# Foreword

The Municipal Association of South Carolina is a nonpartisan, not-for-profit association representing the incorporated municipalities in South Carolina. The Association provides elected and appointed officials with educational opportunities, technical and legal assistance, concentrated lobbying efforts in the General Assembly, risk management programs, and information through various communication vehicles.

The Association is dedicated to offering services and programs that will give municipal officials the knowledge, experience and tools for making the best possible public decisions in the complex world of municipal government. It is in the spirit of this dedication that we prepared this handbook for municipal officials.

This handbook offers officials a general overview of local government operations. Additional copies of the handbook are $10 for municipal officials and $15 for others. To order additional copies, call the Municipal Association at 803.799.9574. A PDF version of the handbook is available at www.masc.sc, (keyword: Handbook for Municipal Officials). The online version will contain the latest updates from law changes and court cases.

December 2017

*Check www.masc.sc (keyword: publications) for the latest version of Municipal Association publications.*

*Editor's Notes: Unless the context clearly indicates otherwise, wherever a masculine pronoun is used in this publication, the same is intended, and shall be understood and interpreted to include all individuals, of any gender, or those who do not identify with any gender. The S.C. Code of Laws is referenced by individual section numbers throughout this handbook.*

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# CHAPTER 1

# THE GOVERNING BODY

## Home Rule

South Carolina municipalities are subordinate units of state government. They derive their power from the state constitution and laws adopted by the General Assembly. Municipal powers are to be liberally construed in favor of municipalities. However, municipal ordinances, resolutions and regulations must be consistent with the federal and state constitutions and with the laws of South Carolina and the United States.

In 1973, the General Assembly passed substantial revisions to the 1895 South Carolina Constitution, including a new local government article.

Article VIII provides

- General law establishes the structure, organization, powers, duties, functions and responsibilities of municipalities. *Section 9.*
- The General Assembly must treat municipalities uniformly. The General Assembly may not enact laws for specific towns or cities. *Section 10.*
- The General Assembly will provide procedures for incorporated municipalities to adopt a charter. [The Legislature has not done this yet.] *Section 11.*
- Political subdivisions may agree to share the cost, responsibility, and administration of various services and functions. *Section 13.*

The Local Government Act of 1975, popularly known as the Home Rule Act, is the framework of laws to implement the 1973 constitutional changes. It provides municipalities with greater uniformity as well as expanded freedom and flexibility to control local affairs.

**Municipal Powers**

Chapter 7 of Title 5 of the S.C. Code of Laws (Volume 2, 1976) provides the general structure, organization, powers, duties, functions and responsibilities of municipalities. This and other chapters in Titles 5 and 6 list the following specific municipal powers, among others:

- regulate roads, markets, law enforcement, health and order;
- regulate any subject necessary for the security, general welfare and convenience of the municipality;
- preserve health, peace, order and good government;

- levy and collect taxes, uniform service charges, assessments and business license taxes;
- grant franchises for use of public streets and public beaches;
- abate nuisances;
- provide recreation, parks and playgrounds;
- borrow in anticipation of taxes;
- pledge revenues and full faith and credit;
- conduct advisory referenda;
- fix fines and penalties up to $500 and/or 30 days;
- own, sell, and lease real and personal property;
- acquire property for any corporate or public purpose by eminent domain;
- furnish services outside corporate limits by contract;
- provide fire protection services and building inspections;
- appoint police officers and contract police services to other cities;
- adopt zoning and subdivision regulations;
- establish a municipal court;
- provide for municipal elections;
- authorize street and sidewalk encroachments;
- establish off-street parking facilities;
- own and operate water, sewer, gas and electric systems, and other public utilities;
- contract for joint facilities;
- engage in community development activities;
- invest funds in approved obligations;
- create improvement districts, tax increment finance districts and redevelopment commissions;
- establish a local housing authority; and
- alter municipal boundaries through annexation.

## Municipal Council

The municipality's governing body is responsible for all the powers granted a municipality and for the performance of all duties and obligations imposed by law. *Section 5-7-160.*

Council cannot delegate the power to decide legislative matters to an individual councilmember, a municipal officer or employee, a committee or a committee composed of councilmembers. The legislative power rests in the collective judgment and discretion of the council whose members are chosen by the people.

Unlike the state legislature, which is re-created at each new election, a municipal council is a continuous governing body. It can continue its business after its members have left office and new members elected to succeed them.

**Quorum**

A majority of the council's total membership constitutes a quorum. S*ection 5-7-160.* Council must have a quorum present to transact official business and to discharge its duties and responsibilities. A quorum for a seven-member council is four members, while a quorum for a five-member council is three members. Some ordinances require a positive majority of the councilmembers to take a certain action. A positive majority is a majority of the total number of members of the council, not a majority of the members present and voting.

**Abstaining from Voting**

Sometimes a problem arises when councilmembers in attendance at a meeting fail to vote or abstain from a matter under consideration. Council should consider adopting rules of procedure to require all councilmembers who are present to vote unless prohibited by a conflict of interest.

Regardless of the form of government, mayors are entitled to make motions, second motions and vote on matters coming before council unless prohibited by a conflict of interest (See Conflict of Interest below).

**Salary and Expenses**

By ordinance, council determines the annual salary of its members. *Section 5-7-170.* An ordinance establishing or increasing council salaries does not go into effect until the start date of the terms of two or more members elected at the general election following the ordinance's adoption. At that time, the salary becomes effective for all councilmembers.

The mayor and councilmembers may receive payment, within limitations prescribed by ordinance, for actual expenses incurred while performing their official duties. Municipal officials may not receive reimbursement for expenses incurred by their spouses.

**Dual Office Holding**

According to Article VI, Section 3 of the S.C. Constitution, no person may hold two offices of honor or profit at the same time. This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables or delegates to a constitutional convention. (Article XVII, Section 1A contains a similar provision.)

"Except where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected." *Section 5-7-180.*

An exception to these prohibitions is service on the board of one of the state's 10 regional planning districts or councils of governments. *Article VIII, Section 13(C).*

**Conflict of Interest**

Public officials cannot use their official positions or offices for personal financial gain. *Section 8-13-700.* The law prohibits mayor and councilmembers, as officials, from participating in council decisions affecting them or an immediate family member's financial or economic interest. The law defines "immediate family" as a spouse, a child residing in the official's household or an individual claimed as a dependent for income tax purposes. Municipal elected officials also cannot participate in decisions affecting the financial or economic interest of a business or a person with whom they are associated. *Sections 5-7-130, 8-13-100, 8-13-700.*

The mayor or councilmember must make a written statement describing the potential conflict of interest and submit it to the mayor and council. The statement is printed in the minutes. The member is excused from votes, deliberations and other actions where the potential conflict of interest exists. The member is not required to leave the meeting. *Section 8-13-700(B).*

A public official, including a person serving on an agency, unit or subunit of a governmental entity, is not required to resign or otherwise vacate his seat or position due to a conflict of interest regarding a particular issue. Instead, the public official must give notice of the possible conflict of interest and comply with the recusal requirements of Section 8-13-700(B). An individual or business associated with a municipal official may represent a client before a governmental entity on which that official serves as long as the official recuses himself from voting on the particular matter in which his business or associate is involved. *Sections 8-13-740(A); 8-13-740(A)(5).*

Under the state ethics law, disclosing known or potential conflicts of interest is the responsibility of the official or member with a known or potential conflict. *Section 8-13-700(B).* The presiding official or other official members should not make public statements about perceived conflicts of interest of other officials or members.

State law prohibits municipal officers from contracting with the municipality. There are two exceptions. First, in cities with more than 30,000 population, such contracts may be allowed by unanimous vote of the city council on each specific contract. The yea and nay vote taken must be entered in the council's minutes. Second, a municipal officer may enter into a contract when the contract is awarded to the officer as low bidder after a public call for bids and the contract is allowed by unanimous vote of council on each particular contract. The yea and nay vote taken must be entered in the council's minutes. *Section 5-21-30.*

**Term of Office**

Regardless of the form of municipal government or the election method, mayors in South Carolina are elected at large. *Section 5-15-20.* The term of office for mayors and councilmembers is either two or four years. Unless otherwise provided by ordinance, elections are four-year terms and are staggered so half the council is elected every two years. Two-year terms are not staggered. *Section 5-15-40.*

**Mayor Pro Tempore**

Immediately after any general election for council, the council elects from its membership a mayor pro tempore for a term of not more than two years. The mayor pro tempore acts as mayor during the mayor's absence or disability. If a vacancy occurs in the office of mayor, the mayor pro tempore serves as mayor until a successor is elected. *Section 5-7-190.*

**Qualifications for Office**

The council is the judge of its members' election, qualifications and grounds for forfeiture of office. Council has the power to subpoena witnesses, administer oaths and require the production of evidence for these purposes. A member charged with conduct constituting grounds for forfeiture of office is entitled to a public hearing. The member may appeal decisions to the Court of Common Pleas. *Section 5-7-210.*

**Temporary Vacancy – Military Service**

When a temporary vacancy occurs because of military service, the governor, upon the recommendation of the council, shall appoint an individual as a temporary replacement until the expiration of the term or the return of the individual, whichever is shorter. This temporary replacement

will be subject to all rights, power and authority; shall perform the duties of the officer and shall receive the same compensation as the replaced individual would have received. *Sections 8-7-10, 8-7-40 and 8-7-50.*

**Vacancy**

When a vacancy occurs in the office of mayor or council, the remainder of the unexpired term is filled at the next regular election. If the vacancy occurs 180 days or more before the next general election, the municipality must order a special election. *Sections 5-7-200(B) and 7-13-190.*

**Resignation from Office**

A councilmember may submit a written, irrevocable resignation from office effective on a specified date. The municipality must hold an election to fill the vacancy pursuant to *Section 7-13-190* within the time calculated from the date the resignation is submitted. The newly elected member may not take office until the vacancy actually occurs. *Section 8-1-145.*

**Suspension from Office**

The governor may suspend a mayor or councilmember if the following two stipulations are met:

- Probable cause exists that the mayor or councilmember is guilty of embezzlement or the appropriation of public or trust funds for private use.
- A true bill is returned by the grand jury or waiver of indictment by the accused. *Article VI, Section 8, S.C. Constitution.*

**Removal and Forfeiture of Office**

Article VI, Section 9 of the S.C. Constitution says, "Officers shall be removed for incapacity, misconduct, or neglect of duty, in such manner as may be provided by law when no mode of trial or removal is provided in this Constitution." Section 5-7-200(A) provides that a mayor or councilmember shall forfeit his office if he

- loses any qualifications for the office at any time during his term,
- violates any express prohibition of Chapters 1 - 17 of Title 5 of the S.C. Code of Laws, or
- is convicted of a crime involving moral turpitude.

A member charged with conduct constituting grounds for forfeiture is entitled to a public hearing. The member may appeal decisions to the Court of Common Pleas. *Section 5-7-210.*

## Forms of Municipal Government

Three forms of municipal government exist in South Carolina:

- mayor-council (strong mayor) - Title 5, Chapter 9 of the S.C. Code of Laws
- council (weak mayor) - Title 5, Chapter 11 of the S.C. Code of Laws
- council-manager - Title 5, Chapter 13 of the S.C. Code of Laws

All South Carolina municipalities operate under one of these forms. Although the administrative function of government varies with each form, the legislative function remains the council's responsibility under all three forms.

**Mayor-Council Form**

The mayor-council form requires a council composed of a mayor and no less than four councilmembers.

Often this is called the "strong mayor" form because of the mayor's dual responsibilities. The mayor acts in a legislative capacity as a voting member and presiding officer of the council. He also acts in an executive capacity as the chief administrative officer of the municipality. The mayor, under this form, has the following powers and duties:

- to appoint, suspend, or remove all municipal employees and appointive administrative officers, except as otherwise provided by law or personnel rules adopted by council;
- to direct and supervise the administration of all departments, offices and agencies of the municipality;
- to preside at meetings of the council and vote as other councilmembers;
- to act to ensure that all laws and ordinances of the council are faithfully executed;
- to prepare and submit the annual budget and capital program to the council;
- to submit to the council and make available to the public a complete report on the finances and administrative activities of the municipality as of the end of each fiscal year; and
- to make other reports concerning the operations of municipal departments, offices and agencies subject to his direction and supervision. *Section 5-9-30.*

The mayor and council may employ an administrator to assist the mayor. *Section 5-9-40.* The South Carolina Attorney General's Office has interpreted this section to mean that the mayor, as a member of council, along with the other members of council, may by majority vote, employ or terminate an administrator. The administrator may not be assigned functions that conflict with or usurp the powers assigned to the mayor by state statute.

State law requires council action to appoint a municipal clerk, attorney, judge and election commissioners. Council may establish and determine the functions of municipal departments, offices and agencies. Council must adopt an annual balanced budget for the municipality's operation and for capital improvements. *Section 5-9-40.*

**Council Form**

The council form of government is considered "government by committee" because the council exercises all legislative and administrative functions. In this form, known as the "weak mayor" form of government, the council is composed of a mayor and four, six or eight councilmembers. *Section 5-11-20.*

The mayor has no powers or responsibilities beyond other councilmembers. By tradition, the mayor presides over council meetings, calls special meetings and designates a municipal judge in certain cases. Council may delegate administrative duties to the mayor.

Council may establish and determine the functions of municipal departments, offices or agencies. *Section 5-11-40(A).* It must adopt operating and capital budgets for the municipality prior to the beginning

of the fiscal year. It also must provide for the levy and collection of taxes necessary to meet the budget requirements. *Section 5-11-40(C).*

Council may hire an administrator whose duties and responsibilities should be clearly defined by ordinance. *Section 5-11-40(A).*

**Council-Manager Form**

Sumter has the distinction of being the first municipality in the United States to operate under a council-manager form of government.

Under the council-manager form, the council is composed of a mayor and four, six or eight councilmembers. *Section 5-13-20.* The municipality employs a manager to act as chief administrator of the council's policies and, to the extent possible, separate the policymaking function from the administrative function.

Council hires the manager, who serves at the council's pleasure. *Sections 5-13-50, 5-13-70.* Council must employ a manager based on his executive and administrative qualifications. Council sets compensation for this position. *Sections 5-13-50, 5-13-70.*

State law forbids the mayor and councilmembers from dealing with employees or interfering with the operation of municipal departments, offices or agencies under the manager's direction. *Section 5-13-40.* The mayor and council set municipal policy. The manager implements the policy through administrative control of municipal departments, offices and agencies.

The mayor acts as another member of council. By tradition, the mayor presides at council meetings, calls special meetings and designates a municipal judge in certain cases.

Council has all legislative powers of the municipality and determines all matters of policy. *Sections 5-7-160, 5-13-30.*

Other specific duties and powers of council include

- creating, changing or abolishing other administrative departments and assigning work to them upon recommendation and approval of the manager;
- adopting a balanced budget;
- authorizing the issuance of bonds by bond ordinance;
- inquiring into the conduct of any municipal office, department or agency, making investigations as to municipal affairs and giving the public information concerning them;
- adopting and modifying the official map of the municipality;
- providing for independent annual Audits;
- providing for the general health and welfare of the municipality through the use of the general police powers granted to municipalities;
- enacting ordinances;
- appointing, with the advice of the manager, all committees, boards and commissions relating to the affairs of the municipal government; and

- appointing a temporary administrative officer to act as manager during a manager's absence or disability. *Sections 5-13-30, 5-13-80, 5-13-100.*

The council may require surety bonds of the manager and other municipal employees. The municipality must pay the cost for these bonds. *Section 5-13-60.*

*City Manager*

The city manager is the chief executive officer and head of the administrative branch. The manager is responsible to council for properly administering all of the municipality's affairs. The manager's responsibilities include

- appointing, removing and setting salaries of any appointive officer or employee of the municipality;
- preparing and submitting to council and implementing the budget;
- preparing a complete annual report on the finances and administrative activities of the municipality for the preceding fiscal year;
- advising council of the financial condition and future needs of the municipality and making such recommendations as may be necessary;
- performing other duties prescribed by law or required of him by the council. *Section 5-13-90;* appointing the municipal clerk. *Section 5-7-220*.

If council decides to remove the manager, it must give the manager a written statement of the reasons for the proposed removal. The manager has the right to a hearing at a public meeting of council. *Section 5-13-70.*

**Changing the Form of Government**

An election to change the form of municipal government can be called for by a certified petition of 15 percent of the qualified electors or by an ordinance of council. *Section 5-5-20.* Elections to change the form of government can be held only every four years. Under the Voting Rights Act, the U.S. Department of Justice must approve or clear the implementation of an election result in favor of changing the form of government. Following the election, the municipality must notify the S.C. Secretary of State's Office if the form of government changes. *Section 5-5-30.*

Prior to the U.S. Supreme Court's decision in *Shelby County, Ala. v. Holder* (2013), municipalities were required to get prior approval or clearance from the U.S. Department of Justice, Civil Rights Division, before changing election procedures, registration procedures or requirements, polling places, precinct or ward boundaries, form of government, annexations, or any other election process feature that could diminish the ability of racial and language minority groups to effectively exercise their right to vote. While such submissions are not currently required by federal law, some jurisdictions have continued submitting notice of such actions. Municipalities seeking further clarification are advised to seek advice from legal counsel. *(See page 19 for information on current U.S. Department of Justice requirements)*

# CHAPTER 2

# ELECTIONS

Elections serve many purposes in the operation of municipal government. Municipal government is the form of government closest to the people. It is through the election process the people evaluate the performance of their local elected officials.

There are two basic types of elections: a general (regular) election and a special election.

Under South Carolina law, a general election is held to select officers to regular terms of office as provided by law.

Examples of special elections include an election to fill a vacancy in an office due to resignation or death of the incumbent or an election (usually referred to as a referendum) in which a question is submitted by ballot to the voters for adoption or rejection. *Section 7-1-20*.

Because a municipality has no inherent power to hold an election, state law must authorize the holding and conducting of a municipal election. All municipal elections must be conducted in accordance with Title 7 of the S.C. Code of Laws except where matters are specifically covered in Title 5, Chapter 15.

The Municipal Association of South Carolina publishes the *Municipal Election Handbook* as a reference guide for conducting municipal elections.

## Types of Elections

**General Election**

A general (regular) election for mayor and council is usually held every two years.

In municipalities where the mayor and councilmembers serve four-year terms, the terms, unless otherwise provided by ordinance, are staggered so voters elect the mayor and no more than half the council in the same election. Two years later, voters elect the other councilmembers in another general election.

In municipalities where the term of office is two years, voters elect the mayor and entire council at the same time. *Section 5-15-40.*

If council decides to change the terms of office, it may do so by passing an ordinance. *Sections 5-15-20, 5-15-40, 5-15-70.*

Under the provisions of the Voting Rights Act, the U.S. Department of Justice must approve or clear any change in terms of office prior to implementation. *(See page 19 for information on current U.S. Department of Justice requirements)*

**Special Elections**

*Vacancy in Office*

Voters must fill a mayor or council vacancy by election. The seat cannot be filled by appointment. If a vacancy occurs 180 days or more before the next municipal general election, council must order a special election to fill the unexpired term. *Section 5-7-200(B).* Section 7-13-190 prescribes the time for holding a special election to fill a vacancy. The U.S. Justice Department must approve or clear any discretionary setting of the special election date or scheduling of events leading up to or following a special election. *28 Code of Federal Regulations, Section 51.17.* Otherwise, Justice Department clearance is not required prior to implementation.

Council may select, by ordinance, a partisan or nonpartisan nomination and election procedure, set filing dates for candidates, set times for filing nomination petitions, set times for holding conventions or primary elections, and prescribe the method for determining election results (plurality or majority vote). *Sections 5-15-60 and 5-15-70.*

*Additional Reasons for Special Elections*

The municipality must hold a special election to change its form of government, the method of election of council (at large, districts or combinations), the number of council seats or the name of the municipality. The election is initiated by ordinance or by a petition signed by 15 percent of the municipality's qualified electors. *Sections 5-5-20, 5-15-30 and 5-15-40.*

The municipality can only hold an election every four years to change the form of government. It can hold elections every two years to change the election method or number of councilmembers. Under the Voting Rights Act, the U.S. Department of Justice must approve or clear any changes prior to implementing the changes.

*Political Party Primary Elections*

If a municipality uses a partisan process, the political parties may conduct primary elections to nominate candidates. The party conducts the primary election and certifies its candidates to the municipal election commission no later than 60 days before the general election. The political party, not the municipal election commission, conducts the primary election.

The municipal election commission is responsible for conducting a nonpartisan primary, if applicable, and the general election to elect a mayor or councilmember once candidates are nominated. *Sections 5-15-60 and 5-15-70.* Through an ordinance and agreement with the county, a municipality may transfer all or part of the authority to conduct municipal elections to the county election commission. *Section 5-15-145.* See the *Municipal Election Handbook* for detailed discussion, timetables and forms for conducting municipal elections.

*Advisory Referendum*

All municipalities have the authority to conduct an advisory referendum on issues confronting the council. An advisory referendum is a special election ordered by council and conducted by the municipal election commission. The council is not bound by the advisory referendum's results. *Section 5-7-30.*

*Petition Initiative Referendum*

Municipal electors can propose any lawful ordinance, except one appropriating money, authorizing the levy of taxes and changing zoning lawfully adopted by council. *Section 5-17-10.* Within 60 days, electors may initiate the repeal of an ordinance authorizing the issuance of bonds, notes or other evidence of debt that requires a pledge of the municipality's full faith and credit, except bond issues approved by referendum or notes issued in anticipation of taxes. *Section 5-17-20.*

The initiative and referendum process is initiated by filing a petition signed by at least 15 percent of the registered electors at the last regular municipal election and certified by the municipal election commission. *Sections 5-17-10, 5-17-20*. If council fails to pass or repeal an ordinance as petitioned or passes one substantially different from what is petitioned, the municipality must conduct a referendum election within one year of the council's final vote on the adoption or repeal. *Section 5-17-30.*

*Utility Systems Referendum*

Before a municipality may acquire, by initial construction or purchase, and operate gas, water, sewer, electric, transportation or any other public utility systems or plants, it must hold a referendum. If a majority of the electors voting on the question approves, the municipality may acquire or purchase and provide the service. *Article VIII, Section 16, S.C. Constitution.*

*Exclusive Franchises*

Municipalities may grant exclusive franchises for furnishing water, sewage and electric services to the municipality if the proposed franchise is approved by two-thirds of the council and confirmed by a positive vote of a majority of the electors voting on the question. *Sections 5-31-50, 58-27-410.* A franchise granted by ordinance is a nonexclusive franchise. *Section 5-7-30.*

*General Obligation Bonds*

The state constitution limits the amount of general obligation bonds a municipality can issue without voter approval. The limit is 8 percent of the total assessed value of all taxable property in the municipality. *Article X, Section 14, SC Constitution.*

*Debt Limit*

Bonds approved by a referendum do not count against the 8 percent limit. Lease-purchase agreements for real property or permanent improvements (such as structures, buildings, fixtures) are subject to the 8 percent debt limit. *Section 11-27-110.*

The referendum question must ask if the council should be granted the power to issue general obligation bonds for a specific purpose that would cause the municipality to exceed the 8 percent limit. The question's wording is extremely important, because council can use the bond proceeds only for the projects described on the ballot. *Sections 5-21-250, 5-21-290, 5-21-310, 7-13-400.*

Public information issued before the referendum should include an explanation of the question appearing on the ballot, the projects to be funded with the bond proceeds and the bond sale's effect on the municipality's operating budget. The information should include an estimate of the debt service for several years and the millage required to service this debt.

The referendum ballot question and the voter instructions on the ballot must be neutral and not an argument for approval or rejection. See *W.J. Douan v. Charleston County Council*, *356 S.C. 602, 590 S.E. 2d 484 (2003)*.

## Voter Qualification and Registration

South Carolina law provides that any citizen of the United States and of this state who is at least 18 years old, has resided within the municipality for 30 days prior to any municipal election, has been registered for more than 30 days and is not disqualified from being registered or voting is entitled to vote in all municipal elections held in his municipality of residence. *Article II, Sections 4, 5, S.C. Constitution; Sections 7-5-120, 7-5-220, 7-5-610.*

An individual may submit an application to the county board of registration either in person or by mail. The individual must submit a registration by mail 30 days before the election. No special municipal registration is required. *Sections 7-5-155, 7-5-170, 7-5-630.* There are also provisions authorizing absentee voter registration. *Sections 7-15-110 to 7-15-260.*

## Absentee Ballot

An elector wishing to vote by absentee ballot must apply by mail to the county registration board at least four days before an election or in person no later than 5 p.m. on the day before the election. *Section 7-15-330.* Generally, absentee ballots are available to individuals such as students, members of the armed services, overseas citizens, vacationers, disabled people and electors who are required to be at work when the polls are open. *Section 7-15-320.* For the qualified electors of this state who are eligible to vote as provided by the Uniformed and Overseas Citizens Absentee Voting Act (United States Code, Title 42, Section 1973ff, et seq.), an absentee ballot with an absentee instant runoff ballot for each potential second primary must be sent to the elector at least 45 days before the primary election. *Section 7-15-405(A).*

## Nomination of Candidates

Mayors and councilmembers must be qualified electors of the municipality. If councilmembers are subject to residential or ward requirements, they must be qualified electors of the ward (single-member district) prescribed for their election qualification. *Section 5-15-20.*

An ordinance adopted by council must state: (a) the method used for candidates to file or be nominated for municipal office; and (b) the method used to determine election results. Council may provide for either nonpartisan or partisan elections. *Section 5-15-60.*

**Nonpartisan Elections**

The vast majority of South Carolina municipalities have a nonpartisan election procedure to select the mayor and council. By ordinance, a municipality with nonpartisan elections must choose among three alternatives:

- plurality method,
- election and runoff method, or
- primary and general election method. *Section 5-15-60.*

*Plurality Method*

With the nonpartisan plurality method, only one election is required. If two or more candidates seek election to a single office, the one who receives the highest number of votes is elected.

In elections for two or more offices in which more candidates are seeking election than there are offices to be filled, those receiving the highest number of votes (equal to the number of offices to be filled) are elected. (If six candidates are seeking election to four council seats, the four receiving the highest number of votes are elected.) *Section 5-15-61*.

*Election and Runoff Method*

The nonpartisan election and runoff method may require two elections, depending on whether a candidate receives a majority of the votes cast in the first election.

When more than one person seeks election to a single office, a "majority" is a number that exceeds the total votes cast for all candidates divided by two. If no candidate receives a majority, the municipality must hold a second election two weeks later between the two candidates receiving the highest number of votes in the first election.

When more candidates than there are offices seek election to two or more offices, a "majority" is a number that exceeds the total votes cast for all candidates divided by the number of offices to be filled then divided again by two. If some or all of the seats are not filled in the first election because the candidates did not receive a majority, the municipality must hold a second election two weeks later between one more than the number of candidates necessary to fill the vacant seat(s) (such as four candidates for three offices). The candidates receiving the highest number of votes cast in the runoff election (equal to the number of offices to be filled) are declared elected. *Section 5-15-62.*

*Primary and General Election Method*

The primary and general election method may require two elections depending on the number of people who file.

- If the number of candidates for a group of offices is equal to twice the number of offices to be filled, the candidates are declared nominated and no primary election is held.
- If the number of candidates exceeds twice the number of offices to be filled, a primary election is held to reduce the field of candidates to twice the number of offices to be filled. The candidates receiving the highest number of votes are declared nominated. A general election is held, and the candidates receiving the highest number of votes (equal in number to the number of offices to be filled) are elected. *Section 5-15-63.*

**Partisan Elections**

If a municipality adopts a partisan election process, the candidates' nominations become a political party matter subject to certain requirements and limitations imposed by state law. Nominations for municipal offices may be by

- political party primary,
- political party convention, or
- petition. *Section 5-15-70.*

*Party Primary*

By ordinance, council determines the time of entry of candidates, the time for closing of entries and the date for holding a party-nominating primary. The political party conducts the primary election in accordance with state general election law, declares the result of the election and certifies to the municipal

election commission the party's nominees no later than 60 days before the general election. *Sections 5-15-70, 5-15-80.*

*Party Convention*

Council, by ordinance, determines the time for holding party conventions, the time for entry of candidates and the time for closing of entries. The party holds its convention and nominates candidates in accordance with state election law and party rules. The party must certify its nominees to the municipal election commission 60 days before the general election. *Section 5-15-70.*

*Petition Nomination*

Candidates nominated by petition must file a standardized petition with the municipal election commission 75 days prior to the general election. At least 5 percent of the voters in the municipality or district (the geographical area of the office) must sign the petition. The municipal election commission must verify the signatures at least 60 days before the general election. *Sections 5-15-70, 5-15-110.*

Important note: If the municipal general election is conducted on the same date as the state's general election (the first Tuesday after the first Monday in November of even-numbered years), petition candidates' filing deadline is noon, July 15. This date coincides with the county's filing deadline for petition candidates. *Section 7-13-351.*

*Single candidate - elections must be held*

Municipal elections must be held even when one candidate files.

*Note: S.C. Code 7-13-190(E) regarding uncontested municipal general elections was repealed by the South Carolina General Assembly. Effective January 1, 2018, municipal elections must be held, even when only one candidate files for the office.*

## The Election Process

**Council Responsibilities**

A municipal council, as the governing body, is responsible for performing certain duties concerning the election process. *Sections 5-15-10 to 5-15-170.*

It must provide by ordinance for the election of its members by selecting one of the following methods:

- All members of the council elected from the municipality at large.
- One member elected from each ward (district) of the municipality by the qualified electors of the district. Candidates seeking office from a particular district must reside in the district during their entire term of office.
- Some members elected from districts and the remainder elected from the municipality at large.
- Some members required to be residents of particular districts, but elected from the municipality at large.
- Some members required to be residents of particular districts and others required to be residents of the municipality without regard to a particular district. All members are elected from the municipality at large.

The mayor must be elected at large regardless of the election method adopted. Mayors and councilmembers must be qualified electors of the municipality. If their election is subject to residential or district requirements, they must be qualified electors of the district prescribed for their election. *Section 5-15-20*.

The council also must

- provide by ordinance a method (nonpartisan or partisan) of nominating candidates for mayor and council;
- provide by ordinance a method for determining the election results (plurality, election and runoff, or primary and general election);
- provide by ordinance the time and manner of filing;
- establish by ordinance the time for general and special elections;
- establish by ordinance district lines;
- appoint the municipal election commission;
- order a new election, if an election is successfully contested; and
- reapportion election districts to comply with the "one-man, one-vote" principle.

**Public Notices**

The municipality must publish two public notices of all elections in a newspaper of general circulation in the municipality. The first notice must appear at least 60 days before the election, and the second notice must appear at least two weeks after the first notice. The notices must contain certain information. *Sections 7-13-35 and 5-15-50.*

**Redistricting**

After each 10-year U.S. Census Bureau report, municipalities with single-member districts or a combination of at-large and single-member districts should review their census data to determine any population shifts between election districts. If shifts in gross population result in disproportionate election districts, the municipal council must reapportion the districts. Section 5-15-50 of the S.C. Code authorizes municipal councils to redraw municipal district lines.

Reapportionment (also referred to as redistricting) is subject to the approval or clearance by the U.S. Department of Justice under the Voting Rights Act prior to implementation. *(See page 19 for information on current U.S. Department of Justice requirements)*

There is no reapportionment requirement for municipalities using an at-large election method.

**Municipal Election Commission**

The municipal election commission is the central figure in the municipal election process. Every municipality must have a commission and keep it in existence on a continuous basis.

The municipal election commission is responsible for conducting all municipal elections held under Title 5, Chapter 15 of the S.C. Code of Laws. It supervises and conducts all municipal special and general elections. *Section 5-15-90.* Also, the commission is vested with the functions, powers and duties of the municipal supervisors of registration. *Section 5-15-100.*

In 2010, the General Assembly amended Section 5-15-90 to make training mandatory for municipal election commissioners. Commissioners appointed on or after May 28, 2010, must complete training as established by the state Election Commission within 18 months of appointment. The training is not mandatory for commissioners appointed prior to May 28, 2010. However, they are encouraged to receive the training as well.

Council appoints the municipal election commission members. The commission is composed of three electors who must be municipal residents. Appointments are for six-year, staggered terms. The local governing body may reappoint members as their terms expire.

The commission elects one of its members as chairperson.

After appointment, each municipal election commissioner must take and sign the oath of office, prescribed by Article III, Section 26 and Article VI, Section 5 of the S.C. Constitution. The signed oath must be immediately filed with the municipal clerk and maintained as a public record.

The Municipal Association of South Carolina has prepared the *Municipal Election Handbook* outlining the municipal election commission's duties, responsibilities and procedures.

