

Board of Zoning Appeals Members

District 1: Beverly Williams
District 2: Kemesha Lowery
District 3: Keye Jones
District 4: Gary Alden
District 5: Sheresa Ingram
District 6:
District 7: Frances Liu, Chair

**County Attorney**

Ginny L. Merck-Dupont

Clerk to Board of Zoning Appeals

Jennifer Bryan

Development Services Director

Allison Hardin

April 2, 2024

6:00 PM

**101 North Main Street
Lancaster, SC 29720**

**LANCASTER COUNTY BOARD OF ZONING
APPEALS
Council Chambers, Lancaster County Administration
Building, 101 N. Main Street**

AGENDA

1. **Call to Order Regular Meeting - Chair**
2. **Roll Call**
3. **Approval of the Agenda - Board of Zoning Appeals**
4. **Approval of Minutes**
 - a. March 5, 2024 BZA Minutes
5. **New Business**
 - a. Training and Review
Discussion and workshop session on revising Board Rules & Procedures
6. **Adjourn**

Please note that the Board of Zoning Appeals makes the final decision on all items.

Anyone requiring special services to attend this meeting should contact 285-1565 at least 24 hours in advance of this meeting. Lancaster County Board of Zoning Appeals agendas are posted at the Lancaster County Administration Building and are available on the Website: www.mylancaster-sc.org

Meetings are live streamed and can be found by using the following link:

<https://www.youtube.com/@LancasterCoSCGov/streams>

Agenda Item Summary

Ordinance # / Resolution #:

Contact Person / Sponsor:

Department: Board of Zoning Appeals

Date Requested to be on Agenda: 4/2/2024

Issue for Consideration:

Points to Consider:

Recommendation:

ATTACHMENTS:

Description	Upload Date	Type
March 5, 2024 BZA Minutes	3/25/2024	Exhibit
Slide Presentation	3/25/2024	Exhibit
Variance Review Criteria	3/25/2024	Exhibit
SCAC Land Use- Zoning	3/25/2024	Exhibit
MASC- Effective Meetings	3/25/2024	Exhibit
DeLoache Article	3/25/2024	Exhibit
SC FOIA Guide	3/25/2024	Exhibit



MEMBERS OF LANCASTER COUNTY BOARD OF ZONING APPEALS

BEVERLY WILLIAMS, DISTRICT 1
KEMESHA LOWERY, DISTRICT 2
KEYE JONES, DISTRICT 3
GARY WAYNE ALDEN, DISTRICT 4
SHERESA INGRAM, DISTRICT 5
, DISTRICT 6
FRANCES LIU, DISTRICT 7

**MINUTES OF THE LANCASTER COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING**

March 5, 2024 at 6:00 PM

1. Roll Call

Board Members present: Quorum is present (4 Board Members)

Frances Liu Keye Jones
Gary Alden Beverly Williams

Absent: Kemesha Lowery, Sheresa Ingram

Staff: Allison Hardin, Development Services Director
Jennifer Bryan, Clerk and Recording Secretary
Ginny Merck-Dupont, County Attorney

Members of the press were notified in advance, but were not present. A notice of public meeting was published in the Lancaster News at least 15 days prior to the meeting. The Agenda was posted on the County website, and posted in the lobby of the administration Building one week prior to the meeting. A copy of the agenda is on file.

2. Call to Order

Chair Liu called the public meeting to order at 6:00 p.m.

3. Approval of Agenda

Keye Jones moved to Approve the Agenda; 2nd by **Gary Alden**. The motion was approved by unanimous consent.

4. Approval of Minutes

At 6:13, the Chair called for a motion. Motion to **adjourn for Executive Session For the receipt of legal advice subject to the attorney-client privilege related to pending approval of November 30, 2023 Minutes** by Gary Alden; 2nd by Beverly Williams. The motion was approved by unanimous consent.

a. Executive Session:

For the receipt of legal advice subject to the attorney-client privilege related to pending approval of November 30, 2023 Minutes.

At 6:43, the Board returned from Executive Session. Chair Frances Liu asked for a motion to adjourn the Executive Session. Motion by Gary Alden; 2nd by Keye Jones. Chair Frances Liu re-called the meeting to order.

a. Minutes of November 30, 2023

Mr. Jones rescinded his previously stated request to amend the November 2023 minutes. Keye Jones made a Motion to approve the minutes. Seconded by Gary Alden.

Vote: 4:0. Motion is approved.

b. Minutes of February 6, 2023.

Motion to Approve by Keye Jones; seconded by Gary Alden.

Motion to Amend, removing resignations of Frances Liu and Keye Jones (Items 6b & 6c) by Beverly Williams; 2nd by Gary Alden.

Vote on Amendment: 4:0. Motion is approved.

Vote on Approval as Amended: 4:0. Motion is approved.

5. New Business

a. Review of Rules & Procedures

Training review of Rules & Procedures by Allison Hardin, Development Services Director

b. Report on Land Law Seminar

Case precedent updates from Land Law Seminar: Allison Hardin.

6. Adjournment:

With there being no further business, Gary Alden moved to adjourn; motion seconded by Keye Jones. The motion was approved by unanimous consent. **Adjourned at 8:25 PM.**

ATTACHMENTS:

1. Slide Presentation:

- a. Review of Rules & Procedures
- b. Report on Land Law Seminar

2. Lancaster County Standards of Review for Variance Criteria

3. SCAC Guide to Land Use Planning, Chapter 2 Zoning

4. MASC publication: How to Conduct Effective Meetings

5. DeLoache Article: *Staying Out of Court While Serving on a County Appeals Board*

6. SC Government Publication: Public Official's Guide to Compliance with South Carolina's Freedom of Information Act.



**Lancaster
County**
South Carolina

**Board of Zoning Appeals
Agenda
March 5, 2024**

1. Call to Order Regular Meeting – Chair
2. Roll Call
3. Approval of the Agenda
4. Approval of Minutes
 - a. Executive Session
For the receipt of legal advice subject to the attorney-client privilege related to pending approval of minutes, November 30, 2023 Minutes.

- b. November 30, 2023 Minutes
- c. February 6, 2024 Minutes
5. New Business
 - a. Review of Rules & Procedures – Allison Hardin
 - b. Report on Land Law Seminar – Allison Hardin
6. Adjourn

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**Lancaster
County**
South Carolina

5. New Business

a.) Review of Rules and Procedures

- Where to Find Them – *Allison Hardin*
- Rules and Procedures – *Ginny Merck Dupont, Allison Hardin*
- Standards of Review – *Allison Hardin*
- Questions – *Allison Hardin*

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Where to Find Them

For the Lancaster County Board of Zoning Appeals:

- Rules of Procedure
 - Specific to BZA (last amended, 2017)
 - Roberts Rules of Order
- Standards of Review
 - UDO Chapter 9 – Administration
 - 9.2.12 – Variances
 - 9.2.13 – Special Exceptions
 - 9.2.14 – Appeal of Administrative Decisions

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State Law Section 6-29-780, etc

Empowers local governments to create a board of zoning appeals
“as a part of the administrative mechanism designed to enforce
the zoning ordinance.”

- Consists of 3-9 members
- Appointed by the governing body
- Vacancies appointed the same way that members are appointed
- Members may be removed by governing body “for cause”
- No members shall hold any other public office in the county

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State Law Section 6-29-800

BZA has four (4) powers:

1. **appeals** where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;
2. **variance** requests from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship;
3. to permit uses by **special exception** subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and
4. to **remand** a matter to an administrative official, upon motion by a party or the board's own motion, **if the board determines the record is insufficient for review**

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State Law Section 6-29-800(A)(2)

Variance may be granted if the board makes and explains in writing the following findings:

- (a) there are **extraordinary** and **exceptional** conditions pertaining to the particular piece of property;
- (b) these conditions do not generally apply to other property in the **vicinity**;
- (c) because of these conditions, the application of the ordinance to the particular piece of property would **effectively prohibit** or **unreasonably restrict** the **utilization** of the property; and
- (d) the authorization of a variance will not be of **substantial detriment** to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

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State Law Section 6-29-800(A)(2)

Definitions:

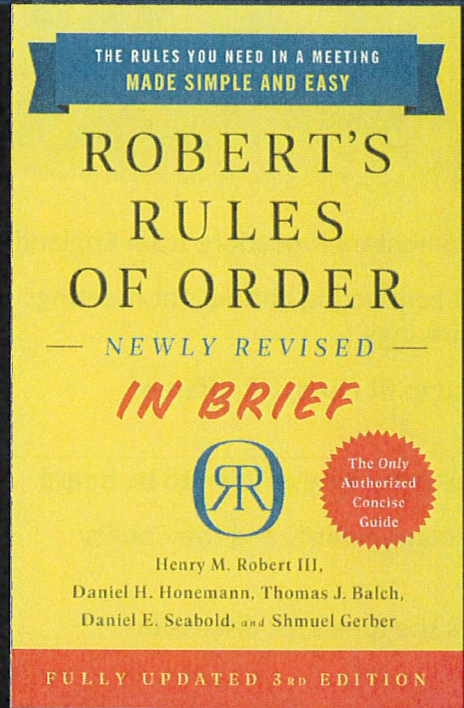
- Extraordinary: going beyond what is usual, regular, or customary
- Exceptional: a thing, concept, or person that does not follow the rule, or is excluded from the general statement/condition.
- Vicinity: state of being near, not remote; may include "neighborhood," "near," or "adjacent."
- Effectively prohibit: the local governing body acts or fails to act in a manner that results in the property owner or tenant being prevented from using the owner's property after reasonable compliance with generally applicable laws. (Currently seen in the short term rental bill in the SC Senate, S 953.)
- Unreasonably restrict: when compliance is out of line with what is considered reasonable and fair.
- Utilization: to make use of; turn to practical use or account.
- Substantial: of real worth and importance; of considerable value; something worthwhile as distinguished from something without value or merely nominal; Detriment: loss or harm suffered in person or property

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Quick Review of State Regulations for BZA

- Consists of 3-9 members, appointed by the governing body
- Vacancies appointed the same way that members are appointed
- Members may be removed by governing body "for cause"
- No members shall hold any other public office in the county
- Board adopts rules of procedure
- Chairman calls meetings; other times by board determination
- Appeal from BZA goes to circuit court; applicant may request mediation

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Rules of Procedure

Presenters:

Ginny Merck-Dupont, County Attorney

Allison Hardin, Development Services Director

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Rules of Procedure

- Required by law to be adopted (*SC Code 6-29-790*)
 - Sets the schedule of actions for the meeting (called "Conduct of Hearing" or "Procedure of Hearing")
 - Procedure is amendable by the Chairperson, or by motion and majority vote of the board
 - Refers to Robert's Rules of Order to govern conduct of meetings, including motions and their order of importance
 - Contains time lines for prompt decision-making
 - Allows for continuation or deferral of applications
 - Contains rules of conduct and communication
 - Includes a script for meeting order to ensure fairness, consistency

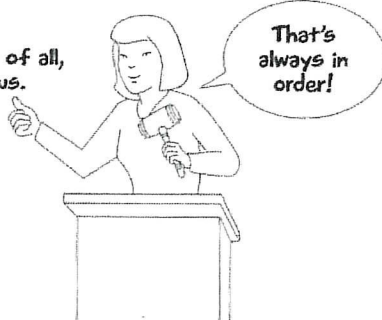


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PARLIAMENTARY PROCEDURE HELPS GET THINGS DONE

- ✓ **MAKE MOTIONS**
that are in order.
- ✓ **OBTAIN THE FLOOR**
properly.
- ✓ **SPEAK**
clearly and concisely.
- ✓ **OBEY**
the rules of debate.

And, most of all,
be courteous.



Robert's Rules of Order Basics

- Based on Parliamentary Procedure from England
- Set of rules for conducting business at meetings and public gatherings
- Can be adopted to fit needs of different organizations
- Provides opportunity for everyone to be heard
- Is used by all county boards and the County Council
- An agenda sets the topics for discussion

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Robert's Rules of Order - Motions

- Motions may be made by any member of the board
 - From [Roberts Rules web site, FAQ #1](#): it is not true that the [chair] can vote only to break a tie. If the [chair] is a member of the voting body, he or she has exactly the same rights and privileges as all other members have, including the right to make motions, to speak in debate, and to vote on all questions. So, in meetings of a small board (where there are not more than about a dozen board members present), and in meetings of a committee, the presiding officer may exercise these rights and privileges as fully as any other member.
- Motions may be amended
 - [FAQ #8](#): Any amendment, "friendly" or otherwise, must be adopted by the full body, either by a vote or by unanimous consent. If it appears to the chair that an amendment (or any other motion) is uncontroversial, it is proper for the chair to ask if there is "any objection" to adopting the amendment. If no objection is made, the chair may declare the amendment adopted. If even one member objects, however, the amendment is subject to debate and vote like any other, regardless of whether its proposer calls it "friendly" and regardless of whether the maker of the original motion endorses its adoption.

PRESENT MOTIONS (make a proposal)



SECOND MOTIONS (express support for discussion of another member's motion)



DEBATE MOTIONS (give opinions on the motion)



VOTE ON MOTIONS (make a decision).



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THERE ARE 5 GENERAL TYPES OF MOTIONS

1 MAIN MOTIONS

These introduce subjects for consideration. They cannot be made when another motion is before the assembly. They yield to privileged, subsidiary and incidental motions. For example:



2 SUBSIDIARY MOTIONS

These change or affect how the main motion is handled. (They are voted on before the main motion.) For example:



3 PRIVILEGED MOTIONS

These concern special or important matters not related to pending business. In general, they are considered before other types of motions. For example:



4 INCIDENTAL MOTIONS

These are questions of procedure that arise out of other motions. They must be considered before the other motion. For example:



5 MOTIONS THAT BRING A QUESTION AGAIN BEFORE THE ASSEMBLY

These enable certain items to be reconsidered. In general, they are brought up when no business is pending. For example:



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Robert's Rules of Order - Motions

- Not all of the motion types are used in each BZA meeting, but each are eligible
- Motions must relate to the business at hand
- Speakers must be recognized/have the floor to make a motion
- Unless otherwise specified, a simple majority of the membership voting can pass the motion

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PARLIAMENTARY PROCEDURE AT A GLANCE

Here are some motions you might make, how to make them, and what to expect of the rules.

