



## Indigent defense costs are municipal responsibility

The U.S. Constitution guarantees a defendant's right to counsel if he cannot afford it on his own. Furthermore, in *Alabama v. Shelton*, the U.S. Supreme Court affirmed a defendant's right to counsel, especially if he could be jailed.

To fund public defenders in South Carolina, the Office of Indigent Defense collects 10.56 percent of every fine levied in municipal courts. In FY 14, municipal courts collected and remitted more than \$2.2 million to OID.

While municipalities provide significant funding for OID through state-mandated surcharges and assessments, the

General Assembly included a proviso in this year's annual budget that prohibits circuit public defenders from representing indigent defendants in municipal court unless the court and the public defender's office have an agreement for services.

The proviso, sponsored by Rep. Mike Pitts (Laurens), also prohibits OID from compensating independent attorneys who defend indigents in municipal courts.

While provisos are valid for only one year, they are often automatically included in subsequent state budgets. Therefore, responsibility for defending indigents in municipal courts for the

foreseeable future has fallen exclusively to municipalities.

"A municipality has four potential courses of action," explained Scott Slatton, the Association's legislative and public policy advocate.

1. Negotiate an agreement for indigent defense with the circuit public defender. Several cities and towns have already taken this option.
2. Contract with an independent attorney for a fee or pro bono. Before contracting with the attorney, the town should ensure the attorney has malpractice insurance.

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- Remove the threat of jail time for indigents, although this makes it more difficult to collect any fines that might be imposed on the defendant.
- Close the municipal court and negotiate an agreement with the county to have municipal cases tried in magistrate court.

Failure to provide indigents with counsel could expose cities to liability. "In fact, advocacy groups around the country are seeking opportunities to sue cities that violate the indigent defendant's right to counsel," explained Slatton.

The Association encourages municipal officials to talk with their legislators before the start of the next legislative session

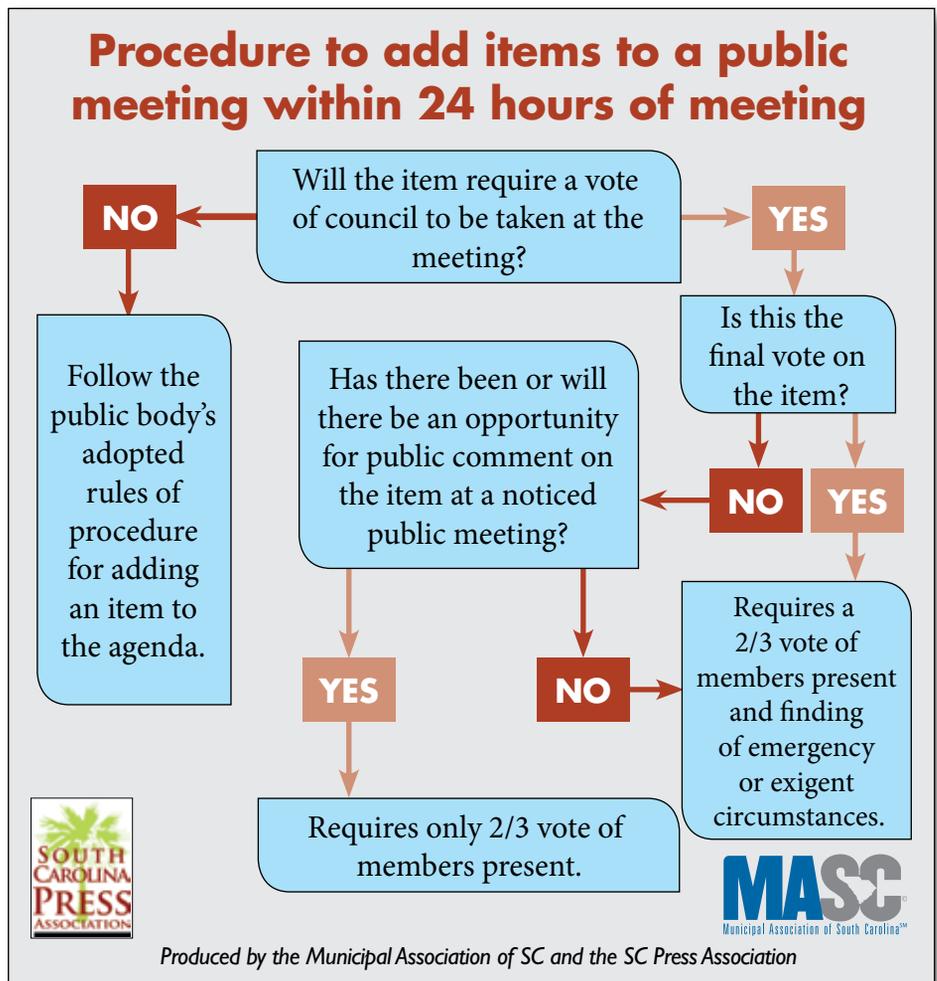
in January. "Remind legislators that, in addition to the 10.56 percent of fines cities send to OID, city residents also pay for public defenders through county property taxes. "This proviso forces city residents to pay for indigent defense a third time," said Slatton.

Slatton also encourages municipal officials to educate their legislators about the benefit of municipal courts to the state and the fact that municipal courts are not the "revenue generators" some legislators believe. Doing so will provide legislators with the facts they need to remove the proviso from the next state budget and find a long-term solution for providing indigent defense in municipal courts.

## Correction to agenda flow chart

The flowchart printed in the August/September issue of *Uptown* about the procedure for adding items to a meeting agenda was incomplete.

Refer to chart below when determining whether an item can be added to a public meeting agenda. We apologize for the inconvenience.



## One city's story

# ADA continues to impact cities

This year marks the 25th anniversary of Congress passing the Americans with Disabilities Act—the nation's first comprehensive civil rights law addressing the needs of people with disabilities. All local governments, regardless of size or number of employees, must comply with the ADA.