**County Election Commission**

A municipality may transfer authority to conduct municipal elections to the county election commission if the governing bodies of the municipality and county agree by ordinance to transfer terms. *Section 5-15-145.*

The Board of State Canvassers for Municipal Primaries hears any protest or contest arising from municipal primary elections held by any political party for the purpose of choosing candidates for office or election of delegates to conventions. *Sections 7-17-580, 7-17-590.*

**Contesting a Municipal Election**

The procedure for contesting a municipal election is set out in Sections 5-15-130 and 5-15-140 of the S.C. Code of Laws and supplemented by applicable provisions of Chapter 17 of Title 7. A candidate may contest an election's results by filing with the municipal election commission a written notice giving the reasons for contesting the election within 48 hours of the polls closing. Within 48 hours of the protest's filing, the commission must give notice to the parties involved and conduct a hearing to decide the issue(s) raised. *Section 5-15-130.*

State law does not specify a procedure for the commission to follow for protest hearings. The commission should follow the statutory procedure designated for county boards of canvassers. *Section 7-17-50.*

Under that procedure, testimony at the hearing is limited to the grounds stated in the written protest. The protester and each candidate in the contested election have the right to be present at the hearing, to be represented by counsel, to examine and cross-examine witnesses, and to produce evidence relevant to the grounds of protest. The chairperson should conduct the hearing according to procedures as closely as possible to the procedures and rules of evidence observed by the state's circuit courts. The chairperson has the authority to administer oaths and subpoena witnesses. After the hearing, the commission determines all issues by majority vote. The commission remains in session until it reaches a conclusion. *Section 7-17-50.*

The municipal election commission files its report, all recorded testimony and exhibits with the county clerk of court. The commission notifies the parties of the decision. If the decision invalidates the election, the council must order a new election for the offices concerned. *Section 5-15-130.*

Any party aggrieved by the decision of the municipal election commission may appeal to the Court of Common Pleas within 10 days. The filing of the notice of appeal stays any further proceedings until the appeal is resolved. *Section 5-15-140 and 5-15-120.*

Until an election contest is resolved, the incumbent officeholder remains in office. *Section 5-15-120.*

**Single candidate - elections must be held**

Municipal elections must be held even when one candidate files.

*Note: S.C. Code 7-13-190(E) regarding uncontested municipal general elections was repealed by the South Carolina General Assembly. Effective January 1, 2018, municipal elections must be held, even when only one candidate files for the office.*

**Voting Systems**

The State Election Commission must approve the voting system used in all elections. *Section 7-13-1320.*

## State Ethics Act Requirements

Each candidate must file a Statement of Economic Interests provided by the South Carolina State Ethics Commission at the time of filing a declaration of candidacy or petition for nomination. All filing must be done electronically. In a partisan election, the candidate files the statement with the designated party official authorized to receive it. In a nonpartisan election, the candidate files the statement with the municipal election commission. The statements are forwarded to the Ethics Commission within five business days after the candidacy books close. If the candidate does not file the statement, his name will not appear on the ballot. Once elected, councilmembers must file an updated Statement of Economic Interests annually by April 15. They must list any additions, deletions or changes in financial status since the previous filing. *Sections 8-13-1110, 8-13-1140, 8-13-1356, 8-13-365.*

Appointed officials required to file a Statement of Economic Interests (manager, administrator, finance officer and purchasing officer) must file the statement before assuming their position. They also must file an updated statement annually by April 15. *Section 8-13-1110.* Officials filing on or after January 1, 2017, are required to include the source and type of income received. Income collected by the filer's immediate family members during the past year must also be disclosed.

The Ethics, Government Accountability and Campaign Reform Act of 1991 substantially changed the regulation of campaign practices, finances and reporting.

**Campaign Disclosure Practices**

A candidate or committee must keep records of total contributions received; each contributor's name, occupation and address; the amount and date of receipt of each contribution; the total amount of expenditures; the name and address of each person receiving an expenditure along with the amount, date, purpose and beneficiary of the expenditure; and all receipted bills, canceled checks or other proofs of

payment for each expenditure. The candidate or committee must keep these records for four years. *Section 8-13-1302.*

**Statement of Organization**

Every committee receiving or expending more than $500 in the aggregate in an election cycle must file a Statement of Organization with the Ethics Commission within five days of receiving the contribution or making the expenditure. The committee must file supplemental reports quarterly. *Sections 8-13-1304 and 8-13-1308.*

A committee is any group of people attempting to influence the outcome of an election or ballot measure. *Section 8-13-1300(4).* A candidate or a committee with contributions or expenditures of less than $500 during an election cycle must still file a report at least 15 days prior to an election. *Section 8-13-1308(A).*

The candidate or an authorized committee member must certify all of these campaign reports. *Section 8-13-1308(C).* The Ethics Commission forwards these reports to the appropriate clerk of court. *Section 8-13-1310.*

**Certified Campaign Report – Contributors**

A candidate or committee with contributions of more than $100 must file a certified campaign report at least 15 days before an election and must maintain a current list of individuals who contributed more than $100. The candidate or committee must make the list available to the public for inspection from the beginning of the calendar quarter prior to the election. *Section 8-13-1308(D)(1).*

**Accounts**

A candidate may not establish more than one checking and one savings account for each office sought, unless federal or state law requires otherwise (such as employee payroll withholding accounts). *Section 8-13-1312.*

All expenses greater than $25 must be made by check drawn on the campaign account. Any cash expenditures of less than $25 must be shown by receipt or written record. *Sections 8-13-1312, 8-13-1348.* All campaign contributions must be deposited in the campaign account within 10 days of receipt. *Section 8-13-1314.*

- The candidate or committee may not deposit a contribution until he receives the necessary information concerning the contributor's name and address. *Section 8-13-1312.*
- If the candidate or committee cannot determine a contributor's name and address within 10 days of receiving the contribution, he must forward the contribution to the Children's Trust Fund. *Section 8-13-1312.*
- Anonymous contributions are prohibited and must be forwarded to the Children's Trust Fund within seven days of receipt. *Section 8-13-1324.*

No candidate may accept or solicit a contribution greater than $1,000 in a non-statewide race. This does not include the candidate's own money. *Section 8-13-1314.*

The candidate's party and the various party committees may not contribute more than $5,000 to a non-statewide race. *Section 8-13-1316(A).* A candidate cannot accept cash contributions greater than $25. *Section 8-13-1314(A)(2).*

**Unexpected Funds**

Unexpended contributions at the end of the election cycle must be

- used to defray expenses incurred in the public office;
- contributed to a tax-exempt organization, political party or committee;
- maintained for a subsequent race for the same office;
- used to further another candidacy of the individual under certain circumstances;
- returned to contributors on a pro rata basis; or
- contributed to the state general fund.

Candidates cannot use unexpended funds for personal expenses. *Section 8-13-1370.*

A candidate or committee receiving no contributions and making no expenditures during a reporting period must file a Statement of Inactivity. *Section 8-13-1362.*

## Voting Rights Act

The Voting Rights Act of 1965, as amended 42 U.S. Code, Section 1973c, requires local governments to get prior approval or clearance from the U.S. Department of Justice, Civil Rights Division, before changing election procedures, registration procedures or requirements, polling places, precinct or ward boundaries, form of government or any other election process feature that could diminish the ability of racial and language minority groups to effectively exercise their right to vote. In general, the Department of Justice must clear in advance almost any change in voting procedures.

**Submissions for Clearance**

All submissions for clearance from the Department of Justice must be made in writing and contain a number of detailed items, including the following:

- A copy of the ordinance or enactment that would authorize the proposed change.
- A copy of the old ordinance or enactment that would be changed.
- An explanation of the reasoning and purpose behind the proposed change.
- Statements on the need for the proposed change.
- Statements on the anticipated effect of the proposed change.
- Maps or other drawings of proposed changes in boundary lines or districts.
- Demographic information on the racial and language makeup of the population of the area affected by the proposed change.
- Records of any public meeting concerning the proposed change.
- Contact information for members of racial or language minority groups familiar with the proposed change.
- Any other information that the Department of Justice deems necessary for a complete examination of the proposal. See 28 Code of Federal Regulations, Sections 51.26 to 51.28, for specific requirements.

Send submissions by certified mail, receipt requested to: Chief, Voting Section; Civil Rights Division; Room 7254-NWB; Department of Justice; 950 Pennsylvania Ave., NW; Washington, D.C. 20530. The municipality may file a submission electronically from 8 a.m. on Monday to 10 p.m. on Friday (EST) excluding federal holidays.

The Department of Justice has 60 days after receiving the submission to make a decision. If the department requests additional information from any party, a new 60-day period starts. The start of the 60 days is based on the date the Department of Justice receives the requested additional information.

Once it receives all information, the Department of Justice may respond by

- Clearing the submission without objection, which means the proposed change is permitted to take effect.
- Requesting additional information as described above.
- Determining that the proposed change would lead to "a retrogression in the position of members of a racial or language group minority (such as a change that will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively." (It may enter an objection to the submission.)

The Department of Justice may bring a civil suit to provide relief for any violations of the Voting Rights Act provisions. Criminal sanctions may be applied for violating certain provisions of the Act.

Regardless of the Department of Justice decision regarding a submission, any affected party can challenge the proposed changes in federal court.

# CHAPTER 3

# MUNICIPAL MEETINGS AND LEGISLATION

## Council Meetings

Councils are public bodies subject to Freedom of Information Act provisions. *Sections 30-4-10 to 30-4-165*. A meeting as defined by the Act, is "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." *Section 30-4-20(D).*

In recent years, how municipalities conduct their business through public meetings has received considerable attention. This interest has stemmed from many sources. Some of the most important factors are the popular demand for more openness in governmental operations, the momentum toward providing increased public participation in the local government process, the general incentive to improve the efficiency of governmental operations in all aspects, and the recognition of the importance of public meetings as avenues of communication between residents and the governing body. The way a local government handles meetings plays an important role in determining its effectiveness and public image.

**Quorum**

To transact business, council must have a quorum present at the meeting. A majority of the total membership of the council constitutes a quorum for the purpose of transacting council business. Some statutes require a positive majority of the councilmembers to take a certain action. A positive majority is a majority of the total number of members of the council, not a majority of the members present and voting. *Sections 5-7-160 and 30-4-20(E).*

**Abstaining**

Sometimes a problem arises when councilmembers fail to vote or abstain from a matter being considered at a meeting. Rules of procedure adopted by council may require all councilmembers present to vote unless prohibited by a conflict of interest. If a councilmember has a conflict of interest, the minutes should include his letter stating the conflict. The member must not participate in the discussion, vote or other actions. *Section 8-13-700(B).*

Regardless of the form of government, mayors are entitled to make motions, second motions and vote on matters before council unless prohibited by a conflict of interest.

**Presiding Officer**

In the mayor-council form, the mayor, by statute, presides at meetings. *Section 5-9-30(3)*. In the council and the council-manager forms, the mayor (by custom) acts as the presiding officer. In the mayor's absence, the mayor pro tempore assumes the presiding officer's role. *Section 5-7-190*. If both the

mayor and mayor pro tempore are absent and a quorum is present, council can elect by majority vote a councilmember to preside at the meeting until the arrival of the mayor or mayor pro tempore. Council should adopt rules of procedure defining the nature and extent of the presiding officer's authority. *Section 5-7-250.*

**Freedom of Information Act**

The proceedings and records of municipal agencies, Boards and Commissions are subject to the provisions of the state Freedom of Information Act. A public body, as defined by the Act, refers to " . . . any public or governmental body or political subdivision of the State, including . . . municipalities, townships . . . or any organization, corporation or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions ..." *Section 30-4-20(A).*

**South Carolina Public Prayer and Invocation Act**

The South Carolina Public Prayer and Invocation Act establishes a method through which, the South Carolina General Assembly believes, public invocations for the benefit of a public body are constitutionally permissible. *Section 6-1-160*.

A municipal council wishing to offer public prayer should incorporate a prayer policy into their rules of procedures using the Act as a guide. If a council's rules of procedures already include a prayer policy, cities should review those procedures to make sure they comply with changes in the law.

Prayers at meetings of public bodies must not seek to proselytize, advance or denigrate any one faith or belief. A public invocation cannot coerce participation by observers of the invocation. Finally, the Act eliminated the need to rotate delivery of the invocation among the members of the public body. Instead, the body may appoint one of its members to deliver an invocation.

A compliant invocation is for the benefit of the public body (this includes council and any public body appointed by the council), not members of the public attending the meeting. So anyone who delivers an invocation at a meeting of a public body should direct the prayer to the body to mitigate the possibility of running afoul of court rulings on public prayer.

**Notice of Meetings and Agendas**

The municipal clerk is required to give notice of council meetings to members of council and the public. *Section 5-7-220*. The Freedom of Information Act requires municipalities make an effort to notify local media of the time, date, place and agenda of all public meetings whether they are scheduled, rescheduled or called. The meeting's minutes must note the efforts made to comply with this requirement. *Section 30-4-80(E)*.

All public bodies, which include municipal councils, public utility boards, municipal planning commissions, boards of zoning appeals, architectural review boards and all other boards, commissions or committees appointed by council, are subject to public meeting notice and agenda requirements contained in S.C. Code Ann. § 30-4-80 (2015) as amended (Freedom of Information Act).

In response to the state Supreme Court's ruling in *Lambries v. Saluda County Council*, the Freedom of Information Act, Section 30-4-80, was amended in 2015 to require a written public notice and agenda for all meetings of a municipal council and its appointed public bodies. *S.C. Code Ann. § 5-7-250, 30-4-80(a).* This notice requirement applies to all meetings of a quorum of council or its appointed public bodies regardless of the name used to describe the meeting, including any special, called or rescheduled

meeting. A copy of the public notice and an agenda must be sent to individuals, news media and organizations requesting notification of meetings.

For all regularly scheduled meetings, public bodies must give written public notice at the beginning of each calendar year. The annual meeting notice must include the dates, times and places of all regularly scheduled meetings pursuant to S.C. Code Ann. § 30-4-80(A) and (D). An agenda for regularly scheduled meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on the municipal website, if the municipality has a website, at least 24 hours prior to such meeting.

For any special, called or rescheduled meeting, a public notice including an agenda containing the date, time and place of the meeting must be posted as early as is practicable, but no later than 24 hours before the meeting, on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on the municipality's website, if the municipality has a website.

**Adding an Item to the Agenda**

Once an agenda for a regular, called, special or rescheduled meeting is posted, no items may be added to the agenda without an additional 24-hour notice to the public, which must be made in the same manner as the original posting.

After a meeting has been called to order, items proposed to be added to the agenda are classified into three categories each of which require distinct actions to authorize the item to be added to the agenda. The required categories and actions are as follows:

**Information only item**

After the meeting begins, an item which does not require a vote or action of council may be added to an agenda. Council should follow the municipality's adopted rules of procedure for adding an item to the agenda.

**Action items with public comment**

After the meeting begins, an action item, which is not a final action and for which public comment has been or will be received at a publicly noticed meeting, may be added to the agenda by a two-thirds vote of the members present and voting.

**Action item without public comment**

After the meeting begins, an action item, which is a final action or for which public comment has not been or will not be received, may be added to the agenda by a two-thirds vote of the members present and voting, and a finding of an emergency or exigent circumstances.

Council, in determining what constitutes "exigent circumstances" should consider the following definition. Exigent means, "requiring immediate attention or needing to be dealt with immediately." The exigent circumstance exception should not be used if it is possible to schedule a properly noticed called meeting to deal with the issue to be discussed.

The Association recommends council use the following sample language to amend an agenda by emergency or exigent circumstances:

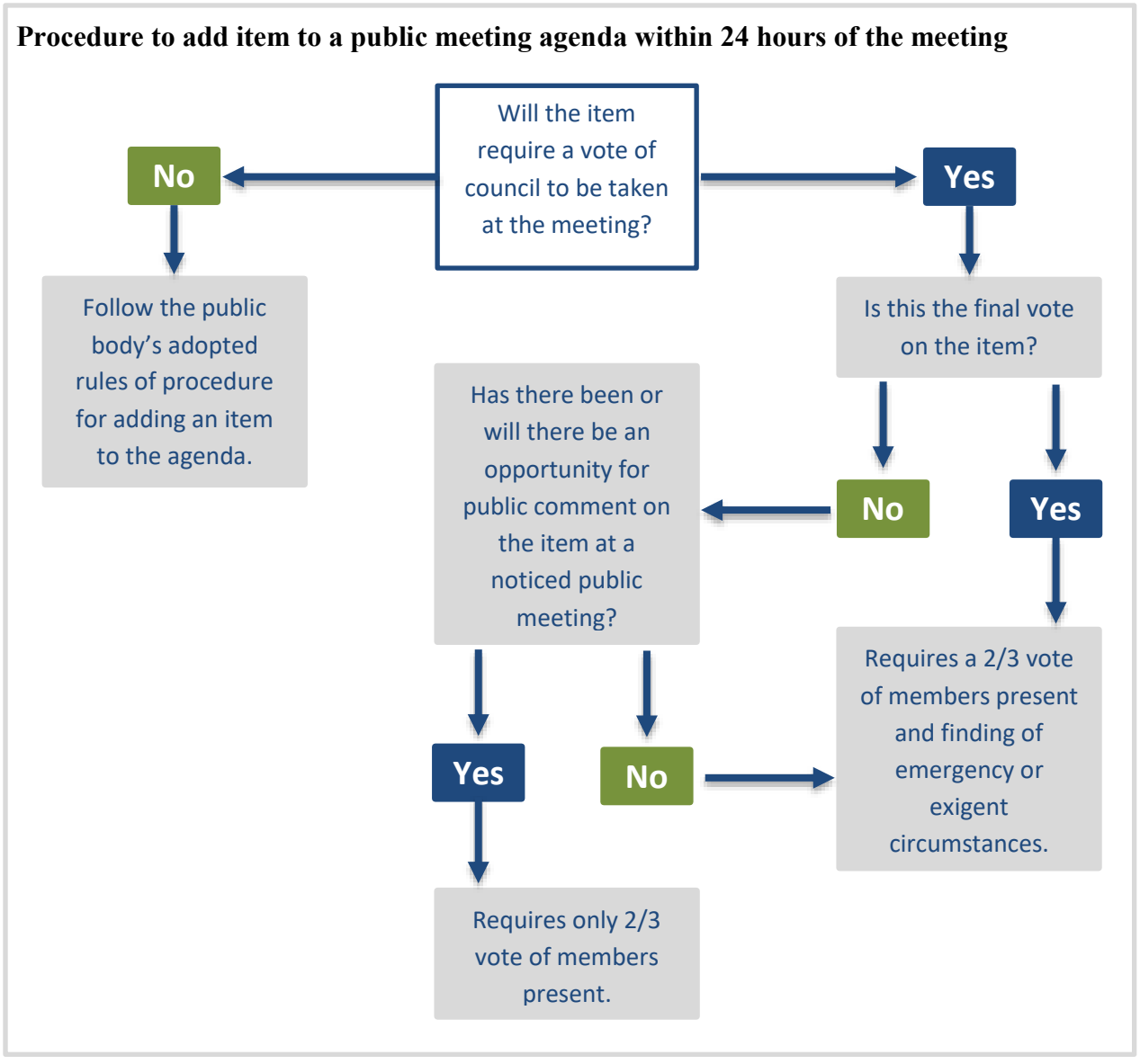
**In accordance with S.C. Code of Laws Section 30-4-80(A), the [NAME OF PUBLIC BODY] finds an emergency or exigent circumstance does or will exist if the [ACTION OR NAME OF ITEM] is not added to the current meeting agenda for the body's consideration and desired action before the conclusion of this meeting.**

Council may edit the sample language to fit the municipality's specific situation when amending an agenda after the meeting has been called to order.

The Municipal Association and the SC Press Association have created a flowchart to guide officials through the process for amending an agenda. See Figure 1 below.

Public meeting notice and agenda requirements do not apply to emergency meetings of public bodies. The requirements of Section 30-4-80 as amended do not relieve a public body of any notice requirement regarding any statutorily required public hearing.

*Figure 1*



**Types of Meetings**

Municipalities have five basic types of meetings:

- regular council meetings,
- special meetings (includes called or rescheduled meetings),
- emergency meetings,
- public hearings, and
- executive sessions (also known as closed meetings or sessions).

Meetings are the avenue for achieving certain goals, such as transacting routine business or providing a forum for communication between the public and the governing body. An incorrect choice of meeting type can potentially have serious disruptive effects on a municipal council's ability to meet effectively and efficiently to achieve the desired result.

*Regular Meetings*

By state law, municipal councils are required to meet regularly (at least once a month) at a time and place as prescribed by local rules of procedure or ordinance. *Section 5-7-250(A).* The frequency is determined by the council's workload. Council should use regular meetings to discuss the municipality's general and routine business and to enact necessary ordinances and resolutions.

*Special Meetings*

The mayor or a majority of the councilmembers may call special meetings which include rescheduled meetings, work sessions and retreats. *Section 5-7-250(A).* Special meetings are held to handle business that arises and cannot be postponed until a regular meeting. Council can effectively use them to

- address issues that affect only a limited number of residents, such as within a neighborhood;
- consider items of high public interest/urgency; or
- reduce the length of prolonged regular meetings.

*Emergency Meetings*

If an unforeseen situation arises that requires immediate action, the mayor or a majority of the councilmembers may call an emergency meeting. The municipality should have emergency meetings only if there is a crisis and council must act with a sense of urgency (i.e. a natural or man-made disaster). The convening authority must act with great caution when calling emergency meetings because they are not subject to the Freedom of Information Act's public notice requirements. *Section 5-7-250(D), Section30-4-80.*

*Public Hearings*

Councils hold public hearings on matters affecting the community and are, by their very nature, open to all members of the public. Council may call a public hearing on any matter it desires. Such meetings provide a forum to permit members of the public to express their opinions on matters of public concern and to permit councilmembers to explain their position on those matters.

Council must hold a public hearing before enacting a budget ordinance. The municipality must publish a notice of the public hearing in a newspaper of general circulation at least 15 days prior to the public hearing. *Section 6-1-80*. Also, council must hold a public hearing before enacting new service fees, user fees or uniform service charges. *Section 6-1-300, 6-1-330(A).* A public hearing is required before adopting a standard code or technical regulations authorized under Section 6-9-60. *Section 5-7-280.*

Public hearings can be used effectively to

- gather information relative to a proposed council action,
- receive public input and recommendations as to the use of public funds (for example, annual budget or grant funds),
- sample public opinion on an issue, or
- receive complaints or suggestions from the public.

In all cases, council should clearly and openly state the reason, purpose and any general procedural rules for the hearing prior to the hearing, so the public understands why the meeting is being held, what to expect from the meeting and how the meeting will proceed.

*Executive Sessions*

In conducting public business, occasions arise when it is necessary and in the best interest of the municipality for council to meet and discuss certain matters in executive session. The Freedom of Information Act *(Section 30-4-70)* authorizes executive sessions, which are closed to the public.

The mayor and council cannot call an executive session simply by issuing a notice. An executive session must be set by motion adopted at a properly noticed and convened public meeting for one of the reasons permitted by the Freedom of Information Act. Council may not take any vote or action in executive session except to adjourn or to return to public session. *Section 30-4-70(B).*

Prior to going into executive session, council must vote in public on the question of closing the meeting. Council must make a motion and vote in a properly convened regular, called or special public meeting to hold an executive session. *Section 30-4-70(B).* If the vote is favorable, the presiding officer must announce the executive session's specific purpose following, as closely as possible, the language of Section 30-4-70(A).

Section 30-4-70(B) defines specific purpose as, "a description of the matter to be discussed as identified in items (1) through (5) of subsection (a)." Items 1-5 include

- **Section 30-4-70(A)(1)**
  Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body. *(The identity of the individual or entity being discussed is not required to be disclosed)*

- **Section 30-4-70(A)(2)**
  Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of Legal Advice where the Legal Advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

- **Section 30-4-70(A)(3)**
  Discussion regarding the development of security personnel or devices.

- **Section 30-4-70(A)(4)**
  Investigative proceedings regarding allegations of criminal misconduct.

- **Section 30-4-70(A)(5)**
  Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body. *(The identity of the individual or entity being discussed is not required to be disclosed.)*

The motion to enter executive session should state all of the five matters noted above that apply as the reason(s) for going into an executive session. It is recommended that the motion include the following three items:

a) The FOIA code section. (Ex: S.C. Code Section 30-4-70 (A)(2))
b) The FOIA code section language. (Ex: Discussion of negotiations incident to proposed contractual arrangements, and the receipt of legal advice where the legal advice relates to matters covered by the attorney-client privilege.)
*c)* The "specific purpose" of the motion as required by law. "Specific purpose" means a description of the specific matter to be discussed as identified in the law. (Ex: For the discussion to renegotiate the town's contract for engineering services and to receive legal advice from our municipal attorney.)

Section 30-4-70(A) provides that if an executive session is held pursuant to either Section 30-4-70(A)(1) or Section 30-4-70(A)(5), then "the identity of the individual or entity being discussed is not required to be disclosed …".

Council cannot take any action in executive session, except to adjourn or return to public session. *Section 30-4-70(B).* Discussions in executive session are limited by law to the topics specifically disclosed in the motion to enter executive session. In addition, the members may not commit the body to a course of action by polling members in executive session. *Section 30-4-70(B).* All council actions must be taken in public session.

In the case of *Brock v. Town of Mt. Pleasant*, the S.C. Supreme Court determined that the town had violated the Freedom of Information Act when, without notice, it took action on matters discussed in executive session after leaving the closed portion of a special meeting. In light of this opinion, the Municipal Association recommends the following statement be included on agendas containing an executive session item: "Upon returning to open session, council may take action on matters discussed in executive session."

**Meeting Facilities**

A meeting's location and layout have a definite impact on the efficiency and quality of council operations. Often, a meeting's overall result takes its tone from the environment in which it is conducted. A poorly arranged and uncomfortable room is not likely to produce positive meeting results. For most municipalities, existing council facilities determine the location. If conditions warrant or if municipal leaders feel it would be an important factor in a particular meeting's success, council should consider holding the meeting in another location (such as schools, courtrooms, church halls). In choosing a place, there are a number of factors to take into account, including location accessibility, capacity, room accessibility, acoustics, sight lines, ventilation and seating. Council must consider federal requirements for accessibility, especially the Americans with Disabilities Act, when choosing a location.

**Public Input**

Municipal government is the government closest to the people. Theoretically, this is the principal source of its strength. Therefore, any program designed to increase the effectiveness of municipal meetings should provide for and encourage maximum public participation.

Even the smallest municipality has a number of simple methods, in addition to FOIA requirements, available to encourage public participation.

- Newspaper announcements of the time, place and agenda of meetings
- Reminders enclosed in public utility bills
- Agendas posted in public buildings
- Public notice and agenda posted on municipal website, if municipality has one
- Postcards sent to interested groups; radio and television stations' public announcements
- Social media announcements

Council should consider the meeting's time and physical accessibility. The public is greatly encouraged to attend the meetings if they are held at a reasonable time in a central location with convenient and free parking.

Council can handle scheduling public participation in various ways. An agenda may include a section for hearings and protests to allow members of the public to speak on specific matters, or it may provide a period for "oral communications" in which a member of the public might speak about any matter of municipal business on or off the agenda.

Ordinarily, council should not include a lengthy public hearing with a regular meeting. Council should give the public hearing its own date and time.

If municipal officials display an open-door policy regarding meetings and actively encourage public participation, the public can greatly enhance the municipality's overall effectiveness.

**Media**

The media may be the only way many members of the public know about the municipality's services and operations. Good media relations are an essential ingredient for any municipality's efficient operation:

- Treat the media fairly and professionally.
- Notify the media in advance of public meetings.
- Supply sufficient materials to aid in the reporter's accurate reporting of the meeting.
- Provide reporters a table and a seating place where they can clearly see and hear the proceedings.

## Minutes

Taking and recording a meeting's minutes is a fundamental process of any organized body. Because the organized body consists of the elected representatives and the proceedings recorded may ultimately carry the weight of law or have a pronounced effect on the community, the minutes are extremely important. The municipality must make a concerted effort to ensure minutes are properly taken, processed and maintained.

By law, municipal councils must keep minutes of their proceedings. *Sections 5-7-220, 5-7-250(b), 30-4-90.* The minutes' usefulness goes well beyond the mere satisfaction of a statutory requirement. Minutes are necessary to confirm what was acted on and agreed to at a meeting and to record decisions to ensure no ambiguity exists in what was actually decided. Without agreed-upon minutes, individual recollections of what transpired are bound to differ, and they will increasingly differ over time.

Beyond recording the dates of official readings and the passage of policies, resolutions and ordinances of council, minutes kept in sufficient detail can provide valuable insight into the legislative intent behind council actions. Without records to draw on, the purpose of a council's action may be lost or misinterpreted.

Approved minutes have several valuable administrative uses. Ordinances, resolutions, policies and other official pronouncements represent a list of "things to do" for the administrative arm of the municipality. Also, discussions recorded in the minutes relating to the adopted acts, or even to matters not adopted, may give administrative personnel strong insight into how the legislative body expects a matter to be treated or administered.

The dissemination of minutes, or some simplified version of them, can be used to effectively see that the proper administrative responsibilities of a council action are carried out. A timely review of minutes of previous meetings is an indispensable step in preparing the council agenda.

Also, minutes may be valuable to a municipality in a historical sense because they represent the only, perhaps the most complete, chronicle of the public activities, concerns and accomplishments of the municipality.

**Contents**

Minutes do not have to contain a meeting's verbatim transcript. They should include

- name of the municipality, date, place and time of the meeting, *Section 30-4-90(A)(1);*
- a statement that the media and public were duly notified of the date, time and place of the meeting;
- type of meeting - regular, special, emergency or public hearing;
- list of members present and absent, including whether or not a quorum was present, *Section 30-4-90(A)(2);*
- disposition of the minutes of the previous meeting;
- all main motions, whether adopted or defeated (a withdrawn motion should not be recorded.);
- names of movers (names of seconders may or may not be recorded);
- points of order and appeals, whether sustained or lost;
- summarized reports of committees, boards and other bodies, unless written reports are attached;
- all appointments to committees, boards and other bodies;
- all resolutions, ordinances, official communications, technical papers, and other items entered in full or appended;
- the number of votes on each side or the names of individual councilmembers when a count has been ordered or where a vote is by ballot or roll call, *Section 30-4-90(A)(3);*

- time of adjournment; and
- the clerk's signature followed by an approval date and verifying initials.

There are generally three ways councilmembers receive the meeting's minutes: issued to all members soon after the meeting, issued to all members with the agenda for the next meeting or read aloud at the beginning of the next meeting.

**Approval**

Usually council approves a meeting's minutes at its next meeting. Once approved, the minutes should not be rewritten.

In special cases, council can correct the minutes after they are adopted. Council should adopt certain policy safeguards to ensure amendments are made to correct obvious cases of omission, misunderstanding or errors, and not to distort, misrepresent or falsify the record's truth. Council should have a policy that any amendments resulting in major change to the minutes can only be proposed and adopted in public meetings. A further precaution many organizations and governing bodies use is a standard procedure in *Robert's Rules of Order*. It requires a two-thirds vote, rather than a simple majority, to make a correction to adopted minutes if the amendment is proposed at a meeting later than the one in which they were originally approved.

**Permanent Book**

All minutes of council proceedings, including regular meetings, special meetings and public hearings, should be kept in a permanent book. Minutes are subject to the Freedom of Information Act. *Sections 30-4-90(B), 30-4-50(7).* To ensure safekeeping, minutes books should always be stored in a safe, fireproof location.

**Executive Sessions**

The municipality must keep minutes for all meetings except executive sessions. *Sections 5-7-220, 5-7-250(B), 30-4-50(7), 30-4-90.* If minutes of executive sessions are kept, they are not subject to public disclosure under the Freedom of Information Act. However, they may be discoverable in a court action. *Sections 30-4-50(7), 30-4-90(B).*

**Electronic Recordings**

Electronic recording of meetings is permissible and advisable. The public is permitted, by law, to electronically record or videotape meetings, to include but not be limited to, audio or video recording. *Section 30-4-90(C).*

## Agendas

A written agenda is an invaluable tool for the orderly conduct of public meetings. An agenda

- offers a prearranged outline for the meeting,
- is a basic method for assigning priorities to the various items of business to be considered,
- can be used as a method of administratively reporting to council, and
- is a tool for sounding out reactions to various discussion topics, particularly controversial items.

An agenda should always follow the same format. Most of the items fall into two basic groups: routine or procedural items and items that vary from meeting to meeting. Procedural items may include a pledge of allegiance, roll call and consideration of the last meeting's minutes.

The bulk of an agenda is normally composed of other business (such as resolutions, ordinances, claims, petitions, reports and hearings); communications from committees, commissions, boards or the public; and other actions.