TO DO THIS:	YOU SAY THIS:	MAY YOU INTERRUPT THE SPEAKER?	DO YOU NEED A SECOND?	IS IT DEBATABLE?	CAN IT BE AMENDED?	WHAT VOTE IS NEEDED?	CAN IT BE RECONSIDERED?
ADJOURN MEETING	"I move to adjourn."	NO	YES	NO	NO	MAJORITY	NO
CALL AN INTERMISSION	"I move to recess for..."	NO	YES	NO	YES	MAJORITY	NO
COMPLAIN ABOUT HEAT, NOISE, ETC.	"I rise to a question of privilege."	YES	NO	NO	NO	NO VOTE	NO
TEMPORARILY SUSPEND CONSIDERATION OF AN ISSUE	"I move to lay the motion on the table."	NO	YES	NO	NO	MAJORITY	NO
END DEBATE AND AMENDMENTS	"I move the previous question."	NO	YES	NO	NO	%	YES
POSTPONE DISCUSSION FOR A CERTAIN TIME	"I move to postpone the discussion until..."	NO	YES	YES	YES	MAJORITY	YES
GIVE CLOSER STUDY OF SOMETHING	"I move to refer the matter to committee."	NO	YES	YES	YES	MAJORITY	YES
AMEND A MOTION	"I move to amend the motion by..."	NO	YES	YES	YES	MAJORITY	YES
INTRODUCE BUSINESS	"I move that..."	NO	YES	YES	YES	MAJORITY	YES

THE MOTIONS LISTED ABOVE ARE IN ORDER OF PRECEDENCE...

BELOW, THERE IS NO ORDER...

PROTEST BREACH OF RULES OR CONDUCT	"I rise to a point of order."	YES	NO	NO	NO	NO VOTE	NO
VOTE ON A RULING OF THE CHAIR	"I appeal from the chair's decision."	YES	YES	YES	NO	MAJORITY	YES
SUSPEND RULES TEMPORARILY	"I move to suspend the rules so that..."	NO	YES	NO	NO	%	NO
AVOID CONSIDERING AN IMPROPER MATTER	"I object to consideration of this motion."	YES	NO	NO	NO	%	YES
VERIFY A VOICE VOTE BY HAVING MEMBERS STAND	"I call for a division," or "Division!"	YES	NO	NO	NO	NO VOTE	NO
REQUEST INFORMATION	"Point of information..."	YES	NO	NO	NO	NO VOTE	NO
TAKE UP A MATTER PREVIOUSLY TABLED	"I move to take from the table..."	NO	YES	NO	NO	MAJORITY	NO
RECONSIDER A HASTY ACTION	"I move to reconsider the vote on..."	YES	YES	YES	NO	MAJORITY	NO

NOTES: 1 Unless moved when no question is pending. 2 Affirmative votes may not be reconsidered. 3 Unless vote on question has begun. 4 Unless the committee has already taken up the subject. 5 Unless the motion to be amended is not debatable. 6 Unless the chair submits to the assembly for decision. 7 A % vote is needed to prevent consideration of the main motion. 8 Only if the speaker has the floor but has not actually begun to speak. 9 Unless the motion to be reconsidered is not debatable.

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Robert's Rules of Order - Info

Robert's Rules of Order web site requires an account to access the document but there are three resources available without an account that are helpful:

- Frequently Asked Questions <https://robertsrules.com/frequently-asked-questions/>
- Official Interpretations <https://robertsrules.com/official-interpretations/>
- Q&A Forums <https://robertsrules.forumflash.com/>
- Access via <https://robertsrules.com/>

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Robert's Rules of Order – FAQ Samples

- **Abstention:** The phrase “abstention votes” is an oxymoron, an abstention being a refusal to vote. To abstain means to refrain from voting, and, as a consequence, there can be no such thing as an “abstention vote.”
- **Calling the Question:** Any member who wishes to force an end to debate must first obtain the floor by being duly recognized to speak by the chair, and must then move the *Previous Question*. Such a motion must be seconded, and then adopted by a two-thirds vote, or by unanimous consent. It is not in order to interrupt a speaker with cries of “Question” or “Call the Question,” and even if no one is speaking, it is still necessary to seek recognition.
- **Minutes:** Minutes are a record of what was done at a meeting, not a record of what was said. It is improper to summarize matters.

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Rules of Order/Procedure



Any Questions?

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Standards of Review for Variances



Presenter:

Allison Hardin, Development Services
Director

Sources: Lancaster County UDO; *"Quasi-Judicial Handbook"* by David Owens and Adam Lovelady; Westlaw; MASC and SCAC handbooks; UNC School of Government; and others as noted

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UDO Section 9.2.12(C)(2)(a)

- | | |
|---|---|
| <p>i. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance;</p> <p>ii. That if the applicant complies with the provisions of the ordinance, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property;</p> <p>iii. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district;</p> <p>iv. That the variance will not materially diminish or impair established property values within the surrounding area;</p> | <p>v. That the special conditions and circumstances referenced in iii, above, result from the application of this ordinance and not from the actions of the applicant;</p> <p>vi. That the variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit;</p> <p>vii. That the variance is the minimum necessary to afford relief; and</p> <p>viii. That the public health, safety and general welfare have been assured and substantial justice has been done.</p> |
|---|---|

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UDO Section 9.2.12(C)(2)(a)

i. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance;

- **Practical Difficulty** : the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the applicant. *Law Insider*
- **Unnecessary Hardship**: case-by-case. The hardship must be more than mere inconvenience or a preference for a more lenient standard. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others subject to the same restriction. [Canons Law Blog, UNC, 2014](#)

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UDO Section 9.2.12(C)(2)(a)

ii. That if the applicant complies with the provisions of the ordinance, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property;

- **Reasonable return**: Until there has been a final decision regarding the application of the zoning ordinance and subdivision regulations to property, the United States Supreme Court has held that it is impossible to determine whether the land retains any reasonable beneficial use, or whether expected property interests have been taken. [Williamson Planning Commission v. Hamilton Bank \(1985\)](#).
- **Reasonable Use**: What is a reasonable use must be consistent with a like reasonable use by the proprietors [in the area] – [White v. Whitney Mfg. Co, 60 SC 254, April 1901](#)

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UDO Section 9.2.12(C)(2)(a)

iii. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district;

- The circumstances must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might include location of the property, size or shape of the lot, or topography or water features on the site.
- Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property. [Canons Law Blog, UNC, 2014](#)

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UDO Section 9.2.12(C)(2)(a)

iv. That the variance will not materially diminish or impair established property values within the surrounding area;

- Testimony that shows specific adverse impacts – noise, traffic, environmental harm, and the like – can provide a foundation for findings of fact regarding impacts to property values. Witnesses must show the ways in which those impacts will hurt neighboring property values.
- Local boards making quasi-judicial zoning decisions must base their decisions on **material, substantial, and competent evidence**.
 - Material Evidence: Evidence that is relevant – relates to the issue – and important enough to allow into evidence.
 - Substantial Evidence: For purposes of review of an agency decision, substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached. *Tims v. J.D. Kitts Const.* 393 S.C. 496713 S.E.2d 340, 2011.
 - Competent evidence is simply evidence that is admissible before the local board or court that is making a zoning decision. – [Canons Law Blog, 2012](#).

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UDO Section 9.2.12(C)(2)(a)

v. That the special conditions and circumstances referenced in iii, above, result from the application of this ordinance and not from the actions of the applicant;

- You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.
- Where an ordinance expresses a clear intent, a variance cannot subvert that intent. – [Canons Law Blog, UNC, 2014](#)

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UDO Section 9.2.12(C)(2)(a)

vi. That the variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit;

- The variance must not impair the public purpose. – [*MASC Comprehensive Planning Guide, 2018.*](#)
- Where an ordinance expresses a clear intent, a variance cannot subvert that intent. – [*Canons Law Blog, UNC, 2014*](#)

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UDO Section 9.2.12(C)(2)(a)

vii. That the variance is the minimum necessary to afford relief; and

- The request must be the bare minimum to provide relief to the applicant, and not one inch more. The fact that the property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance. See *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955). – [*MASC Comprehensive Planning Guide, 2018.*](#)

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UDO Section 9.2.12(C)(2)(a)

viii. That the public health, safety and general welfare have been assured and substantial justice has been done.

- The applicant must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns.
- Additionally, the applicant should show that through the variance "substantial justice has been done." The concept of *substantial justice* raises issue of fairness for the community and neighbors. – [Canons Law Blog, UNC, 2014](#)
- When deciding whether to grant or deny a variance, the board has some discretion; however, the board is not free to make whatever determination appeals to its sense of justice.
- Courts will not uphold a decision of the board to grant or deny a variance based a board action that is arbitrary, capricious, unreasonable, discriminatory or an abuse of discretion. *Hodge v. Pollock, supra.; Black v. Lexington County Board of Zoning Appeals*, 396 S.C. 453, 722 S.E. 2d 22 (Ct. App. 2012). - [MASC Comprehensive Planning Guide, 2018](#).

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FAQs

Frequently Asked Questions



Before the Hearing...

- What does a "fair trial" mean?
- Why is impartiality important?
- What is *ex parte* communication?
- Can we visit the site?

During the Hearing...

- May I use personal knowledge or expertise?
- Are there limits on witnesses?
- Can you explain the three types of evidence?
- What are some tips on how to better deliberate?

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What does "fair trial" mean?

- When making a quasi-judicial decision, the board must adhere to basic standards of a fair trial, including:
 - The right to an impartial jury.
 - The right to due process of law.
 - The right to confront/call witnesses.
 - The right to legal counsel.
- Rooted in the Sixth Amendment to the US Constitution; also impacted by the Fifth and Fourteenth Amendments.



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Why is impartiality important?

- All parties in a quasi-judicial hearing have the constitutional right to be adjudged by an impartial decision-maker. *County of Lancaster, SC v. Mecklenburg County, NC; Supreme Court of NC, 1993.*
- A board member who is biased or has a conflict of interest must not participate.
 - **Bias:** when a board member has "a fixed opinion prior to hearing the matter that is not susceptible to change"
 - **Conflict of interest:** when a boardmember has a "close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter"
- Board members concerned about impartiality (theirs or another board member) should consult with the county attorney in advance of the hearing.
- If a dispute arises as to whether a board member should recuse, the remainder of the board votes to determine recusal status.

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Ex Parte Communication

What is *ex parte* communication?

- Ex parte communication occurs when a board member/decision maker communicates about the case outside of the evidentiary hearing.
 - Example: meeting with a developer; taking a call from a neighbor; an email conversation among board members discussing the application; a board member receiving a briefing from staff outside of the hearing.
- The applicant, general public, and other parties may ask questions of the staff; this is **not** considered ex parte communication.
- Reasons for concern: fairness; quality decision making (all members should have the same info); potential bias.

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Site Visits

Can we visit the site? - With limitations

- If a majority visits at the same time, that constitutes a public meeting and must be legally notified as a meeting.
- Observe the character of the area from the streets and sidewalks.
- **Do not trespass onto private property.**
- Site visits raise the risk of *ex parte* communication with the applicant.
- You must report/disclose your visit and any observations that may sway your decision on the issue (a brief statement is sufficient).

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Personal Knowledge

I have personal knowledge/expertise related to a case. Can I use it?

- Yes – but it is important that the member state the information for the record during the evidentiary hearing.
- This allows other board members to be aware of and consider the information as well as give the parties an opportunity to rebut or clarify that evidence.



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Limits on Witnesses

What limitations apply to witnesses?

- Witnesses' testimony must be sworn, factual, and material (relating to the application and standards).
- The Chair can redirect or cut off testimony that is mere opinion, immaterial, or repetitive.
- In contrast to a public hearing, the BZA may not set strict time limits on a party making their case. Parties with standing have a right to be heard.
 - Reasonable time guidance can keep the parties and witnesses on task.
 - The right to be heard is not a right to "filibuster" – they may not hold the floor and prevent action.

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Types of Evidence

Competent

- Sufficiently trustworthy and reliable
- Sworn truth
- First-hand knowledge
- Acceptable for consideration

Material

- Shows that one of the standards to be applied will or will not be met
- Immaterial: facts that have no bearing on the standards

Substantial

- Relevant and something a reasonable mind would regard sufficient to support a conclusion
- Opposite: speculation, fears, assertions

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EVIDENCE EXAMPLES

Contrast the examples below. To the left is material on which the board cannot base its decision. To the right is evidence on which the board may base its decision.

