our localities to have the flexibility," said Gagnon.

He emphasized that recovery decisions made on a local level are closest to the immediate needs, and that state legislators don't typically have detailed information about damage in individual towns.

"All we can do is say, 'Who do we depend on to give us the right information?' And it is the localities — the towns and cities — that are affected."

Darby urged attendees to advocate for two pieces of legislation:

- S917 would allow revenue from state and local accommodations taxes and local hospitality taxes to be spent on flood control, damage repair and drainage improvements for tourism-related areas.
- S945 would make it easier for local governments to use local tax collections

on operations and management of tourism-related projects by lowering the yearly collection threshold from \$900,000 to \$750,000.

### Opioids

Opioids, such as fentanyl and oxycodone, kill 91 people nationwide every day. (See related article on page 4)

A panel of experts — including Arnold Alier, EMS division director for the S.C. Department of Health and Environmental Control; Frank O'Neal, who supervises the Narcotics and Vice Section of the S.C. State Law Enforcement Division; and Todd Spradling, assistant special agent in charge for the Drug Enforcement Administration — revealed lessons and suggestions from combatting the crisis.

O'Neal urged local law enforcement to treat the scene of a fatal drug overdose like a murder scene.

"Go there. Interview people. Interview people at the time when everybody is stressed," he said, adding that during such moments, parents have been known to hand law enforcement officers the cellphone of the deceased individual and direct officials to the drug dealers' telephone numbers. O'Neal also urged HLAD attendees to support drug courts.



## Agreement reached on indigent defense fee

Approximately 130 cities and towns in South Carolina operate municipal courts but do not receive indigent defense services from circuit public defender offices. These cities do not receive indigent defense services because of a 2015 budget proviso that prohibits public defenders from representing indigents in municipal court unless there is an agreement between the municipality and the relevant circuit public defender's office.

Cities that do not have an agreement with their public defender's office do not receive services, and should not be collecting the \$40 indigent defense application fee provided for in Section 17-3-30 of the S.C. Code. Out of the roughly 209 municipal courts currently in operation, only 78 have entered into such agreements.

"The Municipal Association worked with the Commission on Indigent Defense to clarify that municipalities not receiving public defender services as defined under the statute should not be required to collect the statutorily mandated fee," said Tiger Wells, government affairs liaison for the Municipal Association.

"However, cities that receive those services should collect that fee."

Before the passage of budget proviso 61.12, Section 17-3-30 of the S.C. Code of Laws was interpreted to require municipal courts to take a \$40 application fee from

indigents and to remit that fee to the state. Once the proviso became law, municipal officials wondered if, in cases where there was no agreement between the municipality and the circuit public defender's office, the application fee was still required.

During the 2017 legislative session, the Municipal Association sought an agreement with the Office of Indigent Defense on this issue and proposed a legislative change to clarify which circumstances required municipal courts to collect the \$40 fee.

The Association and the Office of Indigent Defense reached an agreement in January, likely rendering unnecessary any clarifying legislation.

The Office of Indigent Defense and the S.C. Court Administration agreed that it was inappropriate to require an indigent defendant to pay the \$40 application fee required by Section 17-3-30 in courts that did not receive public defender services. The S.C. Court Administration also agreed that the code section should not be interpreted to require payment.

"Municipal courts that do not receive public defender services should not be required to extract an application fee from indigents for services that are unavailable," said Wells.

"This resolution makes perfect sense to clear up the ambiguity created by the budget proviso."

# NEWS BRIEFS

Mauldin Mayor Dennis Raines moved up to second vice-president of the **Municipal Association's board of directors**; Inman Mayor Cornelius Huff moved from his board position to the third vice president; and Aiken Mayor Rick Osbon was selected to fill Huff's unexpired, at large seat.

Eight municipal officials graduated from the 2017 S.C. Economic Development Institute, a collaborative program of the S.C. Department of Commerce and S.C. Economic Developers' Association. The graduates included **Sergio Aparicio**, City of Columbia; **John Stankus**, City of Laurens; **Scott Tanner**, City of Manning; **Jerre Threatt**, City of Clinton; **Liam Kyle**, City of Rock Hill; **Laura Little**, City of Rock Hill; and **Brie Logue**, City of Columbia.

Sandra H. Woods, **City of Fountain Inn**, earned her certified municipal clerk designation from the International Institute of Municipal Clerks.

The **City of Walterboro** received the Wastewater System of the Year award at the 2017 Annual Conference of the South Carolina Rural Water Association.

The **City of Columbia** has been awarded a 3-STAR Community Rating for national leadership in sustainability by STAR Communities, a nonprofit organization that evaluates the livability and sustainability of U.S. communities.



# Putting naloxone within reach

It's hard to find pills in Eric Bedingfield's house.

"If you can find a medicine bottle, good for you — Because you have performed a miracle," said Bedingfield, who retired from the S.C. House in January.

"My kids cannot walk in my bathroom and open a medicine cabinet and see bottles." All medications "are on lockdown in my house," he added.

Bedingfield, a diabetic, said he'd never thought twice about taking his medication in view of his children. But he feels differently now.