Once council agrees to the format, it should formally prescribe the agenda's form by ordinance or resolution or include it in the council's rules.

In smaller municipalities, the clerk customarily holds the primary responsibility for compiling the agenda. The municipality's chief executive, whether elected or appointed, should review the agenda before it is finalized. Specifics on the agenda process should be included in council's rules of procedure.

There should be a definite, known deadline for adding items to the agenda. This will help minimize requests to amend a published agenda and ensure no item will be brought up for discussion that councilmembers have not been briefed on through advance distribution.

The agenda with backup and supporting materials should be distributed to council and appropriate staff prior to the council meeting. The agenda and supporting materials are subject to public release, except for any documents specifically exempted by the FOIA.

The Freedom of Information Act requires the agenda be posted at least 24 hours before the meeting at the principal office of the body holding the meeting, at the building where the meeting will take place and on the municipality's website, if it has one. *Section 30-4-80(A) and (D). Refer to page 22 for specific details and procedures.*

The council must implement rules of procedure for the orderly and proper disposition of matters coming before council. *Section 5-7-250(B).*

## Rules of Procedure

- Provide an outline for how council business should be conducted. Although all municipalities' rules of procedure are subject to certain statutory requirements, they should be tailored as much as possible to meet the particular municipality's needs.
- Deal with such matters as the order council receives certain items, establishment and jurisdiction of council committees, procedure for introducing and enacting ordinances and resolutions, and adoption of a parliamentary guide (for example *Robert's Rules of Order* or the rules of the House or Senate).
- Have all the force of law when established by ordinance and cannot be repealed, suspended or waived except by action of the council with equal formality.
- Are an indispensable tool for expediting council business by providing a fair and open method for council deliberation.
- Serve as a guide to council and others involved in the governing process.

Sample rules of procedure are included in the Association's *How to Conduct Effective Meetings* publication.

## Ordinances and Resolutions

Municipal councils are local, deliberative legislative assemblies empowered to enact regulations, resolutions and ordinances consistent with the constitutions and general laws of the state and nation. *Sections 5-7-30, 5-7-160.*

**Ordinances**

Ordinances are local laws of a general and permanent nature. Every proposed ordinance must be introduced in writing and in the form required for final adoption. No ordinance has the force of law until it has had at least two readings on two separate days with at least six days between each reading. *Section 5-7-270.*

Municipal ordinances must be codified, indexed, typewritten or printed, maintained in a current form, reflect all amendments or repeals, and be available for public inspection at reasonable times. *Section 5-7-290.*

Pursuant to Section 5-7-260, the council must act by an ordinance when it

- Adopts or amends an administrative code.
- Establishes, alters, or abolishes any municipal department, office or agency.
- Provides for a fine or other penalty, establishes a rule or regulation in which a fine or other penalty is imposed for violations. (Council may fix fines and penalties for violation of ordinances or regulations not exceeding $500 and/or imprisonment for up to 30 days.) *Section 5-7-3.*
- Adopts budgets and levies taxes (except as otherwise provided with respect to the property tax levied by adopting a budget).
- Grants, renews or extends franchises.
- Authorizes the borrowing of money.
- Sells, leases or contracts to sell or lease any lands of the municipality.
- Amends or repeals any ordinance described above.

In addition, certain other actions are required to be accomplished by enacting an ordinance. These include

- annexing property *(Sections 5-3-150, 5-7-300);*
- setting salaries for council *(Section 5-7-170);*
- conducting municipal elections *(Section 5-15-10, et seq.);*
- adopting standard codes *(Sections 5-7-280, 6-9-60);*
- adopting council rules of procedure *(Section 5-7-270),*

- adopting procurement ordinances *(Section 11-35-50),* and
- adopting a comprehensive plan, zoning and land development regulations. *(Section 6-29-310, et seq.)*

Municipalities can adopt by reference only the latest editions of nationally recognized standard codes for regulating construction within their respective jurisdictions. *Sections 5-7-280, 6-9-60.* The municipality must submit code variations and modifications to the South Carolina Building Codes Council for approval. *Section 6-9-105.*

**Resolutions**

Resolutions are expressions of the council's opinion on an issue and are ordinarily of a temporary nature. They require only one reading. In substance, there is no difference between a written resolution and a verbal motion approved by council. Unless required by general law, council may act either by ordinance or by resolution. *Section 5-7-260.*

# CHAPTER 4

# MUNICIPAL REVENUE SOURCES

State law must authorize municipal revenue sources. The law restricts the use of nontraditional and creative revenue sources. In recent years, the state's increased legislative restrictions have further limited flexibility in financing public services. This chapter discusses revenue sources authorized by state law.

## Restrictions on New Local Taxes and Fees

Section 6-1-310 prohibits imposing new types of local taxes after December 31, 1996, unless specifically authorized by the General Assembly.

**Real Estate Transfer Fee**

Section 6-1-70 prohibits imposing a fee or tax on the transfer of real property unless expressly authorized by the General Assembly. A municipality enacting a transfer fee prior to January 1, 1991, can continue collecting the fee and expending the funds for the intended purposes.

## Unrestricted General Government Revenue

**Property Tax**

Municipalities can levy and collect taxes on all real and personal property within the municipal corporate limits not exempted by general law from taxation. *Sections 5-7-30 and 5-21-110*. Municipalities may provide penalties not exceeding 15 percent for nonpayment. A delinquent tax is a lien on the property enforceable by execution and sale in the same manner as for county taxes. State law allows municipalities to collect taxes in installments and to accept payment-in-lieu of taxes from nonprofit housing corporations. *Sections 5-21-120, 12-37-240.*

An amendment to the state constitution lets municipalities exempt new manufacturing establishments from the property tax. Additions to existing manufacturing establishments, including machinery and equipment costing $50,000 or more, are also exempt.

Council must approve the exemption by ordinance. The exemption can apply up to 100 percent of the municipal millage and affect the company's taxes for no more than five years. The ordinance will apply to all manufacturers in the municipal limits. *Article X, Section 3(G), S.C. Constitution.*

*Millage Rate Increase Limitations*

A municipality may increase its property tax millage rate for operating purposes above the previous year's rate by the average of the 12-month consumer price indices for the most recent 12-month period consisting of January through December of the preceding calendar year. In addition to this increase, council may increase the millage rate by an additional amount, which is equal to the percentage increase in population from the previous year population of the municipality. The Revenue and Fiscal Affairs Office determines population increases for the municipality. The prior year millage may also be increased by the cumulative population and consumer price index amounts allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies. *Section 6-1-320(A).*

Once every five years, the county or state shall appraise and equalize (reassess) those properties under its jurisdiction. *Section 12-43-217.* In the year in which a reassessment program is implemented, the new rollback millage is calculated by dividing the prior year property taxes levied, as adjusted by abatements and additions, by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and reassessment program are implemented. This amount of assessed value must be adjusted by deducting assessments added for property or improvements not previously taxed, for new construction, for renovation of existing structures, and assessments attributable to increases in value due to an assessable transfer of interest. *Section 12-37-251(E).*

If the municipality's boundaries extend into more than one county and those counties implement the countywide appraisal and equalization programs required by Section 12-43-217 on different schedules, the municipality's governing body must set an equivalent millage to be used to compute municipal ad valorem property taxes. The equivalent millage is determined by methodology established by the respective county auditors. The methodology must be consistent with the methodology for calculating equivalent millage to be established by the Department of Revenue for use in these situations for the purpose of equalizing the municipal property tax on real property situated in different counties. *Section 12-37-251(G).*A 2006 amendment to the state constitution limits the increase in value of properties a maximum of 15 percent over a five-year period. The five-year period coincides with the reassessment program.

Prior year property tax revenues are defined as those property taxes billed and collected the prior property tax year plus that year's delinquent taxes collected beginning January 16. Counties with local option sales tax credit must add the prior year credit that was applied to the property tax bills.

By a two-thirds vote of the membership of council, the millage rate limitation may be suspended and the millage rate may be increased to offset a deficiency of the preceding year; to recover from a catastrophic event such as a natural disaster, severe weather event, act of God, or act of terrorism, fire, war, or riot; to comply with a court order or decree; to offset the closing of a major property taxpayer that decreases by 10 percent or more the amount of revenue payable to the taxing jurisdiction in the preceding year; or to comply with a federal regulation or statute enacted by the federal or state government. If an increase in the millage rate is required because of one or more of these items, the amount of the tax for each taxpayer must be listed on the taxpayer's bill as a separate surcharge with an explanation for the surcharge. The surcharge may only continue for the years necessary to pay for the deficiency, catastrophic event or for the compliance with the court order or decree. The restriction does not apply to millage levied to pay bonded indebtedness or lease-purchase of real property. *Section 6-1-320(B).*

The city may use a third-party administrator to collect payments electronically (credit or debit cards) for property taxes. The entity may impose a surcharge to recover the cost of using this form of payment. *Section 12-45-90.*

A municipality may contract with the county, an individual, firm or organization to help collect property or business license taxes. *Section 5-7-300.*

**Business and Occupation License Taxes**

Municipalities may levy a business license tax based on gross receipts of any business operating within their boundaries. Some businesses and occupations, however, are fully or partially exempt from the business licenses tax by state or federal law. For example, a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax, unless the wholesaler has a warehouse or a mercantile establishment within the municipality. *Section 5-7-30.*

Other examples of businesses that are exempt or subject to limitations from the business and occupation tax are

- buses and other public carriers *(Section 12-23-220, 58-23-620);*
- banks and building and loan associations *(Sections 12-11-30, 12-13-50);*
- alcoholic beverages *(Sections 12-21-1080, 12-33-200);*
- mutual benevolent act societies *(Section 38-35-60);*
- workers' compensation premiums *(Section 38-7-50);*
- interstate air express and passenger transportation *(49 USC Sections 1301, 1513);*
- state and federal credit unions *(Section 34-27-300 and 12 USC Section 1768);* and
- lenders making real estate loans *(Section 5-7-30).*

The Telecommunications Act of 1999 set taxes for telecommunications companies. The Act continued existing franchise agreements until 2003 or the agreement's expiration, whichever was later. Telecommunication companies pay a business license tax of 1.0 percent. The franchise payment will vary according to the municipal population. *Section 58-9-2200, et seq*.

The Transport Network Company Act of 2015, authorizes the Office of Regulatory Staff of the Public Service Commission to regulate transportation network companies which match passengers and drivers through digital networks. Under the Act, local governments retain regulatory authority on all matters not specifically addressed in state law. Instead of paying traditional business license taxes, these companies/drivers will remit to Office of Regulatory Staff a local assessment fee equal to 1 percent of the gross trip fare collected. ORS will remit the fees to the municipality in which the fare originated.

Coin-operated devices and billiard tables with state licenses are subject to special rules. *Sections 12-21-2720, 12-21-2730, 12-21-2746*. Businesses involved in interstate commerce are subject to special rules required by the U.S. Constitution.

Railroad companies pay municipal business licenses according to a rate schedule set by state law based on population. *Section 12-23-210.*

Fire and casualty insurance companies pay municipal business licenses; however, the rate may not exceed 2 percent of gross premiums collected. The Municipal Association collects the 2 percent business license tax on behalf of members of the Insurance Tax Collection Program. *Section 38-7-160.*

The rate for life, health and accident companies is 0.75 percent of gross premium. In addition, the Municipal Association collects 2 percent of gross premium from brokers selling policies from non-admitted companies.

When a business establishment is annexed into a town or city that levies a business license tax, the tax is prorated for the year of annexation. *Section 5-21-60.*

The Municipal Association provides a *Business Licensing Handbook* to guide municipalities in implementing a business license program.

**Service Charges and Fees**

Municipalities can levy service charges. *Sections 5-7-30, 5-7-60, 6-1-330*. Utility fees are often referred to as service charges computed on the quantity of service received. Some municipalities impose fire protection and solid waste service charges.

Section 6-1-330 requires a new service or user fee to be imposed by ordinance adopted by a positive majority of council after a public hearing. Fees imposed prior to December 31, 1996, remain in force until repealed by council. Council must use the fees for the services for which the fees are paid. If the revenue generated by a fee is 5 percent or more of the prior fiscal year total budget, the city must keep the proceeds in a fund separate from its general fund.

Municipalities can make assessments and establish uniform service charges. *Section 5-7-30*. They may use this funding method to support (or partially support) sidewalks, water and sewer lines, stormwater facilities, garbage service and other items.

Municipalities may charge fees for the use of, or admission to, municipally supported facilities such as swimming pools, gymnasiums, auditoriums or other recreational activities. Municipalities can charge fees to provide services (such as fire, water and sewer) outside the municipal corporate limits. *Section 5-7-60.*

**Miscellaneous Licenses, Permits and Fees**

Municipalities may levy a license registration fee as part of a public safety or public health regulation program. Examples of such licenses and permits include a bicycle registration or dog license fee.

As part of codes regulating building, municipalities may charge a reasonable fee to issue permits for electrical, plumbing, gas fitting and other construction operations.

All of these fees are based on a municipality's implied power to make reasonable charges to cover police regulation costs.

**Franchises**

A franchise is the contractual extension of a privilege to use the streets for a purpose for which there is no right as a matter of law without the governing body's permission.

Municipalities may grant franchises for using public streets and rights-of-way to individuals, corporations or other entities furnishing water, gas, electric, heat, transportation, telephone, cable television and other services that serve municipal residents. *Section 5-7-30.*

A franchise granted by ordinance is a nonexclusive franchise. An exclusive franchise may be granted only by a referendum of municipal electors. A perpetual franchise may not be granted.

*Telecommunications*

The Telecommunications Act of 1999 established the franchise authority of municipalities regarding telecommunications companies. The Act allows municipalities to charge a franchise fee based on population. The municipality retains police powers, but the fee is the only revenue generated by the franchise. Additional information regarding the calculation of this franchise fee is covered under the business license section in this chapter.

*Use of Right of Way – Consent or Franchise Required*

S.C. Constitution Article VIII, Section 15, prohibits constructing utility infrastructure in municipal streets without consent of the governing body. A utility using the public right-of-way but not serving customers within the municipality must have municipal council approval. This approval is given by way of a consent ordinance, and the South Carolina Supreme Court has ruled that the grant of consent may be conditioned upon the payment of a consent fee. A utility using the public right-of-way to serve municipal customers must have consent of the municipal council by way of a franchise ordinance, and that consent may be conditioned upon the payment of a franchise fee.

Special rules apply to a municipality's power to grant or deny consent to use the public streets for conducting an electric utility business in newly annexed areas. These rules are based on S.C. Supreme Court decisions interpreting Article VIII, Section 15 of the state constitution and various sections of the S.C. Code of Laws regulating electric utilities, electric suppliers, and electric cooperatives. These rules were substantially changed by Act 179 of 2004. In general, in territory annexed prior to February 19, 2004, a municipality may not prohibit an electric supplier from continuing to serve premises that it was already serving on the date of annexation, but the municipality has wide authority to grant or deny consent to serve premises first requiring service after the date of annexation.

In territory annexed after February 19, 2004, the municipal options have been indirectly restricted by changes to the legal authority of electric suppliers to serve new premises in any annexed territory that was, before annexation, assigned by the Public Service Commission to another electric supplier. As a practical matter, most municipalities will no longer have a meaningful choice of electric suppliers in newly annexed areas, because it is likely that only one electric supplier will have the statutory authority to serve new premises in that annexed territory regardless of the municipal preference. However, due to a specific exception in the 2004 statute, municipalities that have their own electric utility systems will still decide what entity will supply new premises after annexation.

The South Carolina Supreme Court has ruled that, in newly annexed areas, the municipality is empowered to impose a reasonable franchise fee on utility revenues generated by utility companies after annexation into the municipal limits. This fee can be imposed by a voluntary franchise fee agreement approved by ordinance, or, in the event that agreement cannot be reached, the franchise fee may be unilaterally imposed by ordinance. The Supreme Court has held that a 5 percent franchise fee imposed by unilateral ordinance is reasonable. *Sections 33-49-250, 58-27-1360.*

*Cable*

Act 288 of 2006 (Sections 58-12-5 through 58-12-400) changes the traditional way a local government issues franchise agreements to control cable service providers operating within the public streets and rights of way and implements a new process by which cable and video service providers receive approval for providing services within the state. Existing cable service franchise agreements (incumbent service provider) will continue in force until they expire or a competitive cable service provider is granted a statewide Certificate of Franchise Authority and begins to offer service in the

incumbent's area. At that time, the incumbent cable service provider may opt out of the existing franchise agreement and apply for a Certification of Franchise Authority.

The Act requires the municipality to charge the certificate holder the same franchise fee rate charged the incumbent service provider, if it is no more than 5 percent. However, the municipality may increase the franchise fee to no more than 5 percent for all service providers 45 days after the secretary of state notifies the certificate holder of the rate change.

The definition of gross revenues includes all revenues received from subscribers for providing cable services, including franchise fees and all revenues received from non-subscriber services for advertising and home shopping services. The statute defines items not included in the definition of gross revenues. Franchise fee payments must be made quarterly.

The cable service provider is required to provide up to three PEG (Public, Education and Government) access channels. One may be used by the municipality without restrictions to repeat programming. *Sections 58-12-5 through 58-12-400.*

Act 8 of 2007 (Sections 58-12-5 through 58-12-400) includes video services in the definition of cable services and makes the provisions of the state-issued certificate of franchise authority applicable to video services provided through wireless facilities.

## Fines and Forfeitures

Municipalities may, by ordinance, set fines and penalties for municipal ordinance violations. Municipal courts may impose a fine, imprisonment or both. The penalties cannot exceed $500 and/or 30 days. *Sections 5-7-30, 14-25-65.*

All add-on fees and assessments are added to the fine set by the municipal judge.

Municipal courts can accept payment of fines, fees, assessments, court costs and surcharges by credit or debit card. The court may impose a separate fee to cover the cost of accepting payment by this method. *Section 14-1-24.*

The municipal court must promptly remit all fines and penalties to the municipal treasurer. *Section 14-25-85.*

**Assessments**

Municipal courts operate under the state unified judicial system and must collect assessments on fines. Municipal judges must add an assessment to all fines charged to people who are convicted, plead guilty or *nolo contendere*, or forfeit bond for a crime. The assessment is calculated on the unsuspended portion of the fine. In addition, the judge must impose a $25 surcharge on all municipal court convictions except misdemeanor traffic offenses. These convictions include ordinance summons violations. *Section 14-1-211.* These assessments and surcharges cannot be waived, reduced or suspended.

The municipal treasurer receives the assessments then sends them to the state treasurer by the 15th of each month using a form provided by that office. *Section 14-1-208.*

**Local Government Fund**

The Local Government Fund must receive an amount not less than 4.5 percent of the General Fund revenues of the last completed fiscal year. *Section 6-27-30.*

No later than 30 days after the end of the calendar quarter, the State Treasurer distributes 16.722 percent of the Local Government Fund to municipalities. The treasurer distributes the money to individual municipalities based on their population as compared to the state's total municipal population. *Section 6-27-40.*

The General Assembly set up the fund so it would not be subject to mid-year cuts. Only a separate vote of the state Fiscal Accountability Authority can mandate a mid-year cut. The FAA cannot reduce the fund to an amount less than what municipalities received the immediate previous year. *Section 6-27-20.* However, Section 6-27-50 states no changes may be made to the Local Government Fund during the legislative process without separate legislation solely for that purpose.

**Inventory Tax**

During the 1985 tax year, the state began a three-year phase-out of the 6 percent inventory tax. Quarterly, the state reimburses counties and municipalities for the revenue lost from the business inventory tax exemption. The state bases the reimbursement amount on the 1987 tax year millage and assessed value of inventories.

**Homestead Exemption**

The state grants a $50,000 homestead exemption to people 65 and over, or those who are permanently disabled or legally blind. The state compensates political subdivisions for this loss in property tax by reimbursing 100 percent of the amount not collected because of the exemption. *Section 12-37-280.*

**State Sales Tax for Property Tax**

Effective June 1, 2007, the state implemented an additional one-cent sales tax. The state intended for revenue generated by this statewide sales tax to pay all school operating taxes on owner-occupied homes. Any remaining funds are used for tax credits for county operations for owner-occupied homes. *Section 12-36-1110.*

## Restricted Use Revenue

**State Accommodations Tax**

The state imposes a 2 percent local accommodations tax and credits the municipality or county in which it is collected. *Section 12-36-2630(3).* The municipality must allocate the first $25,000 and 5 percent of the balance to its general fund. It must use the remainder for tourism-related activities. *Section 6-4-10.* The council must appoint an advisory committee to make recommendations on expenditures if the municipality receives more than $50,000 in state accommodations tax revenue. *Section 6-4-25.*

**1 Percent Fire Premium**

The state levies a license fee on insurance brokers and a 1 percent tax on fire insurance premiums. The state-imposed fees are in addition to the local business license. The state returns these funds to municipalities for exclusive use by the fire department. *Sections 38-7-40, 38-7-70, 23-9-410 to 23-9-470.*

**Local Option Tourism Development Fee**

The Local Option Tourism Development Fee Act of 2009 allows a municipality, located in a county in which at least $14 million of state accommodations tax revenues have been collected in a fiscal year, to impose a 1 percent sales tax for not more than ten years. The Act stipulates how to administer the tax and how to use the revenue. Approved uses include tourism promotion, property tax rollback and capital projects promoting tourism-related projects. *Section 4-9-10, et seq.*

**Local Accommodations Tax**

County and municipal governments may impose a local accommodations tax by ordinance adopted by a positive majority of the entire governing body. A county government may not impose an accommodations tax exceeding 1.5 percent within a municipality without consent by resolution of the municipal council. The cumulative rate of the tax may not exceed 3 percent. Council must use the tax proceeds for tourism-related projects and programs as listed in Section 6-1-530.

Municipalities in counties that collect more than $900,000 in statewide accommodations tax may use the revenue for operating and maintaining capital facilities eligible to be built with the local accommodation tax funds. All other municipalities may use up to 50 percent of the revenue for operating and maintaining facilities which are eligible to be built with local accommodation tax funds. *Section 6-1-530.*

**Local Hospitality Tax**

County and municipal governments may impose a local hospitality tax on the sale of prepared food and beverages and in establishments. If doing so pursuant to an ordinance that was adopted by a positive majority of the entire governing body, a local hospitality tax may be levied on the sales of prepared food and beverages and in establishments licensed for on-premises consumption of alcoholic beverages, beer or wine. The cumulative rate of the tax may not exceed 2 percent. A county government may not impose a hospitality tax exceeding 1 percent within a municipality without consent by resolution of the municipal council. Council must use the tax proceeds for tourism-related projects and programs as listed in Section 6-1-730. Municipalities in counties that collect more than $900,000 in statewide accommodations tax may use the revenue for operating and maintaining capital facilities eligible to be built with the local hospitality funds. All other municipalities may use up to 50 percent of the revenue for operating and maintaining facilities that are eligible to be built with local hospitality funds. *Section 6-1-730.*

**Local Option Sales Tax**

The local option sales tax is a one-cent tax levied on sales within counties in which voters approve the tax. Local officials must use, at a minimum, revenue allocated to the tax credit fund to decrease property taxes. *Section 4-10-90.* They may use the remaining revenue to pay for services, programs or other projects determined by the local government and its residents.

*Referendum*

The county's governing body must give its approval for the local option sales tax issue to be placed on the ballot for vote. A majority of the qualified electors voting must approve of the sales tax. *Section 4-10-30.*

If the referendum fails, it cannot be placed on the ballot again for 12 months. *Section 4-10-30*. If the vote is favorable, the S.C. Department of Revenue collects the funds.

*Funds*

The law requires two separate funds be established ─ the Property Tax Credit Fund and the County/Municipal Revenue Fund.

The state treasurer must distribute 71 percent of the revenue of the Property Tax Credit Fund to the county and municipalities in the county area as follows. *Section 4-10-40.*

- 67 percent to the county government.
- 33 percent to the municipalities (That amount is distributed to individual municipalities based on the percentage of population the municipality represents as a portion of the total population of all the municipalities within the county.) *Section 4-10-50.*
- 29 percent of the County/Municipal Revenue Fund revenue must be distributed to the local governments within the county as follows: *Section 4-10-50.*
    - 50 percent based on the location of sale.
    - 50 percent based on population.

*Supplemental Fund*

If the state collects more than $5 million from a county, the state treasurer must withhold no more than 5 percent of collections from that county and use it as a supplement to those counties generating less than the minimum distribution. *Section 4-10-60(D).* The state treasurer distributes the supplemental fund based on the receiving county's population in relationship to the total population of those counties collecting less than $2 million.

No eligible unit within a county may receive less from the distribution than it received the previous fiscal year unless the county's collection is less than the previous fiscal year's collection. *Section 4-10-70.*

*Calculating the Property Tax Credit*

The property tax credit appears on the taxpayer's property tax bill as a deduction from the gross taxes owed. The tax credit is calculated by multiplying the tax credit factor by the appraised value (market value) of the taxpayer's taxable property. The credit factor is determined by dividing the total estimated revenue projected to be received by the municipality from the Property Tax Credit Fund during the applicable fiscal year of the political subdivision (the numerator) by the total of the appraised value for tax purposes of all taxable property in the municipality as of January 1 of the applicable taxable year (the denominator). For example, if the amount of revenue projected to be received in the Property Tax Credit Fund in the fiscal year is $500,000 and the appraised value (market value) of all taxable property in the municipality is $225,000,000, the tax credit factor is .002222.

*Reconciling the Property Tax Credit Fund*

A municipality must use all of the revenue received from the Property Tax Credit Fund to provide a credit against the property tax liability of taxpayers in the municipality. Because the tax credit factor is calculated based on estimated revenue to be received in the Property Tax Credit Fund, it is necessary when calculating the credit factor to be used in the next fiscal year to reconcile the revenue in the tax credit factor fund. This is accomplished by comparing the estimated revenue used to calculate the tax credit factor to the actual or revised projection of the amount of revenue received in the tax credit factor fund during the applicable fiscal year.

Any difference between the actual amount received in the tax credit factor fund and the estimate used for calculation of the tax credit factor must be rolled over and added to the estimated revenue in the Property Tax Credit Fund used to calculate the credit factor for the subsequent fiscal year.

In the example listed above, if a total of $550,000 was actually received in the Property Tax Credit Fund compared to the estimate of $500,000, the difference of $50,000 must be added to the estimated Property Tax Credit Fund projection for the next year to ensure full credit is granted to the taxpayers. The reconciliation is an ongoing process from year to year. If the municipality gives too much credit because it overestimated the tax credit factor, there is no provision for recapturing the excess credit.

*Rescinding Local Option Sales Tax*

Fifteen percent of the qualified electors may petition the county's governing body to rescind the local option sales tax. The county's governing body conducts a referendum on the Tuesday following the first Monday in November following the petition's receipt. *Section 4-10-35(A).* County council must receive the petition at least 120 days before the Tuesday following the first Monday in November. *Section 4-10-35(C).*

A referendum rescinding a tax may not be held within two years of the tax being levied.

## Capital Projects Sales Tax

The county governing body may impose a 1 percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose(s) and for a limited amount of time to collect a limited amount of money.

The county council creates a commission of six members. County council appoints three members. Municipal councils within the county appoint the other three members using an appointive index. An appointive index is a formula based on the municipality's population relative to the total municipal population in the county. The commission considers proposals for funding capital projects within the county area. The commission then formulates the ballot question. If the referendum is successful, the sales and use tax is imposed by the county council.

Council must use the sales tax proceeds for capital projects as listed in Section 4-10-330. Council may only impose the tax for the maximum cost of the project, in two-year increments not to exceed eight years from the date of imposition, or in the case of a re-imposed tax, a period ending on April 30, not to exceed seven years in duration. *Section 4-10-330.*

## Municipal Improvement Act

Under the Municipal Improvement Act of 1999, municipalities can set up special improvement districts and assess property owners in the districts for improvements and services. A municipality may not charge properties assessed at 4 percent for improvements or services without written approval of the property owner. *Sections 5-37-10 to 5-37-180.*

## Tax Increment Financing

The tax increment finance law establishes a comprehensive procedure for authorizing the redevelopment of blighted areas within the city. Private developers and municipal bonds retired by the property tax increment finance the redevelopment. A comprehensive plan and feasibility study must be prepared, notice issued and public hearings held. The redevelopment project may be located outside the redevelopment area, if council determines the project would benefit the redevelopment area. *Title 31, Chapter 6, 1976 SC Code.*

Act 109 of 2005 (Section 31-7-30) extends the tax increment financing statutes to allow counties to consider rural areas as blighted areas. In addition, counties and municipalities can jointly adopt redevelopment plans with an intergovernmental agreement. *Section 31-7-120.*

The tax increment financing plan must contain a statement of objectives indicating the need and proposed use of the tax increment. In addition, it must contain cost estimates and projected revenue sources to meet the cost. It must include a list of all included property, the duration of the tax increment financing and the plan's impact on the revenues of all taxing jurisdictions where the project is located.

Counties and school districts have the right to opt out of a municipal tax increment finance district.

Tax increment financing uses the projected increased property tax revenues from the development project area to finance the necessary public investment. The system does not lower tax revenues presently collected for other uses nor does it impose special assessments on the project area. *Section 31-6-30.*

## Revenue Collection

**Setoff Debt Program**

The Setoff Debt Collection Act of 1988 allows the S.C. Department of Revenue to collect any delinquent accounts or debts owed to certain public bodies by setting off refunds the department owes the debtor. The General Assembly amended the Act in 1992 to allow political subdivisions to participate in the program.

Working through the Municipal Association, municipalities notify the Department of Revenue of debts owed to them.

**Insurance Tax Collection Program**

The Insurance Tax Collection Program of the Municipal Association collects the business license tax on insurance premiums on behalf of participating municipalities. The rate for property and casualty companies is 2 percent of gross premium. The rate for life, health and accident companies is 0.75 percent of gross premium. The Association also collects 2 percent of gross premium from brokers selling policies for non-admitted companies.

**Telecommunications Tax Collection Program**

The Telecommunications Act of 1999 allows municipalities to collect a 1 percent business license tax based on the telecommunications companies' gross revenues for retail telecommunications services. The Municipal Association can collect this tax on behalf of the municipalities through its Telecommunications Tax Collection Program.

# CHAPTER 5

# FINANCIAL ADMINISTRATION

Many municipalities began implementing budgets only after the Home Rule Act of 1975 made them mandatory. But budgeting is probably the first and most important element of any sound, businesslike administrative system. Every municipality can benefit from a fully developed budgeting process that includes both annual and long-range financial planning.

A budget is a comprehensive plan, expressed in financial terms, that establishes an operating program for a given time period. It includes estimates of

- the level of services, activities and projects comprising the programs,
- necessary expenditures,
- the level of tax and other income needed for their support, and
- a complete outline of municipal activities containing estimates of probable costs and available revenues during the budget year.

Budgeting is a tool that can meet several goals in municipal finance and administration. Both elected and appointed officials can use the budget to estimate expected revenues and plan municipal spending for a budget year.

At the budget year's conclusion, the budget document can help evaluate the level and quality of services provided during that year. By measuring the level and quality of services performed against each dollar spent, municipal officials can measure the efficiency with which each service was provided. Thus, municipal officials can use the budget as a check on administrative operations.

## Budget Administration

State law requires municipalities to adopt a balanced budget. *Article X, Section 7(b), S.C. Constitution.*

There are three basic steps involved in budgeting.

1. The first is preparation. Estimates of the needed and desired expenditures for the coming year as well as estimates of the revenues available to pay for them are developed for each municipal activity.

2. The second stage is consideration and adoption of the budget.
3. The process ends with the monitoring of revenue received and expenditures.

**Budget Preparation**

The council is responsible for ensuring the preparation and adoption of the annual budget. Council may choose to delegate the task of budget preparation, execution and enforcement to the clerk-treasurer, administrator, council committee or some other municipal officer. However, the delegation of administrative functions does not relieve the mayor and council of its fiduciary responsibilities related to the preparation, implementation and monitoring of the budget and financial statements for the municipality.

*Estimating Expenditures*

The overall objective of estimating expenditures is to accurately record the municipality's total estimated expenditures for the upcoming budget year in a manner that pinpoints the expenditure sources and provides for the greatest amount of control and accountability.

Optimally, budget expenditures should be classified in the following manner

- the funds from which they are paid,
- by the departments, divisions or activity spending the money, and
- by the objects of expenditures (such as wages and salaries, supplies, services or capital equipment).

Budgeting by department or activity establishes controls to hold departments or activities accountable for the money spent. Categories should be broken down as far as possible for each independent function, service or activity. Classification by object and activity makes a budget more understandable because it shows each expenditure's purpose.

The person responsible for a department or activity should be responsible for making an expenditure request. In smaller communities, the council most likely will call upon the clerk to assist with or be entirely responsible for this activity.