Material Not to Consider

From the applicant: "As you can see in the drawings, this project is beautiful. The design, the details. It's exquisite."
(*irrelevant opinion testimony*)

From a neighbor: "We've seen how bad that motel on the other side of town is. There's bad folks there."
(*unsubstantiated fears*)

From a non-appraiser applicant: "This project will not lower neighboring property values."
(*unqualified opinion*)

From a neighbor: "This new project is going to drastically increase traffic. It's going to be dangerous."
(*unqualified opinion*)

From a concerned citizen to the audience: "Please stand up if you are here to oppose the project." [all of audience stands]
(*public opinion*)

Evidence to Consider

From the applicant: "As shown in the project drawings, the project is designed with a scale and massing similar to other buildings in the area."
(*statement relevant to the standard of being in harmony with the area*)

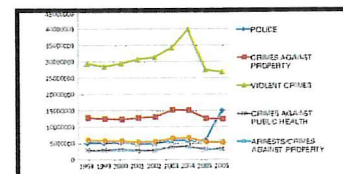
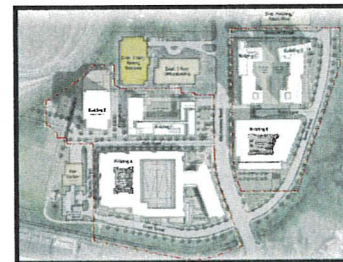
From a neighbor: "Based on these police department statistics, similar uses in town have a high incidence of police calls."
(*evidence to support potential safety concerns*)

From a qualified appraiser with factual basis: "In my expert opinion, this project will lower neighboring property values."
(*expert opinion*)

From a neighbor: "We already have substantial traffic along that road. It's hard to turn left at that intersection. And just this morning I saw a wreck there."
(*factual statement; first-hand account*)

From a concerned citizen: "The land use plan calls for low-density residential for this property, but the proposal is for a substantial commercial operation."
(*testimony related to applicable standards*)

Examples



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Deliberation Do's and Don'ts

Do...

...frame comments and deliberations with applicable facts and standards ("*based on testimony from Mrs. Smith...*", "*based on Section 10.4 of the UDO...*")

...offer direct comments about how a proposal does or does not meet local land use standards

Don't...

...offer comments framed as personal opinions ("*I like...*" or "*I don't like...*" or "*I feel...*")

...redesign the project by committee

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5. New Business

b.) Report on Land Law Seminar

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2023 Case - FOIA

Miramonti v. Richland County School District One

Court of Appeals of South Carolina. January 4, 2023 438 S.C. 612 885 S.E.2d 406 414 Ed. Law Rep. 1072

Background: Richland County SD1 received a letter from a parent who requested the board re-open a transfer request window. At their next meeting, the Board went into executive session, and did not state why they went into executive session prior to entering the session. After the executive session, the chair announced that the "board has responded" to the parent's complaint and the parent would receive "something in writing from the Board tomorrow." A member challenged the decision made without a vote, and counsel stated that the parent's request was discussed during executive session. A letter was sent to the parent declaring "the answer to your question ... continues to be the same," without explaining the answer.

Miramonti sued seeking judgment of FOIA violation and an order to make the Board reconsider the decision at the next meeting; School appealed; appeal court split the decision.

(Up)Held: the school board violated FOIA

Vacated (Denied): forcing the school to reconsider

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2023 Case – Spot Zoning

Ani Creation v City of Myrtle Beach Board of Zoning Appeals

Supreme Court of South Carolina. June 28, 2023 440 S.C. 266 890 S.E.2d 748

Background: City Council enacted a "family friendly" zone of several blocks near the ocean and prohibited the sale of sexually explicit items, CBD products, and tobacco paraphernalia, as well as prohibited the operation of smoke shops and tobacco stores.

Ani Creation represented 9 of 25 affected stores in the area, alleging eleven points, one of which was "reverse spot zoning."

From the order: "Appellants first contend the ordinance constitutes impermissible reverse spot zoning—a novel issue in South Carolina. We disagree."

Takeaway: "A municipal ordinance is a legislative enactment and is presumed to be constitutional. There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application"

Courts must make every presumption in favor of the constitutionality of a legislative enactment. Thus, courts may only declare a municipal ordinance unconstitutional "when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution."

(Up)Held: for the City on all eleven points, in part due to solid evidence used to create the ordinance.

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2023 Case - Process

Lockaby v City of Simpsonville
Court of Appeals of South Carolina. June 21, 2023 440 S.C. 156 889 S.E.2d 631

Background: Councilmember Lockaby was removed from a meeting after speaking over the mayor (chairman) and not following parliamentary procedure.

Lockaby sued, alleging claims of gross negligence, false imprisonment, violation of First and Fourth Amendment rights.

(Up)Held: the decision to eject the councilmember was a legislative act protected by legislative immunity.

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Recent Ethics Decision

RE: Randle Stevens, Surfside Beach Town Council Member
SC State Ethics Commission

Complaint: Councilmember Stevens represented a person before the Surfside Beach Construction Board of Adjustments

Found: Councilmember Stevens attended an appeal hearing, stated he was not friends with the applicant, provided commentary regarding why the Council passed the law in question, and asked the board to uphold the applicant's appeal.

Conclusions:

- At all times the Councilmember was a "public official"
- Section 8-13-740(A)(5) of SC Code of Laws says that a public official may not knowingly represent a person before any agency or subunit of the jurisdiction for which the public official has official responsibility except as required by law
- Councilman's comments constituted "representation" of the applicant
- Fined \$2,500 (max \$2,000 civil penalty plus \$500 admin fee)

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6. Adjourn

Does Adjournment Require a Motion?

As a matter of course, when the agenda has been completed, the following three steps would naturally occur:

1. A board member would motion to adjourn.
2. Another board member would second the motion.
3. The board chair would declare the meeting is adjourned.

However, there are three situations where it's acceptable for a board meeting to adjourn without a motion and a second.

1. The hour has come when the board agreed ahead of time they would adjourn.
2. The agenda has been completed in totality.
3. An emergency such as a fire or medical emergency brings the meeting to an abrupt halt.

EVIDENCE EXAMPLES

Contrast the examples below. To the left is material on which the board cannot base its decision. To the right is evidence on which the board may base its decision.

Material Not to Consider

Evidence to Consider

From the applicant: "As you can see in the drawings, this project is beautiful. The design, the details. It's exquisite."
(irrelevant opinion testimony)

From the applicant: "As shown in the project drawings, the project is designed with a scale and massing similar to other buildings in the area."
(statement relevant to the standard of being in harmony with the area)

From a neighbor: "We've seen how bad that motel on the other side of town is. There's bad folks there."
(unsubstantiated fears)

From a neighbor: "Based on these police department statistics, similar uses in town have a high incidence of police calls."
(evidence to support potential safety concerns)

From a non-appraiser applicant: "This project will not lower neighboring property values."
(unqualified opinion)

From a qualified appraiser with factual basis: "In my expert opinion, this project will lower neighboring property values."
(expert opinion)

From a neighbor: "This new project is going to drastically increase traffic. It's going to be dangerous."
(unqualified opinion)

From a neighbor: "We already have substantial traffic along that road. It's hard to turn left at that intersection. And just this morning I saw a wreck there."
(factual statement; first-hand account)

From a concerned citizen, to the audience: "Please stand up if you are here to oppose the project." [all of audience stands]
(public opinion)

From a concerned citizen: "The land use plan calls for low-density residential for this property, but the proposal is for a substantial commercial operation."
(testimony related to applicable standards)

LANCASTER COUNTY STANDARD OF REVIEW FOR GENERAL VARIANCE REQUESTS

9.2.12(C)(2)(a) – The [BZA] shall not grant a variance unless and until it makes all of the following findings:

- i. That there are **practical difficulties** or **unnecessary hardships** in the way of carrying out the strict letter of this ordinance;
 - ii. That if the applicant complies with the provisions of the ordinance, the property owner seeking the variance can secure no **reasonable return** from, or make no **reasonable use** of his property;
 - iii. That **special conditions and circumstances exist which are peculiar to the land**, structure or building involved and which **are not applicable to other lands**, structures or buildings **located in the same land development district**;
 - iv. That the variance **will not materially diminish or impair established property values** within the surrounding area;
 - v. That the **special conditions and circumstances** referenced in iii, above, **result from the application of this ordinance and not from the actions of the applicant**;
 - vi. That the variance is **in harmony with the general purpose and intent of this ordinance** and preserves its spirit;
 - vii. That the variance is the **minimum necessary to afford relief**; and
 - viii. That the **public health, safety and general welfare have been assured and substantial justice has been done**.
-

RELEVANT DEFINITIONS, CITATIONS, AND DISCUSSIONS

A **variance** allows the board to modify an otherwise legitimate zoning restriction when, due to unusual conditions, the restriction may be more burdensome than was intended. – *MASC Comprehensive Planning Guide, 2018*.

9.2.12(C)(2)(a)(i) Practical Difficulties / Unnecessary Hardships: [A] number of jurisdictions follow the approach of New York, the jurisdiction where the language originated, and hold that ‘practical difficulties’ is a slightly lesser standard than ‘unnecessary hardship.’ *Matthew v. Smith, 707 S.W.2d 411 (1986)*

Practical Difficulty : the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the applicant. *Law Insider*

Unnecessary Hardship: What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. It is not enough for an applicant to say that development will cost more in order to

comply. The applicant must show the substantial and undue nature of that additional cost as compared to others subject to the same restriction. [*Canons Law Blog, UNC, 2014*](#)

To obtain a variance on the ground of unnecessary hardship, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation. - *Hodge v. Pollock*, 223 S.C.342, 75 S.E.2d 752 (1953); *Colbert v. Krawcheck*, 299 S.C. 299, 384 S.E.2d 710 (1989); *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999), cert. denied, 528 U.S. 1020, 120 S.Ct. 528, 145 L.Ed 2d 409 (1999). – [*MASC Comprehensive Planning Guide, 2018*](#), page 44.

9.2.12(C)(2)(a)(ii) *Reasonable return*: Until there has been a final decision regarding the application of the zoning ordinance and subdivision regulations to property, the United States Supreme Court has held that it is impossible to determine whether the land retains any reasonable beneficial use, or whether expected property interests have been taken. [*Williamson Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 \(1985\)](#).

***Reasonable Use*:** What is a reasonable use must be consistent with a like reasonable use by the proprietors [in the area] – [*White v. Whitney Mfg. Co*, 60 SC 254, April 1901](#)

9.2.12(C)(2)(a)(iii) *Peculiar to the property*:

The [special conditions and circumstances] must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is

irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App 479, 548 S.E. 2d 793 (2001)) – [Canons Law Blog, UNC, 2014](#)

9.2.12(C)(2)(a)(iv) Will not materially diminish or impair established property values

The impact on property values is a theme that runs through most zoning decisions. Developers want to create value in their own real property and are wary of property use restrictions that have the opposite result. Owners of neighboring property sometimes benefit from nearby development because a rising tide of property values elsewhere may lift the boats of neighbors as well. Often, however, there is a tendency for neighbors to think that development projects on other people's land will have negative, perhaps unintended, consequences for the use and value of one's own land. ...

[T]he rules of evidence that apply to state administrative agencies and local zoning boards acting in a quasi-judicial capacity are similar to but generally not always as strict as those that apply in a courtroom. One of the key comparisons concerns the treatment of testimony offered by lay and expert witnesses. [T]he relatively strict rules of evidence that apply in court concerning property-value evidence and expert testimony also apply to quasi-judicial zoning decisions.

Local boards making quasi-judicial zoning decisions must base their decisions on **material, substantial, and competent evidence**.

Material Evidence: Evidence that is relevant – relates to the issue – and important enough to allow into evidence.

Substantial Evidence: For purposes of review of an agency decision, substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached. *Tims v. J.D. Kitts Const.* 393 S.C. 496713 S.E.2d 340, 2011.

Competent evidence is simply evidence that is admissible before the local board or court that is making a zoning decision. – [Canons Law Blog, 2012](#).

9.2.12(C)(2)(a)(v) Special conditions and circumstances referenced in iii, above, result from the application of this ordinance and not from the actions of the applicant

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel). The owner may not seek a variance

for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse. Land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? [NC] courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)). Covenants and other legal limitations *may* be a factor [depending on which came first, the covenant or the code]. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, *could* be viewed as a self-imposed hardship so that no variance should be granted. – [Canons Law Blog, UNC, 2014](#)

An owner is not entitled to relief from a self-created or self-inflicted hardship. A claim of unnecessary hardship cannot be based on conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that the nonconforming use would work a hardship upon him. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965); *Georgetown County Building Official v. Lewis*, 290 S.C. 513, 351 S.E.2d 584 (Ct. App. 1986); *Restaurant Row Associates v. Horry County*, *supra*. – [MASC Comprehensive Planning Guide, 2018](#), page 44.

9.2.12(C)(2)(a)(vi) In harmony with the general purpose and intent of this ordinance

The variance must not impair the public purpose. – [MASC Comprehensive Planning Guide, 2018](#), page 44.

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But alternatively, a variance may help to give effect to the ordinance intent. In one case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.” The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)). – [Canons Law Blog, UNC, 2014](#)

9.2.12(C)(2)(a)(vii) Minimum necessary to afford relief

The request must be the bare minimum to provide relief to the applicant, and not one inch more. The fact that the property may be used more profitably, if a variance is granted, may not

be considered as grounds for a variance. See *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955). – [MASC Comprehensive Planning Guide, 2018, page 45](#).

9.2.12(C)(2)(a)(viii) Public health, safety and general welfare have been assured and substantial justice has been done

The applicant must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the applicant should show that through the variance “substantial justice has been done.” The concept of *substantial justice* raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant. – [Canons Law Blog, UNC, 2014](#)

When deciding whether to grant or deny a variance, the board has some discretion; however, the board is not free to make whatever determination appeals to its sense of justice. The board must apply the standards prescribed by the zoning ordinance and the 1994 Act. Courts will not uphold a decision of the board to grant or deny a variance based on errors of law, fraud or lack of supporting evidence, or a board action that is arbitrary, capricious, unreasonable, discriminatory or an abuse of discretion. *Hodge v. Pollock, supra.*; *Black v. Lexington County Board of Zoning Appeals*, 396 S.C. 453, 722 S.E. 2d 22 (Ct. App. 2012). – [MASC Comprehensive Planning Guide, 2018, page 45](#).

Chapter 2

Zoning

Zoning Powers

You've decided an area needs zoning, now what?