This winter, he addressed the Association of SC Mayors about opioid abuse, a problem that kills 91 people nationwide each day. It's an acutely personal crusade for the Greenville Republican, who chaired the House Opioid Abuse Prevention Study Committee. He lost an adult son in 2016 to an overdose.

In January, Bedingfield's committee released a report that makes a host of recommendations to the S.C. General

Assembly for how to halt the rising human and economic toll of addiction.

Among them is a recommendation of ways to increase access to naloxone (sometimes sold under the brand name Narcan), a drug that can reverse an opioid overdose if administered in time. Currently, an individual may buy a dose of the medicine over the counter for \$120 at a retail pharmacy without a prescription, provided there is a standing order, a collaborative agreement between a doctor and a pharmacy that permits the dispensation.

There has been some progress in the General Assembly.

The South Carolina Overdose Prevention Act, enacted in 2015, granted civil and criminal immunity to doctors, pharmacists, caregivers and first responders who were involved in prescribing, dispensing and administering naloxone in a suspected opioid overdose. Shortly after the new law was enacted, law enforcement and health officials created the Law Enforcement Officer Narcan program to provide training on

the identification, treatment and reporting of opioid overdoses.

But some lawmakers believe South Carolina can do more.

"A lot of times, access and care is more difficult than most people would think," said Bedingfield.

"When a person is ready to go get treated, they need treatment then," he added. "If they can't get it then or within the next 24 hours, they're probably going to use again."

When someone expresses a willingness to receive treatment, Bedingfield also urges the individual's friends and family members to be prepared. He suggests they purchase naloxone from a pharmacy and keep the medicine and the vulnerable individual close at hand.

Bedingfield said he would like community groups, such as the Salvation Army, to be able to purchase naloxone directly from manufacturers for \$35 – \$40 per dose, so that those organizations can also assist people in need.

He urged against stigmatizing opioid addicts. They're not lost causes — They're a brother who is recovering from surgery, a grandmother who's taking pain medicine under hospice care or a grandchild who takes the grandmother's medicine.

"It can take your child as quick as it took mine," said the former lawmaker.



## Highlights of the opioids report

In January, the S.C. House of Representatives Opioid Abuse Prevention Study Committee released a host of recommendations, including some that would have particular relevance to local governments.

**Empower "community distributors" of overdose antidotes.** Often, addiction sufferers can't or won't purchase naloxone from a pharmacist. So, lawmakers should pass legislation that allows a "community distributor" to provide opioid overdose antidotes. Community distributors would be considered any public or private organization

that offers substance-use disorder assistance and services, such as counseling, homeless services, advocacy, harm reduction, treatment, and alcohol and drug screening to individuals at risk of an opioid-related overdose.

**Expand prescription drug take-back day events and drop-off box locations.** Local governments and public and private entities should partner with law enforcement agencies to create community events associated with national and community-sponsored prescription drug take-back days. These partnerships should also increase

# Drones: Know what flies



The City of Florence has gotten a lot of mileage out of drone technology.

The small, unmanned aircrafts have checked on construction projects and blighted property and helped create TV commercials to promote the city's downtown.

"Instead of having to climb up on a roof, you can take the picture, put it on a laptop and literally zoom down with great clarity because of the resolution of the camera," said Ray Reich, the city's downtown development manager.

But as with any relatively new initiatives and technology, drones can also run into problems.

One of the city's first drones hit a tree and fell to the pavement.

"The one we have now actually senses when it's getting ready to run into something," said Reich. "And it will start beeping. And if you don't take avoidant reaction, it just stops right there and hovers."

The city's drone cost less than \$1,400. It has infrared sensing to avoid obstacles, photography and video features, and the capability to run as long as 28 minutes and travel up to 8 miles, although the city limits its travel to comply with federal regulations.

Federal Aviation Administration regulations limit the altitude to 400 feet unless an operator receives a special exemption (known as a Section 333 exemption) to fly the drone at a higher altitude. Most of the better drones are preprogrammed to prohibit flying above the 400 foot level, according to Reich.

Nationwide, 42 percent of cities are using or considering using drones in municipal operations, according to a report the National League of Cities released last October.

The Center for the Study of the Drone released a study in April of 2017, *Drones at Home: Public Safety Drones*, that found from 2009 to 2017, at least 347 state and local police, fire and emergency units nationwide had drones.

The report listed a variety of ways government agencies across the country are putting drones to work, including: locating a missing person's body using thermal imaging sensors, taking aerial photographs of a burning six-story building, detecting illegal fireworks and reconstructing a car accident scene.

## Drone coverage now offered

If a city plans to use drones, officials should develop protocols for using the devices when conducting criminal investigations, said Leigh Stoner, underwriting manager for the Association's Risk Management Services.

Local officials should also put a system in place to notify the public of drone usage and have a way to keep records of its deployment. If a drone is expected to collect evidence of a crime, the city should secure a search warrant before launching the drone, said Stoner.

Drone laws and regulations are still evolving at the federal level. In South Carolina, however, there is no specific law that regulates drones.