While the ADA may have been at the top of everyone's agenda when the law passed in 1990, it has fallen off the radar for many public entities nationwide. Numerous complaints continue to be filed with the U.S. Department of Justice against state and local governments.

Greer city officials realized they had more work to do when they hosted a regional transit meeting earlier this year. A visitor in a wheelchair could not get to the meeting room by using the building's accessible entrance. "The first floor entry is designed to remain unlocked when meetings are being held after hours, but a mix-up led to the doors being locked after business hours," explained Steve Owens, Greer's communication manager.

The incident could have led to a complaint being filed with the U.S. Department of Justice and resulted in a hefty fine. Instead, it raised Greer officials' awareness that the city had more work to do to become ADA compliant.

"It has always been our desire to comply with the requirements of the ADA, and we thought we were complying," said Ed Driggers, Greer's city administrator. "However, we discovered we fell short and quickly reacted. We have found that education is the key to understanding our responsibility and the requirements we have."

The Justice Department encourages local officials to be proactive in order to comply with the ADA. Public entities should have a general ADA nondiscrimination policy, a specific policy on service animals, a specific policy on effective communication, and specific policies on other ADA topics.



The Justice Department also suggested training staff about how to access the auxiliary aids and services needed to communicate with people who have vision, hearing or speech disabilities. Officials should also be familiar with the 2010 ADA standards before undertaking any alterations or new construction projects at public facilities.

Public entities with more than 50 employees (full- and part-time) have additional requirements. They must establish an ADA grievance procedure and appoint an ADA coordinator to manage the entity's compliance efforts and investigate any complaints that the entity has violated the ADA.

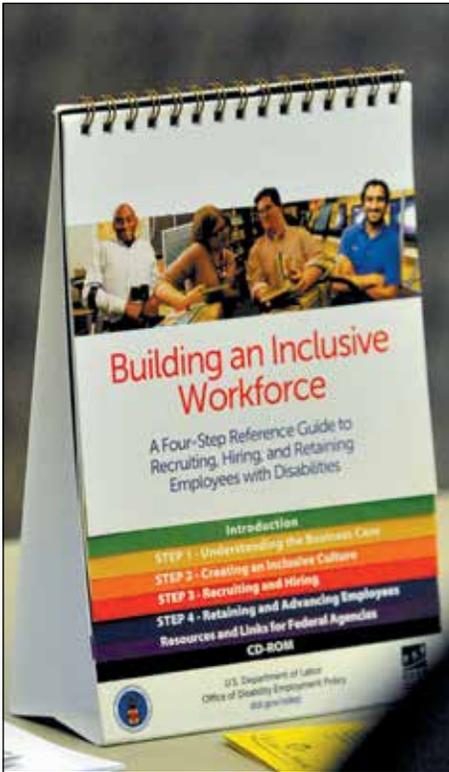
Greer officials appointed Ruthie Helms, building official for the city, as its ADA coordinator. According to Helms, many cities are appointing their building officials as their ADA coordinator. "Building officials are used to inspecting for compliance to building codes and American National Standards Institute standards for accessibility," explained Helms.

All public entities, regardless of size, must conduct a self-evaluation of all their services, policies and practices. Public entities with 50 or more employees must also develop a transition plan detailing any structural changes that the city would need to make to comply with the ADA and specifying a time frame for their completion. Interested individuals must have the opportunity to participate in the self-evaluation and transition planning processes by submitting comments.

In Greer, Helms immediately began inspecting signage, parking and accessibility to city buildings. She enlisted the aid of ABLE South Carolina, a nonprofit that provides an array of independent living services to people of all ages with all types of disabilities. ABLE staff accompanied Helms as she evaluated city facilities, and ABLE did a complimentary audit of downtown.

"We are in pretty good shape downtown in terms of curb cuts and sidewalks,"

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said Helms. What caught Helms by surprise though was the impact of outdoor dining on the sidewalk clearance requirement. The ADA requires all sidewalks be at least 36 inches wide. “We have to be very careful about sidewalk clearance at businesses with outdoor dining.”

Title III of the ADA addresses public accommodations, including accessibility for sidewalks and rights-of-way.

Thus far, ABLE staff and Helms have surveyed five major city buildings, 17 parks, the recreation center and some of the fire stations. The key is to set priorities then work your way through them, advised Helms.

ADA's Title II addresses public services. Public entities cannot deny services or participation in programs or activities that are available to individuals without disabilities.

Title II also outlines appropriate steps the public entity needs to take to ensure that communications with applicants, participants, members of the public and companions with disabilities are as effective as communications with others.

Among other steps, Greer officials are making their printed materials available in Braille and arranging for interpreters to be available as needed.

The Justice Department suggested one way to help meet Title II requirements is to ensure that government websites have accessible features for people with disabilities. In Greer, Owens has spent countless hours bringing Greer's site into compliance. For example, he has added titles (or alt-tags) and captions to all images on the site. Many people with disabilities use assistive technology such as screen readers. Screen readers cannot interpret images unless there is text associated with them.

ADA also requires all government entities to provide a public ADA notice

CELEBRATING 25 YEARS



ADA National Network and [www.adaanniversary.org](http://www.adaanniversary.org)

with relevant information regarding Title II, and how it applies to the programs, services, and activities of the public entity. Owens has posted Greer's notice on the city's website.

For Greer, making programs, services and public facilities accessible is about more than just complying with the law, said Helms. It is the right thing to do.

In addition to the work Owens and Helms are doing to ensure Greer is ADA compliant, Greer contracted with ABLE to conduct sensitivity training for executive- and management-level employees. In April, the city's employee assistance program provided a series of talks about respecting diversity for all employees.

The U.S. Department of Justice created a primer to assist local government officials with ADA compliance. The publication is accessible from the Department's ADA website at [www.ada.gov/regs2010/titleII\\_2010/title\\_ii\\_primer.html](http://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html).