The zoning ordinance is a primary tool of local governing bodies to carry out the land use element of the comprehensive plan. Counties in South Carolina carry out zoning in different ways. While a majority of counties have enacted zoning regulations that cover property in at least part of the county, some have promulgated strict zoning regulations covering the entire unincorporated county area, while others wait until citizens lead an effort to enact zoning in a particular area.

Purpose of Zoning

A zoning ordinance ensures that development fits in with existing and future needs of the community and supports the goals established by the comprehensive plan. The zoning ordinance also promotes the public health, safety, morals, convenience, order, prosperity, and general welfare of the community. These purposes are similar to those for all police power regulations passed by a government to protect its citizens. S.C. Code § 6-29-710. Zoning is the most effective way to control the location and size of landfills or adult-oriented businesses, for example.

Ordinance provisions must comply with the requirements of the Planning Act, Title 6, Chapter 29. When preparing the zoning ordinance, a local government must reasonably consider the following purposes where applicable:

1. provide for adequate light, air, and open space;
2. prevent land overcrowding, avoid undue concentration of population and lessen street congestion;
3. help create a convenient, attractive and harmonious community;
4. protect and preserve scenic, historic or ecologically sensitive areas;
5. regulate population density and distribution;
6. regulate building, structure and land uses;
7. help provide adequate transportation, police and fire protection, water, sewage, schools, recreational facilities, affordable housing, disaster evacuation, and other public services and requirements. If the local governing body intends to address "other public requirements" with a particular ordinance or action, it must specify the "other requirements" in the preamble or some other part of the ordinance or action;
8. secure safety from fire, flood, and other dangers; and
9. further the public welfare in any other way specified by a local governing body.

EDITOR'S NOTE: County citizens often express reservations about zoning, thinking it will infringe on their property rights. But zoning is a necessary tool if a county is to regulate less than desirable land uses such as adult businesses and landfills, as well as manage housing density in areas unserved by public utilities. Unzoned areas present a double-edged sword. Citizens are sometimes happy because they can do practically anything with their land, but this potentially causes much tension when their neighbors can also do anything with their land.

Legislative Function

The authority of a local governing body to enact zoning ordinances is a local government police power. Exercising that authority is a legislative function of the governing body. *Bob Jones University, Inc. v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843 (1963). The local governing body cannot delegate its power to adopt zoning regulations to a board or commission. However, local governments must not exercise their zoning powers arbitrarily. Zoning regulations are valid only when they are reasonable. *Byrd v. City of North Augusta*, 261 S.C. 591, 201 S.E.2d 744 (1974); *Rushing v. City of Greenville*, 265 S.C. 285, 217 S.E.2d 797 (1975); *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965).

A court has no power to zone property and cannot prohibit a local government from adopting zoning ordinances. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965); *Patton v. Richland County Council*, 303 S.C. 47, 398 S.E.2d 497 (1990).

Zoning follows the Land, Not the Owner

The rights and restrictions granted by zoning regulations follow the land. Usually, rights are not lost if the property changes ownership. *Baker v. Town of Sullivan's Island*, 279 S.C. 581, 310 S.E.2d 433 (Ct. App. 1983).

Zoning Tools

Zoning Ordinance Elements

In general, a zoning ordinance can be divided into two parts: a text and a map. The text includes the regulations and permitted uses that will apply in each zoning district. Also, the text sets out the requirements and procedures governing the administration, enforcement, and future amendments to the text and the map. The role of the map is to set out graphically the location and boundaries of the zoning districts. The combination of the text and the map divides the land within the planning jurisdiction of the local government into zoning districts. Individual community needs determine the number, size, and shape of the zoning districts.

Zoning ordinance regulations must follow the comprehensive plan. The courts will not overturn a "fairly debatable" decision by the governing body if the zoning regulation or amendment is consistent with the comprehensive plan. *Knowles v. City of Aiken*, 305 S.C. 219, 407 S.E.2d 639 (1991). However, the S.C. Supreme Court invalidated a county's rezoning ordinance that rezoned an area, but allowed the permitted uses to remain the same as under the previous zoning classification. The Court held that the ordinance did not meet the parameters of a planned development, and that it merely allowed the owners to reduce the lot sizes for the property, thus avoiding the restrictions required in the previous classification. See *Sinkler v. Charleston County*, 387 S.C. 67, 690 S.E.2d 777 (2010).

The same regulations must apply for each class or kind of building, structure, or use throughout each zoning district. The requirements in one zoning district may differ from the requirements for the same use in a different district. S.C. Code § 6-29-720. The term "district" means the zoning district

where a use is located. It does not mean the neighborhood or surrounding districts. *Niggel v. City of Columbia*, 254 S.C. 19, 173 S.E.2d 136 (1970).

Factors Regulated by Zoning

Within each zoning district, the local governing body may use the zoning ordinance to regulate the following:

1. the use of buildings, structures, and land;
2. the size, location, height, bulk, orientation, number of stories, erection, construction, reconstruction, alteration, demolition, or removal in whole or in part of buildings and other structures, including signage;
3. the density of development, use, or occupancy of buildings, structures, or land;
4. the areas and dimensions of land, water, and air space to be occupied by buildings and structures, and the size of yards, courts, and other open spaces;
5. the amount of off-street parking and loading that must be provided, and the restrictions or requirements related to the entry or use of motor vehicles on the land;
6. other aspects of the site plan including, but not limited to, tree preservation, landscaping, buffers, lighting, and curb cuts; and
7. other aspects of the development and use of land or structures necessary to accomplish the purposes set forth throughout the enabling legislation.
8. Additionally, Title 48 grants local governments the planning and zoning authority for approving fishing pier expansions and refurbishments. (S.C. Code § 4-38-290 (A)(8)(ii).

Zoning Techniques

The Planning Act specifically authorizes the use of seven zoning techniques. The Act however contains language that authorizes the use of “any other zoning or planning technique” and thus does not limit local governments to these techniques to accomplish the zoning goals.

The following seven techniques are listed and defined in S.C. Code § 6-29-720(C). The eighth is common practice in the state.

1. **A cluster development** groups residential, commercial, or industrial uses within a subdivision or development site. It allows for the reduction of an otherwise applicable lot size while preserving substantial open space on the remainder of the parcel. This technique could be used to promote developing a site subject to flooding or classified as “wetland.” Cluster zoning gives the flexibility to design a variety of neighborhoods that consider aesthetics, economic construction of streets and utilities, parks and recreational uses, and a pattern not complying with restrictions in traditional zoning regulations. This technique allows higher density uses such as town houses. Local governments allow cluster zoning either through zoning ordinance provisions for a permit process or by using a floating zone.
2. **A floating zone** is described in the zoning ordinance text but is unmapped. A property owner may petition the local government to designate a particular parcel meeting the minimum zoning district area requirements as a floating zone. A floating zone could be used for a planned shopping center commercial district in areas where development has

not reached the point where a specific tract can be singled out for commercial zoning. This technique makes land use regulations more flexible. It is commonly used to create cluster and planned developments. To establish a floating zone, the local governing body usually adopts a zoning map amendment for the particular piece of property. The text of the zoning ordinance must provide standards for a floating zone.

3. **Performance zoning** specifies a minimum requirement or maximum limit on the effects of a land use. This is done instead of or in addition to specifying the use itself. It assures the development is compatible with surrounding development and increases a developer's flexibility. The text of the zoning ordinance should provide detailed standards for the various land uses. Performance zoning usually applies to commercial, industrial, or manufacturing uses; however, some jurisdictions have used performance standards for residential districts. Performance standards can dictate permitted levels of smoke, noise, explosive hazard, and other factors. The standards should state the limits in measurable quantities and qualities.
4. **Planned development district** mixes different types of housing with compatible commercial uses, shopping centers, office parks, and other mixed use developments. Rezoning establishes a planned development district prior to development. It is characterized by a unified site design for a mixed use development. Historically, local governments have called these projects "planned unit developments" (PUDs). The planned development district technique is discussed further in the next section.
5. **An overlay zone** places a set of requirements or relaxes a set of requirements imposed by the underlying zoning district. An area is given an overlay designation if it has a special public interest but does not coincide with the underlying zone boundaries. An overlay designation is not a separate district classification. It is attached to an existing district designation and identifies an area subject to supplemental regulations. This technique is used to regulate areas needing special consideration. These include flood plains, design preservation or conservation areas, significant highway corridors, and airport height restriction areas. Sign regulation is sometimes accomplished through an overlay designation.
6. **Conditional uses** must meet conditions, restrictions, or limitations on a permitted use. These are in addition to those restrictions that apply to all land in the zoning district. The zoning ordinance text must describe the conditions, restrictions, or limitations. This technique is used to allow uses compatible with the district, but which may have an adverse impact on an adjacent district unless conditions are imposed to protect the adjacent district. Existing ordinances have used the term "conditional use" to describe a variety of techniques. According to the Planning Act, "conditional use" applies to uses specified in district regulations and are allowed only when specified conditions or standards are met. S.C. Code § 6-29-720(C). If the conditions or standards are met, the zoning administrator may issue a permit for the use without review by the board of zoning appeals. If the board reviews the case and imposes additional conditions, the use is listed as a permitted special exception not as a conditional use. Only the board of zoning appeals can grant special exceptions after a public hearing. District regulations must contain a list of permitted uses, uses permitted by special exception, and conditional

uses.

7. **Priority investment zones** encourage counties to adopt market-based incentives or relax or eliminate unnecessary nonessential housing regulatory requirements to encourage private development in the priority investment zone. The use of the priority investment zone in an ordinance is optional. This section further encourages the county to provide that "traditional neighborhood design" and "affordable housing" must be permitted within the priority investment zone.
8. **Form-based zoning** allows planners to place more focus on characteristics such as building setbacks, building heights, sidewalk space, parking, and landscaping. An example of form-based zoning is classification of zones such as commercial streets, urban avenues, residential streets, and rear alleys. The form-based standards for building in a commercial street zone could include, for example, greater allowed heights, decreased setbacks, and certain types of window frontage. Traditional zoning would typically prohibit residences in such an area altogether, but with form-based zoning, retail businesses could be located on street level while residences could be located above street level.

EDITOR'S NOTE: Although form-based codes are being used throughout the state, they are not specifically authorized in state law. According to current state law, using a zoning method that is not specified in the ordinance would not mean that method is beyond the power of the local government, but specifically enabling the use of form-based zoning would encourage development patterns that will save local governments money and increase operational efficiency.

Planned Development District

The Planning Act provides specific procedures and explanations for using the planned development district technique. S.C. Code § 6-29-740. Traditionally, this technique was called Planned Unit Development or PUD. Planned development districts give developments greater flexibility to improve design, character, and quality, and to preserve natural and scenic features or open spaces. The courts of this state have approved the planned development district concept. See *Smith v. Georgetown County Council*, 292 S.C. 235, 355 S.E.2d 864 (Ct. App. 1987); *Turner v. Barber*, 298 S.C. 321, 380 S.E.2d 811 (1989).

The following specific features and requirements of planned development districts appear in the Planning Act.

1. **Text amendment.** The governing body must amend the zoning ordinance and zoning district map to allow a planned development district.
2. **Map.** The development plan map for the project being established as a planned development district becomes the zoning district map for this part of the community.
3. **Uses.** The text describes the specific uses, densities, setbacks, and other requirements for the planned development. It becomes the zoning ordinance text describing the permitted uses and other details of the planned development. These provisions tailored to a specific

development may vary from other zoning district regulations concerning use, setbacks, and other requirements. This allows flexibility in arranging different uses.

EDITOR'S NOTE: The S.C. Supreme Court in *Sinkler v. Charleston*, 387 S.C. 67, 690 S.E2d 777 (2010), requires that a PDD contain multiple land uses. The Court held that a PDD is valid only if there are housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments.

4. **Plan amendment.** Amendments to the original planned development district take the form of a zoning ordinance amendment. The governing body can authorize these amendments after receiving recommendations from the planning commission. The governing body must follow established procedures for zoning ordinance amendments.
5. **Minor modification.** The zoning ordinance may include a method for making minor modifications to the site plan or development provisions. These changes would not require a zoning ordinance amendment. The zoning administrator decides whether a proposed modification is major or minor. The zoning ordinance should contain standards on which the zoning administrator can base his decisions. For example, driveway relocations, structure floor plan revisions, facility design, and modifications for amenities are considered minor changes. Changes that materially affect the basic concept of the plan or the designated general use of land parcels are considered major changes. The zoning ordinance may allow the zoning administrator to approve minor changes.

Cash or Dedication In Lieu of Parking

The Planning Act allows waiving or reducing parking requirements in return for cash payments or dedicating land earmarked for public parking or public transit. S.C. Code § 6-29-750. These payments or dedications may not be used for any other purpose. To exercise this provision, the zoning ordinance must designate a special development district showing a parking facility plan and program. The plan and program must include guidelines for preferred parking locations and designate prohibited parking areas. To use this provision, the planning commission should recommend and the local government should adopt an additional comprehensive plan element relating to parking in special development districts.

The cash contributions or the dedicated land value may not exceed the approximate cost of the required spaces or providing public transit service had the reduction or waiver not been granted.

Nonconforming Uses

As the permitted uses in each zoning district are listed and the zoning district boundaries are drawn on the zoning district map, it is almost certain that some zoning districts will contain uses that would not be permitted if they did not already exist. Those uses are called nonconforming uses.

Continuation or Termination

S.C. Code § 6-29-730 authorizes zoning regulations that provide uses that are lawful at the time of adoption or amendment of zoning regulations may be continued although they are nonconforming.

The zoning ordinance may contain regulations for continuing, restoring, reconstructing, extending, or substituting nonconformities. The following issues arise frequently with nonconforming uses:

Discouraged. The general rule is that nonconforming uses and structures are to be discouraged and eliminated whenever possible. Most zoning ordinances provide strict standards for continuing or reconstructing nonconformities.