*Estimating Revenue*

The second consideration in the budget-making process concerns projecting revenue for the upcoming fiscal year. The process begins by identifying and enumerating the various available revenue sources.

Once the revenue sources are identified, the task becomes one of accurately estimating the projected totals for the upcoming year.

Projecting revenue requires great care and caution. In today's climate of rapid change, municipal officials should not base any revenue estimates entirely upon the previous year's receipts. Budget writers should analyze each revenue source separately and in a logical manner.

They must weigh external factors that may affect the various municipal revenue sources.

- New legislation

Have any laws been enacted at the state or federal level that will either increase or decrease revenue coming to the municipality? Also, consider the availability of grants, matching funds and other sources.

- Property tax

What has been the real property tax collection rate historically? Can we reduce the delinquency rate? How many building permits have we issued during the past year, and what are the assessments on these additions? What is the personal property (cars, trucks, boats, etc.) collection rate? Can we improve it? Have there been any changes in automobile registrations? Have any properties been removed from the tax roll by being given tax-exempt status or by demolition? Have there been any annexations? Have there been assessment changes brought about by the equalization program?

- Licenses and permits

How many businesses have been added or deleted during the past year? Has the economic situation been favorable or unfavorable toward business? Have there been changes within the community that may have affected business operations, such as a shopping center outside of town? Have we added or removed any parking meters?

- Fines and forfeitures

Have there been any changes in enforcement patterns of criminal and traffic ordinances that might affect collections?

- Utilities and other enterprises

Has there been any net change in the number of service connections for the various utilities or in the use rate for other services?

- Other revenue

Are there any significant factors that might alter the collection rate on these sources?

After each individual revenue source is identified and estimated on its own merit, a total revenue picture is constructed.

A compilation of all estimated expenditures from the various operating agencies and the estimates of projected revenue from the various revenue sources form the operating budget. The result will be a comparison of the expenditures against the revenues.

*Budget Calendar*

Council should enact the annual operating budget before the beginning of each fiscal year. Because the budget is a financial operating plan for the municipality, it is important that local officials are aware, as early as possible, of the scheduled date and times of meetings, deadlines and key processes related to the preparation and adoption of the budget. A calendar establishing all key dates in the budget preparation should be developed. The budget officer prepares the calendar after consulting with the municipality's legislative and executive officials.

At a minimum, the calendar should indicate the individual(s) responsible and the dates that

- Budget worksheets, instructions and guidelines will be distributed to departments.
- Revenues estimates will be prepared.
- Budget requests will be compiled into a single budget document and necessary summary schedules will be completed.
- The budget will be presented to the legislative body.
- Budget hearings will be held.
- The budget will be adopted.
- The new fiscal year will begin.

Depending on the complexity and formality of the process, the municipality may add other steps.

Budget preparation is meaningless unless the municipal council and administration take subsequent steps to ensure it is followed. Council should receive and review a monthly report showing actual to budgeted revenue and expenditure transactions.

*Budget Planning*

A budget is more than a list of revenues and expenditures:

- It is an important resource and information tool to evaluate and plan for municipal services.
- It offers the opportunity to match service plans with actual costs. This places a measurable perspective on local government operations.
- The budget process forces decisions because the council must prepare and enact the budget if local services are to be administered.
- It acts as a meaningful, decision-making device for future program planning.

Because the municipality provides basic community services, constituents hold local officials directly accountable for providing these services efficiently and effectively.

When budget requests are prepared, local officials should think seriously about

- How much service is needed.
- What minimum and maximum levels of service can be provided.
- How many resources are needed to deliver each level of service (people, materials and equipment).
- How resources can be used more effectively to provide services.

- Whether any service can be provided more effectively and/or efficiently by the private sector through contractual arrangements.

- Whether partnering with other public sector agencies or organizations through an inter-local service agreements and/or contracts is possible.

- Department reorganization to provide greater management efficiency.

- Innovative technology and original solutions to age-old problems. Both small and large jurisdictions should do this type of analysis on a regular basis, not solely during budget time.

If the budget process (both multi-year budget forecasts and fiscal year budgets) is to be effective as a planning instrument, the following basic conditions should be met:

- The people who manage local government activities should be involved in the process.

- Council should make a conscientious effort to determine how the residents perceive current services. Welcome constructive criticism. Conduct periodic surveys.

- The budget should identify services or functions the local government performs.

- Each service's budget request should include a determination of what is the service, what level of service is being provided and what level is needed in the budget year(s).

- Monitor performance in relation to the service levels requested in the budget.

- Legislative officers and the chief executive must support the service planning process and make real use of its results.

**Budget Adoption**

Council must adopt the budget by ordinance. *Section 5-7-260.* Before adopting the budget, council must conduct a public hearing after giving 15-day notice in a newspaper. The notice must be a minimum of two columns wide with a bold headline. *Section 6-1-80.* The notice must include

1. the governing entity's name;

2. the time, date and location of the public hearing on the budget;

3. the total revenues and expenditures from the current operating fiscal year's budget of the governing entity;

4. the proposed total projected revenue and operating expenditures for the next fiscal year as estimated in next year's budget for the governing entity;

5. the proposed or estimated percentage change in estimated operating budgets between the current fiscal year and proposed budget;

6. the millage for the current fiscal year; and

7. the estimated millage in dollars as necessary for the next fiscal year's proposed budget.

**Budget Execution**

Every municipality should exercise two basic controls:

1. Allow no expenditure until there are adequate, appropriated funds to meet the expense. In other words, do not permit any expenditure unless the budget ordinance authorizes it. Once a council adopts a budget, only the council should authorize any deviation from it by adopting a subsequent ordinance allowing the proposed expenditure. *Article X, Section 8, SC Constitution.*
2. Establish a budget reporting system. At regular intervals (usually monthly) council should receive a report showing the amount budgeted, the amount spent and the amount not spent yet but committed for each budgeted item. With this information, council can ensure the budget is being carefully followed, can exercise greater control over future spending and can make any needed adjustments to the budget.

A reporting system, such as this one, is undoubtedly the most important facet of any expenditure control program. A summary of work accomplished under budgetary appropriation should accompany these budget reports. Only with this information can the council hope to maintain an adequate check over the budget's enforcement and municipal departments' administrative activities.

## Audits

All municipalities must have an annual independent audit of all financial records and transactions of the municipality and any agency funded in whole by the municipality. A certified public accountant doing the audit must have no personal interest, direct or indirect, in the fiscal affairs of the municipality. The council may, without requiring competitive bids, designate the accountant for a term not to exceed four years. Council must select the audit firm within 30 days of the beginning of the fiscal year. *Section 5-7-240.*

Municipal governments must submit a yearly financial report to the state Revenue and Fiscal Affairs Office. Failure to submit the report may result in the withholding of 10 percent of the current year's state aid. *Section 6-1-50.* Municipal governments must send a copy of its audit to the state treasurer within 13 months of the end of the fiscal year. Failure to submit the audit will result in the treasurer withholding all of the municipality's Local Government Fund dollars. *Budget Proviso 76.10*.

## Capital Improvement Programs

It is important for municipalities to periodically make long-range plans and program evaluations (five to 10 years) as is done with capital improvement programs. In planning efforts such as these, it is important to consider internal and external environmental factors related to revenues and expenditures.

A capital improvements program can be

- a multi-year plan for financing capital improvements,
- any new or expanded facility or equipment that is relatively expensive and permanent,
- an expansion of existing facilities,

- a renovation of existing buildings or systems, or
- a replacement of buildings, systems or major pieces of equipment.

The benefits to the municipality of preparing a capital improvements program are

- providing a plan for large expenditures,
- providing a plan for financing future needs that are currently unaffordable,
- allowing a planned response to capital improvement needs according to the amount of money available,
- allowing a logical sequence of capital improvement projects, and
- providing an annual review and update of capital improvement needs.

The first year of a capital improvement program should be integrated into the annual operating budget to provide a financial plan for the next fiscal year.

## Financial Administration

**Purchasing**

The Consolidated Procurement Code governs purchasing by the state of South Carolina. *Section 11-35-10*. All political subdivisions must adopt ordinances or procedures embodying sound principles of appropriately competitive procurement. *Section 11-35-50.* Model ordinances are available, or a municipality may write its own code. Adopting state procedures is not required.

**Inter-local Agreements**

Two viable alternatives to providing municipally operated services are contracts with private companies and inter-local governmental agreements. Municipalities are increasingly contracting out services such as accounting, garbage collection and data processing.

Inter-local governmental service agreements are formal or informal agreements for providing service on a regular or standby basis without structurally reorganizing the area's governmental system. The state constitution allows counties, municipalities and other political jurisdictions to share the responsibilities and costs of providing services. *Article VIII, Section 13, SC Constitution.*

Inter-local agreements have many advantages over independent service delivery, particularly for smaller jurisdictions.

- reducing or eliminating a permanent staff position used only occasionally,
- delivering a service at a lower cost,
- avoiding the high capital investments needed for equipment, and
- delivering services across city and county boundaries by eliminating red tape and surmounting boundary problems that hamper service delivery.

## Cash Management

Municipalities receive the bulk of their revenues in just a few months of the year. The municipality collects revenue from the property tax, business license tax and major municipal revenue sources during one or two months each year. This makes cash planning and management an essential part of municipal finance administration.

In addition to leveling the flow of funds, a cash management program can increase a municipality's non-tax income through interest earned on idle cash.

To be effective, council must be familiar with the municipality's cash flow patterns and various legal investment opportunities. Local banks can provide information on available investments.

The municipality's governing body can delegate the investment authority to the treasurer, financial officer, fiscal agent or corporate trustee charged with custody of the local government's funds. *Section 6-5-20.*

There are six key elements for implementing a cash management program.

1. Legal authority which grants investment practices;
2. Evaluation of past, present and future cash flow trends;
3. Development of good relationships with local banking institutions;
4. Familiarization with municipal investment markets;
5. Good, accurate accounting system; and
6. Development of sound methods of estimating cash receipts and expenditures.

## Investments

Municipalities may invest any money subject to their control and jurisdiction in any of the following: *Section 6-5-10.*

- obligations of the United States and agents thereof;
- general obligations of the state of South Carolina or any of its political units;
- repurchase agreements when collateralized by securities as set forth in Section 6-5-10;
- no-load, open-end or closed-end management-type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank, trust company, savings and loan association, or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision or county treasurer;
- savings and loan associations, to the extent that the same are insured by an agency of the federal government; and

- certificates of deposit, where the certificates are collaterally secured by securities of the type described in (1) and (2) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit secured, including interest; provided, however, such collateral shall not be required to the extent the same are insured by an agency of the federal government.

Municipalities can hold funds in deposit accounts with banking institutions. *Section 6-5-10(b).* Municipal officials depositing funds at interest in any bank or other depository must account to the municipality for all interest collected. *Section 5-21-40.*

The municipality may deposit municipal funds in excess of current needs into the South Carolina Pooled Investment Fund maintained by the state treasurer. The state treasurer may sell to political subdivisions interest-bearing participation units in the Fund. *Section 6-6-10.*

**Local Government Investment Pool**

The Local Government Investment Pool is an investment mechanism that provides local governments an opportunity to get maximum returns on investments by pooling available funds with funds from other political subdivisions. *Section 6-6-10.* All political subdivisions that have the consent of their governing body may invest in the pool managed by the state treasurer. *Section 6-6-30.*

The pool allows cash managers, previously limited by either the relatively small amount of funds available for investments or the complexities of the investment environment, to benefit from its volume and expertise. The state treasurer invests pooled funds primarily in fully guaranteed U.S. government and agency securities. After deducting a minimal administrative fee, earnings on pooled funds are credited monthly to participants. The municipality may withdraw funds at any time with a 24-hour notice.

The pool currently offers two investments options. The most commonly used pool participation provides a daily yield based on net earnings for that day and credited at month's end. A second option involves entities with large sums of money available for a set period of time that would like to commit to a predetermined, fixed rate. The state treasurer will work with political subdivisions individually to address investment needs.

## Deposit Insurance

Funds deposited by a local entity (municipality, county, school district, other local government unit or political subdivision, or a county treasurer) in a bank or savings and loan association must be secured by deposit insurance, surety bonds, collateral securities or letters of credit to protect the local entity against loss in the event of insolvency or liquidation of the institution or for any other cause. To the extent that these deposits exceed the amount of insurance coverage provided by the Federal Deposit Insurance Corporation, the bank or savings and loan association must furnish an indemnity bond in a responsible surety company authorized to do business in South Carolina, or they must pledge collateral. *Section 6-5-15.* If not sufficiently collateralized, the deficiency may show up as a liability in the audit.

Effective June 2015, a local governing body may deposit all or a portion of its surplus public funds in a qualifying banking institution collateralized by the FDIC and allow that bank to act as the custodian to move funds into other banks also collateralized by the FDIC. *Section 6-5-15(H).*

# Fund Balance Management

Fund balance is the difference between current assets and current liabilities. It is a municipal government's net position and is the equivalent to working capital for a small business. Because of the irregular nature of municipal revenue receipts and the recurring nature of expenses related to service delivery, most municipalities experience cash flow challenges that require supplemental cash to bridge revenue gaps. Access to excess cash flows (fund balance) is an ideal method of bridging cyclical cash flow challenges.

Because of various circumstances, some municipalities may need supplemental cash equal to 20 percent or more of their annual budgets. Additionally, it is advisable to maintain reserve funds to provide cash to address recovery efforts from natural or manmade disasters, unexpected revenue shortfalls or unavoidable expenditure overruns. The level of fund balance maintained is a local decision based on an evaluation of cash flow needs and risk of hazards. A municipality is well-served by maintaining a reasonable fund balance that helps to bridge cash flow, avoids interest costs associated with short-term borrowing, preserves a sound credit rating, provides a buffer against unexpected revenue shortfalls or expenditure overruns, and serves as a risk management contingency.

The Government Finance Officers Association recommends that , "At a minimum, general-purpose governments, regardless of size, maintain unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures. A government's particular situation often may require a level of unrestricted fund balance in the general fund significantly in excess of this recommended minimum level. " This recommendation is consistent with a minimum fund balance of 17 to 20 percent before taking into consideration any unusual local factors that may require higher or lower fund balance levels.

# CHAPTER 6

# BORROWING: MUNICIPAL DEBT

Councils should exercise with caution their power granted by the state constitution for municipalities to "buy now and pay later." The decision to borrow money and pledge the municipality's taxes and other revenues toward repayment is a commitment that could affect taxpayers and councils for many years to come. Because of the decision's importance, council should base it on the maximum amount of information available.

Although a council considering borrowing funds will eventually require outside assistance from municipal bond specialists, the city attorney, finance director and clerk-treasurer serve an important role as advisers to the council throughout the process.

## Why Borrow Money?

The decision to borrow is secondary to the decision of what the municipality wants to purchase or build. After a council determines the community's service and facility needs, it may consider borrowing as one of several available financing options.

Council should consider borrowing in four types of situations.

1. Long-term borrowing is justified for acquiring, constructing, replacing, or repairing buildings and other facilities used to provide local government services. These facilities (including parks, streets, libraries and streetlights) have a relatively long, useful life. Any capital improvements considered for financing through borrowing should be nonrecurring, one-time expenditures. Council should not consider debt financing for capital items recurring regularly such as operating expenditures (office and operating equipment). Debt financing may be considered for some types of automotive equipment (fire vehicles) because of their long life and high cost.
2. Short-term borrowing is justified when the delay of operating or capital expenditures would be financially or otherwise detrimental to the community.
3. Refinancing a municipality's existing debt is justified when such additional borrowing can save interest costs or eliminate restrictive terms of existing debt.
4. Council may justify emergency borrowing when a natural disaster or other emergency dictates incurring debt to protect the public's health and safety.

# Financing Options for Capital Improvements

Long-range planning for large expenditures is essential because it enables the council to look ahead and match future capital needs with financial resources available to meet those needs.

Long-range capital planning should include all large expenditures a jurisdiction would find difficult to fund routinely through its operating budget. This might include automotive equipment for some jurisdictions.

Capital facility planning culminates in the capital improvement program for a jurisdiction. The program is a schedule of major capital projects planned for five to six years. It includes an identification of funding sources.

- Each year a council should update its capital improvement program and adopt a capital budget. This is the capital expenditure plan for only the next year.
- Placing the highest priority projects from the capital improvement program into the capital budget is a firm commitment to proceed with the projects and to finance them through funds identified in the appropriations.

The most important step after the council develops a "shopping list" of capital requirements is determining what financing options are available.

**Capital Reserve**

Capital reserve involves setting money aside each year in a special fund known as a building fund, capital improvement fund or capital reserve fund for future capital expenditures. This funding option is particularly useful for smaller municipalities and can be used effectively in combination with borrowing.

It is beneficial to identify capital requirements far enough in advance so council can begin setting aside and investing funds to develop a large down payment on the project with the balance being funded through borrowing.

Capital reserve funds are advantageous because the municipality can save interest costs and use it for automotive equipment purchases as well as for larger capital expenditures.

An ordinance must establish safeguards on capital reserve funds when they are initially established to ensure they are not used for purposes other than those originally planned. Council must develop a prudent investment policy for the funds to ensure the best use of the money.

To ensure future contributions to the fund, the council could earmark by ordinance a certain number of mills or percentage of the budget to contribute each year. *Section 5-21-130.*

Arguments against reserve fund financing are the local government is tying up taxpayers' money without providing direct benefits or existing taxpayers are paying substantial amounts for a capital improvement that will benefit future residents.

The advantages and disadvantages of a capital reserve fund also apply to a utility operation that applies user fees to a reserve fund for future utility capital expenditures.

**Pay-as-You-Go Financing**

The financing of all capital projects out of current tax revenues is an acceptable goal, but few municipalities can afford this luxury over a long period.

There are several advantages to funding projects on a current-income basis.

- There are no interest costs so it is less expensive than borrowing.
- Credit remains available for emergencies.
- Projects are planned more efficiently.
- The city pays for only the bare necessities when only using current revenues.

There are also disadvantages to a pay-as-you-go approach.

- Council delays necessary capital improvements for many years.
- If the municipality completes capital improvements in many small segments on a year-to-year basis, the overall costs of the projects could be higher than if the city had borrowed the money to allow the projects to be completed over a shorter time.

Allowed by the Development Impact Fee Act, impact fees provide another method for capital expenditures. *Section 6-1-910.*

**Borrowing**

An obvious advantage of borrowing is that funds are available immediately for purchases or construction. This can avoid potentially costly piecemeal construction, escalation of construction or acquisition cost, and public inconvenience.

Council can spread the project's cost over a longer period of the facility's useful life. This eliminates placing an undue burden on present taxpayers to pay for future facilities from which they may not fully benefit. For example, using 30-year bonds to finance a waterworks facility expansion forces future users to share in paying its construction costs. This cost-sharing arrangement is especially significant when public facilities are expanded to accommodate an increasing population. In the case of equipment and vehicles, municipal officials must carefully consider the useful life of the equipment or asset when determining the length or term of the borrowing. In most cases, the term of the debt instrument should not extend beyond the conservatively estimated useful life of the item being financed.

The negative aspect of borrowing is the additional cost to taxpayers (the costs of marketing the bonds, legal fees and debt administration costs).

**Federal Funds**

From the local taxpayer's perspective, the municipality should seek and accept federal construction grants for all projects considered essential for the community.

Potential pitfalls lie in the cost of the local grant match, if applicable, and the facility's operating costs. The municipalities must consider these costs before proceeding with a project that is to be constructed, but not operated, with federal funds.

Federal dollars are very scarce and come with serious restrictions and limitations. Sources of federal funds include Community Development Block Grants and Economic Development Administration Grants. Municipalities should contact their council of governments for assistance with available grant programs.

**Lease Purchase**

Tax-exempt municipal lease financing is a method of financing the acquisition of personal property and real property unless it is part of a revenue-producing enterprise, energy management contract or one of certain leases repaid with special funding sources. The leasor receives tax benefits by leasing to the municipality. *Section 11-27-110.*

The municipality can spread the cost of a major purchase over a number of years. Real property or permanent improvements to structures, buildings or fixtures count against the 8 percent general obligation debt limit, unless approved by referendum. *Section 11-27-110.*

At the conclusion of the lease, the municipality may purchase the facility at a nominal cost.

Because of the constantly changing tax laws, municipalities should consult with a bond counsel before entering into a long-term lease.

## How Much Debt is Too Much?

If a council decides debt financing is a desirable option, it should then determine what effect borrowing will have on future budgets and how much debt the municipality is willing and able to bear.

The state Constitution provides municipalities some guidance in answering the question of how much debt. It places a ceiling of 8 percent of the assessed value of all taxable property on debt incurred without a referendum. Municipalities may incur debt above the 8 percent limit with voter approval. *Article X, Section 14, SC Constitution.* Referendum debt does not count against the 8 percent debt limit.

State law places no maximum on a municipality's issuance of revenue bonds payable through utility revenues.

## Legal and Financial Advice

**Legal Advice**

Once a council decides to borrow funds and determines how much to borrow, it should acquire legal and financial advisory services. Council should consult an attorney if it is considering any long- or short-term borrowing.

If the council decides to expend money and repay it later from a bond issue, it must adopt a resolution in a form specified by federal income tax regulations. Failure to adopt the resolution may result in an inability to reimburse the expenditure.

Consult the city attorney first. For most jurisdictions and most borrowing situations, it will be necessary to obtain additional legal assistance from attorneys specializing in municipal bonds. The bond attorney will

- help prepare required ordinances and resolutions for the bond issue,
- provide a legal opinion that the bonds are legal, enforceable and tax-exempt,
- prepare the bond sale notice and the official statement of the sale,
- help submit the required documents to bond rating agencies,
- conduct the bond sale and award the bonds,
- have the bonds printed and delivered, and
- help municipal officials establish a system for administering the debt.

**Financial Advice**

Bond attorney services listed above do not include financial advisory services such as surveying the municipality's existing debt and financial resources, recommending a future debt policy, devising an overall financing plan for the project, designing the bond issue's terms and selecting the optimal date for the bond sale.

The bond attorneys may assist municipalities with these financial advisory matters. Financial advisory services are available for planning larger bond issues.

Successful planning and execution of bond issues require the services of experienced, competent personnel. The more complex the funding is, the greater the need for such assistance becomes. To proceed without the benefit of such services is to risk an unwise plan, faulty steps in execution of the plan, unnecessarily high interest costs, and failure to secure the credit rating to which the bonds are entitled. Moreover, the difference between well-planned and poorly planned issues can mean the difference between a sale and a failure.

## Designing the Bond Issue

The municipality has two major choices for securing and paying off the bonds: general tax revenue and special source revenue from utilities and other revenue-producing operations. *Article X, Section 14, S.C. Constitution; S.C. Code Sections 5-21-210 to 5-21-500.*

**Types**

*General Obligation Bonds*

General obligation bonds are secured by the municipality's full faith, credit and taxing power. The bond's principal and interest are generally paid out of the general fund from property tax and other revenues.

The bonds can finance a broad range of projects (a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision). *Article X, Section 14, SC Constitution.*

Because the full taxing power of the issuer backs these bonds, investors generally consider them the most secure of all municipal bonds.

A jurisdiction's proof of its ability to repay the bonds lies in its past financial performance, tax collections, and community resources including its population and tax base.

*Revenue Bonds*

An alternative to general obligation bonds is to pledge operating revenues from utility and other revenue-producing activities toward bond repayments. *Article X, Section 14(10), S.C. Constitution.* Revenue bonds are the most common form of long-term borrowing for municipalities in this state.

Because the debt repayment comes from the project's revenues, a municipality proves its ability to repay by demonstrating the project will be economically feasible. A municipality must show the system will have enough future users and will be designed and operated to generate adequate revenues to pay the debt service.

To help ensure the repayment, the municipality accompanies the revenue bond issue with certain covenants (promises).

- User rates will be sufficient to operate the system and pay debt service on bonds.
- The facilities will be efficiently operated.
- Certain financial management and reporting procedures will be followed.
- New debt for the operation will be limited in some way.

Although the last type of covenant can aid in the bond's salability, it can also severely limit future attempts to upgrade or expand the facilities.

A municipality considering a bond sale to finance a revenue-producing project should carefully look at general obligation and revenue bond financing. Councils should consider the following points when deciding between bond types for projects that could be financed with either. General obligation bonds may offer some additional flexibility under federal income tax laws.

- Some believe revenue bonds are more desirable because they distribute the cost of enterprise-type facilities to users based on their relative usage of the facilities. These users could be residents or businesses located outside the jurisdiction and therefore not paying property taxes to the municipality.
- Experience demonstrates the municipality can generally secure a lower interest rate on general obligation bonds than on revenue bonds.
- General obligation bonds are subject to a constitutional debt limitation of 8 percent of assessed value. A municipality can only exceed the limit with voter approval. Revenue bonds are not subject to this limitation. A jurisdiction may wish to use revenue bonds whenever possible to save its debt capacity for projects it cannot fund with revenue bonds.
- A municipality may secure general obligation bonds with an additional pledge of utility revenues. Beyond the pledge, the municipality could actually use utility revenues to pay the debt service.
- Revenue bonds may have restrictive covenants (or promises).

- A municipality has flexibility in its marketing of revenue bonds. Council may decide to sell them by public auction to the highest bidder or privately without bids. The general obligation bond sales must be public unless they amount to $1.5 million or less, have 10 years or less maturity or are sold to a U.S. government agency.

- The costs of selling general obligation bonds will probably be less than for revenue bonds.

Some alternate sources of revenue such as local accommodations and hospitality fees may be pledged as security for revenue bonds. *Section 6-1-760.*

**Duration of Debt**

A second consideration in designing the bond issue is the debt's duration.

The maximum number of years for bond repayment should not exceed the useful life of the facilities. Usually, the repayment begins within one year of the bond issuance. The municipality may capitalize interest on revenue bonds during the period the facilities are under construction.

South Carolina places maximums on the debt duration for local government.

- revenue bonds — 45 years *(Section 6-21-220)*

- general obligation bonds — 40 years *(Article X, Section 14(4), S.C. Constitution)*

Major aspects in determining the length of maturity:

- the ability of the municipality to pay;

- total interest costs (the shorter the length of maturity, the lower the total interest costs and the lower the average interest costs); and

- the "sharing" of the repayment costs among the taxpayers, present and future. (Lengthening the debt repayment places a lesser burden on the present taxpayers or utility users. It forces future users, including new residents and businesses, to pay for a larger share of the facilities.)

The face amount, or denomination of bonds, is usually $1,000 or $5,000. The $5,000 bond is the most common. *Section 5-21-210.*

**Repayment Schedule**

The municipality repays serial bonds in annual installments. The municipality pays off the bonds during each of the bond issue's years. Each bond has its own maturity date. Municipalities may redeem bonds in equal or unequal amounts, thus permitting a wide range of options.

A repayment schedule can be designed to permit near-level debt service throughout the maturity period, similar to home mortgages.

An irregular maturity pattern can permit low debt service in the early years. An irregular maturity pattern means the principal of bonds redeemed each year will not be constant, and the interest rates on the bonds will vary.

In determining the repayment pattern, a municipality must carefully consider the various options' total interest costs and its ability to meet the debt service at different times.

For example, the maturity schedule for bonds to expand a waterworks facility might be designed so that the debt service is higher in future years. This takes into account the additional revenues generated by new users that will not be available in the first years of the repayment.

**Call Feature**

In designing a debt issue, a municipality must consider a call feature, which lets the municipality "call in" (redeem) part or all of the bonds prior to their maturity dates. Municipalities can require this redemption privilege for both revenue and general obligation bonds. *Sections 6-21-230, 6-21-320, 5-21-350.*

This provides the flexibility to refinance bonds, if better interest rates are available in the future to pay off debts more quickly than planned when adequate funds become available.

The call privilege could cost the municipality in one of two ways.

1. It will probably be unable to obtain as low an interest rate as for bonds without the feature.

2. The jurisdiction must pay a penalty (premium) if it redeems the bonds before maturity.

Council should not make the decision to include a call feature in the debt lightly. The decision to issue non-callable bonds or callable bonds is one that involves great potential costs and sometimes-great potential savings for the issuer.

Despite the advantages of the call feature, it decreases the bond issue's attractiveness. Investors dislike the element of uncertainty this feature presents to them. The municipality should consult with a bond counselor or financial advisor regarding the current reception of call features in the bond market.

## Authorizing the Bond Sale

An ordinance must authorize all borrowing by a municipality. *Section 5-7-260(5).*

A revenue bond ordinance is generally more detailed than the general obligation bond ordinance because of the special covenants and the accounting provisions that must accompany the revenue bond issue. A bond attorney assisting the municipality may recommend certain resolutions in addition to the ordinance.

**Bond Referendum**

A bond referendum is required if issuing the general obligations bond would cause the municipality to exceed its constitutional debt limitation. *Article X, Section 14(6), S.C. Constitution.*

The ballot or the referendum is worded as a question of whether the council shall be granted the power to issue general obligation bonds for a specific purpose. *Section 5-21-310*. The wording is crucial because the municipality can only use the bond proceeds for projects described in the ballot.

Public literature preceding the bond referendum should include the actual question contained on the ballot, a detailed explanation of the projects with maps and graphics as appropriate, and an explanation of the bond sale's effect on the municipality's operating budget.

This explanation should include an estimate of the debt service for several years and the number of mills required to pay the debt service. The estimate can be expressed as a range using different assumptions of interest rates to be obtained and dates of the bond sale.

Even if a bond issue will not place the jurisdiction over the debt limitation, the council can conduct an advisory referendum to ask voters their non-binding, advisory opinion of the proposed debt issue and project. *Section 5-7-30.*

## Marketing the Bonds

There must be a public sale of general obligation bonds with public notice and bids when the issue exceeds $1.5 million or 10 years maturity, unless the bonds are sold to a federal agency. *Sections 5-21-430, 11-27-40(4).*

Council may sell revenue bonds by public sale or a private, negotiated sale. *Section 6-21-280*. The municipality should balance the additional costs of marketing bonds publicly against the potential long-term savings in interest costs if the issue receives favorable bids.

**Public Sale**

Depending on the size, the public sale may be aimed at South Carolina banks and investment bankers or a national market. It is not always possible, however, for small municipalities to attract bids from outside South Carolina.

The firms and banks may bid as groups (syndicates) for large blocks of bonds or individually. In either case, the bidders will be underwriting most of the bonds (buying to resell them to investors seeking the tax-free income from municipal bonds).

*Official Statement*

A major cost of the public sale is the preparation of the official statement that accompanies the public notice. The official statement is presented in booklet form for potential buyers.

Preparing an official statement is usually a collaborative effort. The municipal staff and external auditor provide financial and other data to the bond attorney, who compiles the information into a form investors are accustomed to seeing.

The statement focuses on the nature and legality of the bonds being offered and the ability of the municipality to pay the debt service.

- Cover page: Contains details of the securities being offered, including the amount of the issue and the maturity dates.
- Official statement introduction: Includes an identification of the municipality, the purpose of the bonds and the security for the bonds.

- Description of bonds: Provides a detailed explanation of the bond issue including purposes of the issue, the constitutional and statutory provisions authorizing the sale, and provisions for repayment of the bonds.
- Description of bond issuer and enterprise: Provides general information regarding the municipality's form of government, the services provided by the municipality and its revenue sources. This section should contain information regarding the municipality's ability to pay the debt service, (general obligation bonds would include assessed values for previous years), the tax collection record and general economic characteristics of the municipality. For revenue bonds, the official statement must contain a detailed description of the enterprise including a description of the services provided and the users, detailed data on the systems past operations, and rate data. The revenue bond official statement may require an opinion from a consulting engineer regarding the project's economic feasibility and proposed construction details.
- Debt structure: Details the jurisdiction's current outstanding debt.
- Financial information: Describes the municipality's financial practices and includes financial statements examined by the municipality's external auditor.
- Legal matters: Notes any legal matters that may affect the municipality's ability to repay the bonds and includes a description of bond counsel's opinion regarding the legality of the bonds.

*Bond Rating Agencies*

Besides the official statement, South Carolina bond dealers depend upon two other sources to determine the credit worthiness of the municipality.

A bond rating agency grades the bond issues according to investment risk. The two major agencies, Standard & Poor's and Moody's Investors Service, examine the information contained in the official statement and assign a rating to the bond issue.

Commercial banks generally do not purchase municipal bonds with a rating below "Baa." This rating signifies an investment that is neither highly protected nor properly secured.

Bond attorneys will help the jurisdiction get an initial bond rating which the rating agencies will periodically update.

It is important for municipal officials to understand what information will be required from these agencies to maintain the ratings in future years. Ratings agencies will drop the ratings if they do not receive adequate information.