## Bluffton rolls out welcome mat



During the 2015 Annual Meeting's preconference mobile workshop, more than 100 attendees heard from Bluffton officials about how the coastal community has balanced exponential growth (growing from one square mile to the state's fifth largest municipality in land mass) with preserving its natural resources and maintaining its Southern charm.

# Accuracy of state map vital to cities and towns

An updated statewide map of city and county boundaries will be the result of negotiations that took place this year with transportation network companies during the legislative session. A transportation network company is an entity that uses an app on a phone or tablet device to connect a passenger to a driver. Uber and Lyft are examples of TNCs.

Historically, the state's Revenue and Fiscal Affairs Office has maintained the most accurate database of GIS mapping of boundaries in the state. RFA uses the information to draw district lines for congressional, state, county and local elections. Plus the information from these maps is used to calculate state-shared revenue distributions.

During negotiations with representatives of the transportation network company industry in late spring, RFA agreed to post its database of city and county boundaries on its website in an accessible format.

"While the TNCs will use the state map to determine which jurisdictions

should receive proceeds from the local assessment fee levied on them, most cities won't initially receive checks until companies like Uber begin operating in their cities. However, these maps are very important to all cities now for several reasons," said Tiger Wells, the Association's government affairs liaison.

"First, the state will use the maps to allocate proceeds from the Local Government Fund, and we anticipate the U.S. Census Bureau will use the map for future census activity," Wells said. Plus, the Municipal Association can use the map to increase the accuracy of distributions to cities from its collection programs and to advocate for improved accuracy in the distribution of revenues collected by the state on behalf of local governments.

"Because so many revenue distributions will be based on the map, it is imperative for municipalities to ensure the information is accurate and kept up-to-date whenever a city annexes property," explained Wells.

In the coming months, Revenue and Fiscal Affairs Office staff will work with municipal officials to ensure the existing database is accurate. Officials can view the boundaries database on RFA's website at [rfa.sc.gov/mapping/tncmaps](http://rfa.sc.gov/mapping/tncmaps). Report any discrepancies to Dwight Jones at [dwight.jones@rfa.sc.gov](mailto:dwight.jones@rfa.sc.gov) or 803.734.5076.

State law already requires municipalities to notify several state agencies (i.e., Secretary of State, Department of Transportation, Department of Public Safety) of any annexations within 30 days of the annexation being complete. Now, city officials must also notify the Revenue and Fiscal Affairs Office. The notification must include a written description of the municipal boundary, along with a map or plat that clearly defines the new territory added to the municipality.

Send RFA annexation notifications to Will Roberts at [will.roberts@rfa.sc.gov](mailto:will.roberts@rfa.sc.gov) or the South Carolina Revenue and Fiscal Affairs Office, 1000 Assembly St. Rm. 419, Columbia, SC 29201.

# NEWS BRIEFS

The Association's **history book**, "Celebrating the Past, Embracing the Future: A History of Shared Voices, Shared Knowledge, Shared Solutions," is available online at [www.masc.sc](http://www.masc.sc) (keyword: history).

The Municipal Association has updated the **Freedom of Information Act online course** for the Municipal Elected Officials Institute of Government. The update includes changes resulting from new legislation regarding posting/amending agendas and a recent state Supreme Court case involving stating the purpose of executive sessions.

The **SC Business Licensing Officials Association** awarded five individuals with the Accreditation in Business Licensing designation. Nathan Campbell, City of Aiken; Michelle Paulchel, City of Cayce; Dante Roberts, Richland County; Justin Rose, City of Beaufort, and Lawrence Willoughby, City of Myrtle Beach.

Members of the **SC Association of Municipal Power Systems** elected their 2015-16 officers and board of directors. President Alan Loveless of Georgetown, Vice President Jeff Meredith of Greenwood Commissioners of Public Works, Board Members Tom Couch of Camden, Will Martin of Bamberg Board of Public Works, Mike Jolly of Rock Hill and John Young of Laurens Commission of Public Works.

The **Municipal Association** announced two staff changes. Jennifer Gray, formerly an accountant with the finance department, is working with Risk Management Services as a financial specialist. Candace Fleming joined the staff in August as the receptionist.



## Complying with the law to avoid financial trouble

When financial times are tough, municipal officials look for ways to cut expenses. Sometimes, there aren't any expenses left to cut, and officials must look for new revenue sources or ways to creatively use existing revenue.

When done properly, the effort can produce positive results. If done improperly, the city could face serious and potentially long-lasting financial consequences. Understanding and complying with state and federal revenue restrictions are extremely important to a municipality's financial health.

### Property tax revenue

Property tax revenue is the largest source of revenue for most South Carolina municipalities. "The most important point to understand is that state law caps how much a city can increase its property tax millage each year," cautioned Eric Budds, the Association's deputy executive director.

A municipality may increase its millage for general operating purposes in one year by the prior calendar year's average Consumer Price Index increase plus the percentage increase in the city's previous year population. The city can also add the increase allowed in millage for each of the three previous years if it was not previously imposed by council.

Each year by late spring, the state Department of Revenue and Fiscal Affairs provides each city with the CPI and population growth percentages.

State law also requires municipalities to "roll back" their millage rate after reassessment of property values to ensure local governments receive the same amount of revenue from property taxes after reassessment as they did before.

In reassessment years, municipalities must adjust the millage rate to account for the change in the assessed value after reassessment, excluding the increase in value associated with new construction,

the renovation of existing structures and the property resales. This is referred to as the rollback millage calculation. Visit [www.masc.sc](http://www.masc.sc) (keyword: rollback millage) for specifics on the calculation.

Additionally, municipalities with the local option sales tax must reconcile the prior year's LOST collections with the revenue estimate used to calculate the tax credit factor. The city must roll over any shortage in credit given in the current budget year into the calculation of the credit factor for the next year.