The SC Municipal Insurance and Risk Financing Fund, which has previously provided property coverage for drones under the inland marine category, began offering drone liability coverage in January. A city may acquire coverage, provided the drone is owned and operated in accordance with applicable federal and state laws.

For more information, contact Leigh Stoner, Risk Management Services' underwriting manager, at [lstoner@masc.sc](mailto:lstoner@masc.sc) or 803.354.4752.

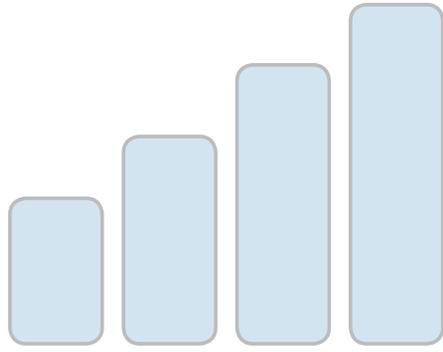
the availability of prescription drug drop-off boxes by coordinating with local law enforcement agencies.

**Coordinate with the U.S. Drug Enforcement Agency for timely removal of prescription drugs collected from law enforcement agencies.** State and local law enforcement agencies should coordinate with the DEA to develop policies to dispose of these medications in order to lessen the burden on local law enforcement departments, which accumulate large quantities

of prescription opioids. Certain federal regulations limit disposal options, and law enforcement entities must often retain and store prescription drugs indefinitely.

**Support workforce initiatives to increase awareness and access to treatment.** The state should establish comprehensive drug-free workplace policies for employees and implement training for human resources personnel on how to recognize the signs of opioid use disorder and to refer sufferers to treatment.

**Evaluate the geographical availability of facilities and the potential expansion of detoxification programs.** State substance abuse officials should review withdrawal management programs, initiate policies about the need for in-patient or out-patient detoxification treatment programs, and establish detoxification facilities based on needs of each community. This review should identify geographic areas that need additional facilities, capital improvements, or expanded detoxification programs, including transitional housing and rehabilitation programs.



# Small cells are coming: How to prepare



*Small wireless facilities in the City of Columbia attach to telephone poles and other structures.*

Residents and businesses worldwide are increasingly reliant on handheld wireless devices to communicate and transmit data, and they expect ever-increasing processing capabilities and speed. To keep pace with user expectations, the telecommunications industry must rapidly build next-generation wireless networks and their associated infrastructure.

The newest version of performance standards for the mobile wireless industry is labeled as a generation. Fifth generation standards, commonly known as 5G, will require mobile wireless networks to provide greater bandwidth, which supports faster download speeds and the capability to run more complex mobile devices.

Unlike previous wireless networks, the 5G wireless technology relies on a denser network of antennas, deployed at heights closer to street level, to supplement and communicate with traditional cell towers. Next generation antennas and support equipment — called small cells or small wireless facilities (SWF) — are attached to a pole or support structure such as a building. The control equipment mounts on either the pole or structure, or on or under the ground near the pole or structure.

So what does the rollout of 5G networks have to do with municipalities? In short, cities and towns are where it's all happening — if not now, then soon. Specifically, while the size, design and aesthetics of SWFs vary widely, what they have in common is their need to be placed in publicly visible — and in most cases publicly regulated — spaces.

Depending on the number of mobile device users and volume of data processed, the average spacing of SWFs in urban areas ranges from a city block to a mile compared to cell towers built many miles apart. To understand the potential impact, the City of Columbia's experience is revealing. In less than two years, the city permitted 64 SWFs and continues to process permit requests.

## High-stakes challenge

There is a lot riding on efforts to build a network that can handle users' rising demands. The country's reliance on wireless technology is so significant that federal experts believe the expedited rollout of 5G networks is critical to the United States' continued economic competitiveness and the quality of life of its residents.

To help build the network as quickly as possible, the Federal Communications

Commission is in favor of using public rights of way as opposed to private property because commissioners do not believe that enough private properties can be leased fast enough to allow this technology to be rolled out. FCC policy also prohibits municipalities from banning SWFs and requires the competitively neutral and nondiscriminatory processing of permit requests within tightly defined time periods. Fortunately, FCC policy preserves municipal police powers, including local land use zoning.

## Crafting an ordinance

Over the past year, the Municipal Association worked with the telecommunications industry to understand the issue and its potential impacts and to craft a model small wireless facility ordinance. The model ordinance balances municipal and telecommunications interests by streamlining the review and permitting process. At the same time, it preserves municipal authority to control rights of way and the design and aesthetics of SWF facilities to the extent permissible in state and federal law.

Under the model ordinance, small wireless facilities are classified as a permissible use, subject to administrative

review, in municipal rights of way and abutting utility easements unless the proposed SWF location is within a historical, design or underground utility district. In these supplemental review districts, SWFs are a conditional use that affords the municipality additional review authority and protection for the character of the districts.