*South Carolina Municipal Council*

A second major information source is the South Carolina Municipal Council, which is supported by participating investment firms and banks. This organization provides periodic reports regarding the ability of specific South Carolina jurisdictions to incur additional debt.

Rating agencies, the Municipal Council and bond dealers will also examine whether the municipality has had surpluses or deficits during the previous years.

**Private Sale**

Councils have considerable discretion in determining whether they should advertise a bond issue and accept bids or negotiate privately with a potential buyer. The $1.5 million maximum for private general obligation bonds sales is not a rigid guide. *Section 11-27-404.* Municipalities may find it beneficial to conduct public sales of bonds for amounts less than $1.5 million.

A bond rating and official statement are not required for a private sale.

Legal assistance is necessary for any borrowing by the municipality. The bank or other buyer will require a legal opinion regarding the debt's legality and the municipality's power to borrow. It is possible the municipal attorney could provide this assistance, but the bond buyer may insist on an opinion from an attorney specializing in municipal bonds.

A private sale is similar to securing a loan. The bank will examine the municipality's credit with the same scrutiny it examines an individual's credit.

Below are some excerpts from a South Carolina bank's policy and procedures manual regarding loans to the state or its political subdivisions. It illustrates the considerations of the lender.

- It will be the policy of the bank to treat requests for "tax-free" loans in the same manner that would be exhibited in response to a request from any other good deposit customer, with proper emphasis on the credit worthiness of the borrower and the source of repayment of the loan.

- Normally, the bank does not purchase tax-free indebtedness of any kind from a source having less than a "Baa" bond rating. Some issuers may be of acceptable quality but not rated by the credit rating agencies (Standard & Poor's, Moody's). The only way to determine their status is to analyze their financial statements and to examine the South Carolina Municipal Council reports. The major effort is to determine that no "casual" deficit exists and that revenues (annually) are sufficient to cover expenditures and debt service.

- A legal opinion from an attorney acceptable to the bank must support the "tax free" loans.

The private sale of general obligation bonds comes with a public notice requirement. The municipality must give "notice of intention to sell such bonds at private sale and without advertisement" in a local newspaper at least 10 days before the sale. *Section 11-27-40(4).*

A municipality can conduct a private bond sale to federal government agencies. *Section 11-27-90(b).* For example, the Environmental Protection Agency, Department of Agriculture and other agencies provide guaranteed loans for water and sewer projects.

## Short-term Borrowing

The clerk or other finance officer can prepare a month-by-month cash budget to accompany the fiscal-year budget. The cash budget requires the following monthly analysis for the entire municipality.

*Cash at beginning of month 1 + expected receipts - expected disbursements*
*= cash position at end of month 1 and at beginning of month*

The previous year's experience should provide a good basis for this analysis. The cash budget preparation enables the council to anticipate the need for short-term borrowing. It permits council to take corrective actions if it predicts cash shortages.

Characteristics of short-term municipal borrowing include

- Debt extends for one year or less.
- Municipality generally issues the lender a note that contains the amount, interest rate and payment due dates.
- Municipality pledges a specific source of funds. For a general obligation bond anticipation note, the municipality pledges its full faith, credit and taxing power as security for the loan.
- The municipality pays back the loan out of a specific source of funds.
- The loan's term does not extend much beyond (if at all) the anticipated date for receipt of the funds pledged for repayment.
- The municipality may accept bids or privately negotiate loans with banks or other lenders.

**Tax Anticipation Notes**

South Carolina municipalities may incur short-term debt in anticipation of tax collections, bond proceeds and grant funds.

A municipality issues tax anticipation notes to remedy cash flow shortfalls during a fiscal year. The issuance of TANs provides supplemental cash which allows a smooth expenditure pattern until the municipality receives business license fees and property taxes in two large collections later in the year. *Article X, Section 14(8), S.C. Constitution; Sections 11-1-30, 11-27- 40(5).* The issuance of tax anticipation notices is subject to specific limitations under federal income tax regulations. They do not count against the 8 percent debt limit imposed by the state constitution.

The notes are designed for repayment as quickly after the tax due date as possible to minimize interest charged. Municipalities should set a goal of operating entirely on a cash basis and avoid the need for TANs.

**Bond Anticipation Notes**

A bond anticipation note pledges the proceeds from a subsequent bond sale toward the note's repayment. *Article X, Section 14(9), S.C. Constitution; Sections 11-27-40(6), 11-17-10 to 11-17-120.*

BANs provide municipalities the flexibility to proceed with portions of bond-funded projects before the actual bond sale. BANs are especially useful for projects completed in stages. A good strategy could be to obtain cash for early stages of a project, such as the engineering studies, through the issuance of these bond anticipation notes. This saves interest payments on the bonds' full amount until the total project funds are required.

Council may issue BANs in anticipation of general obligation or revenue bonds for a period up to one year. Although state law permits a municipality to renew or re-fund BANs beyond one year, council should carefully consider such an action because of the notes' interest rate, the potential interest rate on the forthcoming bonds and the project's cash requirements.

**Grant Anticipation Notes**

Municipalities can issue short-term notes based on repayment from anticipated federal funds. The municipality can pledge only construction grants for such notes. *Sections 11-19-10 to 11-19-80*.

Council may consider this temporary funding option if the grant payment is available only after a project is completed. The notes cannot exceed 90 percent of the anticipated federal receipts and cannot mature later than the expected date of receiving the funds.

## Debt Administration

The municipality and the paying (fiscal) agent for the bonds share the tasks for administering the debt after the bond sale.

The paying agent is generally a large commercial bank in South Carolina or in a major city such as New York. Usually, the bank has the task of making principal and interest payments directly to bond holders.

The municipality is responsible for keeping track of due dates for debt service payments and making timely payments to the paying agent. "Timely" means making disbursements to the banks several days before they are due. Promptness is important.

The basic record required by a municipality to establish its debt payment routine is the bond register. Council must establish by ordinance a separate fund for debt service on revenue bonds. *Sections 5-21-420, 6-21-440, 6-21-460.*

Clerk-treasurers, elected officials, administrators and finance officers should consult with their external auditors and bond attorneys to make sure legal requirements, which must take precedence over accounting principles, are satisfied for all accounting related to bonds.

# CHAPTER 7

# HUMAN RESOURCES

Municipalities are in the business of delivering services. As such, municipal operations are labor intensive. Because of this dependence on municipal employees, an effective personnel system is extremely important. Municipalities must make sure they have sound personnel policies and administration that produce maximum results in terms of legal compliance, cost control, employee motivation and productivity.

## Personnel Policy

Developing and adopting a comprehensive personnel policy is the key to establishing a sound personnel program. In all but the very smallest municipalities, it is useful to summarize policies in an employee handbook or policy manual. Municipal officials should periodically update the manual or handbook and have it reviewed by a labor attorney.

**Implied Contracts**

The South Carolina Supreme Court ruled employee handbooks and policies might create implied contracts. Municipalities should have an attorney specializing in employment law examine these documents to make sure they do not contain language that could be construed as a contract (for example, promises of permanent employment). Section 41-1-110 outlines how to make sure an employee handbook does not become a contract.

**Responsibility**

Depending on the city's form of government, a municipal official or body is responsible for administering and interpreting the policy. The easiest way to avoid difficult interpretations is to adopt clearly written policy and procedures.

With the council-manager form of government, state law prohibits council from dealing with employees. Section 5-13-40(C) provides that "Except for the purpose of inquiries and investigations, neither the council nor its members shall deal with municipal officers and employees who are subject to the direction and supervision of the manager except through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately." Therefore, the manager should handle the preparation and administration of personnel policies and handbooks.

The policy should clearly state the municipality's expectations for its employees' conduct both on and off the job.

The Municipal Association of South Carolina publishes a model employee handbook, available at www.masc.sc (keyword: publications).

**Obligations**

The municipality should establish guidelines on conflict of interest, outside employment, political activity, nepotism and other issues.

**Recruitment, Selection and Promotion**

The personnel policy should state the municipality's employment philosophy as it relates to the promotion of its employees and the recruitment and selection of applicants.

Generally, information a municipality receives in the search to fill a vacant position is exempt from the Freedom of Information Act. However, municipalities must release information relating to no fewer than three final applicants being considered for a position. In addition, municipalities must disclose the number of applicants considered for the position. *Section 30-4-40(13).*

The policy should also address job posting, advertising, application procedures and selection criteria.

In addition, the policy should contain a statement of the municipality's practice concerning equal employment opportunity and employment under the Americans with Disabilities Act.

**Holidays**

The policy should list the specific holidays the municipality will observe by closing nonessential operations and include policy concerning those employees in essential services who must work the official holidays. Define the conditions for receiving holiday pay.

**Leave**

The policy should state the various types of leave allowed and provided (such as vacation, sick, personal, military and jury) including accumulation rates and conditions of leave usage.

**Working Hours/Pay Days**

The policy should state the regularly scheduled paydays for all employees. The personnel policy is a good place to meet the legal obligation of giving employees written notice of their normal work schedule.

**Overtime**

Municipalities are subject to the provisions of the U.S. Fair Labor Standards Act and related regulations promulgated by the U.S. Department of Labor. Municipalities must provide for premium compensatory time or overtime payments to employees not exempt from the requirement. *29 US Code, Sections 201 to 219.*

**Compensatory Time**

Employees exempt from the U.S. Fair Labor Standards Act are not eligible for compensatory time. Policies granting non-exempt employees compensatory time off in lieu of pay for overtime should clearly state the conditions for taking such time off and the maximum time that can be accumulated.

**Classification and Pay Plan**

Many municipalities use a position classification and compensation plan to establish the job title and pay range for its employees. The position classification and pay plan should not be a part of the personnel policy because the city needs to update it continually.

Personnel policies should reference the classification and compensation plan and may list the factors that determine it. For each municipal job, the key factors for classification and pay plan include

- a complete description of the type of work performed;
- the level of supervision given and/or received;
- the level of responsibility for money and/or equipment;
- the amount of regular public contact; and
- the skills, abilities, knowledge, experience and training required to perform the job effectively.

The municipality should base pay schedules on the local economy and comparable wages paid in the area for the same type of work. Pay schedules should provide incentives for productive employees.

A municipality cannot establish, require or otherwise mandate a minimum wage that exceeds the set federal minimum wage. *Section 6-1-130.*

**Employee Status**

The personnel policy should address the different employment statuses (such as regular, temporary, full time, part time and probationary). It should address how each relates to limitations on hours, days, weeks or months of work, benefits allowed for each status and the movement from one status to another.

**Probation Period**

Many municipalities require new employees serve a probationary period. During this period, which usually lasts six months, new employees are observed as to their efficiency, willingness to learn, work attitude and relationships with other employees.

If an employee is judged satisfactory in these areas after the probationary period, the person's status may change to that of a regular or full-status employee.

The Americans with Disabilities Act of 1990 (*42 U.S. Code, Sections 12101 to 12213)* prohibits employment practices and policies that discriminate against people with a disability as defined by the Act. The Act's definition of disability is very broad. *42 U.S. Code, Section 12102(2).*

**Physical Exams**

A municipality cannot require a medical examination of an applicant, unless it offers the applicant employment conditioned on the examination's results. *42 U.S. Code, Section 12112(C).*

The municipality cannot turn down an applicant for employment because of a disability, unless the applicant fails to meet job-related requirements or cannot perform the essential functions of the position after reasonable accommodations have been made.

The Americans with Disabilities Act of 1990 also prohibits compulsory physical exams of employees unless required by law (e.g., firefighters and drivers of large trucks) or when there is a question about a specific employee's ability to perform his job duties.

Applicants for firefighter positions, paid and volunteer, must have a criminal background check conducted by a law enforcement agency. This does not apply to firefighters employed before June 30, 2001. *Section 40-80-20.*

Within 60 days of employment, paid or volunteer firefighters must register with the Office of the State Fire Marshal. *Section 40-80-30.*

**Drug Testing**

Although the law is not entirely clear, pre-employment testing for illegal drug use seems to be permissible and serves the legitimate governmental interest of selecting reliable employees. Municipalities with one or more employees with a commercial driver's license must perform a drug test on those employees.

The Americans with Disabilities Act does not prohibit testing for illegal drug use. *42 U.S. Code, Section 12114(D).*

The Act allows employers to regulate illegal drug use by employees and take action against employees currently engaging in illegal drug use. However, a former user who has been rehabilitated or is participating in a supervised rehabilitation program is considered disabled and protected against discrimination. *42 U.S. Code, Section 12114(B).* A municipality can conduct random and periodic drug testing of existing employees only for police personnel, commercial driver's license holders and probably firefighters.

**Employee Safety**

An unsafe workplace is costly in terms of both employee injury or death, and high insurance costs and equipment replacement.

The personnel policy should establish a safety program that requires employee training, the issuance of proper protective equipment and regular inspection of machinery, equipment and the workplace.

Municipalities are required to follow safety requirements of the U.S. Occupational Safety and Health Act administered by the state Department of Labor.

**Performance Evaluations**

A performance evaluation or appraisal is an important tool in supporting employee development, determining merit-based pay increases and fostering employee/supervisory communications. The personnel policy should establish but not guarantee a formal performance evaluation program.

The policy should outline the evaluation's purpose, the factors upon which the evaluation will be based and when the evaluations will occur.

There is a tendency to evaluate employees higher than their performance actually deserves (the "halo" effect). It is better to have no evaluation policy than to have inaccurate evaluations.

**Grievances**

Human nature dictates not everyone can be satisfied with everything. For this reason, grievances always will occur. It is up to the municipality to handle employee complaints in an efficient and equitable manner.

The personnel policy or a separate policy should contain a grievance procedure. Sections 8-17-110 through 8-17-160 of the S.C. Code of Laws contain the basic grievance procedures. Under the Freedom of Information Act, the employee may request a public adversary grievance hearing. *Section 30-4-70(A)(1).*

**Labor Unions**

Although municipalities may not recognize or bargain with labor unions, public employees have a constitutional right to belong to a union.

**Disciplinary Action**

The policy should set out common employee offenses that could result in disciplinary action. If the policy lists a standard disciplinary action for particular offenses, be clear that the list of offenses is not exhaustive and that the severity of any disciplinary action is at the discretion of supervisors.

In addition, the policy should state the chief administrative officer or governing body may terminate any employee when deemed necessary for the municipality's good.

**Training**

To ensure continued high-quality employee performance, the personnel policy should encourage training. It should clearly state the extent of the municipality's responsibility for expenses (for example, tuition reimbursement and travel expenses).

The municipality may use an employee service commitment agreement when extensive training expenses are required.

**Internet Use Policies**

It is important to establish acceptable-use policies to help protect against legal liabilities. The municipality can be included in any lawsuit against an employee if that person abuses the internet at work. Acceptable use policies should prohibit access to sexually oriented material and specify what users can download onto municipal computers.

Acceptable-use policies should also cover email and social media. Make sure employees know that the email system, and therefore all employee emails, belongs to the municipality, and the municipality may monitor its use. Municipalities should prohibit employees from making any statement online about the municipality, unless management approves the statement.

Caution employees using social media sites not to post comments or materials that reflect negatively on the employing municipality.

**Uniforms and Equipment**

If the municipality furnishes uniforms or equipment to an employee, the personnel policy should cite clearly the employee's responsibilities for such uniforms or equipment. The municipality should secure an acknowledgment or receipt from the employee for all "company-furnished" items, such as uniforms and equipment.

**Moonlighting**

The policy should state the municipality's position on employees moonlighting. When developing the policy, seriously consider possible liability incurred by the municipality for allowing moonlighting, particularly related to police officers.

**Fringe Benefits**

If the municipality provides fringe benefits (such as life insurance and health benefits), the municipality should specifically list benefits and cost participation percentages for both the municipality and the employee. Title 9 of the S.C. Code of Laws has specific information about the South Carolina Retirement System, Police Officer's Retirement System and Firemen's Pension Fund.

The U.S. Consolidated Omnibus Budget Reconciliation Act of 1985 requires employers to extend health care benefits to former employees and their spouses/dependents, divorced spouses of current employees, and current employees' dependent children who have become too old for the group plan.

Although the municipality is not required to pay for these benefits, COBRA does require the employer to notify former employees or dependents of their right to continued health care coverage. The employers must make the notification twice: first when the employee becomes covered by the plan and later when a qualifying event (usually termination of employment) occurs.

- Former employees and dependents are entitled to a certificate of past insurance coverage.
- The municipality must give new employees with pre-existing health conditions who have a certificate of prior coverage full coverage under the new employer's health plan.

## South Carolina Other Retirement Benefits Employer Trust

In 2004, the Governmental Accounting Standards Board issued Statement 45. This statement requires all employers reporting under the GASB requirements to recognize the cost of other post-employment benefits as the benefits are earned. Historically, municipal governments have met these obligations on a pay-as-you-go basis. The benefit is generally a health insurance benefit either paid for retirees or available to retirees. It could also include dental, vision, life insurance and other benefits. GASB 45 requires the municipality to calculate actuarially the annual required contribution and either deposit it in an irrevocable trust or show the amount as a liability of the municipality on the balance sheet.

The Municipal Association formed the South Carolina Other Retirement Benefits Employer Trust to provide a GASB 45-compliant trust. Governed by representatives from participating entities, the trust provides a full range of services to help local governments meet the GASB 45 requirements.

## Human Resources Administration

Although the personnel policy provides the rules and guidelines for a personnel program, administering those rules gives life to the program.

Many people have the mistaken notion that to have a personnel program, there must be a personnel department with a staff. Consequently, many small municipalities think a personnel program is something for only large cities. If a municipality has five or more full-time employees, it needs a formal personnel program.

Personnel administration is not solely the job of a personnel director. It is the job of every supervisor. The people who direct the daily activities of employees are the primary interpreters of the personnel policies. Therefore, they play a key role in personnel administration. These supervisors must understand the personnel policy, along with the spirit of the policy.

Frequent meetings with supervisors may be necessary when creating the new program to make sure that there is reasonable uniformity in understanding the program.

A personnel program's administration should adhere to several principles. The following is a partial listing of these principles:

- The employer should provide fair treatment to all employees in all personnel matters including appointments, compensation, benefits, training, grievance proceedings, promotions, reductions and terminations.

- The employer should conduct all personnel matters without regard to race, color, national origin, sex, age, religious creed, disability or political affiliation, and with proper regard for the employee's constitutional rights.

- The employer should make all recruitment, selections and promotions based on the applicant's or employee's relative ability, knowledge and skills as demonstrated through an objective evaluation. Tests and other selection procedures should be job samples or job-related and professionally validated.

- All records and observations of employee performance should be in writing and open for review by the employee.

- The employer should document all rule infractions that may ultimately lead to disciplinary action and notify the employee immediately.

- The employer should administer discipline.

- The employer should provide equitable compensation through a well-structured and continually maintained classification and pay plan.

- The employer should make training opportunities available to all employees and encourage employees to participate to the greatest extent possible.

- The employer should address all grievances in a fair, open manner and on a timely basis and avoid delays in hearing grievances and carrying out subsequent actions.

- The employer should seek legal advice as soon as any problem or issue arises.

Laws requiring equal employment opportunity for many protected groups, equal pay for equal work, minimum benefits and safe work places have greatly affected employee relations and personnel administration. A good personnel program is no longer a luxury for big cities. It is a necessity for all municipalities.

# CHAPTER 8

# MUNICIPAL OFFICIALS, DEPARTMENTS, BOARDS AND COMMISSIONS

Municipal officials, departments, boards and commissions help administer municipal affairs.

Departments differ from boards and commissions. Departments provide direct-line services and are always under the supervision and control of the municipality's chief administrative authority. Police and fire departments are examples of the departmental type of administrative agency.

Boards and commissions have a more diverse role in municipal government. Some commissions are directly involved in implementing and operating municipal services (such as a board or commission of public works) while other commissions serve an advisory role (such as a citizen advisory commission).

Unless otherwise prohibited by general law, the municipality may design the organizational structure, duties, functions and powers of boards and commissions to serve whatever need or perform whatever role the municipality desires.

All municipal councils have the authority to establish departments, offices and agencies in addition to those created under general law. *Sections 5-9-40, 5-11-40, 5-13-100.*

The number of administrative agencies depends on the municipality's population and the range of services it chooses to provide. As the population increases and more diversified services are added, the number of administrative agencies, departments, boards and commissions increases.

## State Authorized Boards and Commissions

Under all three forms of municipal government (council-manager, council and mayor-council), the council has the authority to establish and prescribe the functions of departments, offices or agencies in addition to those created and authorized by the general law relating to municipal corporations. *Sections 5-9-40, 5-11-40, 5-13-100.*

**Municipal Election Commission**

The municipal election commission is comprised of three electors who reside in the municipality and are appointed by council for six-year terms. The commission conducts and supervises all municipal elections. *Section 5-15-90.* Municipal election commissioners appointed on or after May 28, 2010, must complete training as established by the state Election Commission within 18 months of appointment. Commissioners appointed prior to May 28 are not required to receive training unless there is a break in

service. *Section 5-15-90*. Municipalities may contract with the county election commission to conduct municipal elections.

**Planning Commission**

A council may establish a municipal planning commission under the provisions in Title 6, Chapter 29. The planning commission must consist of no less than five but no more than 12 members appointed by council. *Section 6-29-350.* As an alternative, council may designate the county planning commission as the municipality's official planning commission. *Section 6-29-330.*

With council's authorization, the planning commission prepares a comprehensive plan and program for the municipality's physical, social and economic growth. The comprehensive plan and program should include recommended means of its implementation (for example, zoning and subdivision regulations). The plan must be based on careful and comprehensive surveys and studies of existing conditions and probable future development. *Sections 6-29-510 to 6-29-540.*

Council must adopt the comprehensive plan by ordinance after a public hearing. *Section 6-29-530*.

**Board of Zoning Appeals**

If the municipality has zoning, council must create a board of zoning appeals. Appointed by council to serve overlapping terms of not less than three but no more than five years, the board consists of three to nine members. *Section 6-29-780.* This quasi-judicial administrative agency hears requests for special exceptions and variances arising from the application of the municipality's zoning ordinance, resolutions and maps. *Section 6-29-800.*

The board of zoning appeals also will hear appeals from zoning officials' decisions. The circuit court hears appeals of the board's decisions. *Sections 6-29-800, 6-29-820.*

**Commission of Public Works**

Council does not appoint commission of public works members. Municipal electors elect them to office. The commission consists of either three or five municipal residents who serve six-year staggered terms once the original commission has been phased into office. *Section 5-31-210.*

Section 5-31-230 lists the municipalities where there shall be no board of commissioners of public works. In those municipalities, the duties, powers and responsibilities usually vested in a commission of public works are vested in the council, with certain exceptions.

The board of commissioners of public works is responsible for the acquisition, operation and management of municipal water and electrical systems. The commissioners may supply water, electricity and gas to municipal residents, contract for such services outside the municipality, and require payment of rates, tolls and charges for the use of those services. *Section 5-31-250.*

**Sewage Commission**

Any municipality enlarging, extending or establishing a municipal sewage system may create a sewage commission responsible for the sewage system's construction. *Section 5-31-840.*

The commission consists of five to seven residents elected by council. As many as three commission members may be councilmembers, but this is not recommended due to possible constitutional problems. The commission members serve for two-year terms until their successors are elected or until the sewage system's enlargement, extension or establishment is completed. *Section 5-31-820.*

# Municipal Officers and Employees

**Creation and Abolition of Office**

By ordinance, municipal councils may establish, alter or abolish any municipal department, office or agency. *Section 5-7-260(1).*

State law gives the council in all three forms of municipal government the authority to set the functions of each department, office or agency. *Sections 5-9-40, 5-11-40, 5-13-100.*

Under the mayor-council form, no function assigned by law to a particular department, office or agency may be discontinued or assigned to any other agency. *Section 5-9-40.*

Under the council-manager form, the council may create, change and abolish offices, departments or agencies upon the manager's recommendation. With the manager's recommendations, council may assign additional duties and functions. *Section 5-13-100.*

**Distinction Between Officer and Employee**

Although a public office is distinguished from public employment, public office is, in a sense, a form of employment.

Section 8-13-100(27) of the state Ethics Act defines the term public official as "an elected or appointed official of the state, a county, a municipality, or a political subdivision thereof . . ."

In *Edge v. Cayce, 187 S.C. 171, 197 S.E. 216(1938)*, the South Carolina Supreme Court declared a police chief, who is charged with preserving the peace and order of the municipality and with enforcing its laws in which the public is concerned, is a public officer. Sometimes, it is important to distinguish between those people who hold public office and those who are public employees. The following criteria are usually associated with public office

- the position is created by statute or ordinance;
- the position's duties involve some portion of the exercise of the state's sovereign power including the exercise of discretionary powers; and
- the position and the duties associated with it are of an ongoing, continuing nature and not occasional or intermittent.

If these elements are present, the position may be classified as a public office. If not, the position should be considered one of public employment.

**Term of Office, Suspension and Removal**

Generally, municipal officers, employees, and commission members serve at the pleasure of the appointing authority.

The municipal council has the authority to create, alter or abolish municipal offices. Along with this power comes the authority, except as otherwise provided by law, to set, shorten or lengthen the term of office.

Except as otherwise provided by law or personnel rules, the chief administrative authority may suspend or remove any municipal employee or administrative officers when deemed to be necessary for

the good of the municipality. *Sections 5-9-30(1), 5-11-40(b), 5-13-90(1).* However, the discharged employee may file a grievance if the municipality has established a grievance procedure that complies with the requirements of Section 8-17-130.

**Residency Requirement**

Generally, elected and appointed municipal officials must be residents of the municipality to hold office. *Article VI, Section 1, Article XVII, Sections 1, 1A, S.C. Constitution.*

There is no requirement in general statutory law for public employees to be residents of the municipality during their employment.

A manager in a council-manager form of government does not need be a resident of the municipality or state at the time of his employment and may reside outside the municipality while in office only with the approval of the council. *Section 5-13-50.*

The U.S. Supreme Court ruled a chief administrative officer may implement a residency requirement for all employees or a particular class of employees, such as police or fire personnel. Obtain legal advice before implementing residency requirements.

**Dual Office Holding**

No person shall hold two offices of honor or profit at the same time. *Article XVII, Section 1A and Article VI, Section 3, S.C. Constitution.*

This limitation does not apply to officers in the militia, notaries public, constables, personnel of lawfully and regularly organized fire departments, or delegates to a constitutional convention.

The prohibition against dual office holding applies to municipal offices. *Darling v. Brunson, 94 S.C. 207, 77 S.E. 860 (1913).* According to the state attorney general, the dual office holding provision applies regardless of whether a statute or municipal ordinance created the office. *1963-64, Ops. S.C. Attorney General, No. 1639, at 72*.

Some positions determined by court decisions or attorney general opinions to be offices of honor or profit and (with some exceptions) subject to the dual office prohibition are

- mayor or councilmember,
- municipal police officer,
- municipal judge (full- or part-time),
- municipal attorney,
- municipal treasurer,
- planning commission member,
- zoning administrator,
- city manager,
- election commission member, and
- zoning board of adjustment members.

Except where expressly authorized by another law, a mayor or councilmember is prohibited from holding any other municipal office or employment with the municipality for which he holds elected office. *Section 5-7-180.*

**Oath of Office**

All elected and appointed officers of the state's political subdivisions, before entering their respective offices, shall take and subscribe the following oath of office from any person authorized to administer oaths, such as a judge or notary public *(Article VI, Sections 4 and 5 of the S.C. Constitution)*:

> *I do solemnly swear (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the duties of the office to which I have been elected (appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect, and defend the constitution of this state and of the United States. So help me God.*

In addition to the oath prescribed by the constitution, the mayor and councilmembers must take the following oath of office *(Section 5-15-150):*

> *As mayor (councilmember) of the municipality of _____, I will equally, fairly, and impartially, to the best of my ability and skill, exercise the trust reposed in me, and I will use my best endeavors to preserve the peace and carry into effect according to law the purposes for which I have been elected. So help me God.*

**Particular Officers and Employees**

Under the council-manager form of government, the council must employ a manager and set his compensation. No mayor or councilmember may concurrently serve as manager of his municipality.

*Manager*

The manager may reside outside the municipality with council approval. *Section 5-13-50*. The council may require the manager to be bonded for the faithful performance of his duties. *Section 5-13-60.*

The manager's term of employment is at the pleasure of the council, although the council may employ the manager for a definite term. If the council wishes to remove the manager, it must provide a written statement of the reasons for the proposed removal.

- The manager has the right to a hearing at a public meeting of the council.
- Within five days of the removal notice, the manager may file a written request with the council for a public hearing. Council must hold this hearing at a council meeting no earlier than 20 days but no later than 30 days after the manager files the request.
- The manager may file a written reply with the council no later than five days before the hearing.
- The removal is stayed pending the decision at the public hearing. *Section 5-13-70*.

Under the council form of government, an officer appointed by and subject to council's direction and supervision may administer all departments, offices and agencies. *Section 5-11-40.*

*Administrator/Administrative Assistant*

Under the mayor-council form of government, the mayor and council, as a collective body, may employ an administrator to assist the mayor with all departments, offices, and agencies under the mayor's direction and supervision. The employee is subject to the mayor's direction and supervision. *Section 5-9-40*.

*Municipal Clerk*

The council under the council and mayor-council forms of government or the city manager under the council-manager form of government must appoint a municipal clerk. *Section 5-7-220*.

The clerk must give notice of council meetings, keep minutes of council meetings and perform the duties assigned by state statute or municipal ordinance.

In smaller municipalities, the municipal clerk's duties and functions may be combined with those of a treasurer. Thus, the position is referred to as clerk-treasurer.

Traditionally, the clerk-treasurer is considered a nucleus of information and a source of continuity for municipal government. By virtue of having responsibility for numerous administrative and financial functions, and by generally serving a long and stable tenure, the clerk-treasurer often has provided a stability that otherwise might not have existed in smaller municipalities.

*Municipal Attorney/Court*

The council may appoint a municipal attorney to serve the municipality. *Section 5-7-230*. The council may establish, by ordinance, a municipal court. This court is part of the state's unified judicial system. *Section 14-25-5.*

*Judge*

Council sets the judge's compensation and appoints a municipal judge for a term of not less than two years but not more than four years or until a successor is appointed and qualified. *Sections 5-7-230, 14-25-15, 14-25-25*. A municipal judge cannot be suspended or removed from office at the discretion of city council during his appointed term. A municipal judge, during his term of office, may only be suspended or removed by order of the Supreme Court pursuant to its rules for incapacity, misconduct or neglect of duty.

Municipal judges must complete training and/or pass a certification examination within one year of appointment. They will also have to meet continuing education requirements established by the chief justice and renew their certification every eight years. *Section 14-25-15.*

# CHAPTER 9

# FREEDOM OF INFORMATION AND ETHICS

The South Carolina Freedom of Information Act guarantees that the public has access to public records of governmental bodies in South Carolina, which includes municipalities. Municipal officials, employees and operations are subject to compliance with both the state Freedom of Information Act as well as the Ethics Reform Act of 1991.

## Proceedings and Records

The proceedings and records of agencies, boards and commissions are subject to the provisions of the Freedom of Information Act. *Sections 30-4-10 to 30-4-110.* A "public body" as defined by the Act is

> "... any public or governmental body or political subdivision of the state, including... municipalities, townships..., or any organization, corporation or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known and includes any quasi-governmental body of the state and its political subdivisions..." *Section 30-4-20(A).*

**Meetings**

Individuals cannot use chance meetings, social meetings or electronic communication to circumvent the Freedom of Information Act's requirements. *Section 30-4-70(B).*

The Act does not prohibit removing any person who willfully disrupts a meeting to the extent that the disruption seriously compromises the orderly conduct of the meeting. *Section 30-4-70(C).*

A public meeting occurs when a quorum of the constituent membership of a public body, whether in person or by means of electronic equipment, convenes to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power. *Section 30-4-20(D).*

A quorum, unless otherwise defined by applicable law, means a simple majority of the constituent membership of a public body. *Section 30-4-20(E).*

**Closed Sessions**

Every meeting of all public bodies must be open to the public unless one of the exceptions provided for in S.C. Code Ann. § 30-4-70(A) permits closing the meeting for an executive session. Exceptions include

- **S.C. Code Ann. § 30-4-70(A)(1)**
  Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body. *(The identity of the individual or entity being discussed is not required to be disclosed.)*

- **S.C. Code Ann. § 30-4-70(A)(2)**
  Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of Legal Advice where the Legal Advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

- **S.C. Code Ann. § 30-4-70(A)(3)**
  Discussion regarding the development of security personnel or devices.

- **S.C. Code Ann. § 30-4-70(A)(4)**
  Investigative proceedings regarding allegations of criminal misconduct.