The municipality should calculate a new local option sales tax credit factor every year as part of the budget process (See the October 2010 edition of *Uptown* for details on calculating the credit factor). Failure to properly calculate the millage rate or tax credit factor could result in the municipality being ordered to refund the unauthorized revenue collected.

### Fees

Another potentially problematic issue involves adopting new fees.

A municipality can only impose "uniform service charges and fees" if a positive majority of council approves them. If the revenue generated from the fee exceeds five percent of the municipality's total revenue, the city must segregate the fee revenue into a separate fund.

An important issue concerning new fees is ensuring that the fee is truly a fee and not a tax in disguise.

The fee must be specifically tied to a measurable benefit derived by the payer of the fee which is different from the benefits to the general public not paying the fee. Municipalities considering new fees should consult their city attorney to ensure the fee is legally defensible. Collecting an improper fee could expose the municipality to an unintended financial liability.

### Restricted revenue

Local governments collect several types of revenues that have strict limitations on how the money may be spent. Restricted revenues include locally retained state victim's rights funds, state accommodations tax proceeds, and local accommodations and hospitality tax

revenue. The city may spend money from these revenue sources only for the specific purposes authorized by state law. The state can audit the city's use of the money. The city would have to repay any money improperly spent.

For some revenue types, the city must hold the proceeds in trust for payment to another entity. Examples include state assessments, surcharges and pullouts applied to municipal court fines; employee-withheld payroll taxes; and employee retirement and insurance contributions.

This money does not belong to the municipality and should never be used for municipal purposes. Unauthorized use of this money is not only illegal, but it is also a quick way to dig the municipality into a deep financial hole because the money held in trust is usually a substantial amount.

### Reporting requirements

Failing to meet state reporting requirements is another way officials can put their municipality in fiscal distress. The state may withhold 25 percent of the city's state-shared revenue if the city fails to submit an annual audit to the State Treasurer's Office by the 13th month after the end of the city's fiscal year or if it fails to submit the Local Government Finance Report to the state Revenue and Fiscal Affairs Office each year by January 15.

"Understanding and complying with revenue restrictions are imperative to avoid serious financial consequences," said Budds. "When in doubt, city officials should seek guidance from the appropriate federal or state agency or the Municipal Association's technical assistance staff."

*Budds presented a session on this topic at the Association's 2015 Annual Meeting.*

## Regional meetings focus on legislation



*Scott Slatton and Melissa Carter of the Association's advocacy team led lively discussions at the ten Regional Advocacy Meetings to identify issues important to cities and towns for the upcoming legislative session. Road funding, annexation, business licensing and indigent defense were hot topics at all of the meetings.*

# Website features members-only content and services

Elected officials, city staff and others affiliated with the Municipal Association can take advantage of more features and resources on the new www.masc.sc by entering the site's members-only area using the Member Login link located in the upper right corner.

The site will prompt the user to enter his birth month, birth date and the last four digits of his Social Security Number. This combination of numbers represents the user's personal identification number to access online services, simplify event registration and ensure proper recording of participation in Association training programs.

If the site does not recognize the user, it will provide directions for creating a profile. Once signed in, individuals can update their title and contact information, indicate their preferred mailing address and phone number, and provide their email address and social media account names.\*

Individuals can also manage their subscriptions to the Association's printed newsletter, e-newsletters and mobile alerts. While the Association does not currently send mobile alerts (text messages), staff plans to use this method of communication on a limited basis in the future.

The Association's website also contains numerous resources specifically for

members of the SC Municipal Insurance and Risk Financing Fund and the SC Municipal Insurance Trust. Once logged in, SCMIT and SCMIRF members have access to model policies, best practices and online training.

The Member Login link gives access to clerks and specially designated municipal representatives to the Municipal Information Dashboard. The Municipal Information Dashboard is the Association's centralized tool to keep all listings and contact information up-to-date for municipalities, city staff and elected officials. Clerks or their designee can log in to the Member Home to make updates at any time during the year.

Every year in early November, the Association asks municipal clerks to update and verify their city's information as part of the annual data review.

The Association relies on the information provided in the Dashboard to communicate with municipal officials on issues important to cities and towns. The online directory also uses this information to list names of elected officials and key municipal personnel.

*\*The Association does not share personal information like email addresses and social media account names with other organizations, businesses or individuals.*

## Available subscriptions

- *City Connect* – The Association's blog that connects municipal officials with timely information and resources to help them make their cities more efficient and effective.
- *Daily News* – Headlines and links to news stories of municipal interest from around the state.
- *From the Dome to Your Home* – Weekly legislative report for elected officials and city staff that recaps the week's activity on bills affecting SC municipalities, suggests action steps for local officials and previews the upcoming week in the General Assembly.
- *Riskletter* – Quarterly publication available to members of the Association's two self-funded insurance programs. The e-newsletter addresses a wide range of risk management topics.
- *Uptown* – Monthly newsletter provides in-depth articles on issues of municipal interest. Users can choose to receive the print version, electronic version or both.
- *Uptown Update* – Weekly newsletter emailed to municipal officials on Monday afternoons that provides information about upcoming training opportunities, resources and timely topics.



## Looking at the city through the eyes of seniors

*This article is the last in a series exploring what various sectors of the community value about their city government. The seniors we spoke with have various levels of involvement with their municipalities, by volunteering for city programs or by utilizing social programs offered by the cities.*

Local government plays an important role in the daily lives of many seniors. For some, it means receiving help from programs designed to assist them with various needs. For others, it means volunteering their time for city programs and giving back to their community. Still others rely on the city for recreational opportunities and other programs.

Sumter resident Maggie Achelpohl is an active 73-year-old, but she lives alone and has been increasingly worried that she could fall and no one would immediately realize she needed help. When she called police to report some vandalism, she began chatting with an officer and expressed her personal concerns. The officer signed Achelpohl up with Sumter's Project CheckMate.