### Striking a balance

Municipal officials have a key policy consideration: On one hand, cities must understand the importance of the technology to the national economy, quality of life and convenience of users. At the same time, however, officials must recognize that the contributions of the technology should be balanced with the potential impact the technology could have on municipally controlled rights of way and the visual aesthetics that residents and businesses demand. Achieving an acceptable balance of these interests is critical to avoiding an unwanted legislative solution.

Last year, 17 states passed SWF legislation that favors telecommunications interests while severely restricting authority over regulating SWFs. But unlike many other states, South Carolina previously addressed the most contentious issues that other states debated — such as telecommunications company access to municipal rights of way and fees municipalities could impose for such use — with the S.C. Telecommunications Act of 1999.

“It would be helpful to cities to start preparing now even before any permit requests are pending before council,” said Eric Budds, deputy executive director of the Municipal Association. “To get ready, cities and towns are encouraged to consider the adoption of the model ordinance or use the model ordinance as a guide to develop and adopt an SFW ordinance.”

*Small cell technology is among the topics at the spring meeting of the Municipal Technology Association of SC on March 22. For more information, visit [www.masc.sc](http://www.masc.sc) (keyword: *mtasc*). For more information on the model ordinance, contact Eric Budds at [ebudds@masc.sc](mailto:ebudds@masc.sc) or 803.933.1228 or visit [www.masc.sc](http://www.masc.sc) (keyword: *SWF*).*



*The 2018 Advanced Municipal Elected Officials Institute graduates, shown above at Hometown Legislative Action Day in February, recently finished the four of six courses offered after graduating from the Municipal Elected Officials Institute.*



*The winter 2018 MEO Institute graduates, picture above at HLAD this year, completed seven required courses.*



## 2018 MEO and Advanced Institute graduates

**T**hirty mayors and councilmembers who graduated from the South Carolina Municipal Elected Officials Institute of Government were recognized during Hometown Legislative Action Day on February 6. To graduate from the MEO Institute, participants must complete seven required courses — two daylong sessions and five other courses that can be taken in person through the 10 offices of the Councils of Governments or online through the on-demand option.

The next in-person session is “Basic Budgeting and Municipal Finance,” which will be held at the COGs on Tuesday, March 20, from 9:30 a.m. to 12:30 p.m. The deadline to register online is Thursday, March 15.

The Advanced MEO Institute recognized 45 mayors and councilmembers during the Hometown Legislative Action Day ceremony. To graduate from the Advanced MEO Institute, participants must complete four of the six courses offered. Sessions are held in person annually in February and October. Registration opens in July for the next in-person session on Wednesday, October 24, from 9 a.m. to 4 p.m. at the Columbia Marriott. The deadline to register online is Monday, October 22.

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



# Supreme Court to Decide Billion Dollar Sales Tax Case

By Lisa Soronen, executive director of the State & Local Legal Center

In November 2017, a Government Accountability Office report estimated that states and local governments could “gain from about \$8 billion to about \$13 billion in 2017 if states were given authority to require sales tax collection from all remote sellers.”

In January 2018 the Supreme Court agreed to decide *South Dakota v. Wayfair*. In this case South Dakota is asking the Supreme Court to rule that states and local governments may require retailers with no in-state physical presence to collect sales tax.

This case is huge news for states and local governments. This article describes

how we got here and why it is likely South Dakota will win.

In 1967 in *National Bellas Hess v. Department of Revenue of Illinois*, the Supreme Court held that per its Commerce Clause jurisprudence, states and local governments cannot require businesses to collect sales tax unless the business has a physical presence in the state.

Twenty-five years later in *Quill v. North Dakota* (1992), the Supreme Court reaffirmed the physical presence requirement but admitted that “contemporary Commerce Clause jurisprudence might not dictate the

same result” as the Court had reached in *Bellas Hess*.

Customers buying from remote sellers still owe sale tax, but they rarely pay it when the remote seller does not collect it. Congress has the authority to overrule *Bellas Hess* and *Quill* but has thus far not done so.

To improve sales tax collection, in 2010 Colorado began requiring remote sellers to inform Colorado purchasers annually of their purchases and send the same information to the Colorado Department of Revenue. The Direct Marketing Association sued Colorado in

federal court claiming that the notice and reporting requirements were unconstitutional under *Quill*. The issue the Supreme Court decided in *Direct Marketing Association v. Brohl* (2014), was whether the Tax Injunction Act barred a federal court from deciding this case. The Supreme Court held it did not.

The State and Local Legal Center filed an *amicus* brief in *Direct Marketing Association v. Brohl* describing the devastating economic impact of *Quill* on states and local governments. Justice Kennedy wrote a concurring opinion stating that the “legal system should find an appropriate case for this Court to reexamine *Quill*.” Justice Kennedy criticized *Quill* for many of the same reasons the SLLC stated in its *amicus* brief. Specifically, internet sales have risen astronomically since 1992, and states and local governments have been unable to collect most taxes due on sales from out-of-state vendors.

Following the Kennedy opinion, a number of state legislatures passed laws requiring remote vendors to collect sales tax in clear violation of *Quill*. South Dakota’s law was the first ready for Supreme Court review.