- **S.C. Code Ann. § 30-4-70(A)(5)**
  Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body. *(The identity of the individual or entity being discussed is not required to be disclosed.)*

Before a public body can go into a closed session, it first must vote, in public, on the question of going into executive session. The motion to enter executive session should state one or more of the five specific purposes for the executive session. "Specific purpose" means a description of the specific matter to be discussed as identified in the law. However, when the executive session is held pursuant to personnel or economic development matters, the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement.

If the vote is favorable, the presiding officer must announce the executive session's purpose. *Section 30-4-70(A)(6) (2005). Refer to page 26 for specific requirements and procedures for entering executive session.*

Council cannot take any action in executive session except to adjourn or return to public session. *Section 30-4-70(B) (2005).*

**Public Notice**

At the beginning of each calendar year, all public bodies must give written public notice of their regular meetings. The notice must include the meeting dates, times and places. *Refer to page 22 for specific details and procedures.*

The public body must post an agenda for any regularly scheduled, special, called or rescheduled meeting on a bulletin board at the office or meeting place of the public body at least 24 hours prior to such meetings and on the municipality's website, if it has one. *Section 30-4-80(A) (2005).*

All public bodies must post a public written notice for any called, special or rescheduled meetings. They should post the notice as early as is practical but no less than 24 hours before the meeting. It must include the meeting's agenda, date, time and place. *Refer to page 22 for specific details and procedures.* These requirements do not apply to emergency meetings. *Section 30-4-80(A).*

A written public notice consists of, but need not be limited to, posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building where the meeting is to be held. *Section 30-40- 80(D).* If the public body has a website, notice of public meetings must also be posted on its website.

All public bodies must make an effort to notify the local media (and other media that request meeting notification) of all scheduled, rescheduled or called meetings. The meeting's minutes must note efforts to comply with this requirement. *Section 30-4-80(E).*

**Records**

Any person, other than an individual serving a sentence of imprisonment in a state, county, or federal correctional facility, has a right to inspect or copy any public records of a public body except those exempted from disclosure by the Freedom of Information Act, or otherwise exempted by state or federal law. *Sections 30-4-30(A)., and 30-2-50*

The public body may require the request for access to or copies of records to be made in writing. The public body then has 10 business days to respond to a request for records that are up to 24 months old, and 20 business days to respond for records that are more than 24 months old. Requested records deemed subject to production under FOIA must be produced within 30 calendar days of the public body's required response for records up to 24 months old, and within 35 calendar days for records more than 24 months old. If the requestor appears in person, the public body must make certain records available for immediate inspection and copying without a written request:

- meeting minutes for the past six months;
- all reports identified in Section 30-4-50(A)(8) for at least 14 days before the date of the request; and
- documents identifying people confined in any jail, detention center or prison for the past three months.
- All documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period.

The public body may establish and collect fees, not to exceed the actual cost of the search, retrieval and redaction of records. The public body shall develop a fee schedule that includes a uniform charge for copies (not to exceed the prevailing commercial rate), and a fee for search, retrieval and redaction that does not exceed the prorated hourly salary of the lowest paid employee with the skill and training necessary to perform the request. The public body may require a deposit of up to 25 percent of the reasonably anticipated cost for reproduction of the records, and the above-mentioned 30 and 35 day production periods do not begin until that deposit is received. Any balance is due at the time of production. *Section 30-4-30(B)*

The public body may request a court order relieving it from a records request that is unduly burdensome, overly broad, vague, repetitive or otherwise improper. The public body may also request a ruling from a circuit court where it is unable, despite its best efforts, to determine if a record is subject to disclosure. If a public body prevails at the circuit court level, a good faith finding will shield the public body from paying the requesting party's attorney's fees and costs if the requesting party prevails on appeal. However, if a court finds that a violation was arbitrary or capricious, it may assess a civil fine of up to $500. *Section 30-4-110*

A public body that receives an FOIA request for records that include personal information must provide notice to the requesting party that using or distributing such personal information for purposes of commercial solicitation is a crime under state law. *Section 30-2-50.*

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# Ethics

**Conflicts of Interest**

Any municipal officer or employee who has a substantial financial interest in any business that contracts with the municipality for the sale or lease of land, materials, supplies, equipment or services, or who personally engages in such matters, shall make known that interest and refrain from voting or otherwise participating in his capacity as a municipal officer or employee in matters related thereto. *Section 5-7-130.*

Any municipal officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of Section 5-7-130 is guilty of malfeasance in office. If convicted, he must forfeit the office or position.

A violation of Section 5-7-130 with the knowledge (expressed or implied) of the person or corporation contracting with or making a sale to the municipality shall render the contract or sale voidable by council.

No municipal officer shall take a contract to perform work or furnish material for the municipality of which he is an officer, and he shall not receive any compensation on any such contract.

In cities of more than 30,000 population, such contracts may be allowed by the unanimous vote of council taken for each specific contract. The vote, taken by yeas and nays, is entered in the council's minutes.

Any municipal officer may enter into a contract if he is awarded the contract as low bidder after a public call for bids and council unanimously votes on each particular contract. The vote, taken by yeas and nays, is entered in the council's minutes. *Section 5-21-30*.

**State Ethics Commission**

The Ethics Reform Act of 1991 expanded the size of the state Ethics Commission and gave it additional responsibilities to include lobbyist registration and disclosure, financial disclosure, campaign practices and ethical rules of conduct. The statute provided that the commission could issue advisory opinions, conduct investigations and hearings into complaints, and levy fines for violations of the Act. Municipal officials and employees in South Carolina are subject to the Ethics Reform Act, *Section 8-13-100*.

**Ethics Act**

As previously discussed, the State Ethics Act defines a public employee as a person employed by a municipality and public official as an elected or appointed municipal official. *Section 8-13-100(25), (27).* A person appointed to a non-compensated, part-time position on a board or commission is a public member. *Section 8-13-100(26).*

Other definitions in the state Ethics Act are important because they govern the application of the Act's prohibitions and requirements. Municipal officials should review the entire Act carefully.

The term "public official" usually includes a public member (such as a planning commissioner) and public employee.

A public official may not knowingly use his official position to gain an economic interest for himself, a member of his family or an individual/business with whom he is associated. Section 8-13-100(15) defines a family member of a public official as the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild or immediate family member.

In the past, the law required public officials to recuse themselves from matters when immediate family members had an economic interest. Immediate family members defined in the Ethics Reform Act are essentially children, spouses or dependents living within the same household. Legislation passed in 2011 significantly expanded when recusals are required.

Under current law, a public official must recuse himself if any of the public official's expanded family members listed within Section 8-13-100(15) have an economic interest in a matter. The definition of an economic interest for purposes of this requirement is found in Section 8-13-100(11).

No person, directly or indirectly, may give or offer anything of value to a public official to influence the discharge of his duties, nor can he require the official to perform or fail to perform an act in violation of his duties. A public official may not directly or indirectly ask, seek or receive anything of value for such purposes. *Section 8-13-705.*

No person may offer or pay a public official for advice or assistance given in the course of his official duties; and a public official may not seek or receive the money. *Section 8-13-720.*

A public official or public employee may not use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a member of his immediate family, an individual with whom he is associated or a business with which he is associated. Section 8-13-725.

No person may serve as a member of a regulatory agency that regulates a business with which he is associated. *Section 8-13-730*.

A municipal public official (or an individual/business with whom he is associated) may not knowingly represent a person before any board, commission, body or unit of that municipality. *Section 8-13-740(A)(5).*

These representation restrictions do not apply to purely ministerial matters, representation in the course of official duties or representation on matters relating to the public official's and his immediate family's personal affairs. *Section 8-13-740(A)(7)*.

A state, county or municipal public official; public member; or public employee, including a person serving on an agency, unit or subunit of a governmental entity, cannot be required to resign or otherwise vacate his seat or position due to a conflict of interest that arises under this section as long as notice of the possible conflict of interest is given and he complies with the recusal requirements of Section 8-13-700(B). A governmental entity includes, but is not limited to, a planning board or zoning commission. *Section 8-13-740(A)(8).*

A public official may not cause the employment, appointment, promotion transfer or advancement of a family member to a municipal position that the official supervises or manages. *Section 8-13-750(A).* In addition, a public official may not participate in any action relating to the discipline of a family member. *Section 8-13-750(B).*

For one year after terminating his public service, a public official may not represent clients before the municipality he served regarding matters in which he directly and substantially participated. *Section 8-13-755(1).* He also cannot accept employment from a person whom the municipality regulated when the employment involves a matter in which the former public official directly and substantially participated. *Section 8-13-755(2).* A public official involved in procurement may not resign and accept employment with a person contracting with a municipality if the contract was one of the official's responsibilities. *Section 8-13-760.*

A person may not use municipal government personnel, equipment, materials or office buildings in an election campaign. However, a municipality may rent or provide public facilities for political meetings if it makes the facilities available on similar terms to all candidates. *Section 8-13-765.*

A public official may not have an economic interest in a contract if he is authorized to perform an official function relating to the contract's preparation or award, and the contract is awarded through public notice and competitive bidding. *Section 8-13-775.*

The Ethics Act does not prevent an elected municipal official from communicating in writing with a municipal board or commission for a constituent relating to delays, discourteous treatment, scheduling or other matters not affecting the outcome of a matter. He can do this only if he or an individual/business with whom he is associated is not representing the constituent. *Section 8-13-785.*

The Statement of Economic Interests instructs filers to report anything of value worth $25 or more in a day and anything worth $200 or more in aggregate in a calendar year. However, this dollar value limit does not apply if a gift is received because of an individual's position as a public official. The state Ethics Commission recommends all municipal elected officials and employees who are required to file an SEI report all gifts received, regardless of value.

No public official, member or employee may make, participate in or attempt in any way to use his position to influence a governmental decision in which he, a member of his immediate family or an individual/business with which he is associated has an economic interest.

In cases of potential Ethics Act violations, the official, member or employee must prepare a written statement describing the matter and the nature of the potential conflict of interest. Take the following actions to disclose a potential conflict:

- A public employee gives a copy of the statement to his superior, who assigns the matter to another employee.

- A public official (such as a councilmember or manager) or public member (such as planning commissioner) gives a copy of the statement to the mayor or other appropriate presiding officer. The mayor or presiding officer will make sure the statement is printed in the minutes and will require the official or member be excused from any votes, deliberations or other actions on that matter.

*Speaking Engagement*

A public official or public employee acting in an official capacity may not receive anything of value for speaking before a public or private group.

A public official, public employee or member (not a public employee) may receive payment or reimbursement for actual expenses incurred for a speaking engagement.

If the expenses will be incurred out of state, a municipal public official or member must receive prior written approval from the municipality's chief executive to receive reimbursement. *Section 8-13-715*. Under the mayor-council and council forms of government, the chief executive is the mayor. Under the council-manager form, the manager is the chief executive. *Sections 5-9-30, 5-13-90*.

For purposes of the preceding paragraphs, "anything of value" does not include

- informational or promotional materials less than $10 in value;
- a personalized plaque or trophy less than $150 in value;
- educational material of a nominal value;
- an honorary degree;
- promotional or marketing items offered to the general public on the same term; or
- a properly received and reported campaign contribution. *Section 8-13-100(1)(b)*.

*Statement of Economic Interests*

The following municipal officials and employees (regardless of compensation) must file a Statement of Economic Interests with the state Ethics Commission. *Section 8-13-1110(B).*

- any elected public official or candidate for public office;
- city administrator, city manager or chief municipal administrative official or employee, by whatever title;
- chief financial official (or employee) and the chief purchasing official (or employee) of the municipality;
- any person appointed to fill an unexpired term

*What is Filed*

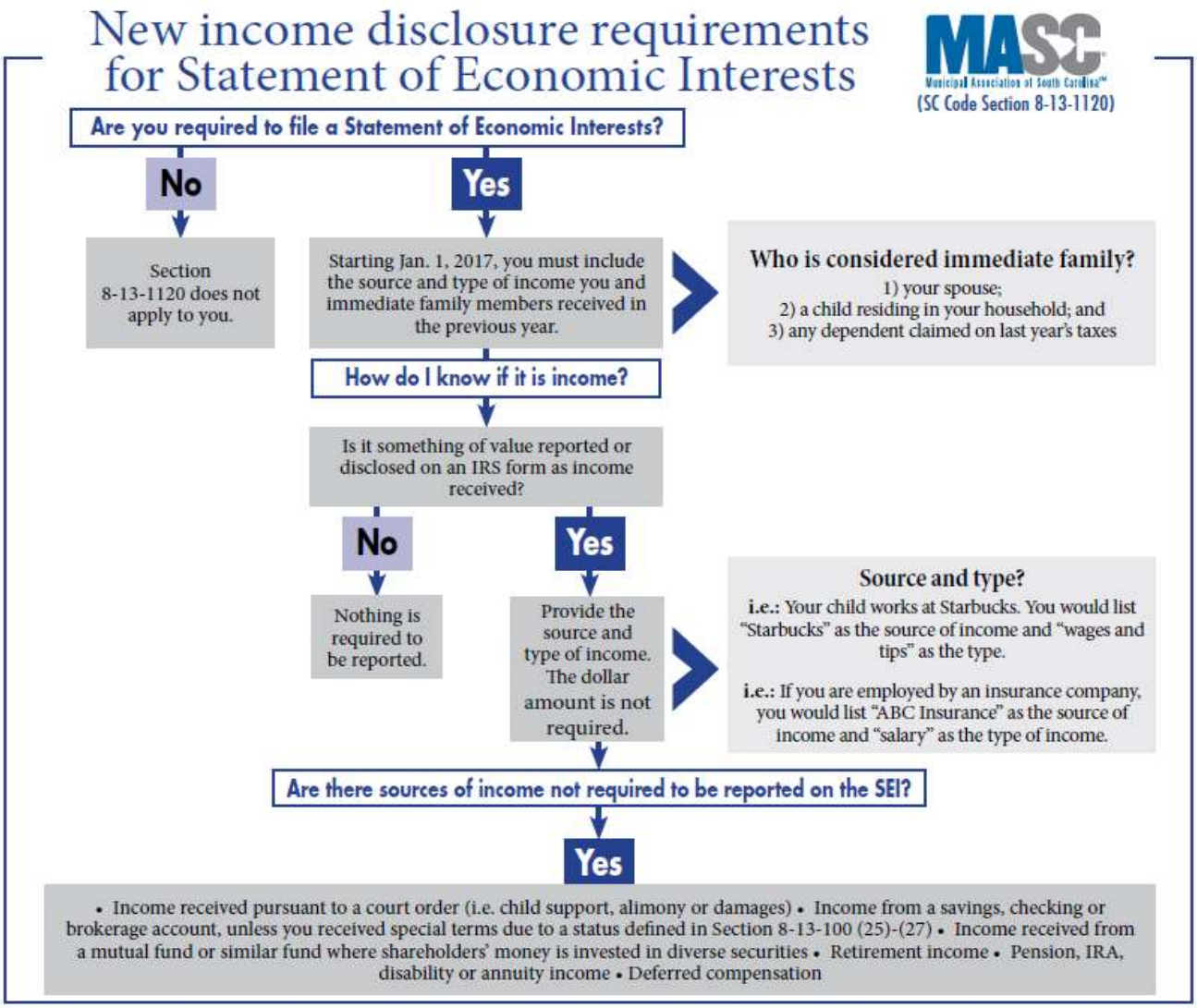
A Statement of Economic Interests form asks *(Sections 8-13-1120, 8-13-1130)*

- income and benefits from state and local public agencies,

- compensation from government contractors,
- certain business interests,
- certain types of debt,
- business transactions with public agencies,
- certain relationships with lobbyists,
- real estate interests which could conflict with the official's position,
- certain types of gifts, and
- purchases by a lobbyist of goods or services worth more than $200.

Officials filing a Statement of Economic Interests must include the source and type of income received during the previous year, including income received by the official and his immediate family.

The amended law defines income as anything of value received by the filer or his immediate family required on an IRS form filed for the disclosure of income. A lengthy list of sources or types of income expressly excluded from the definition includes retirement, annuity, pension, IRA, disability or deferred compensation payments.




*When Filed*

- prior to assuming the duties of the office or employment *(Section 8-13- 1110(A))*
- at the time of filing as a candidate *(Section 8-13-1356)*
- prior to April 15 of each subsequent year *(Section 8-13-1140)*

**Bonding**

Generally, there are two classes of surety bonds for municipal officers and employees.

1. Official faithful performance bonds protect both the public body for which they are written and the interest of any other parties involved. Faithful performance bonds protect the government and the public against monetary loss by public employees and guarantee faithful performance on their part.

2. Fidelity bonds provide protection against loss due to dishonest acts of public officials and employees in positions of trust.

Although no state statute requires municipal officials to be bonded, it is good policy to bond certain classes of officials and employees:

- all custodians of municipal funds including the treasurer, tax collector, utility bill collector and finance officer;

- legislative and executive officers including the mayor, councilmembers, manager or administrator, clerk and other designated department heads; and

- any other subordinate employees whose duties routinely are carried out through the delegated authority of an individual appropriately bonded.

Council has the power and authority to require and designate which municipal officials and employees should be bonded. In addition, it may decide the amount to which they should be bonded.

- Normally the governmental unit underwrites the expense of surety bond coverage.

- An ordinance should direct the bonding of municipal officials and employees. The municipality should consult its attorney before procuring any bonds.

The municipal clerk should maintain records of all individuals subjected to municipal bonding requirements.

# CHAPTER 10

# PUBLIC SAFETY

One of the primary services provided by municipalities is public safety (police and fire protection services and building codes enforcement).

## Law Enforcement

A municipality may appoint or elect as many police officers as it deems necessary for adequate law enforcement. Police officers are vested with all the powers and duties conferred by law upon constables, in addition to the special duties given to them by the municipality.

Municipal police officers may exercise their powers on all private and public property within the municipality's corporate limits as well as on all property owned and controlled by the municipality. *Section 5-7-110*.

A municipality may adopt, by reference, the provisions of general state law relating to traffic regulation *(Chapter 5, Title 56, Code of Laws of S.C.*) and provide for additional traffic regulations if they do not violate state law. *Sections 56-5-30, 56-5-710, 56-5-720*.

All law enforcement officers appointed by a municipality must successfully complete the basic training program at the South Carolina Criminal Justice Academy within one year of their appointment.

Exceptions to the one-year rule may be made in cases where the Academy cannot meet its training commitments due to time or physical limitations or if the officer is injured, is on military leave or has completed a similar course in another state. *Section 23-23-40*.

Prior to certification, the officer may not perform any duties involving control and direction of the public or exercise the power of arrest unless he has successfully completed a firearms qualification program.

A law enforcement agency or department may not require officers to meet a quota for the number of citations issued during a designated period. Officers may be evaluated based on performance data comparisons, such as interaction with citizens and businesses within their jurisdictions and the law enforcement officer's involvement in community-oriented initiatives. *Section 23-1-245*.

Data recorded by a body camera is not a public record subject to disclosure under the Freedom of Information Act, but may be subject to disclosure to other law enforcement-related agencies. Additionally, certain parties who are related to the recording, or a party that is subject to a civil or criminal action where the recording may be relevant, may receive body camera data through the discovery process or by court order.

**Services**

Typically, law enforcement services (property protection, criminal investigation and apprehension, traffic control, conflict resolution and community education) represent a significant portion of a municipality's budget.

Residents often are more aware of the police department's service than any other municipal services because of its high visibility and constant provision of services.

**Outside Limits**

A municipality may contract with any public utility, agency or private business to provide law enforcement protection outside its municipal corporate limits. The service agreement must be a contract. In addition, the municipality must file a legal description of the service area with the State Law Enforcement Division, the county sheriff's office and the state Department of Public Safety. *Section 5-7-110*.

In cases of emergency, a municipal council may send law enforcement officers to another political subdivision of the state that requests assistance. *Section 5-7-120*.

- A complete record of the request and list of the officers sent must be recorded in the minutes of the next regular or special meeting of the governing bodies of both the requesting and the sending political subdivisions.

- The requesting political subdivision must pay the costs of the emergency services provided.

- Law enforcement officers sent to another municipality in an emergency have the same jurisdiction, authority, rights, privileges, immunities and workers' compensation coverage as they have in their own municipality.

- The law enforcement officers sent to the requesting political subdivision have the same authority to make arrests and execute criminal process as the law enforcement officers of the requesting political subdivision. *Section 5-7-120*.

With a written agreement, municipalities may transfer law enforcement officers on a temporary basis to other municipalities or counties. *Section 23-1-210*. They also may enter into agreements for joint criminal investigations. *Section 23-1-215*.

Municipalities may also contract with another law enforcement agency to provide police services in the municipality in lieu of establishing a municipal police department.

The Law Enforcement Assistance and Support Act of 2000, as amended in 2016, allows law enforcement agencies to enter into a mutual aid agreement to provide public safety functions across jurisdictional lines, including, but not limited to, multijurisdictional task forces, criminal investigations, patrol services, crowd control, traffic control and safety, and other emergency service situations. Such agreements must not be permitted for the sole purpose of speed limit enforcement. The appropriate governing bodies of each concerned county, incorporated municipality, or other political subdivision must approve a mutual aid agreement entered into on behalf of a law enforcement authority. Agreements executed between governing bodies remain in effect until terminated by a participating party of the agreement. *Section 23-20-10*.

## Fire Prevention and Suppression

Another visible, important service provided by municipalities is fire prevention and suppression. Any municipality with more than 100 inhabitants may equip and control, in any way it deems necessary, a fire department for the municipality's protection. It may also establish, by ordinance, fire limits in the municipality. *Section 5-25-20.*

Act 78 of 2005 *(Section 6-11-1460)* prohibits employers from terminating the employment of a volunteer firefighter or medical services volunteer for failing to report to work if they are participating in statewide mobilization responding to an emergency declared by the president or governor.

The South Carolina Fire Academy, operated under the auspices of the state fire marshal, provides training for municipal fire department personnel. *Section 23-10-10*.

Local governments have police power to enact ordinances prohibiting the discharge of fireworks in certain locations or at certain times. Such ordinances "should be carefully drafted so as to impose nothing more than a civil penalty for violations…. A civil penalty can be achieved by language indicating a violation is an 'infraction' and/or a 'public nuisance'." When drafting the ordinance, council should ensure that the restrictions imposed are not overly broad and do not unreasonably prohibit the discharge of fireworks which is otherwise permissible under state law. *Op. S.C. Atty. Gen., October 11, 2011.*

## Building, Housing, Electrical, Plumbing and Gas Codes

All municipalities and counties are required to adopt building, energy, electrical, plumbing, mechanical, gas and fire codes, referred to as building codes, relating to the construction, livability, sanitation, erection, energy efficiency, installation of equipment, alteration, repair, occupancy, or removal of structures located within their jurisdictions and promulgate regulations to implement their enforcement.

Municipalities may establish agreements with other governmental entities to issue permits and enforce building codes. The South Carolina Building Codes Council will assist in arranging for municipalities to provide building code enforcement if a written request is sent to the council. *Section 6-9-10.*

Municipalities and counties may adopt by reference only the latest editions of the following nationally recognized codes and the standards referenced in those codes regulating construction within their respective jurisdictions: property maintenance, performance codes for buildings and facilities, existing building and swimming pool codes as promulgated, published, or made available by the International Code Council, Inc. A municipality or county may adopt the appendices of the codes provided in this section as needed, but the adopting ordinance must reference the specific appendix or appendices by name or letter designation. However, the provisions of the codes referenced in this section that concern the qualification, removal, dismissal, duties, responsibilities of, and the administrative procedures for all building officials, deputy building officials, chief inspectors, other inspectors, and assistants do not apply unless the municipal or county governing body has adopted them.

Municipalities may appoint a building codes enforcement officer to inspect or enforce applicable building code requirements. The building codes officer must be registered with the South Carolina Building Code Council and certified by a recognized code organization. The official must also complete training and continuing education for recertification on a two-year cycle. *Section 6-8-10.*

Municipalities may enter into regional agreements with other political subdivisions for code enforcement. *Section 6-9-10, Section 6-9-20.*

**Statewide Building Codes**

If any of the authorized codes do not meet a municipality's needs because of local, physical or climatological conditions, it should submit any variations or modifications to the South Carolina Building Code Council. *Section 6-9-60*.

Municipal ordinance provisions for permitting and enforcement of building standards do not apply to state and federal agency projects. *Section 6-9-110*.

**Manufactured Homes**

Manufactured homes constructed after June 15, 1976, must be constructed according to national standards, commonly known as the HUD Code. *24 Code of Federal Regulations, Section 3280.* When Congress authorized the development of federal standards for manufactured home construction, it preempted the imposition of inconsistent requirements by state or local governments.

The HUD Code is a performance-based code. It establishes the performance standard to meet when constructing the manufactured home. There are no construction specifications for the manufactured home. The manufacturer uses an engineer or architect to design the manufactured home to meet the HUD standard. The manufacturer must certify to HUD that the manufactured home meets the standard. HUD does not monitor the construction of each manufactured home. It uses third-party inspectors to make random inspections.

Section 603 (6) of the Federal Act, 42 U.S.C. Section 5402 (6) defines a manufactured home as

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation….

State law preempts local governments from imposing specifications for the foundations of manufactured homes. The foundation system is not the same as for a modular or site-built home. State law prescribes the foundation specifications. The building official may not inspect the construction of the home; the official may inspect the connection of utilities such as water, sewer, gas and electric.

**Modular Homes**

The South Carolina Modular Building Construction Act establishes standards for the construction of modular homes. The Act defines a modular building unit as

> "any building of closed construction, regardless of type of construction or occupancy classification, other than a mobile or manufactured home, constructed off-site in accordance with the applicable codes, and transported to the point of use for installation or erection."

Modular homes must be constructed to the Standard Building Code. The code prescribes the material and methods allowed in construction, which are the same codes that apply to site-built homes. A neutral third party must inspect every modular unit during construction before a certification label is affixed to the unit.

The foundation system required for a modular home is the same as for a site-built home. The building official may inspect the foundation. The official may inspect all utility connections and any features, such as porches or garages, added at the site.

Local governments must accept that the modular buildings certified by the South Carolina Building Codes Council comply with state standards. Local governments must recognize modular buildings as the equivalent to site-built structures for the purposes of code enforcement and zoning. *Section 23-43-130*.

## Ordinance Summons

Act 328 of 1992 (Section 56-7-80) authorizes local governments to adopt an ordinance allowing any municipal law enforcement or code enforcement officer to issue an ordinance summons for municipal ordinance violations. The summons document must meet the requirements of Section 56-7-80.

State law prohibits municipalities from issuing an ordinance summons for violations of ordinances regulating motor vehicle usage on state public roads or for custodial arrests.

Any person failing to appear before the court as a summons requires without first posting bond or without receiving a continuance by the court is guilty of a misdemeanor.

# CHAPTER 11

# PUBLIC WORKS AND UTILITIES

The term "public works" encompasses a wide range of municipal services: providing and maintaining streets, sidewalks, parking facilities, street lighting, traffic control signs and signals, street signs; power plants; electric transmission and distribution lines; pipelines and gas mains; water treatment and distribution systems; wastewater (sewage) collection and treatment systems; stormwater collection and treatment systems; and refuse collection and disposal operations.

Public works is the infrastructure of a municipality. Municipal governments, public service districts, the state, counties and private utilities are all responsible for the design, construction and maintenance of that infrastructure.

This chapter covers municipalities' powers and duties for streets and sidewalks, as well as the four most common types of municipal utilities — water, wastewater, stormwater and electric systems.

**Condemnation**

Throughout this chapter, the municipality's authority to acquire land, obtain rights of way and condemn property for public works and utility projects is pointed out. In each case, the municipality must handle condemnation procedures in accordance with the Eminent Domain Procedure Act of 1987. *Sections 28-2-10 to 28-2-510*.

**Constitutional Amendment**

In 2007, a constitutional amendment on eminent domain was ratified. Private property must not be taken for private use without the owner's consent or for public use without first making just compensation for the property. The municipality cannot condemn private property by eminent domain for any purpose or benefit (including economic development) unless the condemnation is for public use. A public use or purpose has the general public as its primary beneficiary. *Article 1, Section 13, S.C. Constitution (2007).*

## Streets and Sidewalks

**Opening, Closing or Altering Streets**

Paving streets and sidewalks is an important part of developing and maintaining municipal infrastructure. Accordingly, municipal governments have broad powers regarding streets and sidewalks. *Section 5, Chapter 2.*

Municipalities also have broad powers for carrying out redevelopment projects, which may include streets and sidewalks. *Section 31, Chapter 10*.

Municipalities may acquire land, easements, or rights of way for any authorized corporate or public purpose. That power applies to acquiring land to widen, open, lay out, extend or establish streets, alleys, courts or lanes. Municipalities have the right to condemn properties if they follow state condemnation laws and pay just compensation. *Sections 5-7-50, 5-27-10; Article I, Section 13, S.C. Constitution*.

Just as municipalities may open, widen or extend streets, they also have the power to close streets based on certain procedures. *Section 5-27-150*. Other interested parties may petition the courts to close streets. *Sections 57-9-10 to 57-9-40*.

Municipalities may assess property owners bordering on streets and sidewalks receiving permanent improvements. The municipality must make assessments or charges against the property in proportion to the amount of frontage the property has on the street or sidewalk being improved. The total assessments may not exceed one-half of the improvement cost. *Sections 5-27-310 to 5-27-370*.

To assess the property owners bordering street or sidewalk improvements, the municipality must

- receive written consent from at least two-thirds of the property owners bordering the street or sidewalk (or portion of each) to be improved;
- file the signed, written consent with the municipal clerk;
- make provision to pay at least one-half of the cost of the improvement; and
- order the improvement by ordinance, prescribe the interest rate on deferred payments, and set the terms and times of the property owners' payments.

The municipality must keep assessments, along with its contribution, in a separate fund for use only for the project for which it was raised. *Section 5-27-330*.

The municipal clerk must enter street and sidewalk improvement assessments into the book of assessment liens. The municipality can enforce payment of the assessment in the same way as it enforces payment of municipal taxes.

The five-year limitation period on the lien begins on the date the final payment is due. If there is a default in an installment payment, the municipality may declare the entire balance of the assessment to be due. *Section 5-27-340*.

The Municipal Improvement Act of 1999 provides another assessment method for such improvements in an improvement district. An ordinance adopted by a majority of the council after a public hearing or a petition signed by a majority of the real property owners within the district may be used to create an improvement district. A wide variety of improvements are authorized, and the assessments may be designed to fairly apportion the benefits of the improvements to property owners. The municipality cannot include residential, owner-occupied property in the district unless the owner gives written permission. *Section 5-37-20*.

The financing by assessment, bonds or other revenues is at the discretion of the governing body, and the rates of assessment upon property owners within the improvement district need not be uniform. The rates can vary in proportion to improvements made immediately adjacent or abutting upon the property. *Section 5-37-80*.

# Water, Electric and Gas Utilities

**Authority to Operate**

State law specifically states municipalities may construct, purchase, operate and maintain waterworks and electric light works both inside and outside their corporate limits.

Municipalities also may own and operate the equipment for generating electricity or gas. *Section 5-31-610*.

A municipality may require a landlord of a multi-unit building, consisting of four or more residential units served by a master meter or single connection, to execute an agreement to be responsible for all gas, electric, water, sewage or garbage charges billed to the landlord's premise leased by a tenant. The municipality may discontinue or refuse to provide the service if the landlord refuses to execute an agreement to be responsible for the charges. *Section 27-33-50.*

**Acquisition and Condemnation of Property**

As part of its authority, municipalities may buy and hold land and water bodies and build the various public works facilities (such as dams, canals, mains, pipes, buildings) needed to obtain and supply the water and power needed for the utility system. *Section 5-31-430*. The initial construction or acquisition of a water or power system requires voter approval through a referendum. *Article VIII, Section 16, S.C. Constitution; Section 5-31-620*

State law provides municipalities with the power to condemn property for a range of purposes relating to water and electric utilities.

- A municipality may condemn property where the drainage from that property threatens to contaminate the city's water supply.
- A municipality may condemn land, lakes and streams to provide the municipality with a water supply.
- A municipality may condemn rights-of-way for water and electric works such as pipes, mains, canals, aqueducts, dams and electric lines.

Municipal condemnation powers include condemning land, property, water rights, water privileges, existing waterworks or pipelines to establish, maintain, extend or operate a waterworks plant. Municipalities also may condemn land and tenements to protect the watershed. *Sections 5-31-430, 5-31-440*.

**Sale of Utilities**

In *Sojourner v. Town of St. George*, the state Supreme Court ruled *Section 5-31-640* and *Section 5-31-620* unconstitutional. A municipality does not have to hold a referendum prior to selling its water and sewer system. The Home Rule Act authorizes selling a town's water and sewer system by ordinance. See *Sojourner v. Town of St. George, 383 S.C. 171; 679 S.E. 2d 182 (2009).*

A municipality may sell its gas system if a majority of its qualified electors votes in a general or special election to approve the sale. *Section 5-31-680*.