Project CheckMate commits one police officer to regularly visit the homes of the elderly and disadvantaged adults. Seniors are asked to call and check in every day. If a senior does not call in, an officer phones him that day to check on his well-being. When the assigned officer stops by and visits the seniors, the officer also can help with any small tasks or minor repairs that the seniors are unable to do.

The officer assigned to Achelpohl has helped by changing air filters and replacing light bulbs in her ceilings. Some of those light bulbs had been out for five years, Achelpohl said.

They are small acts, but for the seniors in the program, it represents peace of mind.

"I'm really glad I found this program because I was getting worried (about



(l) Cpl. Warren Davis with CheckMate participant  
(r) Chesterfield Visitors Center volunteers



falling)," Achelpohl said. "Now I don't have to worry about it anymore."

Lessie Mae Brunson, 81, also is grateful for the assistance and attention she receives from Project CheckMate. Her assigned officer has replaced light bulbs, taken out the trash, found contractors for repairs to be done to her porch and roof, and installed a small air conditioner for her.

Brunson considers her officer a friend and notes that his wife comes to check on her and that she's even met his mother. Occasionally, she said, they bring her hot, fresh doughnuts.

"They check to see that I've got something to eat and something to drink, and that I'm cool," Brunson said. "They ask if there's anything I need or want. I really enjoy and appreciate it."

For coastal resident Joe Parks, volunteering is his connection with local government.

Parks, 75, started volunteering last year with the Myrtle Beach Community Ambassador Program. He has helped out at a number of events such as Black Bike Week and a basketball tournament. In the past, he also has volunteered at Huntington Beach State Park, giving tours of Atalaya Castle.

The Myrtle Beach ambassadors wear marked orange t-shirts and walk the streets during certain times, answering questions from visitors, offering advice on where to eat, tourist attractions like parks,

rides and shopping, and giving general advice on Myrtle Beach, Parks said.

The ambassador program is sponsored by the Myrtle Beach Police Department. Parks knows the ambassadors can make a good impression on visitors. Parks said he enjoys talking to other people and giving back to his community.

Another active volunteer, Margaret Dotson, helped get the Chesterfield Visitors Center off and running several years ago. Dotson said she suggested to then-Mayor John Douglas that a visitors center would be beneficial for Chesterfield. The mayor agreed.

The center houses an art gallery, history museum, genealogy library, First Steps, Chamber of Commerce office and a conference room. Dotson, 78, organized the Chesterfield County Historical Society board of directors to volunteer their time to keep the center open to the public.

"They have been faithful volunteers over the years," she said.

The center is staffed by volunteers several days a week. Dotson volunteers there herself on Tuesday afternoons.

Seniors across Chesterfield volunteer at numerous sites, including The Sunshine Shoppe (a thrift store run by Hospice of Chesterfield County) and a soup kitchen at the Chesterfield Baptist Church, Dotson said.

"All of the senior volunteers I know enjoy doing work that helps Chesterfield become a better place for everyone," she said.



# Get maximum value for tower leases

by Greg Fender, Local Government Services, LLC

Typically, cellular companies prefer to lease space for their equipment on city property rather than on private property. In most cases, the companies want to lease space on a water tower or a communications tower (e.g., where a city has its 911 operations).

When negotiating a tower lease, city officials should keep several things in mind to get the maximum value in exchange for these companies using the city's property.

## Tower leases

It is not uncommon for the company's initial rent offer to be substantially lower than the market rate (ex. \$500/month initial offer ultimately negotiated to \$2,000/month or more). Most water tower leases are, at a minimum, in the \$2,000+/month range, depending on coverage density and traffic routes.

- Include an inflation escalator clause, ranging from 3-5 percent each year.
- Know the number of antennas and equipment the company wants to attach

to the tower before negotiations begin. Do not give the company a general lease to add equipment without the city's prior approval and more rent consideration.

- Negotiate for higher compensation for any term longer than the typical five years with two five-year term extensions. Include an early termination fee if the company removes its equipment before the lease expires.
- Require the company to pay for moving their equipment if the tower needs painting or maintenance. Do not have the city assume the cost.
- Require cellular companies to reimburse the city for any outside expertise used to negotiate the lease.

## Land leases

- Include a revenue sharing provision in every land lease as towers are usually constructed with the capacity to add antennas from additional companies on the tower. The provision should

require the city's approval for all subleases and provide the city with 20-40 percent of the sublease as collocation revenue.

Occasionally, companies ask for a rent reduction, claiming that technological advances may make the need for your tower obsolete or that cellular companies are consolidating which will mean fewer leases. A more recent trend involves companies offering a lump sum payment in return for the city abating future rent. In most cases, city officials should reject these types of proposals as they are often not in the city's best interest and far below the value cities should receive.

*The Municipal Association has a strategic partnership with Local Government Services, LLC to provide technical assistance with cable franchise management and tower lease negotiations. For more information, contact Greg Fender with Local Government Services, LLC at 706.482.9933 or [ghfender@windstream.net](mailto:ghfender@windstream.net).*



# Drone popularity *rising*

Unmanned Aerial Systems (more commonly referred to as drones) made their public debut first in military operations. However, because of their widespread potential uses by government, businesses and individuals, it is not uncommon to see drones flying above cities and towns across the country.

Nationwide, city officials are considering potential municipal uses while at the same time considering regulations to minimize risks related to drones. Several South Carolina cities are already using them for a variety of tasks.

While the City of Landrum does not use drones, there are several local photographers and videographers who use them at local events, according to City Administrator Caitlin Cothran. She has purchased several photos from these individuals to use for advertising the city.

The Florence Downtown Development Office purchased a drone earlier this year and uses it to take aerial photographs at events, to show progress of buildings being renovated or newly constructed, and to document the downtown historic district.