Repair. It is common for zoning ordinances to provide that a nonconforming structure may be repaired or rebuilt if it is not more than 50% (some necessitate 75%) destroyed. It is important that the ordinance set the standard upon which the percentage of destruction is determined (e.g., replacement cost, market value, cost to repair, physical destruction). A decision by the zoning administrator or board of zoning appeals that is not based upon evidence related to the standard in the ordinance will not be upheld. *National Advertising Co., Inc. v. Mount Pleasant*, 440 S.E.2d 875 (1994).

Substitution. Some zoning ordinances allow the substitution of one nonconforming use for another, if the new use is more in character with the neighborhood, lower in density or has less objectionable features.

Amortization. Termination of a nonconformity may be required within a specified time. Usually the time is based upon a formula for recovery or amortization of investment in the nonconformity. Amortization schedules have been upheld where the period of removal was not so unreasonable to be considered a taking of property. *Major Media of the Southeast v. City of Raleigh*, 792 F.2d 1269 (4th Cir. 1986). However, when the time period is so short that it denies the owner of an economically viable use of an appropriate unit of property, the time period may be declared unreasonable and may give rise to a taking claim for which the owner must be paid just compensation. *Naegele Outdoor Advertising, Inc. v. City of Durham*, 844 F.2d 172 (4th Cir. 1988); *Naegele Outdoor Advertising, Inc. v. City of Durham*, 803 F.Supp. 1068 (M.D.N.C. 1992).

EDITOR'S NOTE: If the nonconforming use involves a billboard or other outdoor advertising use, consult S.C. Code § 57-25-150(G) and (H). These sections provide certain protections for nonconforming signs on private property adjacent to highways.

Eminent Domain & Takings

Both the federal and state constitutions provide property owners protection from the seizure or overly burdensome regulation of their property. The Fifth Amendment to the United States Constitution holds that a government entity may not take private property for public use unless there is payment of just compensation. The South Carolina Constitution also provides that just compensation be paid for the taking of property for public use. See Article I, Section 13, S.C. Constitution.

Eminent domain is the power of government entities to take private property and convert it into public use. A variety of property rights are subject to eminent domain, such as air, water and land rights. Federal, State and Local governments may take private property through their power of eminent domain, or may regulate it by exercising their statutory powers.

The South Carolina Constitution provides that private property must not be condemned by eminent domain for any purpose or benefit, including economic development, unless the condemnation is for public use. The constitution provides an exception that allows a local government to use eminent domain to remedy blight. Blight is specifically defined as “private property constituting a danger to the safety and health of the community by reason of lack of ventilation, light, and sanitary facilities, dilapidation, deleterious land use, or any combination of these factors.” See Article I, Section 13, S.C. Constitution.

There are generally two types of takings. One is a physical taking, where the government physically occupies private land for its own use. The second is a regulatory taking. The government doesn’t physically take the land. However, the government restricts use of the land by way of a law or regulation that burdens the property to the point that there is no economically viable use. Even if there is some remaining economically beneficial use to land that has been regulated, a taking may have occurred. A regulation that is only temporary may still constitute a taking. *First English Evangelical Lutheran Church v. County of Los Angeles*, 462 U.S. 304 (1987). Takings claims can center on local government regulations requiring the dedication of land, the completion of public improvements, the payment of impact fees, building permits and condemnation orders, and ordinances declaring specific property a nuisance.

The South Carolina Supreme Court held that floodplain regulations that prohibited construction within the floodway were not a taking, even where the county regulations were stricter than the federal FEMA regulations. *Columbia Venture, LLC. v. Richland County*, 413 S.C. 423, 776 S.E.2d 900 (2015).

Other examples where the Court has found no regulatory taking include:

- Where county mistakenly told owner and potential buyers the wrong zoning classification of a property and that the property was not in conformity with zoning ordinances, costing the owner the sale. *Richland County v. Carolina Chloride*, 382 S.C. 634, 677 S.E.2d 892 (2009).
- Where an ordinance prevented homeowner from parking commercial vehicle on a residential lot. *Whaley v. Dorchester Board of Zoning Appeals*, 337 S.C. 568, 524 S.E.2d 40 (1999).
- A city ordinance prohibiting bars from being open between 2 a.m. and 6 a.m. was not a regulatory taking, as this was a reasonable exercise of the state’s police powers. *Denene v. Charleston*, 359 S.C. 83, 596 S.E.2d 917 (2004).

Procedure for Adopting Zoning Ordinances

Adopting a zoning ordinance is a legislative function. The procedural requirements are described in S.C. Code § 6-29-760. They may vary slightly, depending on ordinance notice provisions and whether the council or the planning commission is designated to hold public hearings. The governing body must adopt amendments to the ordinance text or zoning maps in the same manner it adopted the original ordinance. In general, the following procedural steps are required.

- 1. Public hearing.** The governing body may conduct public hearings, or it may authorize the planning commission to conduct them. The governing body should state its choice

in the ordinance. There is no law prohibiting a joint public hearing. The public hearing on an amendment may be held, as prescribed by ordinance, either before or after the required planning commission review and recommendation. If the hearing is held before the planning commission, the planning commission recommendation to the governing body should contain a summary of any significant issues or concerns presented at the hearing. If a planning commission does not hold the public hearing, it may allow a property owner affected by a proposed amendment to present oral or written comments. If oral or written comments are taken, the commission must give other interested members of the public ten days' notice and allow them the opportunity to comment in the same fashion. S.C. Code § 6-29-760(B).

2. Notice.

- a. Newspaper and other notice.** An ordinance may establish notice provisions. If not, the Planning Act requires notice be placed in a newspaper of general circulation in the community at least fifteen days prior to the hearing. The notice must list the hearing time and place. Some ordinances require a thirty-day notice. In §30-4-80 of the S.C. Freedom of Information Act, an agenda is required as part of a meeting notice and it must be posted to a bulletin board in the office of the public body or in the building where it will meet or any website the county maintains. See Appendix J for a model notice form.
 - b. Posting property.** In rezoning cases, the governing body or commission must post conspicuous notices on or adjacent to the property. One notice must be visible from each public street that borders the property.
 - c. Mail notice.** If the local government maintains a list of groups requesting notice, it must mail meeting notices to such groups. Some ordinances also require notice by mail to adjacent property owners. This is not required by the Planning Act.
- 3. Planning commission review.** Any change in the original text and any amendment to the ordinance or maps must be submitted to the planning commission for review and recommendation. If the planning commission fails to make a recommendation within the time prescribed by ordinance, it is considered to have approved the change.
- 4. Adoption of ordinance.** After the required public hearing and planning commission review, the original ordinance or amendment must be adopted by an ordinance. Counties may adopt ordinances on three readings on separate days with a minimum of seven days between second and third readings. S.C. Code § 4-9-120 (1976). Municipalities may adopt ordinances on two readings at least six days apart. S.C. Code § 5-7-270 (1976).

The Planning Act allows flexibility in providing notices and for setting the time and conduct of the public hearing. There is no set sequence for some required actions. The following are examples of possible sequences.

If Council Holds Hearing:

1. Amendment initiated
2. Refer to Commission for review
3. Notices of public hearing
4. Commission reviews
5. Commission makes recommendation
6. Council holds hearing
7. Council adopts or rejects ordinance

If Commission Holds Hearing:

1. Amendment initiated
2. Refer to Commission for hearing/ review
3. Notices of public hearing
4. Commission holds hearing
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Challenge to Ordinance Validity

An owner of adjoining land or his representative has legal standing in a court of law to bring an action contesting the zoning ordinance or an amendment. S.C. Code § 6-29-760(C). The landowner unquestionably has similar standing. It is likely that a court would rule that anyone who has a property right that is adversely affected could bring a legal action.

If there has been substantial compliance with the notice requirements of the ordinance or the Planning Act, no challenge to the adequacy of notice or validity of a zoning ordinance or amendment may be made sixty days after the decision of the governing body. Because substantial compliance may be a question of fact or a question of fact and law, it may be necessary for a court to decide that question before the sixty day limitation can be invoked. Due process principles apply to notice procedures. Notices must fairly and reasonably inform those whose rights may be affected. An amendment accomplished with a defective notice is void. *Brown v. County of Charleston*, 303 S.C. 245, 399 S.E.2d 784 (Ct. App. 1990.)

Public Property Subject to Zoning

The following public entities, while using real property as owner or tenant, are subject to the local zoning ordinance requirements. S.C. Code §§ 6-29-770(A), (B) and (C).

1. Agencies, departments, and subdivisions of the State of South Carolina.
2. Counties and any agency, department, or subdivision of the county are subject to the zoning ordinance of any municipality within whose limits it uses property.
3. Municipalities and any agency, department, or subdivision of the municipality is subject to the county zoning ordinance if it uses property within the county but outside the municipal limits.

A state agency, department, or subdivision occupying a facility on June 18, 1976, does not have to move regardless of whether or not their location is in violation of municipal or county zoning ordinances. This provision was obviously inserted to take care of some particular situations; however, it applies statewide.

EDITOR'S NOTE: While the state is generally subject to local zoning ordinances, Article VIII, Section 14 of the state constitution provides that state agencies are exempt from provisions of an ordinance that sets aside the administration of a governmental service that has been delegated to state government and requires uniformity. For example, the SC Court of Appeals held in *Charleston County v. SC DOT*, Ct. App. Op. No. 5495, July 12, 2017 (2017 WL 2960751), that the Department did not have to comply with tree preservation provisions in the county zoning ordinance. The removal of trees in the right of way was part of the Department's delegated duty to construct and maintain state roadways.

Exemptions, Homes for Handicapped

A home serving nine or fewer mentally or physically handicapped persons if it provides 24-hour care and is approved or licensed by a state agency, department or under contract with the agency or department for that purpose, is exempt from 24-hour requirements of the local zoning ordinance. Residents of such a home are treated as a natural family as if related by blood or marriage. S.C. Code § 6-29-770.

The following are specific procedures for locating such a home:

1. Prior to locating the home, the owner or operator must give prior notice to the local governing body advising of the exact site of the proposed home.
2. The notice must identify the individual responsible for site selection.
3. If the local governing body objects to the selected site, it must notify the individual responsible for site selection within fifteen days of receiving the notice. It must also appoint a representative to assist in selecting a comparable, alternate site. This triggers the following actions:
 - a. The site selection representative of the entity and the representative of the governing body must select a third, mutually agreeable person to assist with the selection.
 - b. The three people have forty-five days to make a final site selection by majority vote.
 - c. This final site selection is binding on both the proposing entity and the governing body.
4. In the event no selection is made by the end of the forty-five day period, the entity establishing the home shall select the site without further proceedings.

5. An application for a variance or special exception is not required.
6. The licensing agency must screen prospective residents of these homes to ensure that the placement is appropriate.
7. The licensing agency shall conduct reviews of these homes at least every six months to promote the rehabilitative purposes of the homes and to confirm compatibility with their neighborhoods.
8. The local governing body whose zoning ordinances are violated may apply to a court of competent jurisdiction for injunctive or such other relief as the court may consider proper.

Federal Defense Facilities Utilization Integrity Protection

As certain areas of South Carolina continue to grow, there is the potential for the development of areas contiguous to federal military installations that can undermine the integrity or utility of those installations. This puts at risk the expansion or eventual closure of these installations. The General Assembly enacted the Federal Defense Facilities Utilization Integrity Protection Act to coordinate future development or use of land contiguous to active federal military installations. S.C. Code §§ 6-29-1610 et seq. The Act creates overlay zones around active military installations. A local zoning ordinance in any county or municipality that contains an active military installation should reference the overlay zone area and the restrictions on development of lands surrounding provided in the Act.

Federal Fair Housing Act

The Fair Housing Act of 1988 was adopted by Congress to strengthen Title VIII of the 1968 Civil Rights Act. The amendments to 42 U.S.C. § 3604 extend the principle of equal housing opportunities to handicapped persons and families with children. The provisions in § 3604 prohibiting a regulation that otherwise makes unavailable or denies housing to the handicapped was intended, according to the House Committee Report, to prohibit land-use regulations, restrictive covenants and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice within the community.

Section 3610 of the Fair Housing Act, as amended, provides for enforcement by the U.S. Justice Department in land use cases referred by HUD that question the legality of any state or local zoning or other land use law or ordinance. The court may impose civil penalties of up to \$50,000 for a first violation.

Courts have issued injunctions compelling local zoning officials to issue special use permits, pointing out that equitable relief under the Fair Housing Act includes prohibitory injunctions and orders for such affirmative action as may be appropriate. See *Baxter v. City of Bellville*, 720 F.Supp. 720 (S.D. Ill. 1989). Economic injury is sufficient to give standing to institute an action under the Act. Reasonable spacing requirements and safety and sanitation restrictions have been upheld. See *Familystyle of St. Paul v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991); and *Baxter*, supra.

Although it is facially neutral, if a land use regulation or official action is motivated by discriminatory intent or has a disparate impact, it may be illegal under the Fair Housing Act. See *Metropolitan Housing Dev. Corp. v. Village of Arlington Heights*, 588 F.2d 1283 (7th Cir. 1977).

Although 42 U.S.C. § 3615 provides that Congress has not preempted the fair housing field, it further provides that any law of a State or political subdivision "that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid." It appears that federal law does not preempt S.C. Code § 6-29-770(E) relating to homes for handicapped persons.

The local government should not take into consideration any community sentiment or concern that reflects on the handicapped residents. Delay in taking action on a request for a permit may be considered tantamount to a denial. The refusal to rezone property to permit its use for handicapped housing may be a violation of the Fair Housing Act if it fails the disparate impact test. See *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988).

Conditional use permits and density requirements may be valid as long as they are not applied in a discriminatory manner. However, the courts have subjected them to strict scrutiny.