In September 2017, South Dakota’s highest state court ruled that the South Dakota law is unconstitutional because it clearly violates *Quill* and it is up to the U.S. Supreme Court to overrule *Quill*. In October 2017, South Dakota filed a *certiorari* petition asking the Supreme Court to hear its case and overrule *Quill*. The SLLC filed an *amicus* brief supporting South Dakota’s petition. The Supreme Court ultimately agreed to decide the case.

It seems likely the Supreme Court will rule in favor of South Dakota and overturn *Quill* for a number of reasons. It is unlikely the Supreme Court accepted this case to congratulate the South Dakota Supreme Court on correctly ruling that South Dakota’s law is unconstitutional. Said another way, if the Supreme Court wanted to leave the *Quill* rule in place it probably would have simply refused to hear *South Dakota v. Wayfair*.

It is easy to count at least three votes in favor of South Dakota in this case. First, Justice Kennedy of course. Second, Justice Thomas. While he voted against North Dakota in *Quill*, he has



since entirely rejected the concept of the dormant Commerce Clause, on which the *Quill* decisions rests. Third, Justice Gorsuch. The Tenth Circuit ultimately decided *Direct Marketing Association v. Brohl* ruling that Colorado’s notice and reporting law didn’t violate *Quill*. Then-judge Gorsuch wrote a concurring opinion strongly implying that given the opportunity the Supreme Court should overrule *Quill*.

That said, the Supreme Court, and the Roberts Court in particular, is generally reticent about overturning precedent. The *Quill* decision illustrates as much. The Supreme Court looks at five factors in determining whether to overrule a case. One factor is whether a rule has proven “unworkable” and/or “outdated ... after being ‘tested by experience.’” This factor weighs strongly in favor of overturning *Quill*. As Justice Kennedy pointed out in *Direct Marketing Association v. Brohl*: “When the Court decided *Quill*, mail order sales in the United States totaled \$180 billion. But in 1992, the internet was in its infancy. By 2008, e-commerce sales alone totaled \$3.16 trillion per year in the United States.” The Court will hear this case and issue an opinion by the end of June 2018. *The SLLC files amicus curiae briefs in support of states and local governments in the U.S. Supreme Court.*

## S.C. revenue may hinge on court opinion

South Carolina has been missing out.

If state and local governments had been allowed to require all remote sellers — companies located outside the state — to collect taxes on all remote sales last year, South Carolina could have seen between \$132 million and \$193 million in revenue, according to the Government Accountability Office.

A GAO report released in November of 2017 also found that nearly half of those potential revenue gains to state and local governments would have resulted from collecting sales taxes on all e-marketplace sales, transactions on sites such as eBay, Etsy and Amazon Marketplace. The current dynamic also works against local brick-and-mortar businesses that lose out on sales when customers visit to try on or try out a product only to go home and purchase the item online state-tax free.



# Make plans now to attend the 2018 Annual Meeting

The Municipal Association's Annual Meeting will be held July 19 – 22 at the Marriott Hilton Head Island. The Association will use the same registration/housing reservation process as in past years to ensure municipal officials receive priority for hotel reservations and ticketed Annual Meeting events.

The Association will hold a drawing on March 12 to determine the order of appointments for municipalities to make hotel reservations and register local officials. The deadline for municipal representatives to register for the drawing is March 7. Visit [www.masc.sc](http://www.masc.sc) (keyword: annual meeting) to register.

After the drawing, Association staff will notify representatives of their 30-minute appointment time and will post all appointment times at [www.masc.sc](http://www.masc.sc).

Registration materials will be posted to the Association's website and mailed on April 9. The

30-minute appointments for municipal representatives to register their officials will be scheduled for May 29, 30 and 31.

During the online process, municipal representatives will make hotel reservations and register municipal attendees for the meeting using a Visa or MasterCard with a sufficient credit limit and per transaction limit. Nonrefundable hotel deposits and registration fees will be collected during the registration process.

During the scheduled phone appointments, an Association staff member will call the city representative to initiate the online registration/reservation process. The representative can only register municipal officials from his city during the appointment. The designated representative must have the completed registration forms in hand, including housing and meal ticket requests, for each person being registered during the call.

## Key Annual Meeting Dates

- March 7 – Deadline to register for appointments.
- March 12 – Drawing held.
- April 9 – Agenda and registration information posted online.
- April 9 – Registration brochures with meeting agenda mailed.
- May 29, 30 and 31 – Online registration process for cities that have an appointment.
- June 1 – Online registration opens for cities without appointments and non-municipal officials.
- June 19 – Hotel reservation deadline.
- July 5 – Meeting registration deadline.
- July 19 – 22 – Annual Meeting.



# Keep up with FOIA changes

**T**here are several new elements in the S.C. Freedom of Information Act resulting from the legislation passed in May of 2017 that affects public bodies' allowable timeline to respond to a request, fees and the ability to seek outside judicial help on difficult decisions.

Here are just a few changes that cities and towns should keep in mind:

## **Is my city required to generate records in a digital format, if that is how the requestor asks for it?**

No. A public body is not required to create an electronic version of a public record where one does not exist. However, the law says an individual may request and receive a public record electronically.