The City of Greer budgeted for an aerial camera in the last fiscal year with plans to use it in the building and codes department for things such as roof inspections, lessening the risk

to inspectors. “We also considered it for missing person searches, post-fire images and images of city facilities,” said Steve Owens, Greer’s communications manager. Greer officials decided to delay their purchase until the FAA finalizes its regulations on drones.

With an eye on economic development, the City of Tega Cay is considering using a local drone operator to film undeveloped land in the area. Staff also hopes to use footage for a marketing video of the city-owned golf course.

Charleston County also uses a drone for economic development purposes such as flying the drones over industrial sites for prospects. North Charleston officials have used the county’s drone for footage to use in their annual State of the City video.

In Bluffton, officials are using drones to monitor stormwater activity as part of its large-tract development site erosion and sediment control inspections.

According to Shirley Freeman, the town’s director of finance and administration, “It’s more efficient to fly over the large acreage sites than to walk the erosion control fence lines. It will also aid in our post-construction best management practices maintenance inspections for MS4 requirements for aerial images of ponds.”

Across the country, there are other examples of public-sector uses, especially in law enforcement. Local governments are using drones for crime, accident and fire scene investigations; search and rescue operations; surveillance; and live imaging in hostile situations.

Some entities are also using them to monitor and inspect water tanks and other infrastructure.

## Federal regulation

Responsible for establishing safety standards in the national airspace, the Federal Aviation Administration limits drone usage by both the public and private sectors. Congress directed the FAA to establish regulations for incorporating drones into the national airspace. The final regulations are expected to be released in mid-2016.

Before purchasing and using a drone, city officials must develop a plan for use, secure an operator whose credentials meet FAA requirements and obtain a Certificate of Authorization from the FAA. The certificate determines who can pilot the drone, training requirements, conditions for flight, the flight area, hours of operation and reporting requirements. Officials also need to determine if their insurance will cover a drone accident or incident that results in liability.

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Alternatively, the city may decide to use a drone owned and operated by a third party. This may be an easier solution if the private entity has equipment, a qualified operator and approval from the FAA that covers the intended operation. It is important for the local government to ensure its project fits within the owner/operator's intended usage submitted to and approved by the FAA.

### **Risks**

Drones offer many potential benefits for public entities, including reduced costs, increased efficiencies, reduced dangers or injuries to employees, and enhanced perspectives on projects. There are also risks, most of which have not yet been fully explored because the use of drones is so new.

**Accidents.** A drone might crash during use, itself sustaining physical damage or causing physical damage to property (city or private) or even personal injury. A drone could also collide with another aircraft, creating the same sort of risks.

**Trespass.** Drone use could lead to allegations of trespassing on private property, including trespassing into the airspace above private property. If a drone needs to be retrieved because of malfunction or crash. If permission from a landowner is not appropriately granted, there could also be direct trespass concerns.

**Privacy breach and civil rights violations.** There are risk considerations regarding privacy breach both in law enforcement's use of drones and use in other areas.

With law enforcement usage, there are also risks related to appropriate warrant procedures, such as the need for a warrant and the approval of a requested warrant. There may be privacy and civil rights risks related to recordings made by cameras or other devices employed by law enforcement through a drone (or any other means).

There are privacy breach concerns for drone use in other areas. For instance an aerial parks survey conducted by a drone could record private activity in a home on an adjoining property. Even if the local



*During the 2015 Annual Meeting, Flyover Systems representatives provide drone demonstrations and discuss potential uses for the drones by municipal governments.*

government entity does not use such private information in any direct way, the mere recording of information could be cause for privacy concerns.

**Cyber risks.** Collection of information and images by drones can provide robust data, stored electronically, to local governments. Such data or images might be subject to the same sort of cyberattacks or accidental releases as other electronic information sources. In addition, the remote operation of drones could make them subject to a direct cyberattack, such as a unauthorized pilot commandeering a drone being operated for a public purpose. This could result in theft or destruction of the drone, itself, but more importantly could lead to liability for the public entity that failed to adequately protect against the cyberjacking of its (owned or contracted) drone.

**Regulatory violations.** The FAA regulations apply to public entity use of drones. In some cases, there may be penalties for failure to comply. As drone regulation increases and takes firm shape at the federal and state levels, other penalties could apply for violation of rules or restrictions.

**Land use liability.** Local governments that attempt to regulate when, where or how drones can be used within their

jurisdictions may face pushback from commercial or recreational users, particularly related to land use rights for private property.

**Failure to supervise or limit use.** For any situation where drone use over public property creates a liability concern—for instance by causing damage through a crash or collecting private information—there could be a tort claim against the city for failure to supervise use, failure to protect against dangers, or failure to appropriately limit the use of drones in public areas. These claims could be made regardless of whether the local government operates its own drone, allows a drone to be used, or fails to limit drone use over public property.

Drones offer local governments of all sizes the opportunity to enhance services, operate more efficiently and reduce risks to their employees. As with the evolution of any technology, recognizing the full spectrum of benefits and risks is a “work in progress.”

*Information for this article provided in large part from “Use and Regulation of Drones by Local Government Entities & Schools: Thought for Public Entity Pool,” produced by the Association of Governmental Risk Pools and the National League of Cities Risk Information Sharing Consortium.*



## Public works deserves attention

While there is much discussion locally and nationally about risks associated with law enforcement, public works employees face daily risks that do not generate as much attention.

According to statistics from the Association's two self-funded insurance programs, public works departments rank behind only law enforcement in terms of number and costs of claims in both the workers' compensation and liability programs. Public works edged out the fire service departments, which are perceived to carry more risks, according to Heather Ricard, director of Risk Management Services.

Public works departments face several risk management challenges. These include training employees with wide-ranging education and experience levels; providing remote supervision of lone workers; and keeping employees safe while performing high-risk tasks such as trenching and excavating, working in confined spaces, and using various power tools, specialized vehicles and other complex heavy equipment. Sanitation workers, in particular, face substantial risks such as varied size, shape, weight and content of refuse; weather conditions; and traffic situations.