Zoning Administration

Zoning Official

The zoning ordinance must designate an administrative official to administer and enforce the zoning ordinance. The official is usually called the zoning administrator. S.C. Code § 6-29-800. It is not unusual for small jurisdictions to give the building official the job of zoning administrator. One employee may administer several codes. The official's title is specified in the zoning ordinance.

Powers and Duties

The zoning ordinance should specify the duties of the zoning administrator. The following are examples of duties.

1. Interpreting zoning ordinance provisions.
2. Administering permits and certificates, including fee collection [See Appendix S for a sample form.].
3. Processing applications for variances and special exceptions [See Appendix U for a sample form.].
4. Processing appeals to the board of zoning appeals and preparing the record for appeal to the circuit court.
5. Maintaining the current zoning map.
6. Maintaining public records related to zoning.
7. Investigating and resolving complaints.
8. Enforcing the zoning ordinance.
9. Other duties assigned by ordinance, manager, or council.

PRACTICE POINTER: The zoning administrator is the only official that should be relied upon when questions arise over a parcel's official zoning. There have been several cases where a land owner or

purchaser has relied on the opinion of a tax assessor or building official concerning applicable use only to find years later the use was not permitted. The South Carolina Supreme Court has not been sympathetic to such mistaken reliance on opinions of anyone other than the Zoning Administrator. See *Carolina Chloride v. Richland County* (2011) and *Quail Hill v. Richland County* (2010).

Estoppel

Administering the zoning ordinance often requires interpreting terms and provisions that are not always clearly defined. Once an authorized local official makes an interpretation, the local governing body may be estopped (prohibited) from changing the official's interpretation or from enforcing the ordinance differently from past enforcement when a landowner has relied upon the interpretation. See *Landing Development Corp. v. City of Myrtle Beach*, 285 S.C. 216, 329 S.E.2d 423 (1985); *County of Charleston v. National Advertising Co.*, 292 S.C. 416, 357 S.E.2d 9 (1987). In South Carolina, estoppel may apply to public figures, but only when acting in the scope of their official duty. *McCrowey v. BOZA Rock Hill*, 360 S.C. 301, 599 S.E.2d 617 (2004).

A landowner must show the following estoppel elements against the government: (1) lack of knowledge and lack of means to gain knowledge of the truth in the matter, (2) justifiable reliance on the conduct of the officials, and (3) a prejudicial change in the position of the party claiming estoppel. *Daniels v. City of Goose Creek*, 431 S.E.2d 256 (Ct. App. (1993)). However, the public cannot be estopped by the actions of an official who acts outside of the scope of his authority. *DeStephano v. City of Charleston*, 304 S.C. 250, 403 S.E.2d 648 (1991). A person is presumed to know the limits of the authority of a public official.

A zoning permit may be revoked if the zoning official acted on a permit application that contained incorrect or false information. Estoppel would not apply. See *Christy v. Harleston*, 266 S.C. 439, 223 S.E.2d 861 (1976).

It is important for the zoning administrator to consistently interpret and enforce the zoning ordinance. When a change in practices or interpretations is necessary, making the appropriate changes to the ordinance by amendment will avoid estoppel claims for future applications.

Board of Zoning Appeals

As part of the zoning enforcement and administrative structure of the zoning ordinance, the governing body may create in the zoning ordinance a board of zoning appeals. Previous legislation referred to this board as a zoning board of adjustment. Under the Planning Act, the term "board of adjustment" is inappropriate. S.C. Code § 6-29-780.

Local governing bodies with a joint planning commission and a common zoning ordinance may create a joint board of zoning appeals.

Creation of Board

The zoning ordinance section creating a board of zoning appeals should include the following:

1. The board's size is limited to three to nine members.

2. A majority of the membership makes up a quorum.
3. The governing body appoints members.
4. Members' terms are overlapping.
5. The terms range from three to five years.
6. The number of terms a member may serve.
7. Members continue to serve until their successors are appointed.
8. Vacancies are filled for unexpired terms in the same manner as the initial appointments.
9. The appointing governing body can remove a member for cause.
10. How much, if anything, board members are compensated.
11. Members cannot hold any other public office or position in the appointing local government.

Appendix D provides a model ordinance for the creation of a Board of Zoning Appeals.

Powers of the Board of Zoning Appeals

The planning enabling legislation lists - explicitly in many instances - the powers and required findings of the board of appeals. S.C. Code § 6-29-800. It may be useful to include this section in the board rules of procedure. The power of the board is limited to three specific areas: administrative review, variances, and special exceptions. The local governing body should include these provisions in the zoning ordinance and make them consistent with the language of the Planning Act. Sample forms for appeals to the board are provided in Appendix U.

Administrative Review

The board can hear and decide appeals where it is alleged the zoning administrator erred in an order, requirement, decision, or determination. In such cases, the board may reverse or affirm, wholly or in part, the zoning administrator's actions. The board has all the powers of the zoning administrator in such cases and may direct the issuance of a permit.

The board may remand a matter to an administrative official if it determines the record is insufficient for review. The board may deny a party's motion to remand if it determines the record is sufficient. The board must set a rehearing within sixty days unless the parties agree to another time.

The Board should adopt, as part of its rules of procedure, specific rules for the conduct of applicant appeals. Unlike regular meetings and public hearings, the Board sits in a quasi-judicial manner. Applicants are provided certain constitutional rights of due process. The Board must allow an applicant a meaningful right to be heard, and judicial review of the Board's final decision. Chapter 8 outlines the basic rules of procedures necessary to ensure applicants are guaranteed procedural due process.

Variances

The Planning Act provides the statutory basis for granting variances. The board has the power to hear and decide appeals for variances when strict application of some aspect of a parcel's current zoning classification would cause an unnecessary hardship. S.C. Code § 6-29-800(A)(2). When deciding whether to grant a variance or not, the board is not free to make a determination based on whatever

appeals to its sense of justice.

A variance allows the board to make an exception to an otherwise legitimate restriction for special cases. Special cases occur when unusual circumstances make the restriction more burdensome than intended. The variance must not impair the public purpose. To obtain a variance based on "unnecessary hardship," there must at least be proof that a particular property suffers a singular disadvantage from a zoning regulation. *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953); *Colbert v. Krawcheck*, 299 S.C. 299, 384 S.E.2d 710 (1989). Additionally, an owner is not entitled to relief from a self-inflicted hardship. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965).

Standards for Granting Variances

The board may grant a variance for an unnecessary hardship if it makes and explains in writing all of the following findings.

1. **Extraordinary conditions.** There are extraordinary and exceptional conditions pertaining to the particular piece of property. Extraordinary conditions could exist due to topography, street widening, beachfront setback lines, or other conditions that make it difficult or impossible to make an economically feasible use of the property.
2. **Other property.** These conditions do not generally apply to other property in the vicinity. See *Bennett v. Sullivan's Island Board of Adjustment*, 438 S.E.2d 273 (Ct. App. 1993).
3. **Utilization.** Because of these conditions, the application of the ordinance to a particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
4. **Detriment.** The authorization of a variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by granting of the variance.

Other issues affecting findings of a board in a variance application are found in S.C. Code § 6-29-800(A)(2).

1. **Profitability.** The fact that property may be used more profitably if a variance is granted is not grounds for a variance. See *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955).
2. **Conditions.** In granting a variance, the board may attach conditions to it. These conditions may address the location, character or other features of a proposed building, structure, or use. The board sets the conditions to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.
3. **Use variance.** Under the general rule, the board may not grant use variances. A "use variance" involves the establishment of a use not otherwise permitted in a zoning district,

extends physically a nonconforming land use, or changes the zoning district boundaries shown on the official zoning map. The Planning Act allows a local governing body to authorize the board of zoning appeals to grant "use variances," and the governing body can attach conditions to this authorization. S.C. Code § 6-29-800(A) contains specific procedures for granting use variances, which may be incorporated into a local zoning ordinance. Granting use variances is not good zoning practice and is not recommended. A use variance may be subject to attack as an unlawful delegation of legislative authority. Zoning is a legislative power in this state.

The zoning ordinance may provide other requirements for a variance. The board must follow the local ordinance and Planning Act. The courts will generally uphold a variance decision unless it was based on an error of law, fraud, lack of any supporting legal evidence, or where the board acted arbitrarily, unreasonably, abused its discretion or acted in a discriminatory manner.

PRACTICE POINTER: a variance may not allow a use that is not otherwise authorized within the parcel's zoning classification. For example, a variance may waive a 60 foot setback where a parcel's unique shape would eliminate all use of a section of the property; however, a variance could not authorize the operation of a dentist office where commercial use is not authorized.

Special Exceptions

The board of zoning appeals can permit uses by special exception if the terms and conditions described in the zoning ordinance are met. S.C. Code § 6-29-800(A)(3). The zoning ordinance must include the standards and conditions for the board to follow when considering such appeals. For example, standards and conditions could relate to noise, compatibility with adjoining uses and traffic generation. In some zoning ordinances, conditional uses granted after review should now be designated as special exceptions.

Appeals to Board and Circuit Court

Appeals from the administrative actions and decisions of zoning officials are taken to the board of zoning appeals. See Appendix U for a sample form. Appeals from decisions of the board are made to Circuit Court and finally to the Supreme Court. An appeal on a zoning matter is never taken to the local governing body. It has only a legislative function in zoning.

Third-party intervention

When a decision of the board has been appealed to the circuit court a person who is not the owner of the subject parcel may seek to intervene as a party. S.C. Code § 6-29-825(A) provides that the motion to intervene must be granted if the person has a substantial interest in the decision of the board.

EDITOR'S NOTE: The Planning Act does not provide the basis for determining "substantial interest." The circuit court judge will make that finding based on the facts of the petition, and will generally not be overturned by a higher court without evidence that the finding was based on error of law or abuse of discretion.

Pre-Trial Mediation

Property owners have the ability to elect a pre-trial mediation process as set forth in S.C. Code § 6-29-825. Any tentative mediated settlement reached must be approved by the local legislative governing body and the circuit court. Any mediated settlement is not precedent for other parcels of land or owners. Mediated settlements must also have a rational basis within the standards of Chapter 29 or Title 6.

Time Limits for Appeals

1. **Appeal to Board.** The zoning ordinance or rules of the board of zoning appeals may set the time for appeal of an administrative action or decision. If no time is set, S.C. Code § 6-29-800(A)(4) requires the party to make an appeal within 30 days of receiving actual notice of the action from which he is appealing.
2. **Appeal to Circuit Court.** A party appealing a board decision to circuit court must file the appeal with the clerk of court within thirty days after the decision of the board is mailed. S.C. Code § 6-29-820. Failure to file an appeal within the time limit deprives the court of jurisdiction to hear the matter. *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 372 S.E.2d 584 (1988).

Appeal to Supreme Court. A party may appeal a circuit court decision to the South Carolina Supreme Court in the same manner as other circuit court judgments. S.C. Code § 6-29-850. *Bishop v. Hightower*, 292 S.C. 358, 356 S.E.2d 420 (Ct. App. 1987). Rule 203, South Carolina Appellate Court Rules, requires a party to service notice of appeal to the Supreme Court within thirty days of receiving written notice of entry of the circuit court order.

Procedure for Appeals to Board

1. **Notice of appeal.** Any person displeased with an officer's action may appeal it to the board of zoning appeals. The person must file a notice of appeal specifying the grounds with the officer and the board. The applicant and parties to the permitting process are parties in interest and are entitled to notice of the appeal. Citizens and residents who are not parties to the permitting process are not entitled to notice. *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 372 S.E.2d 584 (1988); *Spanish Wells v. Board of Adjustment of Hilton Head Island*, 292 S.C. 542, 357 S.E.2d 487 (Ct. App. 1987). The zoning administrator should provide a form for the appeal notice. The notice form should require all the necessary information for the appeal. A sample is provided in Appendix U. The officer being appealed must immediately send the board all papers constituting the record upon which the action was taken. S.C. Code § 6-29-800(A)(4).
2. **Stay of proceedings.** Filing an appeal to the board stays all legal proceedings to enforce the appealed action unless the appealed officer certifies that a stay would cause imminent peril to life and property. In such cases, a board or court restraining order may stay the action. S.C. Code § 6-29-800(B).

3. **Time and notice of hearing.** The board must set a reasonable time for hearing the appeal. It must publish a 15-days' notice in a general circulation newspaper and give notice to parties in interest, preferably by mail. S.C. Code § 6-29-800(D). See Notice Form in Appendix K. The zoning ordinance may require other notice forms to inform persons whose property interests might be affected by the variance or other action.
4. **Conduct of hearing.** Any party may appear at the hearing in person, by agent, or by attorney. The rules of the board should set the hearing procedure. At the start of the hearing, the chairperson should explain the procedures for presenting and examining witnesses, receiving evidence, the role of attorneys, and how the board will make and serve a decision. The board may subpoena witnesses and certify contempt to the circuit court. The board must hold the hearing in compliance with the Freedom of Information Act. S.C. Code § 6-29-800(C) and (D).
5. **Rehearing.** The board may provide in its rules of procedure for a rehearing. A rehearing may be justified by reason of newly discovered evidence, fraud, surprise, mistake, inadvertence, or change in conditions. *Bennett v. City of Clemson*, 293 S.C. 64, 358 S.E.2d 707 (1987).
6. **Board decisions.** The board has the same powers as the zoning official. It can affirm, reverse, or modify the zoning official's actions. Board members cannot vote by absentee ballots. Members must be present to vote. *Bennett, supra*. The board must make all final decisions in writing, deliver them to parties in interest by certified mail, and permanently file them as public records. The board must separately state in decisions or orders all findings of fact and conclusions of law. This is a critical requirement because the board's findings of fact are binding on the circuit court on appeal. S.C. Code § 6-29-800(D) and (E). A form should be used for the decision that contains a checklist or reminder regarding the necessity for written findings and conclusions. See Appendix V for a sample order form.