**Franchises to Water and Electric Suppliers**

After a two-thirds vote of council and subsequent approval by a majority of municipal electors voting in a special election, a municipality may grant an exclusive franchise to furnish water or waste disposal to a private utility. The franchise period may not exceed 40 years. *Section 5-31-50*.

Granting an exclusive franchise for furnishing electricity to the municipality and its residents follows the same procedure as for granting a water supply franchise. *Section 58-27-410*.

Municipalities may enter into a contract to provide water or electric utilities to customers outside of, but Contiguous to, their corporate limits. *Sections 5-7-60, 5-31-1910*.

Each municipality, public service district, electric cooperative, public utility and electrical utility providing electric and gas services must establish a written policy for terminating service for non-payment for all special needs customers and all residential customers during extremely hot and cold weather conditions. The municipality must submit its policy to the state Office of Regulatory Staff. *Sections 5-31-2510, 6-11-2520, 33-49-1420, 58-5-1120, 58-27-2520.*

**Provision of Electric Utilities to Newly Annexed Areas**

The Territorial Assignment Act of 1969 authorized the South Carolina Public Service Commission to assign geographic service areas to electric cooperatives and investor-owned utilities. The Act did not recognize municipal electric systems as electric suppliers and denied them assignments of service areas. Municipalities have the authority to serve or decide who serves residents within the municipality's limits.

The Electric Cooperative Act of 2004 redefined a municipal electric systems' authority to serve customers in newly annexed and incorporated areas. The Act allowed electric cooperatives serving a premise in a newly annexed or incorporated area to continue serving the area. The Act prevented the cooperative from extending services to a premise unless the premise was within the municipal limits on the effective date of the Act and the cooperative was the principle supplier of electricity to the municipality or the cooperative had the legal right to serve the premise. The cooperative is empowered to serve if the premise is located within the annexed or incorporated area after the effective date of the Act and is within an area assigned by the Public Service Commission in Act 432 in 1969 or the area is unassigned by the Public Service Commission and the annexation or incorporation constitutes granting consent by the municipality. The cooperative is not authorized to provide service to any premise first requiring service in the area unless the municipality grants consent by ordinance. The cooperative cannot provide service to any premise or corridor in the area assigned by the commission to an electric provider other than a cooperative after the effective date of the Act.

A municipality may charge a franchise fee to the supplier to continue to serve customers in the newly annexed area, or it may provide service to new customers.

An electric utility having its assigned territory annexed may not use municipal streets to serve new customers in the assigned area without the municipality's consent. *Article VIII, Section 15, S.C. Constitution*.

# Wastewater Utility

**Authority to Operate**

To purchase or establish wastewater systems or incur bonded indebtedness for that purpose, the municipality must receive approval for the purchase, establishment and/or indebtedness from a majority of the municipality's electors voting in an election. *Section 5-31-810*.

Municipalities may enact ordinances, rules and regulations, both within and outside its corporate limits if they are consistent with law. They must be for the establishment, construction, maintenance, operation, protection, use, control and repair of the wastewater system. *Section 5-31-900*.

**Contracts**

Municipalities that own, control, lease or plan to construct a wastewater system may contract with people or political subdivisions for sewage system services. The contracts may not be for a period exceeding 30 years. The political subdivision with which the municipality contracts does not have to be contiguous to the municipality's corporate limits.

Contracts may cover a wide range of activities. State law specifies municipalities may contract for construction, maintenance, operation, improvement, leasing, controlling or furnishing the facility, its use and its benefits.

The contract or agreement may fix the terms, rates and charges when, in the judgment of the proper officials, it is in the municipality's best interest to do so. *Section 5-31-890*.

If the municipality gives notice, as established by Section 6-15-90, and follows hearing procedures, unpaid sewer tap fees and service charges may constitute a lien on the real property served. Liens are collected in the same manner as property taxes. *Section 6-15-100*.

# Solid Waste Management Act

The Solid Waste Management Act promotes the reduction, reuse and recycling of solid waste before land filling or incineration. It also encourages research by state agencies, state-supported educational institutions and private entities into the reduction of solid waste generated. It encourages a regional approach to solid waste management.

**State Plan**

The state solid waste management plan includes

- an inventory of the amount and type of municipal and industrial solid waste being disposed of at solid waste disposal facilities;
- an evaluation of all current solid waste management practices and programs;
- an estimate of the state's current capacity to manage solid waste; and
- an estimate of the amount of solid waste generated during the next 20 years and an analysis of the facilities needed to accommodate this estimate.

The plan includes procedures to

- encourage local governments to take a regional approach to solid waste management,
- obtain input from private industries and citizens in developing the solid waste management plan, and
- develop a public education program outlining the needs and benefits of activities such as recycling and reducing waste in conjunction with local governments.

The plan includes recommendations on things to be recycled; how local governments can be assisted by either technical or financial aid; and whether to require certain solid waste materials be made biodegradable.

The plan contains a description of a certification program for solid waste management facilities operators. The plan also includes a fiscal impact statement of the cost of plan preparation and implementation.

**County or Regional Plans**

Each county or region, with the participation of all local governments in its jurisdiction, must prepare a solid waste management plan and update it annually.

Counties must enact the necessary ordinances to carry out the terms of the Act, but the local ordinances cannot conflict with the state Solid Waste Management Plan.

The local plan must include

- an estimate of the solid waste currently being disposed of and a projection of the solid waste that will be disposed of at solid waste disposal facilities during the next 20 years;
- an estimate of the current capacity, including identification of all solid waste disposal facilities and projection of the life expectancy of the facilities;
- an analysis of existing and new facilities needed to manage solid waste within that county or region during the next 20 years;
- the cost of implementing the plan;
- an estimate of the revenue each county or region needs and intends to make available to fund implementation of the plan;
- a cost estimate of new facilities needed during the next 20 years and revenue available;
- a cost estimate of siting, constructing and bringing into operation any new facilities needed to manage solid waste during the next 20 years; and
- a description of the resource recovery or recycling program that will be implemented, including the following
    - a designated coordinator;

- identification of solid waste to be source separated, recovered or recycled;
- methods of collecting and marketing materials;
- incentives or penalties to ensure compliance with the program; and
- a description of public education programs that will inform the public of the need for and benefits of the program.

A county or region may be exempted from the resource recovery and recycling program requirements if it provides sufficient justification to DHEC that implementing a source separation, resource recovery and/or recycling program is not economically feasible or a program is unnecessary to meet the Act's goals.

Plans containing source separation, resource recovery or recycling programs must provide residents with the opportunity to recycle the categories of solid waste materials designated in the county or regional plan. This may include curbside collection, drop-off centers or collection centers for multifamily residences.

**Solid Waste Management Trust Fund**

Administered by the office of Solid Waste Reduction and Recycling, South Carolina Department of Health and Environmental Control, the Solid Waste Management Trust Fund pays for

- activities of the department to implement the provisions of the Solid Waste Management Act,
- research by state-supported educational institutions,
- activities of the Recycling Market Development Advisory Council,
- demonstration projects or pilot programs, and
- grants to local governments to carry out their responsibilities,

The Solid Waste Management Trust Fund money comes from

- funds from the General Assembly,
- contributions and grants from public and private sources,
- out-of-state disposal fees,
- fee for the Waste Tire Grant Trust Fund,
- fee for lead-acid batteries,
- fee for white goods,
- funds generated by fees on motor oil and similar lubricants, and
- interest earned on the Solid Waste Management Trust Fund.

# Stormwater Utility

The Land Resources Commission requires all land-disturbing activities to adhere to the stormwater management and sediment control plans approved either at the state or local level according to the Stormwater Management and Sediment Reduction Act of 1992. Each local government can either implement its own program or allow the Land Resources Commission to implement it. Two or more local governments may establish a joint program. All local programs must comply with the Land Resources Commission's regulations, which include a model ordinance, technical standards and maintenance requirements.

Under the Stormwater Act, a municipality may designate a stormwater utility and establish a fee system to fund a stormwater management program. The stormwater utility may fund such activities as watershed master planning, facility retrofitting and facility maintenance. The fee system or tax assessment must be reasonable and equitable. *Section 48-14-10 through 48-14-170.*

Municipalities with a separate stormwater system and regulated by the National Pollutant Discharge Elimination System Phase II must apply for a permit from the S.C. Department of Health and Environmental Control. The municipality's stormwater program is required to address the following areas: public education, public involvement, illicit discharge detection and elimination, pollution prevention and good housekeeping of municipal operations, construction site runoff control, and post-construction stormwater management in a new development or redevelopment.

# CHAPTER 12

# MUNICIPAL COURTS

The state constitution vests the state's judicial power in a unified judicial system including the state Supreme Court, the circuit courts and such other courts of uniform jurisdiction as may be provided for by general law.

The chief justice of the state Supreme Court is designated as the administrative head of the unified judicial system with the power to appoint a state court Administrator. *Article V, Sections 1 and 4, S.C. Constitution*.

Municipalities may either establish a municipal court or have cases prosecuted in magistrate's court in the county in which the particular municipality is situated. *Section 14-25-5*.

If a municipality establishes its own court, the municipal court becomes part of the unified judicial system. It must keep the records and reports required by the chief justice through the state Court Administrator's Office.

## Municipal Court System

A municipality can create a municipal court by ordinance. If a municipality decides to establish a municipal court, it must provide adequate facilities for the judicial officers to conduct trials and hearings and provide sufficient clerical and non-judicial support personnel to assist the municipal judge in the discharge of his duties.

**Powers, Duties and Jurisdiction**

Municipalities have jurisdiction to try all cases arising under municipal ordinances. *Sections 14-25-45, 5-7-90*.

Councils may set fines and penalties if they do not exceed $500 and/or imprisonment of more than 30 days. *Section 5-7-30*. A municipal judge may assess penalties not exceeding $500, imprisonment not exceeding 30 days or both.

In addition to the fines and penalties assessed by the municipal judge, the municipal judge must impose state assessments on municipal court fines. The state assessments are added to the court fines and are based on a percentage of the court fines. The fines are collected and retained by the municipality. The state assessments are collected along with the fines and remitted to the state treasurer. The amount of total state assessments often exceeds the base fine retained by the municipality. Failure to collect and remit state-mandated assessments is a serious offense and may result in severe state sanctions and financial liability for the municipality. *Section 14-1-208.*

Municipal courts can accept payments of fines and assessments by credit or debit card. The court may impose an additional surcharge to cover the cost to the municipality for these payment methods. *Section 14-1-214.*

Municipal courts also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. *Section 14-25-45*. Municipal courts have no civil jurisdiction.

Municipal judges may suspend sentences they have imposed if terms and conditions they deem appropriate have been met, such as restitution or public service employment. *Section 14-25-75*. Municipal judges have the right to place any person on probation. *Section 14-25-45*.

A municipal judge can punish for contempt of court by imposing a sentence up to the limits allowed for municipal courts, such as a fine not to exceed $500, 30 days imprisonment or both. *Sections 14-25-45, 14-25-65*.

**Municipal Judge**

The municipal council, in the ordinance establishing the municipal court, must provide for the appointment of one or more full- or part-time judges. *Section 14-25-5(A)*.

In all forms of municipal government, the council is responsible for the appointment of the municipal judge(s). Council appoints each municipal judge to serve for a term of not less than two years but no more than four years. He serves until a successor is appointed and qualified. *Section 14-25-15*.

Municipal judges must complete training and/or pass a certification examination within one year of appointment. Also, they must meet continuing education requirements established by the chief justice and renew their certification every eight years. *Section 14-25-15.*

Council cannot appoint the mayor or a councilmember to serve as municipal judge during his term of office. *Section 5-7-230*.

Because the position of municipal attorney is an office subject to the constitutional restrictions on dual office holding, the appointed municipal attorney cannot serve as the municipal judge of the same municipality. A municipal judge may serve as municipal attorney for another municipality. *Section 8-1-130.* The judge does not have to be a resident of the municipality in which he is employed. *Section 14-25-25*.

If a vacancy occurs, council must appoint a successor as provided in the ordinance establishing the municipal court. In the case of a municipal judge's temporary absence, sickness or disability, the mayor can designate another municipality's judge, a practicing attorney or some other person who has received training or has experience in municipal court procedure to hold court. *Section 14-25-25*.

The council determines the municipal judge's compensation. *Section 14-25-15*.

Before assuming his duties, a municipal judge must take and subscribe to the oath of office prescribed by Article VI, Sections 4 and 5, of the S.C. Constitution:

> *I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect, and defend the Constitution of this State and of the United States. So help me God.*

Municipal judges who are admitted to practice law in the courts of this state cannot practice in the municipal court for which he is appointed. *Section 14-25-15*.

A municipality may contract with any other municipality in the county to employ its judge. *Section 14-25-25*.

The municipal judge must speedily try all people charged within the court's jurisdiction for violating municipal ordinances or state law. Unless the person charged requests a jury trial, a summary procedure is used to dispose of the case. The trial must be held within seven days after arrest or other agreed-upon date. *Section 5-7-90*.

**Ministerial Recorder**

In addition to the municipal judge's appointment, the council can, by ordinance, establish the office of ministerial recorder and appoint one or more full- or part-time people as ministerial recorders. Ministerial recorders

- hold office at the pleasure of the municipal council,
- must take and subscribe to the prescribed oath of office required for the municipal judge,
- must be certified by the municipal judge as having been instructed in the proper method of issuing warrants, and
- have the power to issue summonses, subpoenas, arrest warrants and search warrants and set bonds in all cases arising under the municipal ordinances and in criminal cases conferred by law on magistrates. They have no other judicial power. *Section 14-25-115*.

**Contracting with the County**

State law permits a municipality to contract with the county to employ a magistrate to preside over its municipal court. *Section 14-25-25*. The chief justice of the state Supreme Court has approved the following procedure:

- The governing bodies of the county and the municipality, regardless of the form of government, must enter into a written agreement for a magistrate to serve as the municipal judge.
- The agreement is forwarded to the chief magistrate who then sends a copy to the Court Administration office. The name, address and telephone number of the mayor and county council chair should be included with the agreement.
- The agreement is reviewed and filed in the Court Administration office. An order of the chief justice is drafted.
- The unsigned order is transmitted to the mayor for his signature then to the county council chair. After both have signed the order, it is returned to the Court Administration office for the chief justice's signature.
- Copies of the signed order are distributed to all affected parties. The chief magistrate formally assigns the magistrate to serve the municipal court. Any and all changes in the written agreement or other aspects of the arrangement are filed with the state Court Administration.

- Magisterial and municipal functions must be kept entirely separate (such as separate supplies, separate warrant books, separate dockets, separate bank accounts and separate hours). At any given moment, it should be clear whether a judge is acting in his magisterial or municipal capacity.

- Magistrates may not receive any compensation directly from the municipality.

Arrangements must be made for the disposition of funds collected in the municipal court, particularly if a percentage is to be paid to the county as compensation for using one of its magistrates. The agreement could also specify the magistrate's county salary be increased to reflect the extra work.

**Clerk of Municipal Court**

The municipal council, in the ordinance establishing the municipal court, must provide for the clerk of court's appointment. *Section 14-25-5.* The council needs to be aware of the separation of the judicial function from the law enforcement function. Municipal employees working in the police department should not be assigned duties in the municipal court.

The clerk of municipal court is responsible for keeping records and making reports as may be determined by the state court administrator. *Section 14-25-35.* The clerk is responsible for turning over all fines and penalties collected by the court to the municipal treasurer. *Section 14-25-85*.

The clerk of court cannot report to the police chief nor can the police chief supervise the municipal court. *Opinion 08-2002 from the State Supreme Court's Advisory Committee on Standards of Judicial Conduct.* In addition, the clerk of court should not serve as a records clerk for the police department. *Opinion 19-2001*. The state attorney general has given the opinion that it would be inappropriate for an individual to work for both the court and police department. The two departments should be separate and distinct to avoid any potential conflict of interest.

**Police Officers**

The police chief or someone designated by the chief must attend all court sessions. The chief and the other police officers are subject to the orders of the court. They must execute the orders, writs and mandates of the court and perform such other duties as may be prescribed by the municipality's ordinances.

The chief and other police officers also have the same powers and duties as provided for magistrate's constables. *Section 14-25-55*.

**Other Support Personnel**

In the ordinance establishing a municipal court, the council is required to provide sufficient clerical and non-judicial support personnel to assist the municipal judge. *Section 14-25-5(B).*

## Court Procedures and Administration

The *South Carolina Bench Book for Magistrates and Municipal Court Judges,* produced by the South Carolina Court Administration, is a useful guide for carrying out the day-to-day operations of a municipal court. This book covers record-keeping, reports, warrants, bail proceedings, trial procedure and the handling of criminal cases in general.

**Juries**

A person tried in a municipal court has the right to demand a jury trial. *Article I, Section 14, SC Constitution*. The accused must exercise this right before the trial or the right is waived.

A municipal court jury consists of six people drawn from the municipality's residents who are licensed drivers and identification card holders eligible to register to vote. *Section 14-25-130.*

The municipal council must appoint no less than three but no more than five people to serve as jury commissioners for the municipal court. The council may act as jury commissioners.

*Preparing the Jury Box*

It is the jury commissioner's duty to prepare the jury box in the manner prescribed in S.C. Code of Laws. *Sections 14-25-145 to 14-25-205*.

*Jury Service*

Any person who is a registered elector of the municipality is qualified to serve as a municipal court juror. Also, any licensed driver of the municipality who is eligible to register to vote is qualified to serve as a juror. *Section 14-7-130*.

No person is exempt from service as a juror except people older than 65. *Section 14-7-840*. A person may be disqualified to serve as a juror if one of the following is met:

- He has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.
- He is unable to read, write, speak or understand the English language.
- He is incapable by reason of mental or physical infirmities to render efficient jury service (legal blindness does not disqualify an otherwise qualified juror).
- He has less than a sixth-grade education or its equivalent. *Section 14-7-810*.

Any person having legal custody of a child under 7 years old, is the primary caretaker of a person 65 or older, or is the primary caretaker of a disabled person unable to care for himself or cannot be left alone may be excused if the person can furnish an affidavit to the clerk of court stating that he/she is unable to provide adequate care while performing jury duty. *Section 14-7-860*.

Any person employed within the walls of any courthouse is also disqualified. *Section 14-7-820*. The presiding judge may excuse anyone from jury duty if he considers it advisable. *Section 14-7-860*.

No person is liable to be drawn and serve as a municipal juror more than once every year. *Section 14-25-850*.

**Court Reporters**

Any party has the right to have the testimony given at a jury trial recorded stenographically or mechanically. The requesting party must pay the charges for a municipal court reporter to take and transcribe the testimony.

Any party may mechanically record the proceedings. *Section 14-25-195*.

**Appeals**

Any party has the right to appeal a municipal court's sentence or judgment to the Court of General Sessions of the county in which the trial is held. Notice of intention to appeal must be given in writing and served on the municipal judge or the clerk of court within 10 days after sentence is passed, judgment rendered or the appeal is waived.

The notice must set the grounds for appeal.

The party appealing must enter into a bond, payable to the municipality, to appear and defend such appeal at the next term of the Court of General Sessions or shall pay the fine assessed. *Section 14-25-95*.

Once he receives notice of intention to appeal, the municipal judge must make a return to the Court of General Sessions. The presiding circuit court judge upon the return hears the appeal. The return consists of a written report of the charges preferred, the testimony, the proceedings and the sentence or judgment. When a reporter has taken the testimony, the return shall include the reporter's transcript of the testimony.

The return is filed with the clerk of the Court of General Sessions in the county in which the trial was held. The case is docketed for a hearing in the same manner as provided for appeals from magistrate's court.

There is no *trial de novo* (such as taking witness testimony, etc.) on any appeal from a municipal court. The decision will be based upon the return filed with the court. *Section 14-25-105*.

# CHAPTER 13

# TORT LIABILITY

## Governmental Immunity

A tort is a civil wrong or injury arising independent of a contractual relationship committed by one person against the person or property of another. There are four basic elements to a tort action:

- The offending party owes a duty to the injured party.
- The first party has failed to fulfill this duty.
- There is a causal connection between the act or omission and the injury.
- Actual damages have occurred.

If all of these conditions exist, a tort has been committed. The offending party is liable to the injured party.

Prior to 1986, the tort liability of governmental jurisdictions was strictly limited by the common-law doctrine of sovereign immunity. The statutory exceptions affecting municipalities were for injuries arising from motor vehicle operation and road/street defects.

In *McCall v. Batson, 285 S.C. 243, 329 S.E. 2d 741(1985)*, the S.C. Supreme Court abolished the sovereign immunity doctrine. In 1986 the General Assembly adopted the South Carolina Tort Claims Act, which provides for the qualified and limited liability. *Sections 15-78-10 to 15-78-190*.

**Whistleblower Statute**

Under the Whistleblower Protection Act, any employee of a public body may bring a civil action for money damages if he is disciplined in any way or discharged for reporting a violation of state/federal law, or if he "exposes governmental criminality, corruption, waste, fraud, gross negligence or mismanagement."

An employee must have probable cause to believe the allegations to be true, but he does not have to prove the existence of an actual violation. If the employee "blows the whistle" without probable cause, the public body may terminate his employment.

A rebuttable presumption exists when an employee is terminated or disciplined in any way within one year of reporting a violation under the statute. The employer bears the burden of rebutting this presumption.

The whistleblower statute does not fall under the Tort Claims Act. There is no cap on the amount of a governmental agency's liability under this statute. Municipalities in the South Carolina Municipal Insurance and Risk Financing Fund are covered up to $1 million.

## South Carolina Tort Claims Act

In circumstances of a person being injured by the actions of government employees and officials, the South Carolina Tort Claims Act makes liability the general rule and immunity the exception. *Section 15-78-20*.

The Act establishes maximum loss amounts of $300,000 per person for acts arising from a single occurrence. The total sum that can be recovered cannot exceed $600,000 regardless of the number of claims, political subdivisions or agencies involved. *Section 15-78-120(a)*.

Unless jurisdictions were insured for losses that occurred prior to the Act, no political subdivision, as a rule, can be sued for torts committed before the Act took effect on July 11, 1986. *Section 15-78-20*.

The Act does not permit litigants to recover punitive or exemplary damages or interest prior to judgment. *Section 15-78-120(b)*.

The Act's most sweeping provision makes the state and its political subdivisions liable for torts "in the same manner and to the same extent as a private individual under like circumstances." *Section 15-78-40*.

Recognizing government's peculiar roles and obligations in society, the Act explicitly exempts public entities from liability resulting from the following *(Section 15-78-60)*:

- Legislative, judicial or quasi-judicial action or inaction.
- Administrative action or inaction of a legislative, judicial or quasi-judicial nature;
- Execution, enforcement or implementation of the orders of any court or execution, enforcement or lawful implementation of any process.
- Adoption, enforcement or compliance with any law, or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation or written policies.
- The exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.
- Civil disobedience, riot, or rebellion or the failure to provide the method of providing police or fire protection.
- A nuisance.

- Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the snow or ice thereon is affirmatively caused by a negligent act of the employee.

- Entry upon property where such entry is expressly or impliedly authorized by law.

- Natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition.

- Assessment or collection of taxes or special assessments or enforcement of tax laws.

- Licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew or revoke any permit, license, certificate, approval, registration, order, or similar authority, except when the power or function is exercised in a grossly negligent manner.

- Regulatory inspection powers and functions, including failure to make an inspection or making an inadequate inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard health or safety.

- Any claim covered by the state Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the state Unemployment Compensation Act, or the state State Employee Grievance Procedure Act.

- Absence, condition or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing herein gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals or warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to herein are those used in connection with hazards normally connected with these of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for loss on public ways under construction when an indemnity bond protects the entity. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way, unless the defect or condition is not corrected by the particular governmental entity responsible for maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the design of highways and other public ways.

- Maintenance, security or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for

maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition.

- Employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm or a crime involving moral turpitude.

- Imposition or establishment of any quarantine by a governmental entity, whether the quarantine relates to people or property.

- Emergency preparedness activities and activities of the S.C. National Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accident.

- An act or omission of a person other than an employee, including but not limited to the criminal actions of third parties.

- The decision to or implementation of release, discharge, parole or furlough of any people in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these people.

- Termination or reduction of benefits under a public assistance program.

- Institution or prosecution of any judicial or administrative proceeding.

- Holding or conducting elections.

- Responsibility or duty including but not limited to supervision, protection control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.

- Failure to supervise or control areas open for public hunting or activities thereon. Failures to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.

- Solicitations on streets and highways as authorized by the provisions of Section 5-27-910.

- Notification of any public school student's parent, legal guardian, or other person with whom a public school student resides of the student's suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school Administrator, principal, counselor, or teacher if such notification is made in good faith.

- Acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.

Despite the Act's complexity, a few distinct trends are apparent in the list of exempted activities. Generally speaking, government entities are not liable for their decisions to undertake or not undertake a particular activity. The legislative exemption covers such choices and any adjudicatory determinations handed down by court officials or administrative officials charged with interpreting regulatory programs.

## Liability of Municipal Officials

Under state law, the Act gives municipal officials and employees immunity from personal liability in the course of performing their official duties and transfers the liability to the municipality. *Section 15-78-70(A)*. Municipal officials, like all citizens, are liable for their personal negligent acts outside the scope of official duty that result in injury to others.

The Act also provides that an employee may be liable for fraud, malice, intent to harm or a crime involving moral turpitude. *Section 15-78-70(B)*. The municipality would not be required to defend such actions or be liable under the Act. *Section 15-78-60(17)*.

Traditionally, courts have drawn distinctions between acts that are "ministerial" and those that are "discretionary." The Supreme Court in *Long v. Seabrook, 260 S.C. 562, 197 S.E. 2d 659 (1973),* declared that an official's duty is considered ministerial when it is absolute, certain, and imperative, involving merely execution of a specific duty from fixed and designated facts. In contrast, discretionary duties, "necessarily require exercise of reason in adaptation of a means to an end, and discretion in determining how or whether an act shall be done or course pursued."

Consistent with judicial precedents throughout the United States, South Carolina's courts have maintained that, in general, public officials are not liable for their discretionary acts.
Before a public official can be sued for performing a discretionary duty, it must be shown that, in the performance or nonperformance of such duties, the official was guilty of corruption, bad faith or influenced by malicious motives. *Long v. Seabrook. Section 15-78-70*.

In effect, municipal officials are protected from liability for discretionary acts committed without malicious or criminal intent and in good faith. Malicious acts or actions that exceed the employees' or officials' scope of duties of authority (*ultra vires*) may result in personal liability.

## Claims Handling

Aggrieved individuals seeking to recover losses from torts committed by political subdivisions are required to file claims setting forth the circumstances that brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all people involved if known, and the amount of the loss sustained. *Section 15-78-80*.

Each municipality must designate an employee or office to accept the filing of such claims. Claims against political subdivisions must be received within one year after the loss was or should have been discovered. *Section 15-78-80*.

Once a municipality receives a claim, it has 180 days to determine whether the claim should be allowed. Failure to notify the claimant of action upon the claim within the 180-day period is considered a disallowance of the disputed amount. *Section 15-78-80*.

For participants in either the state Insurance Reserve Fund or the South Carolina Municipal Insurance and Risk Financing Fund, the funds help investigate and handle the claim.

If the municipality disallows a claim, the individual may initiate civil action against the political subdivision. Actions initiated under the Act are heard initially in circuit court with jurisdiction over the county in which the alleged injury occurred. *Section 15-78-100(B)*.

Statutory limits on liability awards of $300,000 per person with a maximum of $600,000 per occurrence would apply.

## Insurance Coverage

All political subdivisions have the option of electing one of the following means of insurance coverage: the state Insurance Reserve Fund, private carrier, self-insurance, or pooled self-insurance liability funds established by intergovernmental agreements such as the South Carolina Municipal Insurance Risk and Financing Fund. *Section 15-78-140*.

In South Carolina, the state Insurance Reserve Fund and the South Carolina Municipal Insurance and Risk Financing Fund provide political subdivisions with alternatives to private insurance firms.

## Federal Laws

Although the 1986 Tort Claims Act greatly increased the liability exposure of municipalities, it is not the exclusive source of liability claims against government entities.

An unrelated avenue of redress against state and local governments is a Section 1983 action in federal and state courts. The legal grounding for the largest number of federal-based suits is the Civil Rights Act of 1871 *(42 US Code, Section 1983)*. A segment of the Act, which was intended to protect newly freed slaves from the excesses of state and local officials, provides that:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State ... subjects, or causes to be subjected, any ... person ... to the deprivations of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The judicially expanded interpretation of the Act allows municipal governments and their employees to be sued for damages, attorneys' fees and legal costs for violating an individual's rights under constitutional or federal law.

Most cases based on Section 1983 pertain to violations of the due process or equal protection provisions of the Fifth and Fourteenth Amendments of the U.S. Constitution. These cases do not necessarily involve property damage or personal injury but result from actions that violate an individual's federal constitutional or statutory rights.

Dozens of examples may be found in any number of areas. Common causes of lawsuits in the police and protective services include illegal searches and seizures, unlawful arrest and imprisonment, the use of excessive force, improper disciplinary hearings, unwarranted confinement, indifference to serious medical needs, physical abuse, and failure to follow law enforcement training and policies.

Section 1983 suits may occur regardless of state and local laws concerning official liability. Additionally, local government entities cannot depend upon the use of a good faith argument in their defense to such cases. The good faith defense is available only to individuals.

Municipalities may be held liable if the violation was caused by municipal policies, practices or customs. Municipal officials and employees may be immune from Section 1983 liability for conduct that does not violate clearly established constitutional rights of which a reasonable person would have known.

Similar sources of federal lawsuits against municipalities and their officials arise from employment activities:

- Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex or national origin. *42 U.S. Code, Sections 2000e to 2000e(15).*

- Age Discrimination in Employment Act prohibits employment discrimination against people 40 years of age or older. *29 U.S. Code*, *Section 621 to 634.*

- Americans with Disabilities Act of 1990. prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government' programs and services.

# CHAPTER 14

# RISK MANAGEMENT

Insurance has long been the primary way of protecting municipalities against loss; however, rising insurance costs, higher deductibles and lower limits of coverage are forcing local governments to look at alternative methods of managing the risks of loss.

Risk management is the process of making and carrying out decisions to minimize the adverse effects of accidental losses on an organization. For a municipality, the process involves taking measures to protect financial stability and to ensure the safe operation of the city. These measures include loss control, litigation and claims management, occupational safety and health, employee benefits, contract management and risk financing. An effective risk management program allows the municipality to devote more taxpayer dollars to increasing services or benefits instead of addressing claims or lawsuits.

Protecting resources from accidental loss is the main objective of a municipal risk management program. The primary elements of any risk management program are exposure identification, risk evaluation, loss control, risk financing and program administration/monitoring.

**Exposure Identification**

Exposure identification means identifying those services or assets that could cause financial loss to the municipality. The primary types of loss exposures cities may face are property, liability, personnel and income. The methods used to identify these exposures are surveys/questionnaires, financial statements, records, personal inspection or use of experts.

**Risk Evaluation**

Evaluating financial risk is based on analysis of the loss history of the municipality and of other similar jurisdictions, then estimating future probabilities of loss. Potential financial loss is measured in terms of frequency and severity.

**Loss Control**

Loss control is reducing or eliminating risk or loss (subject to economic constraints) through careful procedures and practices of municipal operations. There are several techniques designed to minimize the frequency and severity of accidental losses.

**Risk or exposure avoidance** —eliminating th e possibility of loss by abandoning or not undertaking an activity. For example, a city planning to build a skateboard park may decide not to do so after viewing the safety risks and liabilities associated with such a facility.

**Loss prevention** - reducing the frequency or likelihood of a particular loss. For example, fire safety programs, rules for proper storage and handling of flammable materials, and regular fire inspections of all municipal buildings can help prevent fires.

**Loss reduction** - lowering the severity of a particular loss. For example, fire alarms, sprinkler systems and fire extinguishers do not prevent the frequency of fires, but they do reduce the severity of losses that occur from a fire.

**Segregation of loss exposures** - arranging activities or resources so that no single event can cause simultaneous losses to all of them. This technique may involve separation or duplication. Separation is the dispersal of a particular activity or asset over several locations and involves routine, daily reliance on these assets by the municipality. An example of separation would be having municipal operations occupying several buildings at different locations. Duplication is having backups or spares when primary assets or activities suffer loss. An example would be keeping a backup copy of computer programs and current files off premises in case of fire.