## **What is the most the city may charge as a deposit?**

No more than 25 percent of the anticipated cost for reproduction of the records. The law requires that any balance be paid at the time the public body produces the records.

## **The law also**

- Requires public bodies to develop a schedule of the fees for activities such as searching, retrieving, redacting and copying records.
- Limits the copy rate to the prevailing commercial rate for producing copies. The legislative intent was that the public body would not charge more than its actual costs, treating the rate charged by local commercial copiers (i.e. Kinko's, etc.) as a gauge for capping fees.
- Limits the rates charged for searching, retrieving and redacting records to the hourly wage of the public body's lowest paid employee with the skills to fulfill the request.

## **I've heard cities have less time to respond to a FOIA request. Is that true?**

Yes. A public body must now respond to a written FOIA records request in 10 business days instead of 15. A "response" communicates whether the public body will comply with the FOIA request or claim an exemption. The timeframe is 20 business days if a requested record is more than 24 months old. The public body is not required to decide how a record may need to be redacted within this response period.

## **Then what?**

The public body must produce the requested records within 30 calendar days from the date it responds to say the request will be fulfilled or within 30 days of receiving any deposit. That deadline is 35 days for records more than 24 months old.

## **Does the law offer any new guidance for public bodies?**

Yes. A public body may request a hearing with the circuit court for relief from unduly broad, burdensome, vague, repetitive or improper requests.

## **What if my city is faced with a tough disclosure decision?**

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, such as a private business or individual whose information is included in requested records, to request a hearing if it has an interest in exempt information or records that may be released as part of a FOIA request.

# Council meetings now streaming

The smartphone-wielding public captures everything from live music shows to political rallies and their children's dance recitals to customer service interactions at fast-food restaurants. But city council meetings, too, are often the subject of residents' cellphone videos.

**That raises a question:** Does a member of the public have a right to record a city council meeting with a smartphone or other device?

**Answer:** Yes. This is a public meeting.

Anyone can make audio and video recordings of council meetings. There should be no expectation of privacy at a public meeting. There are limits to how an individual may record the meeting, however, relating to whether the individual is disrupting the meeting. The Freedom of Information Act "does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of a meeting is seriously compromised." However, removal should be a last resort after the presiding officer has made every reasonable effort to restore order.

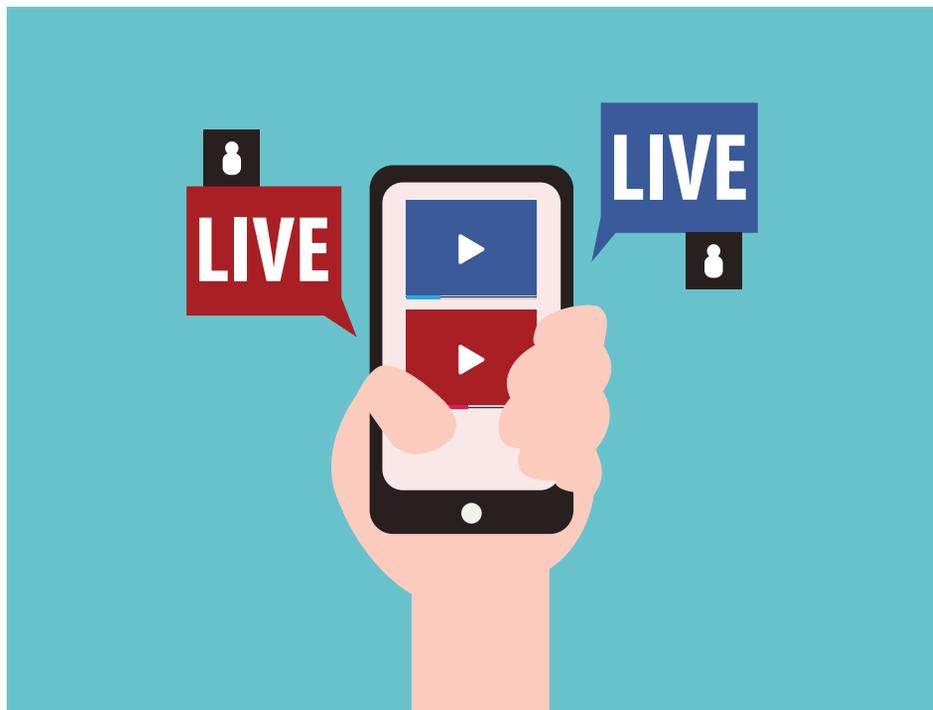
But in many instances, residents don't need to take matters into their own hands. Municipalities large and small commonly make city council meetings easily viewable through live streaming video and even public video archives.

The Town of Irmo does both. By buying its own equipment, the town was able to avoid monthly vendor fees.

"We operate and store the digital videos in house," said Renee Caviness, clerk/treasurer of the Town of Irmo, adding that the town purchased the video equipment for about \$30,000. The equipment is linked to the town's website using the town YouTube account.