Appeal to Circuit Court

1. **Petition.** A party may appeal a board decision to the circuit court. He must file a written petition with the clerk of court stating why the decision is contrary to law. Although the statutes do not require serving the petition on the board, it is advisable. The clerk of court is required to give immediate notice of the appeal to the secretary of the board. The filing does not stay or supersede the decision of the board, but the circuit judge may grant a supersedeas upon reasonable terms. S.C. Code §§ 6-29-820, 6-29-830.
2. **Transcript.** Within 30 days after notice from the clerk of court, the secretary of the board must file with the clerk of court a certified copy of the proceedings, a transcript of testimony, evidence, and the decision, including findings of fact and conclusions. S.C. Code § 6-29-830. There is no requirement for the board to serve the certified record on parties in interest. The attorney for the board files a return to the petition and sends it with a copy of the certified record to the attorney for the appealing party.

3. **Standard of review.** The findings of fact by the board are treated in the same manner as findings of fact by a jury. The court may not take additional evidence. It can determine only whether the board decision is correct as a matter of law. The court must allow the board's decision to stand if there is any evidence in the record to support it. *Wells v. Finley*, 260 S.C. 291, 195 S.E.2d 623 (1973); *Bishop v. Hightower*, 292 S.C. 358, 356 S.E.2d 420 (Ct. App. 1987); *Fairfield Ocean Ridge, Inc. v. Edisto Beach*, 294 S.C. 475, 366 S.E.2d 15 (Ct. App. 1988). If the record is insufficient for review, the circuit judge may send it back to the board for rehearing. S.C. Code § 6-29-840. This provision should be helpful in getting a complete record. Lack of a good record is the most common problem in zoning appeals. See *Dolive v. J.E.E. Developers, Inc.*, 418 S.E.2d 319 (Ct. App. 1992). (The court allowed the applicant to supply missing portions of the transcript by affidavit).

Exhaustion of Administrative Remedies

The courts ordinarily dismiss suits challenging zoning actions as premature if the party fails to exhaust the provided administrative remedies. A party may not go directly to court when administrative procedures and remedies are available. *Dunbar v. City of Spartanburg*, 226 S.C. 360, 85 S.E.2d 281 (1955).

Constitutional "takings" claims frequently arise when application of the zoning regulations result in the denial of use of property. The Supreme Court has ruled that a takings claim is premature when there was no application for a variance or exception pursuant to administrative procedures provided by the zoning ordinance. *Moore v. Sumter County Council*, 300 S.C. 270, 387 S.E.2d 455 (1990). The court dismissed a claim that the zoning ordinance was unconstitutional when the party failed to exhaust administrative remedies in *Stanton v. Town of Pawley's Island*, 309 S.C. 126, 420 S.E.2d 502 (1992).

Until there has been a final decision regarding the application of the zoning ordinance and subdivision regulations to property, the United States Supreme Court has held that it is impossible to determine whether the land retains any reasonable beneficial use, or whether expected property interests have been taken. *Williamson Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

Legal Issues in Zoning

Exactions

Exactions are burdens or requirements a local government places on a developer to dedicate land or construct or pay for all or a portion of the costs of capital improvements needed for public facilities as a condition of development approval. Exactions come in many forms - they may be called conditions or impact fees and may be in the form of infrastructure building, cash payments to the local government, dedications of land for public uses, conditions on future land use, restrictions on alienation, or other restrictions or burdens on the permit applicant.

PRACTICE POINTER: entities should consult the county attorney or other legal professional with knowledge of land use law before enacting ordinances/regulations requiring cash payments or land

dedications. The US Supreme Court has become less tolerant of such requirements and more prone to find them a regulatory taking. See *Kootz v. St. Johns Water Management District* (2013)

Vested Rights

The Planning Act did not originally address vested rights other than provisions dealing with nonconforming uses. In 2004 the Vested Rights Act, granted developers specific rights if they had received approval of certain site plans to complete development of property according to a site specific development plan or a phased development plan. Essentially the Act protects developers from later zoning changes (except under certain circumstances).

If a county does not establish its own land development ordinances, the Vested Rights Act provides that state law, S.C. Code § 6-29-1560, becomes the default county land use ordinance. Section 6-29-1560 provides:

- A landowner has a vested right to proceed in accordance with an approved site specific development plan for two years and the landowner may apply for at least five annual extensions.
- The landowner must have obtained a significant affirmative act of the government, rely in good faith on this act, and incur significant obligations and expenses in pursuant of the project in reliance on the government act.

The South Carolina Attorney General has previously opined that if a county has not established a land development ordinance by the mandated date, it is prohibited from now doing so and must use the statutory default rule as its ordinance. See *Op. Att’y Gen.*, 2006 WL 1207278 (April 11, 2006).

A vested right is not absolute. Certain conditions apply. A county may terminate a conditionally approved site specific plan or a conditionally approved phased development plan - after public notice and public hearing - if the landowner does not comply with the terms of the conditional approval. A county may revoke an approved plan if it determines the landowner made material misrepresentations or is in substantial noncompliance with the terms of the approval. S.C. Code § 6-29-1540(10). Laws enacted after a vested right confers - whether federal, state, or local - may establish regulations that do not allow for grandfathering a vested right. S.C. Code § 6-29-1540(11).

A vested right belongs to the property - not the owner - and therefore attaches when the property changes hands. See S.C. Code § 6-29-1550. A validly issued building permit is not revoked or does not expire solely because a vested right expires.

Pending Ordinance Doctrine

The zoning administrator has authority to refuse a permit for a use which is repugnant to the terms of a proposed zoning ordinance or amendment pending at the time of the application for the permit. An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning. *Sherman v. Reavis*, 273 S.C. 542, 257 S.E.2d 735 (1979); *Stratos v. Town of Ravenel*, 297 S.C. 309, 376 S.E.2d 783 (1989).

In *Simpkins v. City of Gaffney*, 315 S.C. 26, 431 S.E.2d 592 (Ct. App. 1993), the Court of Appeals held that a resolution of city council setting a moratorium on construction of multi-family dwellings was not a pending ordinance and did not suspend an existing, valid zoning ordinance. The zoning ordinance must be amended by ordinance, not by resolution.

Spot Zoning

Zoning a small parcel as an island surrounded by a district with different zoning may be considered spot zoning. Spot zoning is a practice which the South Carolina courts have held invalid. The Supreme Court stated that invalid "spot zoning" is the process of singling out a small land parcel for a use classification totally different from that of the surrounding area to benefit the property owners and to the detriment of other owners. *Bob Jones University, Inc. v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843 (1963). The mere fact that business property adjoins residential property does not mean the commercial zoning is invalid spot zoning. See *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952); *Knowles v. City of Aiken*, 305 S.C. 291, 407 S.E.2d 639 (1991).

The governing body may rezone small areas as long as the action is not arbitrary or unreasonable. Courts will not rule on the wisdom or expediency of local ordinances. They are presumed to be valid. To help avoid the problem of spot zoning, many zoning ordinances include a provision requiring a free-standing zoning district to have a minimum land area of at least two acres.

Adult Businesses

The South Carolina Supreme Court has consistently held that it is proper for zoning ordinances to regulate sexually oriented businesses. See *Harkins v. Greenville County*, 340 S.C. 606, 533 S.E.2d 886 (2000). These businesses are, however, protected by the First Amendment right to free speech. A county may not prohibit adult businesses from operating at all, but may regulate where an adult business is located. See *Restaurant Row v. Horry County*, 516 S.E.2d 442, 335 S.C. 209 (1999).

Religious Use of Land

The Planning Act provides that a zoning ordinance cannot prohibit church-related activities in a single-family residence. "Church-related activities" are only defined so as not to include "regularly scheduled worship services." S.C. Code § 6-29-715.

The Religious Freedom Act of 1999, codified at S.C. Code § 1-32-10 et seq., further provides that a local government "may not substantially burden a person's exercise of religion," unless the government is acting in furtherance of a compelling state interest, and by the least restrictive means. S.C. Code § 1-32-40. Though the law does not explicitly reference zoning, it does specifically apply to local ordinances, and therefore should be taken in to consideration when adopting zoning and other land use ordinances.

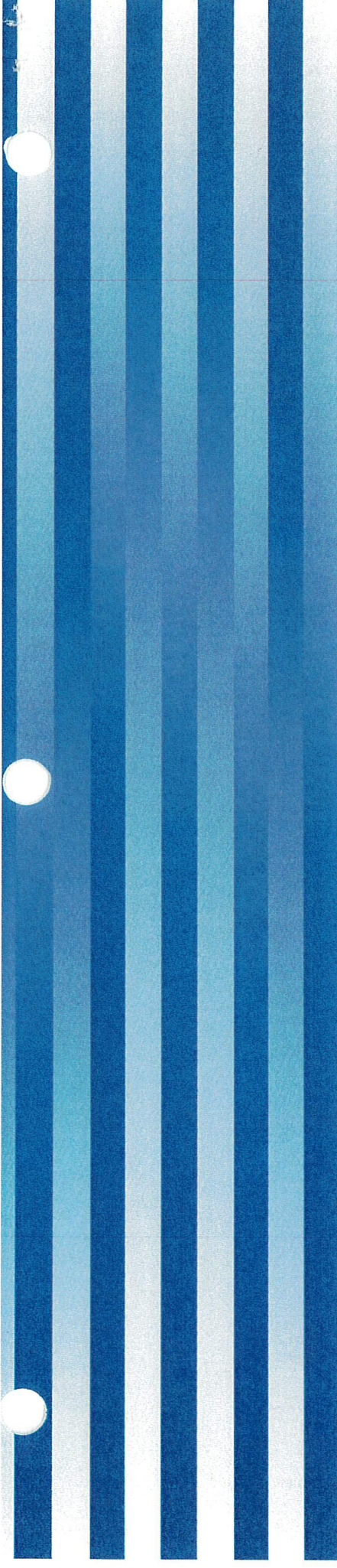
Growth Management Programs

South Carolina has experienced exponential growth since the 1990's. Some counties in the state are among the fastest growing in the nation as populations move from the traditional industrial

states to coastal regions. As a result, many local jurisdictions are forced to consider programs to manage growth and its impacts.

Common growth management policies include:

- **Moratorium:** A moratorium places a temporary halt on the issuance of new building permits to give the jurisdiction time to address growth issues. A moratorium may apply to a limited area or county-wide, and could be made applicable to certain types of structures. For instance a jurisdiction may begin with a moratorium on new multi-family units rather than single-family. A moratorium cannot halt construction where a permit has already been issued.
- **Adequate Public Facilities Ordinance (APFO):** APFO's are designed to ensure public infrastructure is in place before new development is allowed. APFO's have not been widely used in South Carolina, and have been controversial in the states where such ordinances have been adopted.
- **Growth Management Plans:** Some jurisdictions have developed separate plans, which are incorporated by reference into their comprehensive plans, which deal exclusively with ordinances to control growth within a certain area. Some aspects of these plans can include restrictions on building permits, open space requirements, and fees for new development.



How to Conduct Effective Meetings



How to Conduct Effective Meetings

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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.

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First Order of Business: Adopt Rules of Procedures

S.C. Code Ann. § 5-7-250(b) provides the council shall determine its own rules and order of business

South Carolina law requires municipal councils and their appointed bodies to adopt meeting rules of order and procedure. Adopting local rules is extremely important because they establish the procedure for preparing agendas and conducting meetings. Because state law allows councils to exercise complete discretion over their rules of order, provided they do not conflict with state law, local rules may be as complex or as simple as council deems necessary.

While adopting Robert's Rules of Order is a quick way to satisfy the state requirement, using only Robert's Rules for municipal council meetings can be difficult and confusing because the rules were not designed for that use.

Sample rules of order are provided in Appendix B of this handbook. These rules are formatted to be easily amended and adopted to meet specific local needs.

The sample rules of order allow the municipality to reference a secondary (or outside) set of rules of procedure, such as Robert's Rules. In the rare instances when the local rules do not provide sufficient guidance on meeting conduct, the secondary rules would be used. Once customized to fit the local needs, the Association's sample rules, used in conjunction with Robert's or some other commonly recognized rules of order, should be sufficient to guide the orderly conduct of most municipal meetings.

Statutory Authority for Rules of Procedure

S.C. Code Ann. § 5-7-250 requires

- (a) public notice of meetings; regular meetings to be held at least once a month; special meetings on call of mayor or majority of council;
- (b) council determines its own rules and order of business and provide for keeping minutes which are public records;
- (c) procedures not conflict with general state law concerning freedom of information; and
- (d) emergency ordinances (not for taxes, franchises or service charges) be adopted by vote of two-thirds of members of council present, and expire on 61st day after adoption.

S.C. Code Ann. § 5-7-260 requires

certain acts to be by ordinance. *[See Appendix B, Section 13]*

S.C. Code Ann. § 5-7-270 requires

establishing rules of procedure for adopting ordinances. Ordinances must be in writing, in the form for final adoption and receive two readings at least six days apart.

S.C. Code Ann. § 5-7-280 authorizes

adopting by reference nationally recognized codes or standards specified in S.C. Code Ann. § 6-9-60. A public hearing must be held prior to adoption.

S.C. Code Ann. § 5-7-290 requires

codifying and indexing all ordinances, maintaining ordinances in current form reflecting all amendments and repeals, and making them available for public inspection.

How to: Schedule a Meeting

Regular meetings

The council shall meet regularly, but no less than once every month. Local rules shall stipulate the time and place. *S.C. Code Ann. § 5-7-250.*

Special meetings

The mayor or a majority of members may call for a special meeting. *S.C. Code Ann. § 5-7-250.*

Freedom of Information

Meeting procedures shall not conflict with Freedom of Information laws. Council is responsible for complying with FOI laws.

Public Notice and Agendas

In response to the state Supreme Court's ruling in *Lambries v. Saluda County Council*, the Freedom of Information Act, *S.C. Code Ann. § 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 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.