Trenching, excavation and confined space entry are common public works activities that can have catastrophic results if safety measures are not in place.

Trench cave-ins are preventable by taking basic, long-established precautions. The South Carolina Municipal Insurance Trust, the Association's self-funded workers' compensation program, annually offers grants for its members to purchase trench boxes and other safety equipment designed to prevent such tragedies.

"We are looking closely at our member cities' policies, procedures and training documentation in public works departments," said Venyke Harley, loss control manager for SCMIT and the SC Municipal Insurance and Risk Financing Fund, the Association's self-funded property and liability insurance program.

"We often see consistent training and recordkeeping in the law enforcement and fire service departments we visit, but sometimes our grounds keeping, sanitation, and water and sewer departments are not in compliance with our annual risk assessment audit criteria and OSHA's standards," Harley added. One common deficit is consistent documentation of safety committee meetings.

City officials can limit their public works department's liability by developing appropriate policies and procedures, providing employees with personal protective equipment, and offering consistent training and supervision.

## Ransomware holds data hostage

According to a Symantec Internet Security Threat Report, ransomware attacks grew 113 percent in 2014. Ransomware is a type of malware that uses encryption to lock files, photos and other digital media on a user's computer or mobile device.

With ransomware, the cyberattacker agrees to offer a key to unlock the encryption once he receives a sum of money. This type of attack can occur on both personal and business computers and devices. The extortionist is solely attacking the computer for financial gain.

Users unknowingly allow the ransomware to download onto their computers or devices usually by clicking on an attachment in an email or an ad on a website. The emails with the attachment are usually disguised to appear as legitimate correspondence from a contact in the user's email directory.

Once malware infects a system, it denies the user access to his files and databases, including confidential documents containing personal and financial information.

There are several ways to prevent or mitigate this risk exposure.

- Install computer security software and update it frequently. Antivirus, anti-malware software should scan all emails for threats and block any that could pose a threat.

- Back up files regularly and ensure the backup system is working properly. Store the backup files externally in a location away from the original files. Those without up-to-date backup files are more likely to agree to pay the ransom, which in turn encourages the attacker to continue targeting the system with additional malware.
- Delete suspicious emails and do not click on any links or unexpected attachments. If the suspicious email has an attachment, the user should contact the sender to verify the email. Employers should educate their employees on how to identify suspicious emails.

An attack can still occur even if preventive measures are in place. In the event of an attack, the user should disconnect the affected computer from the network. The computer should be scrubbed completely then restored using the backup files.

*The SC Municipal Insurance and Risk Financing Fund offers its members access to NetDiligence, a cyber-risk management firm. NetDiligence offers proactive and reactive services for data breach responses and cyber liability issues.*

*For more information on Net Diligence, SCMIRF members can contact Cindy Martellini, claims manager, at 803.933.1235 or cmartellini@masc.sc.*



# The next step for body-worn cameras



Risk Management

A new state law aimed at increasing both accountability and protection for police will eventually require law enforcement officers across South Carolina to wear body cameras, but it could be some time before all agencies are equipped.

Under the law signed by Gov. Nikki Haley in June, the state's Law Enforcement Training Council is required to establish body camera policy guidelines by December 1. All state and local law enforcement agencies then have 90 days to create their own local policies and submit them to the Training Council for approval.

The 2015–2016 state budget includes \$3.4 million to equip law enforcement officers with body cameras. This will not be enough for a full state rollout, but it will be enough to begin funding body cameras in some jurisdictions that do not currently have them or to reimburse those that already purchased them (see the July 2015 issue of *Uptown* for more details).

The Department of Public Safety will offer grants to law enforcement agencies to cover the initial purchase, maintenance and replacement of body-worn cameras as well as ongoing costs related to maintenance and data storage. Until the state

provides full funding, entities are not mandated to purchase cameras.

“Keep in mind,” said Tigerron Wells, government affairs liaison for the Association, “state and local law enforcement will need to budget not only for the initial rollout year but also for the rollout and several years of data storage and other expenses that go along with the cameras. This would include, but not be limited to, maintenance, replacement, and data review and report generation.”

There are various sources of grant funding accessible on a competitive basis for law enforcement. A bill by U.S. Senator Tim Scott, R-S.C., would offer another source for full funding.

Scott introduced legislation in July that would help provide funding for body-worn cameras for state, local and tribal police departments. The Safer Officer and Safer Citizens Act of 2015 would provide up to \$100 million in grants over five years to law enforcement jurisdictions nationwide that provide a 25 percent match in the funds that they request.

“Across our nation, too often we are seeing a lack of trust between communities and law enforcement lead to tragedy,” Scott said in a press release. “While rebuilding that sense of trust will take

time, I believe that providing law enforcement agencies with the resources they need to equip officers with body-worn cameras is an important step. We have seen that body-worn cameras can keep both officers and citizens safer, and that video can help provide clarity following an altercation. If a picture is worth a thousand words, then a video is worth a thousand pictures.”

A number of law enforcement agencies around the state already have body cameras in place.

The City of Greer Police Department started using body-worn cameras in September 2014, according to Chief Daniel Reynolds. The city issues cameras to uniformed officers in the patrol, traffic and canine units.

Reynolds has seen several benefits from the use of the cameras.

“Officers have made a number of traffic stops when, once the violator realizes or is told about the camera, they seem to become more civil in their communications with the officer,” he said. “Domestic violence cases benefit from cameras. The camera captures the emotions of the victim at the time of the incident which accurately depicts the violent nature of the event. Victims of domestic violence are

often reluctant to prosecute and downplay the violent nature of the incident in court. The video can refute these claims by the victim.”