Irmo residents have come to rely on the service.

"They love it and watch it," said Caviness. "If it does not work or there



is an interruption in the live streaming, they let Council know immediately. Some residents come to the meeting and live stream it from their cellphones and post on their Facebook account."

She said the town does the live streaming on the town's website, and then after a day or so, she puts the video on the site's "Meeting, Agendas & Minutes" page.

In the City of Marion, council meetings are videotaped through a service provided by a local TV station, Hometown TV 8, through a local cable franchise agreement.

"We began our partnership with Hometown TV 8 in 2008 in an effort to provide our residents with convenient access to our public meetings," said Lakesha Shannon, city clerk/business license official. "This partnership has helped us offer more transparency to our residents by providing access to the most current business of the city."

Marion City Council's current meeting broadcast is aired every Saturday on their station, and the video is also available on the station's website.

The city pays a monthly fee that includes the council meeting and other recordings. The video recordings are archived with the company, and DVDs are available to the city upon request. The city pays nothing for the council meeting broadcast but does pay for event and business advertising. A city-hosted talk show costs the city \$350 per month, while advertising is about \$400 per month.

"We immediately saw this as an opportunity to provide more information to our residents," said Shannon. "We began broadcasting our public meetings and advertising city events and local business."

The City of Marion also uses the station to broadcast a sports talk show called "Hometown Sports Talk" and a city talk show called "Swamp Fox Country," which is hosted by the mayor and city administrator and features a special guest.

"Public meeting access through this local station has helped us tremendously in communicating information to our residents and giving them a firsthand look at the matters addressed by our City Council," said Shannon.

# Protecting residents' privacy

In addition to changes to the Freedom of Information Act, the bill the S.C. Legislature enacted last May, H3352, also made a notable change to the Family Privacy Protection Act.

Previously, it was illegal to knowingly acquire personal information from the

state government or one of its agencies for commercial solicitation. But now, the law expands that offense to include local governments and political subdivisions. That means municipalities must not only provide notice of the prohibition to requesting parties but must also

take steps to ensure that no individual or entity "obtains or distributes" such information for commercial solicitation.

So you received a request for documents containing personal information. What do you do next? First ask: Is what is being sought really personal information?

The town received a Freedom of Information Act request for documents containing personal information.

## Does the Family Privacy Protection Act apply?

### Do the documents contain personal information?

Personal information is any of the following that identify or describe an individual:

- photograph or digitized image
- social security number
- date of birth
- driver's identification number
- name
- home address and/or telephone number
- medical or disability information
- education level
- financial status

NO

YES

### The Family Privacy Protection Act does not apply.

Fulfill the FOIA request according to the set municipal procedures.

### The Family Privacy Protection Act applies.

- 1) The city must provide written notice to the requesting party that obtaining or using public records for commercial solicitation directed to any person in this state is prohibited, and that a person knowingly obtaining or using personal information for purposes of commercial solicitation is guilty of a misdemeanor and subject to a fine of \$500 or imprisonment for one year.
- 2) The city may seek confirmation from the requesting party that any personal information contained in the requested records is not being obtained for purposes of commercial solicitation and will not be distributed for such a purpose.

### What is commercial solicitation?

"Commercial solicitation" means contact by telephone, mail, or email for the purpose of selling or marketing a consumer product or service.

### What isn't "commercial solicitation?"

- offering membership in a credit union;
- notification of continuing education opportunities;
- selling or marketing banking, insurance, securities, or commodities services provided by an institution or entity defined in or required to comply with the Federal Gramm-Leach-Bliley Financial Modernization Act; or
- contacting individuals for political purposes using information on file with state or local voter registration offices.

### Did the party provide written confirmation?

NO

YES

**Provide the records after redacting any personal information they contain.**

**Provide records after redacting any personal information that is otherwise protected by state or federal laws other than the Family Privacy Protection Act.**



## Public access at a keystroke

When Edisto Beach leaders want to know how many times the Town Council has discussed dogs on the beach, the town clerk simply types a few keywords into the computer system and pulls up agendas, minutes, resolutions and ordinances.

It's a simple process to find information. But it wasn't always that way.

Edisto Beach, like many other towns and cities around the state, has moved to a digitized system of record keeping. That means taking hundreds of thousands of sheets of paper — everything from city council minutes to proclamations to meeting agendas — scanning them into a computer and filing them in a way that they are easily accessible. The result is less space needed to house boxes of files, an

increase in the public's access to records and an improvement in government transparency.

Typically, local governments decide to digitize records for three reasons: cost savings, security and ease of access, said Bryan Collars, electronic records supervisor with the S.C. Department of Archives and History.

### Efficient retrieval

"Cost savings can happen at multiple levels, but the one with the most impact is the storage of records. Digitization allows the records creator the opportunity to destroy bulky, space-consuming originals," Collars said. "Additional cost savings may occur in retrieval times for the digital record and savings in staff costs."

Still, Collars said it is important to remember that public records may only be destroyed by following a records retention schedule approved by the state's archives and history department.