**Contractual transfer** - transferring all financial and legal responsibility for any loss to another party. Examples of contractual transfer are the leasing of property (depends on terms of the lease) and subcontracting activities (depends on terms of contract).

Loss prevention and reduction efforts allow municipalities to have the most impact on their risk management program. These efforts must focus on policies, procedures and training. Ideally, each municipality should have a safety/loss control committee with responsibility for developing safety policies and rules; inspection programs; accident/claims investigation and review programs, safety training orientation programs; and training programs.

To comply with the variety of federal and state standards for health and safety, the municipality should document and have on file formal written plans, training and enforcement.

**Risk Financing**

Risk financing refers to having sufficient funding to meet loss situations that occur. The funding may come from internal and external financial resources, including insurance. Even if efforts are made to control risks, the municipality still must be protected financially in the event of loss. The risk financing generally takes two forms: retention and transfer.

**Retention**

Retention is paying for losses with funds that originate within the organization. The most common form of retention occurs when a municipality decides to take a larger deductible than is prescribed by normal policy conditions. The reasons for choosing a larger deductible are numerous, including relieving short-term premium pressures, promoting interdepartmental accountability for loss control and lowering the total cost of risk.

Generally, deductibles and retentions are available at different dollar amounts. Municipalities that take larger deductibles must ensure they have adequate funds to pay for losses should they occur. Management must resist the temptation to raid accounts used to fund deductibles unless an actuary, accountant or other insurance professional advises that funding is adequate to ensure continued solvency.

In general, larger municipalities can afford higher deductibles. The best way to determine what type of deductible may be appropriate for a municipality is to have an insurance or risk management professional conduct an analysis of losses spanning a five-year period. Various scenario analyses can

provide an idea of how much a deductible could save a municipality and whether the savings generated warrant the extra risk the municipality takes with a deductible.

Retentions and deductibles are often viable options, particularly as insurance premiums continue to rise. Retention techniques coupled with a strong risk management program have the potential for savings. See Figure 2 as a guide as to when retentions or deductibles might be appropriate.

**Frequency/Severity Index**

| | | Loss Frequency | | | |
|---|---|---|---|---|---|
| | | Almost Nil | Slight | Moderate | Definite |
| Loss Severity | Severe | Transfer | Reduce or prevent | Reduce or prevent | Avoid |
| | Significant | Retain | Transfer | Reduce or prevent | Avoid |
| | Slight | Retain | Transfer | Prevent | Prevent |

*Figure 2*

**Transfer**

Transfer means paying for losses from funds originating outside the organization. In other words, the financial burden of losses is transferred to another party. Insurance is the most popular form of contractual transfer for risk financing.

In South Carolina, political subdivisions can elect one of four means of insurance coverage: state Insurance Reserve Fund; private carrier; self-insurance; or pooled self-insurance funds through intergovernmental agreements, such as those sponsored by the Municipal Association of SC.

**Program Administration and Monitoring**

Program administration and monitoring involves administrative oversight of the risk management process using internal and external means.

Every risk management technique a municipality undertakes must be one it can successfully implement and monitor. This will require some sort of framework for coordinating the risk management program. The municipality should appoint a risk manager or loss control coordinator.

Forming a risk management or loss control/safety committee should be paramount. This committee should review accidents, identify training needs and make recommendations to management. Solving problems, not just identifying them, is the committee's primary purpose.

Some municipalities may use external sources for risk management administration and monitoring, such as outside consultants or risk management/loss control services available from their insurance carrier.

# CHAPTER 15

# PLANNING AND LAND DEVELOPMENT

Municipal governments undertake planning to provide for the growth and development of their community. Planning and implementing plan recommendations can promote orderly growth, reduce land use conflicts, provide for informed land use decisions, and help prepare for development through the expansion of public services and facilities to serve developing areas.

Municipalities derive their planning and land regulation authority from the General Assembly.

## Planning Commissions

The first step for developing a planning process is to create and appoint a local planning commission. The planning commission serves as a citizen advisory group to the governing body on planning matters. The commission gives the governing board its advice in the form of recommendations for adopting plans and planning-related ordinances. Typically, planning commission members are laypersons from the community. The Comprehensive Planning Act of 1994 *(Section 6-29-310, et seq.)* requires the commission members to represent a broad cross-section of the interests and concerns within the community. The Act advises governing bodies to consider professional expertise and community knowledge of the proposed members. The planning commission's size varies based on the number of jurisdictions it serves. *Section 6-29-350.*

The Act spells out the planning commission's powers and duties. In general, a planning commission carries out a continuing planning program for the physical, social and economic growth, development and redevelopment of the community it serves. To accomplish its goals, the planning commission prepares and reviews plans, studies and planning-related ordinances. Depending on available funds, the commission can contract for assistance from staff and outside experts.

A planning commission fulfills its responsibilities to the governing body and the community by making recommendations on planning, zoning and land development matters. As the advisory and oversight body on planning matters, the commission drafts the comprehensive plan, the capital improvement plan, zoning ordinance and land development or subdivision regulations. Depending on the authority given to the commission in the local ordinance, the commission could have the responsibility for approving land development of subdivisions and site plans. Because it is a commission comprised of laypeople, the planning commission seldom produces the plans or studies itself. The planning staff usually performs the work necessary to complete plans and studies, and the planning commission ensures the completion of plans and studies. *Sections 6-29-340, 6-29-360, 6-29-520.*

A 2003 amendment to the Planning Act requires specified training for appointed zoning and planning officials and for professional zoning and planning employees. *Sections 6-29-1310 to 6-29-1380.*

## Comprehensive Plan

When the local planning commission and the local governing body have adopted at least the community facilities element, housing, and priority investment elements of the comprehensive plan, the local planning commission may prepare and recommend to the governing body for adoption regulations governing the development of land within the jurisdiction. *Section 6-29-1130(A).* The commission must develop the comprehensive plan in accordance with Section 6-29-510. The plan's nine elements and any other elements prepared for the particular jurisdiction must be designed to promote the public health, safety, morals, convenience, prosperity, general welfare, efficiency and economy of its area of jurisdiction. The commission must base each element on careful and comprehensive surveys and studies of existing conditions and probable future development. The commission should include recommendations for implementing the plans. The comprehensive plan must be reviewed every five years and updated every 10 years. *Sections 6-29-340, 6-29-510(E).*

## Zoning Regulations

Comprehensive plans are not self-executing. To give a plan's policies and recommendations the force of law, the municipality must adopt implementing ordinances or regulations.

Because a zoning ordinance is a tool local governments use to implement a land use plan, it should be consistent with the community's land use element of the comprehensive plan and policies. *Section 6-29-72.* The general purposes of zoning ordinances are set out in Section 6-29-710.

A zoning ordinance has two parts: a text and a map.

The text of a typical zoning ordinance

- creates several zoning districts,
- references a zoning map that defines the locations of the various zoning districts,
- identifies the land uses permitted in each district, and
- establishes use standards for each district. *Sections 6-29-710 to 6-29-775*.

A zoning district is a geographical area within which certain uniform regulations apply. *Section 6-29-720.*

Usually, the council or manager appoints a zoning administrator who has the primary responsibility for administering, enforcing and interpreting the zoning ordinance.

**Board of Zoning Appeals**

Administering the zoning ordinance is not the responsibility of the planning commission, council or police department. It is the responsibility of the zoning administrator and the board of zoning appeals.

The board of zoning appeals is created by the zoning ordinance and appointed by council. *Section 6-29-780.* The state zoning enabling legislation gives the board certain exclusive and well-defined powers. The board may

- hear appeals concerning the zoning administrator's interpretation and enforcement of the zoning ordinance,
- hear and decide appeals for variances from the ordinance,
- decide applications for special exceptions, and
- remand a matter to the administrative official for supplementation of the record. *Section 6-29-800*.

The appeal of a board of zoning appeals' decision is made to the circuit court. *Section 6-29-820*. Amendments to the Planning Act in 2003 allow for a mediation procedure as part of an appeal by a property owner. *Sections 6-29-820, 6-29-825.*

Members of the board of zoning appeals and the zoning administrator are required to receive training pursuant to Sections 6-29-1310 to 6-29-1380. Failure to complete the training and maintain adequate records of commission training may be grounds to challenge board actions.

**Council**

The council gets involved with zoning issues in three ways.

1. The council is responsible for adopting the zoning ordinance. *Section 6-29-720.*
2. The council makes the final decisions on all amendments to the zoning text and the zoning map. *Section 6-29-760.*
3. The council considers whether or not to approve the terms of a mediated settlement of a property owner appeal to circuit court from a decision of the board of zoning appeals or the board of architectural review or from the planning commission's action on land development plans and subdivision plats. *Sections 6-29-825, 6-29-915, 6-29-1155.*

The Landowner and Advertising Protection and Property Valuation Act *(Section 39-14-40)* requires local governments to pay cash compensation to billboard owners if the local zoning ordinance requires removal of the billboard. The municipality cannot use time amortization as a payment method to the billboard owner. If a billboard ordinance was enacted before April 15, 2005, the Act does not affect it.

## Land Development Regulations

**Subdivision Regulations**

Land subdivision is the division of a tract of land into two or more lots for the purpose of sale or development. *Section 6-29-1110*.

Land development is the changing of land characteristics through redevelopment, construction, or subdivision into parcels for residential, condominium complexes, apartments, commercial parks, shopping centers, industrial parks and similar developments for sale or lease. *Section 6-29-1110*.

Land development regulations provide for the harmonious development of the community, coordination of streets, and reservation of land and easements for streets, schools, recreation, and utilities. *Sections 6-29-1120, 6-29-1130.* Land development regulations are broader in scope than the preexisting

subdivision regulations. Before a municipality may enact land development regulations, it must adopt at least the community facilities element of the comprehensive plan. *Section 6-29-1130.*

The process of administering land development regulations is more complex than administering zoning regulations. Major land developments usually go through three review stages: the sketch plan, the preliminary plans or plat, and the final plans or plat. Minor subdivisions requiring no infrastructure improvements are often required to go through only the final plat review.

The sketch plan review gives the developer an opportunity to have rough plans reviewed. This review identifies major problems with the proposed development and allows the developer to make corrections in the plan without the expense of detailed engineering, survey or architectural plans. This review stage is usually optional.

At the preliminary plat stage, the developer must provide detailed plans for review. At this point, the subdivision layout and construction plans for streets, water, sewer and drainage facilities are reviewed. *Section 6-29-1150*. After approval of the preliminary plat with the construction drawings, the developer installs the planned infrastructure.

After construction is complete, the developer submits for review the final plans or plat and "as-built" drawings of the infrastructure. Approval of the final plans or plat allows the developer to record the plans or plat with the county registrar of deeds or the clerk of court. Once this is done, the developer can transfer and develop the lots. *Sections 6-29-1140, 6-29-1160, 6-29-1190*.

Development review is the responsibility of the municipality's planning commission. Assisted by its staff, the planning commission has the authority and the responsibility to review and approve all development plans within the municipality. *Section 6-29-1150.*

Decisions of the planning commission on land development plans and subdivision plats are subject to appeal to the circuit court and mediation. *Sections 6-29-1150, 6-29-1155.*

**Other Regulations**

There are other types of land development regulations municipalities may adopt.

- Flood plain regulations regulate development in areas identified as flood-prone by the U.S. Army Corps of Engineers. These regulations require new structures in flood-prone areas be elevated or flood-proofed above expected flood levels. Most communities adopt flood plain regulations to participate in the National Flood Insurance Program. This program makes flood insurance available to property owners at a subsidized rate. Flood insurance is not available outside of this program.

- The Stormwater Management and Sediment Reduction Act *(Sections 48-14-10 to 48-14-170)* and municipal ordinances adopted pursuant to the Act regulate land development activities to minimize the soil erosion from development sites and other land-disturbing activities onto adjoining property and streets. The regulations also serve to minimize the adverse effect of stormwater runoff. These ordinances typically require the submission of erosion control plans prior to the grading of land or other land-disturbing activities.

The Act requires all local governments adopt plans consistent with the state plan for controlling stormwater runoff. The S.C. Department of Health and Environmental Control must approve local plans.

The plan adopted by the municipality may establish a stormwater utility. The municipality may impose a system of fees to provide revenue for the infrastructure necessary to control stormwater runoff. *Section 48-14-120*.

**Vested Rights**

The Vested Rights Act of 2004 amended the Comprehensive Planning Act to establish a number of responsibilities for local governing bodies related to a property owner's "vested rights." *Section 6-29-1510 to 6-29-1560.*

A property owner has vested rights - or an entitlement - to use property a certain way or to undertake and complete a development of property despite a change in the zoning that would otherwise prohibit such a use or development. A non-conforming use pre-existing the adoption or change of a zoning ordinance that would prohibit the use is an example of a limited vested right. In this situation, the owner can continue the use until the right is terminated by operation of the zoning ordinance such as by time amortization or in the event of abandonment or discontinued use.

Prior to the Vested Rights Act, case law vested a right to build or develop property only when the property owner had obtained a validly issued building permit and had made substantial expenditures or incurred substantial obligations.

A local government must establish a point in time in the zoning or land development plan approval process, prior to the issuance of the building permit, at which time the property owner's right to use or develop the land vests. If the government does not establish an earlier vesting point, the new provisions deem the vesting to have occurred when one of the following conditions exist:

1. The government has approved any rezoning, variance or special exception for the development.
2. The government has approved a final plat or plan.
3. The government has approved a preliminary plat or plan, and the owner is seeking approval of the final plat or plan.

The Act requires the vested right to develop an approved site-specific development plan for two years, with five annual extensions unless an amendment to the land development ordinances or regulations have been approved that prohibits approval. A site-specific plan is defined as a submitted development plan describing the types of density and intensity of uses for a specific property. Examples include planned unit developments, subdivision plats, preliminary or general development plan, variance, conditional use or special use. Phased development plans may be approved for a vested rights period of up to five years. There are limited circumstances when the vested right may be revoked.

**Federal Defense Facilities**

A 2004 amendment to the Comprehensive Planning Act known as the Federal Defense Facilities Utilization Integrity Protection Act gives the federal military a formal voice in local planning and zoning decisions. That Act provides a process by which the commanders of federal military installations may make written recommendations to the local government on proposed land use or zoning decisions that involve: land on a federal military installation; land within any federal military installation overlay zone; or if there is no such established overlay zone, land within 3,000 feet of a federal military installation or land within the 3,000-foot Clear Zone or Accident Potential Zone of a federal military airfield.

The local government's planning department, planning commission or board of zoning appeals must request a written recommendation from the commander. This request should be made at least 30 days prior to any hearing under Section 6-29-530 (adoption of a comprehensive plan or its elements) or Section 6-29-800 (actions by the board of zoning appeals) involving land on (or near, as described in the Act) a federal military installation. The base commander may submit a written recommendation by the date of the public hearing. If the base commander submits no written recommendation, the presumption is the land use plan or zoning proposal does not have an adverse impact on the military facility.

Any written recommendation submitted by the base commander concerning a land use plan or zoning proposal is to address certain specified factors, including suitability of the proposed use with the military installation, any adverse effect on existing military use or future usability, reasonable economic use of the affected property, safety concerns, conformity with an adopted land use plan, and other existing or changing conditions affecting the proposed use. The base commander's written recommendation becomes a part of the public record. Additionally, the local government planning or zoning entity is required to investigate and make its own recommendations as to each of the statutorily specified factors. *Sections 6-29-1610 to 6-29-1640.*

**Priority Investment Act**

A 2007 amendment to the Comprehensive Planning Act entitled the South Carolina Priority Investment Act amends the housing element and adds two new elements – transportation and priority investment.

The housing element requires an analysis of local regulations to determine if there are regulations that may hinder development of affordable housing. It includes an analysis of market-based incentives that may be made available to encourage the development of affordable housing. Incentives may include density bonuses, design flexibility and a streamlined permitting process.

The new transportation element was originally included in the community facilities element. The transportation element considers transportation facilities including major road improvements, new road construction, and pedestrian and bicycle projects. This element must be developed in coordination with the land use element to ensure transportation efficiency for existing and planned development.

The new priority investment element requires an analysis of projected federal, state and local funds available for public infrastructure and facilities during the next 10 years and recommends projects for those funds. These recommendations must be coordinated with adjacent and relevant jurisdictions and agencies (counties, other municipalities, school districts, public and private utilities, transportation agencies, and any other public group that may be affected by the projects). Coordination simply means written notification by the local planning commission or its staff to those groups. *Sections 6-29-510(D), 6-29-720(C),6-29-1110, 6-29-1130(A).*

**Local Housing Trust Fund Enabling Act**

The 2007 William C. Mescher Local Housing Trust Fund Enabling Act allows local governments to create and operate a local housing trust fund or regional housing trust fund to promote the development of affordable housing. Both funds are to be separate from the general fund established by the governing authority(ies) with one or more dedicated sources of public revenue and authorized expenditures.

A local government that creates either fund by ordinance may finance it with money available to the local government through its budgeting authority. Funding sources include donations; bond proceeds; and grants and loans from a state, federal or private source. The funds may be used to match other funds from federal, state or private resources, including the State Housing Trust Fund. A local government should administer its housing trust fund through new or existing nonprofit organizations to encourage

private charitable donations. The local government must require the trust funds provide an accounting of its finances each year. *Sections 31-22-10 to 31-22-40.*

**Casino Boats**

The Gambling Cruise Act authorizes local governments to prohibit or regulate casino boats offering gambling cruises to nowhere. *Section 3-11-100.* A gambling vessel is defined as a boat, ship, casino, boat, watercraft or barge operated for the purpose of gambling, with one or more gaming devices on board. The Act delegates to a county and municipality the authority conferred to the state by the Johnson Act (*15 U.S.C. Sections 1171 through 1177)*. This includes the power to regulate or prohibit gambling aboard gambling vessels while such vessels are outside the territorial waters of the state when such vessels embark or disembark passengers within their respective jurisdictions. This includes authority over voyages that depart from the territorial waters of the state, sail into United States or international waters, and return to the territorial waters of the state without an intervening stop. The authority to regulate passenger cruise liners is not delegated to the county or municipality.

If a county or municipality does not adopt an ordinance prohibiting a gambling vessel from operating, or if a gambling vessel is permitted to operate because it makes an intervening stop on each cruise in another state, possession of the United States or foreign country, the county or municipality may assess a surcharge of up to 10 percent of each ticket sold per gambling cruise and a surcharge of up to 5 percent of the gross proceeds of each gambling vessel. If a county or municipality assesses the surcharges, the proceeds are paid to the county or municipality from which the gambling vessel originated its cruise. The county or municipality is responsible for setting the procedures by which the proceeds are paid. *Sections 3-11-400(C)(2), 3-11-400(C)(3)*.

If a county or municipality enacts an ordinance prohibiting gambling vessels, but the business was operating at the time of the ordinance being enacted, the county or municipality must allow the continued operation of the gambling vessel business for a period of five years from the effective date of the ordinance. *Section 3-11-400(D)*.

## Economic Development

Local governments participate in economic development activities in several ways.

- Making the development process easier for the developer. This can include providing a centralized point of contact for information on economic development in the community.
- Helping market and promote the area.
- Working to improve the area's quality of life to attract new business.
- Providing and improving services to industrial sites.
- Working with federal and state programs to provide financial aid to make projects economically feasible and competitive (federal and state programs include the Economic Development Administration programs and Small Business Administration programs).

Many municipalities have a community development office to manage projects funded through the Community Development Block Grant Program. *Section 6-1-30*.

Other duties often assigned to the community development office include coordinating grant applications from various sources and economic development planning for the municipality.

**Rural Infrastructure Fund**

Act 161 of 2005 makes grants available from the Rural Infrastructure Fund to benefit counties or municipalities designated as distressed or least developed. Annually, the S.C. Department of Commerce establishes the criteria for being designated distressed or least developed based upon the county's unemployment rate and per capita income. Grants are distributed according to guidelines established by the Rural Infrastructure Council. Annually, 25 percent of the funds available in excess of $10 million must be set aside for grants to areas of underdeveloped, moderately developed and developed counties. A governing body of one of these counties must apply for the set-aside grants stating the reasons that certain areas of the county qualify for these grants because the conditions in that area of the county are comparable to those conditions qualifying a county as distressed or least developed. *Sections 12-6-3360, 12-10-85(B), 12-37-220(A).*

**Textile Communities Revitalization**

The Textile Communities Revitalization Act of 2008 provides financial incentives for the "rehabilitation, renovation, and redevelopment of abandoned textile mill sites located in South Carolina." The law offers two types of credit options, 25 percent credit against real property taxes or 25 percent state income tax or corporate license fee credit. Both credits are calculated on rehabilitation expenses, which are "expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site." *Section 12-65-10.*

Properties that qualify for the state historic tax credit for income-producing properties can also take advantage of this incentive. (S.C. Code of Laws, Section 12-6-3535 allows a 10 percent state income tax credit for properties qualifying for the 20 percent federal income tax credit for the rehabilitation of historic income-producing properties.) A "Notice of Intent to Rehabilitate" is required. To receive the property tax credit, the law outlines a process by which the municipality and other local taxing entities must approve the incentive. *Section 12-65-30(B).* The law outlines a process by which the S.C. Department of Revenue must approve the incentive for properties to receive the credit against income tax or corporate license fees.

**Abandoned Buildings Revitalization Act**

The Abandoned Buildings Revitalization Act of 2013, as amended in 2015, provides an incentive for the rehabilitation, renovation and redevelopment of abandoned buildings located in South Carolina by offering a state income tax or property tax credit to eligible projects. To be eligible for the credit, a taxpayer must renovate an abandoned building for commercial use. A building is considered abandoned if a minimum of 66 percent of the space in the building has been vacant or nonoperational for five years.

Taxpayers meeting the requirements of the Act can receive a tax credit equal to 25 percent of the cost of rehabilitating property against either (1) state income taxes and corporate license fees or (2) property taxes. A minimum threshold for rehabilitation expenses is required and varies between $75,000 and $250,000 based on the population of the county or municipality. State law establishes specific eligibility criteria and a process to claim the income or property tax credit. *Section 12-67-140.*

The Act was amended in 2015 to expand the definition of abandoned buildings to include a building or group of buildings the aggregate size of which is greater than 50,000 square feet. In addition to the size requirement, the building must have been abandoned for more than five years and owned by the state or one of its political subdivisions before the taxpayer's acquisition. This amendment also expanded the tax credit eligibility to insurance premium tax liability and added a new section, Section 12-67-160, providing for municipal or county certification of abandoned building sites.

# CHAPTER 16

# ANNEXATION AND CONSOLIDATION

## Annexation

Annexation is the process of expanding municipal boundaries and is governed by Title 5, Chapter 3 of the S.C. Code of Laws. The law contains a number of annexation methods. All annexations must be completed by ordinance adopted by council.

Municipalities are not legally required to prepare a feasibility study prior to annexation. An analysis, however, is often prepared for large annexations to determine the relative benefits and costs.

Immediately after annexing an area, the municipality must

- Notify the S.C. Secretary of State, Revenue and Fiscal Affairs Office, Department of Transportation and the Department of Public Safety of the annexation. The notice must include a written description of the annexed property and a map of the annexation. *Section 5-3-90*.

- Notify utilities serving the area to ensure inclusion of customers under municipal franchise agreements.

Prior to the U.S. Supreme Court's decision in *Shelby County, Ala. v. Holder* (2013), municipalities were required to submit annexations to the U.S. Department of Justice for review and preclearance. While such submissions are not currently required by federal law, some jurisdictions have continued submitting notice of such actions. Municipalities seeking further clarification are advised to seek advice from legal counsel. *(See page 19 for information on current U.S. Department of Justice requirements)*

To be subject to annexation, the land must be contiguous to existing municipal boundaries. *Sections 5-3-150(1) and (3), 5-3-300(A).* Contiguous is defined as property that is adjacent to a municipality and shares a common border. Contiguity is not established by a road, waterway, right of way, easement, railroad track, marshland or utility line which connects one property to another; however, if the connecting road, waterway, right of way, easement, railroad track, marshland or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity. *Section 5-3-305.*

**100 Percent Petition Method**

Using the 100 percent petition method, any contiguous area may be annexed by filing a petition signed by all property owners in the area. The annexation is complete once council adopts the annexation ordinance. *Section 5-3-150(3).*

**75 Percent Petition Method**

Under the 75 percent petition method, any contiguous area may be annexed by filing a petition, meeting certain specified requirements, signed by at least 75 percent of the freeholders who own at least 75 percent of the assessed valuation of the real property in the area requesting annexation. The annexation is complete once council enacts an ordinance declaring the area annexed to the municipality. No election is needed.

Not less than 30 days before acting on an annexation petition, the annexing municipality must give notice of a public hearing in a newspaper of general circulation in the community, post the notice on the municipal bulletin board and provide written notification to the taxpayer of record for all properties within the area proposed to be annexed, the county's chief administrative officer, all public service or special purpose districts, and all fire departments, whether volunteer or full time. The public notice must include a map of the proposed annexation area, a complete legal description of the proposed annexation area, a statement that details what public services are to be assumed or provided by the municipality, and the taxes and fees required for these services. The same items must be available at the public hearing. The notice must include a projected timetable for providing or assuming these services. *Section 5-3-150(1).*

*Freeholder*

A freeholder is defined as a firm, corporation or individual 18 years or older who owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights, and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate.

**Petition/Election Method**

In 2000, the General Assembly passed a law reinstating the petition/election method of annexation, which the U.S. District Court previously ruled unconstitutional. A petition of 25 percent of the electors living in the area proposed to be annexed triggers the petition/election method. The election is held only in the area proposed to be annexed. *Section 5-3-300.* The previous law, struck down by the courts, allowed freeholders (property owners) to petition for an election. The court ruled it was unconstitutional for a property owner to be able to deny an elector the right to vote on an issue.

The municipal council must certify the petition is signed by 25 percent or more of the qualified electors living in the area proposed for annexation. Upon receipt of a written resolution certifying the petition meets the requirements of Section 5-3-300, the county election commission orders an election on the proposed annexation. The county election commission certifies election results to the municipal council. If a majority of the votes are in favor of annexation, the council must publish the results of the election using a written resolution.

The municipal council must publish in a newspaper of general circulation within the municipality a notice that must contain

- a description of the area to be annexed,
- the act or code section pursuant to which the proposed annexation is to be accomplished,
- a statement that the qualified electors of the area to be annexed voted to be annexed to the municipality, and
- a statement that the municipal council will approve the annexation of the area unless a petition signed by 5 percent or more of the qualified electors within the municipality is

> presented to the municipal council within 30 days from the date of the notice requesting that the municipal council order an election to be held within the municipality on the question of extension of the corporate limits by annexation of the area proposed to be annexed. *Section 5-3-300(E).*

After 30 days from the date of the notice's publication, the council may give final approval to an ordinance declaring the area to be annexed unless council receives a petition signed by 5 percent of the qualified electors within the municipality requesting an election on the annexation be held within the municipality. *Section 5-7-300(F).*

If such a petition is presented to the municipal council within the specified time period, the council verifies and certifies the petition to the municipal election commission. *Section 5-3-300(G).* The municipal election commission conducts the election within the municipality. If a majority of the votes cast by the qualified electors of the municipality is in favor of annexation, the council gives final reading to the ordinance declaring the area annexed. If a majority of the votes cast by the qualified electors of the municipality opposes annexation, the municipal council publishes the election results and tables the proposed annexation ordinance. *Section 5-3-300(H).*

When using the petition/election method of annexation, there are opt-out provisions for property owners whose assessed value is 25 percent or more of the total assessed value of the real property of the area proposed to be annexed. There are other opt-out provisions for certain agricultural real property. *Section 5-3-300(I).*

**Annexation into a Special Purpose District**

When a municipality annexes all or part of a special purpose district, special tax district or assessment district using any annexation method, the municipality may elect at its sole discretion to provide the service formerly provided by the district within the annexed area. The transfer of service rights must be made pursuant to a plan formulated under the provision of Section 5-3-300 through 5-3-315. *Section 5-3-310.*

**Special Annexations**

There are special ordinance annexation methods for property owned by the municipality *(Section 5-3-100)*, county *(Section 5-3-100)*, school district (Se*ction 5-3-130),* federal government *(Section 5-3-140),* state government *(Section 5-3-140),* a corporation *(Section 5-3-120),* a church/religious group *(Section 5-3-260)*, an airport district *(Section 5-13-15)* property within a multi-county park *(Section 5-3-115)* property in street or highway rights-of-way *(Section 5-3-110*) and cemeteries *(Section 5-3-250)*.

An annexation may not be challenged in the state courts unless a notice of contest is filed with the municipal clerk and clerk of court within 60 days after the annexation is published or declared and a lawsuit is filed within 90 days after the annexation is published and declared. *Section 5-3-270*.

## Incorporation

Chapter 1 of Title 5 of the S.C. Code of Laws sets out the petition/election procedure for incorporating a new municipality.

A petition required to trigger the incorporation procedure must have the signatures of 15 percent of the electors. *Section 5-1-40.*

Act 77 of 2005 *(Sections 5-1-10 to 5-1-100)* sets the population threshold at 7,000 for areas seeking to incorporate if they are within 5 miles of another municipality. County, state or federally owned land in an incorporated area can be used to link areas seeking to incorporate.

The Act establishes service requirements for areas seeking to incorporate. The proposed municipality must provide law enforcement services at a substantially similar level of law enforcement services provided to the area prior to the incorporation. The law enforcement services may be provided directly or indirectly. In addition to law enforcement, the area proposing incorporation must provide three of nine municipal services described in Act 77 of 2005. The Municipal Incorporation Oversight Committee, created by this Act, reviews all municipal incorporations to ensure compliance with the law's requirements.

## Reduction of Corporate Limits

To reduce a municipality's corporate limits, a majority of the municipality's resident freeholders must sign a petition and submit it to council requesting such a reduction. A majority of the municipality's registered voters must vote in favor of the reduction at an ordered election. If the vote is favorable, council must adopt an ordinance declaring the area no longer part of the municipality. *Section 5-3-280*.

Property owned entirely by the municipality may be removed from the corporate limits by ordinance. Property owned by the county or owned jointly by the county and the municipality may be removed by municipal ordinance following a county council resolution requesting removal. *Section 5-3-285.*

As with annexations, the municipality must notify the state secretary of state, the state Department of Transportation, the state Department of Public Safety and the U.S. Department of Justice of the municipality's new reduced boundaries. *(See page 19 for information on current U.S. Department of Justice requirements)*

## Consolidation

**Municipal-Municipal**

No petition is required when two or more municipal corporations propose to consolidate. Each municipal corporation may by ordinance call for the election. *Section 5-3-30.* Consolidating all or part of two or more municipalities may also be accomplished after a public hearing, by ordinance of the municipalities involved. The ordinance must include terms of the boundary adjustment. *Section 5-3-40.*

**Municipal-County**

Counties can consolidate with municipalities and other political subdivisions within its limits into a single governmental unit. *Article VIII, Section 12, S.C. Constitution.* In 1992, the General Assembly established the statutory provisions necessary to implement consolidations. *Sections 4-8-10 to 4-8-150*. There are problems with this legislation that make it unworkable for some jurisdictions.

Upon the request of the county's governing body or petition of not less than 10 percent of the registered electors within the county, the county governing body is authorized to create an 18-member consolidated government charter commission. These members are apportioned by formula to the county, municipalities and special purpose districts. *Section 4-8-20.*

The commission studies the consolidation and drafts a proposed consolidated government charter within 12 months of its appointment. It must conduct at least three public hearings. *Sections 4-8-40, 4-8-50, 4-8-70.*

Within 30 days of receiving the proposed charter, the county governing body must set an election on the issue within 60 to 90 days. *Section 4-8-80.*

The charter commission must determine whether consolidation must be approved by a majority vote of the county's qualified electors or by a majority vote of the qualified electors within each municipality or special purpose district. If the vote is unfavorable, another commission may not be created for at least four years after the election. *Section 4-8-90.*

A municipality or special purpose district may elect to be excluded from the consolidation. A majority vote opposing consolidation in a municipality or special service district counts as a decision to be excluded. *Section 4-8-95.*

Municipalities and special service districts excluded from consolidation may later become part of the consolidated subdivision pursuant to certain procedures. *Section 4-8-120.*

## Dissolution

Municipalities cannot bring about their own dissolution. There are three ways in which a municipality can be dissolved: *Section 5-1-100*.

1. A majority of the registered voters may file a petition with council requesting the municipal charter be surrendered. The council orders an election for all municipal registered voters. If two-thirds vote in favor of surrendering the municipal charter, council certifies the election result to the secretary of state, who cancels the charter.

2. If a municipality's population decreases to less than 50 people, the municipal charter is automatically forfeited.

3. The secretary of state can cancel a charter if a municipality performs no municipal services, collects no taxes or other revenues, and has not held an election for four years.

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