There have been a few issues the department has had to resolve with the cameras though. Greer’s cameras need to be charged at least every six hours of use, and the officers work 12-hour shifts. This means officers sometimes must bring the camera in for charging before their shift ends and then return to the field without a camera until it is charged. Reynolds said they are replacing their cameras with another brand which holds a charge for 10 hours in an effort to fix this problem.

Reynolds also advised other departments to test the product before purchasing cameras, adding that some sales people will overstate the capabilities of the cameras.

“In our case, security/integrity of the downloaded video could be compromised or modified by officers once it was downloaded,” he explained. “Our vendor initially said this couldn’t happen.”

The Town of Mount Pleasant began testing different cameras back in 2013 and officially put a few into service in February 2014 with the K9 and bike patrols. Police Chief Carl Ritchie got the support of his town administrator, mayor and council to purchase the remaining cameras to outfit the entire agency. They officially implemented the department-wide program in June.

Ritchie said the presence of the cameras can alter the way people respond to police and may reduce unwarranted complaints. One example, he said, involved the protestors who shut down the Ravenel Bridge in response to the North Charleston shooting.

“During the encounter, one of my bike officers made contact with the protestors and, in a very professional manner, instructed them to leave the bridge or face arrest,” Ritchie said. “Most complied but several refused. As other officers arrived on scene, we removed the protestors and placed them under arrest. After the incident, they contacted the media alleging rough treatment, violation of rights and physical abuse.” The body camera showed the inaccuracy of the statements. Later,

the individuals pleaded guilty to the charges.

A second incident involved Ritchie personally. Ritchie said he stopped a driver who cut him off and almost caused an accident. The driver became confrontational—verbally abusive and rude—until he noticed the camera and apologized, Ritchie said.

“The camera changed his whole demeanor and attitude,” he said. “I finished the stop with a public contact warning, and he went on his way.”

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**“Camera footage can represent valuable evidence in cutting through the ‘he said-she said’ of what happened during or leading up to an interaction between law enforcement and a member of the public.”**

**Tigerron Wells**

*government affairs liaison for the  
the Municipal Association of SC*

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Ritchie advised other departments just beginning to use cameras to identify specific supervisory staff to act as body camera monitors to ensure proper use and training. He has two supervisors specifically trained by the vendor and has conducted both equipment training and policy review. Ritchie said his department’s policy requires a supervisor to review a selection of each officer’s videos for training purposes.

“This gives the supervisor the chance to critique an encounter and help the officer become a better public servant and, in many cases, gives us the opportunity to praise all the good work that we normally wouldn’t see if they weren’t on camera,” he said.

Ritchie recommended that agencies purchase at least enough cameras for

those officers in daily contact with the public and in an enforcement role, if not for the entire department. Agencies also must work closely with their IT departments to ensure there is appropriate storage space and that they are prepared to assist with any hardware or software issues that may occur, he said.

The Bennettsville Police Department has had its cameras for almost two years. The department has 20 cameras and 33 officers, according to Police Chief Larry McNeil.

Bennettsville has flex cameras that are mounted to the officers’ heads because, McNeil said, sometimes the head turns when the body doesn’t. This provides a more accurate account of what an officer sees, he explained.

One of the department’s biggest challenges, McNeil said, has been downloading the camera footage in a prompt, efficient time. They are sometimes backed up by a day or two, and it takes time to get the video footage logged in and categorized, he said.

“The cameras are one of the best tools when it comes to officer safety and accountability,” McNeil said. “It keeps them in a professional realm. It helps in how they deal with folks and how folks deal with them.”

McNeil said the cameras have led to a reduction in complaints. “It’s almost like having an integrity angel sitting on your shoulder,” making sure everyone behaves as they should, he said.

“Camera footage can represent valuable evidence in cutting through the ‘he said-she said’ of what happened during or leading up to an interaction between law enforcement and a member of the public. As such, it could save cities money by resolving frivolous claims, help identify officers in need of better training or unsuited for law enforcement, and in some cases even benefit residents who are suspected of doing something that footage later reveals they did not do,” Wells said.

*During the Association’s 2015 Annual Meeting, Chiefs Reynolds, Ritchie and McNeil shared best practices for body-worn cameras.*



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# Calendar

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

## OCTOBER

**13-16 SC Business Licensing Officials Association/Municipal Finance Officers, Clerks and Treasurers Association Joint Academy.** Marriott, Hilton Head Island. Topics include liens, assessment and summons for business license enforcement; best practices for setting up a one-stop shop for business licensing; e-discovery, digital records and email management; and municipal bonds.

**21 Communications Workshop.** 1411 Gervais St., Columbia. Topics include social media tools, measurement and best practices; media relations case studies from three cities that faced national/international media attention; and how to find and tell positive municipal stories.

**27 OSHA Trenching and Excavation Training.** Greenwood. Open to SC Municipal Insurance Trust members.

**28 Advanced Municipal Elected Officials Institute of Government.** Marriott, Columbia. Courses offered: “Advanced Budgeting and Financing” and “Advanced Leadership and Governance.”

**28 OSHA Trenching and Excavation Training.** 1411 Gervais St., Columbia. Open to SC Municipal Insurance Trust members.

**29 OSHA Trenching and Excavation Training.** Manning Police/Fire Department. Open to SC Municipal Insurance Trust members.

**30 Managers/Administrators Fall Forum.** Columbia Conference Center.

## NOVEMBER

**4-6 SC Municipal Human Resources Association Annual Meeting.** Embassy Suites at Kingston Plantation, Myrtle Beach. Topics include Affordable Care Act reporting, Fair Labor Standards Act update, employee wellness plans, and best practices for attracting, recruiting, onboarding, developing and retaining employees.

**12 Risk Management Services Annual Members’ Meeting.** DoubleTree Hotel, Columbia.

**19 SC Association of Stormwater Managers Fourth Quarter Meeting.** Columbia Conference Center.

## DECEMBER

**4 SC Municipal Attorneys Association Annual Meeting.** Embassy Suites Columbia.