Digitization can also improve security. "A digitized record cannot simply be picked up and carried out of the local courthouse or county office. One must be careful to ensure that digitized records are adequately backed up, so if the distribution copy becomes corrupted, another digital copy is readily available to replace it," he said.

Finally, when properly indexed, digitized records accessible through a website are available for public view at any time.

"No longer is the public denied access to a public record because the courthouse

is closed or it's a holiday," Collars said. "Digitized records don't take time off."

For Deborah Hargis, the Edisto Beach town clerk who worked to digitize records as her capstone project for certification as a municipal clerk, the new process is extremely helpful — especially to office staff who no longer have to wade through boxes of records searching for a specific paper document.

Edisto Beach contracted with a national firm to scan and organize documents in an electronic format in November 2013. "They did all the scanning and indexing of documents prior to then," she said. "Now I'm in charge of getting it into it the system." By June 2014, there was a dedicated server at Edisto Beach and on-site training began a few months later.

The town had two goals: Reduce the amount of space for paper and make records accessible.

Hargis started with records that went back to the town's incorporation in 1972, including agendas and minutes of meetings, along with ordinances and resolutions. It was a lot of paper. She estimates about 30 banker's boxes crammed full of paper — more than 135,000 sheets — were converted to digital records.

Hargis said she scans current documents for about an hour each week to stay up to date on the process. The cost to maintain the site and house the electronic records is about \$2,000 each month. Now, records are available to anyone who logs on to the town's website.

### Improving transparency

Clerks agree that, along with helping city staff do its job, the digitization process improves government transparency by allowing the public to monitor and understand the activities of their local governments.

"It helps keep a good record of everything that has happened so that the institutional memory isn't just with people who have been there a while. It's recorded digitally for even the newest members of the team to read. It's harder to say records were lost if they are kept in a digital file," said Shelly Spivey, who



worked on the digitization of records when she was the municipal clerk for the City of Landrum and has since moved to the same position in the City of Woodruff.

Spivey participated in a similar capstone project to digitize minutes, resolutions and ordinances going back to the 1990s. As the project started, the city already had a scanner/printer/copier in use and plenty of cloud backup. The base cost could be as little as a scanner and an external drive, she said. After she completed her capstone project, the city purchased software to scan documents into digital archives.

"I spent easily over 80 hours across several weeks on this project," Spivey said. "The types of binders they used in the earlier days made pulling documents out for scanning much more labor intensive.

Some of the documents were 'onion skin' paper and very fragile."

### Plan for access

Her advice for other cities undertaking a digitization project?

"Expect it to take longer than anticipated, and plan for additional time beyond scanning," Spivey said.

"This is a daunting project, and breaking it up into smaller bits helps keep it from feeling overwhelming. Do a year of minutes or five at a time. Start scanning in everything new you plan to keep right away. Plan a filing system that makes sense for your city and that someone will be able to make sense of in 10 years. Thinking ahead as you look back is very important as you archive because it helps you plan for how these records will be accessed and used as you prepare them for scanning"



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# Calendar

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

## MARCH

**7 – 9 Municipal Clerks and Treasurers Institute Spring Session – Year 3, Session A.** Hyatt Place Columbia. Topics include the basics of public speaking and media relations, ordinance preparation, employee evaluations and their importance, and human resources records management.

**11 – 13 SC Utility Billing Association Annual Meeting.** Hilton Myrtle Beach. Topics include workplace violence response; meter technology; and the practical, financial, technical and aesthetic implications of solar power.

**20 Municipal Elected Officials Institute of Government: Basic Budgeting and Municipal Finance.** Regional councils of governments' locations.

**21 SC Association of Municipal Power Systems Legislative Breakfast.** S.C. State House.

**22 Municipal Technology Association of SC Spring Meeting.** Columbia Conference Center. Topics include the U.S. Census and its IT implications, Enhanced 911, and a Criminal Justice Information Services Division update from the State Law Enforcement Division.

**28 SC Business Licensing Officials Association Spring Training Institute and Advanced Academy.** Columbia Conference Center. Topics include preparing for the ABL exam and addressing specific business license problem areas.

## APRIL

**13 Municipal Court Administration Association of SC Spring Meeting.** Columbia Conference Center. Topics include bond estreatments, changes in the S.C. Freedom of Information Act and an update from the S.C. Department of Motor Vehicles.

**13 Spring Managers Forum.** Columbia Conference Center.

**18 (repeated on April 19) SC Association of Municipal Power Systems Lineman Training.** SCE&G Pine Island, Columbia.

**19 Main Street South Carolina meeting.** Greenwood. The Inn on the Square. Topics include the importance of historic preservation and architecture.

**25 SC Municipal Human Resources Association Spring Meeting.** Columbia Conference Center. Topics include effective internal investigations, ethics and an employer's legal obligations when addressing harassment.

## MAY

**6 – 9 Building Officials Association of SC Annual Meeting.** Ocean Drive Beach and Golf Resort, North Myrtle Beach. Topics include polymetric siding, controlling building air leakage, wall bracing, changes to the international building and residential codes, and how to be a resource for residents after a disaster.