If an unforeseen situation arises that requires immediate action, the mayor or a majority of councilmembers may call an emergency meeting. The municipality should hold emergency meetings only if there is a crisis and council must act with a sense of urgency (e.g., a natural or man-made disaster). The council and its appointed public bodies must exercise great caution when calling emergency meetings because they are not subject to the Freedom of Information Act's public notice and agenda requirements for public bodies. *S.C. Code Ann. §§ 5-7-250(d) and 30-4-80*. *S.C. Code Ann. § 30-4-80* does not relieve a public body from notice requirements regarding any statutorily required public hearing.

How to: Set an Agenda

The Home Rule Act does not specify who has the responsibility for making an agenda or what it must contain. S.C. Code Ann. § 5-7-220 states, "The municipal clerk shall give notice of council meetings to its members and the public, keep the minutes of its proceedings and perform such other duties as are assigned by council." In some instances, responsibility for producing the agenda is delegated to the clerk, administrator, manager or mayor.

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, if properly used, has the same format from meeting to meeting. 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 considering other business (such as resolutions, ordinances, claims, petitions, reports and hearings), communications from committees, commissions, boards or the public, and other actions.

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

In smaller municipalities, the municipal clerk customarily holds the major 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 practice will help minimize requests to amend an 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 or portions thereof specifically exempted by the FOIA.

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. The notice 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 requires distinct actions to authorize the item to be added to the agenda. The required categories and actions are as follow:

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 SC 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 this 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 (*See Appendix A on page 14.*) to guide officials through the process of amending an agenda.

Executive session

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. *S.C. Code Ann. § 30-4-70(b)*. (See chapter on executive sessions on page 8 of this handbook.)

Quorum

A quorum is necessary to conduct business at any meeting. A simple majority of the constituent membership (members of a body selected to represent the interests of the public) of council (including the mayor) constitutes a quorum. *S.C. Code Ann. § 30-4-20(c)*.

Minutes

Minutes must be taken of all public meetings. Minutes are not required for the executive session portion of a meeting. If minutes are taken in executive session, they are not considered public records. *S.C. Code Ann. §§ 30-4-50(7), 30-4-90*. However, they may be discoverable in a court action. *S.C. Code Ann. §§ 30-4-50(7), 30-4-90(b)*.

How to: Preside Over a Meeting

An effective presiding officer follows and enforces the rules

In addition to being on time for a meeting, a good presiding officer should

1. be familiar with the rules of procedure
2. run the meeting firmly and courteously
3. maintain order
4. follow the agenda
5. require a member to be recognized before speaking
6. allow only one person to speak at a time
7. allow persons not on council to speak only at designated times
8. rule "out of order" remarks which involve personalities or attack motives of another member
9. rule "out of order" remarks not related to the matter before the council
10. apply time limits uniformly
11. reject frivolous motions and motions not permitted by the rules
12. require motions to be stated affirmatively
13. allow discussion only after a motion is seconded and restated by the presiding officer
14. allow the maker of a motion to speak first
15. allow a member to speak twice on a matter only after all other members have an opportunity to speak
16. allow interruption of a speaker only by consent or for permitted reasons (e.g., point of order; question of privilege)
17. reject discussion of motions which are not debatable (e.g., previous question, table, adjourn)
18. allow only one main motion on the floor
19. require members to vote clearly without explanation
20. consult the parliamentarian for advice, not a ruling (only the chair can rule)
21. deal firmly with disruptions
22. comply with the Freedom of Information Act

State law gives a mayor full voting privileges which cannot be modified by local rules. Robert's Rules, which allow the presiding officer to vote only when his/her vote would affect the result, does not apply.

How to: Go Into Executive Session

All council meetings are public, except 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 (*S.C. Code Ann. § 30-4-70*) authorizes executive sessions, which are closed to the public, for specific purposes.

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. *S.C. Code Ann. § 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 *S.C. Code Ann. § 30-4-70(a)*.

S.C. Code Ann. § 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 stated 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: SC 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. (For the discussion to renegotiate the town's contract for engineering services and to receive legal advice from our municipal attorney.)

S.C. Code Ann. § 30-4-70(b) provides that if an executive session is held pursuant to either *S.C. Code Ann. § 30-4-70(a)(1)* or *S.C. Code Ann. § 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. *S.C. Code Ann. § 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. *S.C. Code Ann. § 30-4-70(b)*. All council actions resulting from executive session discussions must be taken in public session.

How to: Participate in a Meeting

Regardless of whether Robert's Rules or some other rules of procedure are used, meeting participation should generally follow the recommendations contained in this section.

A member must be recognized by the presiding officer before speaking.

To gain the floor

- Raise your hand or address the presiding officer.
- Do not shout "I move."

When making a motion

- Speak clearly and concisely.
- State your motion affirmatively.

Comment or discussion is not in order unless a motion has been made and seconded. After being seconded, the presiding officer restates the motion and calls for discussion. The maker of a motion is entitled to speak first. A member may not speak a second time on a subject until all who wish to speak have done so. A member may not continue to speak when a matter is ruled out of order.

- Direct all remarks to the presiding officer.
- Confine remarks to the subject of the motion.
- Remarks involving personalities are not in order.
- Do not use a council meeting to make a political speech.
- Do not try to explain your vote. The time for explanation is during discussion of the motion.
- Be courteous; be fair.

A member may not interrupt a speaker who has the floor without consent, except to present a privileged matter which is granted precedence over ordinary business.

Robert's Rules limit a speaker to 10 minutes. Local rules may specify a different amount of time. More time may be granted by a two-thirds vote.

Members are obligated to abide by the presiding officer's ruling, unless a motion to appeal the ruling is seconded and passed by majority vote.

All members must vote on every question unless disqualified by a conflict of interest.

How to Make a Motion

1. Gain the floor by being recognized by the presiding officer.
2. Make your motion in clear, concise and affirmative language.

Say: *"I move that we deny the request."*

Not: *"I move that we not grant the request."*

"I so move" is not a proper motion.

3. Wait for a second to the motion. A member may second a motion without being recognized. A motion cannot be considered without a second, if a second is required. After the motion is seconded, the chair will restate the motion and allow discussion.
4. The maker of the motion is allowed to speak first on a motion. This is the time to explain the motion not when it is being made.
 - Direct all comments to the chair, avoid personalities and keep to the time limit.
 - The maker of the motion may speak again after all other speakers are finished.
5. When discussion ends, a vote is taken.

How to Call for the Question

When calling to stop debate and vote on a motion, the speaker must be recognized by the chair and say, "I move (or call for) the previous question." Members may not interrupt a speaker to gain the floor. The motion requires a second, is not debatable and may not be amended. It takes precedence over subsidiary motions (motions made while the original motion is pending) and must be put to a vote immediately.

Robert's Rules require a two-thirds vote. If adopted by a two-thirds vote, the main motion is put to a vote and debate on the main motion ends.

How to Amend a Motion

If a motion is subject to amendment, gain the floor and say, "I move to amend the motion." The motion to amend requires a second and can be amended. The motion can be debated if the motion to be amended is debatable. Discussion and vote only on the amendment is then taken. If an amendment is adopted by majority vote, debate may continue on the original motion as amended. When debate ends, a vote on the amended motion is taken. Some motions not subject to amendment include a motion to adjourn, motion for the previous question and motion to suspend the rules (*See Appendix C*).

How to Table a Motion

To temporarily suspend consideration of a motion, gain the floor and say, "I move to table the motion." The motion is not debatable and cannot be amended. It is put to an immediate vote.

If adopted by majority vote, the matter is suspended until a motion to take it from the table is adopted.

How to Make a Motion to Substitute

A motion to strike out and insert a new section in a motion or to replace the entire text of a pending motion is called a "motion to substitute." It is treated in the same manner as a motion to amend. If a pending motion becomes unwieldy or confusing due to amendments, a motion to substitute can be offered to restate the question in better form. Also, a motion to substitute can be used to propose an alternative way to deal with a matter.

Gain the floor and say, "I move to substitute for the pending motion (or section in the pending motion) the following: _____." The rules applicable to a motion to amend are followed. If the motion to substitute is adopted, the motion as amended by substitution becomes the pending motion and may be debated and voted on. Referring to a motion to substitute as a "substitute motion" causes confusion.

Section 7, Motions. in Appendix B suggests limiting the motion to clarifying the original motion and not providing a new or alternative proposal.

When a member disagrees with a motion entirely, a simpler procedure may be to move to table that motion. If the motion to table is adopted, make a new motion.

How to Appeal a Ruling of the Chair

If a member disagrees with a ruling of the chair, the member may interrupt a speaker and address the chair without being recognized as soon as the ruling is made. Say, "I appeal from the decision of the chair." The appeal must be seconded. It is generally subject to debate. The chair then puts to a vote the question: "Shall the decision of the chair be sustained?" A majority or tie vote upholds the ruling of the chair. The chair can vote. This procedure is applicable only to a ruling of the chair (e.g., "The motion is out of order"). It is not applicable to announcing the result of a voice vote. This can be corrected by calling for a "division," a standing vote.

How to Make a Point of Order

When a member thinks rules of procedure are being violated and wants to insist on their enforcement, the member may interrupt a speaker without being recognized and say, "Point of order." No second is required, and no debate is allowed on a point of order. Once a debate begins on a motion which is out of order, a point of order is too late unless adopting the motion would result in an action which violates law or rules of council. The chair asks the member to state the point, and the chair rules whether it is "well taken" or "not well taken." The chair's ruling is subject to appeal. If the chair is in doubt, the chair may put the question to a vote. A point of order may be made to question the conduct of a member or speaker who violates rules of procedure.

How to Request Information

If a member needs information relevant to the business at hand, the member may interrupt a speaker without being recognized and say, "A point of information, please." The question is addressed to and answered by the chair. When needing information from the speaker, say, "I would like to ask the member a question." The chair then asks if the member consents to interruption for a question. If so, the inquiry and reply are made in the third person through the chair. Members are not allowed to carry on discussions directly with one another.

How To Make a Committee Report

A committee report may be oral or written. It is presented by the committee's chairperson or designated member. If the report contains no recommendation for action, it is received as information. If action is recommended by a majority of the committee members, it should be stated in the form of a resolution at the end of the report. The chairperson should make a motion to adopt the resolution at the conclusion of presentation by saying: "On behalf of the committee, I move adoption of the resolution just read." Committees containing councilmembers can make a recommendation to the council and no second is required because it already has the support of more than one member. The motion is debatable and may be amended.

How to Vote

How members vote should be specified in the rules of procedure adopted by ordinance. If no rule is prescribed and Robert's Rules have been adopted, the vote on a motion is usually taken by voice (aye or nay) or show of hands, as determined by the chair or custom. The chair must always ask for negative votes, even when it appears that the ayes have it. If the result is uncertain, a member may call for a "division" which requires members to vote by standing. A roll call vote may be required by motion or rule. Some ordinances provide that all votes are by roll call. A public body should not vote by ballot, with the possible exception of electing a member to a position such as mayor pro tempore. When a motion is obviously unopposed, the chair may announce approval without objection or by unanimous consent. If a member objects, a vote is taken.

In small bodies, abstentions can result in decisions made by less than a majority of members. Because Robert's Rules do not prohibit abstentions, a local rule should be adopted. Sample Section 6 in Appendix B suggests a requirement that every member vote on every issue unless legally disqualified (conflict of interest). A legal disqualification is not an abstention, which is a voluntary refusal to vote. Some rules provide that an abstention be recorded as a vote in favor of the motion.

How to Reconsider a Vote

A motion to reconsider is used to correct hasty, ill-advised or erroneous action, or to take into account new or changed information. The motion can be made only on the same day the original vote was taken, unless local rules provide otherwise (*See Appendix B Section 7*). The motion can only be made by a member who voted with the majority. The motion takes precedence over all other motions, requires a second, is debatable if the original motion was debatable, and cannot be amended.

Ordinarily, a motion to reconsider should not be made at a subsequent meeting to reverse or alter a decision with which a member disagrees. Any ordinance or resolution may be amended by a new motion to adopt an amendment placed on any subsequent agenda. Some rules prohibit a motion to be reconsidered after a set time period. A motion to reconsider may be allowed after the time period if a motion to suspend the rules is adopted.

How to Announce a Conflict of Interest

The Ethics Act, S.C. Code Ann. § 8-13-700, provides that no public official may knowingly use his office to gain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. No public official may make, participate in making or influence a governmental decision in which he or his business has an economic interest.

The following actions are required for an official to disclose an economic interest.

1. The public official shall prepare a written statement describing the matter requiring action and the nature of the potential conflict of interest.
2. The public official shall furnish a copy of the statement to the presiding officer of the governing body.
3. The presiding officer shall direct the statement to be printed in the minutes.
4. The member shall be excused from any votes, deliberations and other actions on the matter.
5. The disqualification and the reasons for it are noted in the minutes.

The Home Rule Act, in S.C. Code Ann. § 5-7-130, provides that a municipal officer or employee who has a substantial financial interest in a business which contracts with the municipality or who personally engages in sale or lease of land, materials, supplies, equipment or services is required to make known that interest and refrain from voting upon, or otherwise participating in, related matters. Violation is a misdemeanor, and the contract or sale is voidable by the governing body.

The legal disqualification from voting because of a conflict of interest is not an abstention. There is no requirement that a disqualified member leave the meeting. The disqualified member may be counted for a quorum if allowed by the rules (*See Appendix B, Section 1*). An action may be taken by majority vote of those qualified to vote.

It is not the responsibility of the mayor, council, board, commission or presiding officer to invoke a disqualification under either the Ethics Act or the Home Rule Act. The presiding officer may not prohibit members from voting on an issue. It is the responsibility of a member who has a conflict to comply with the laws. The penalties for failure to comply fall on the offending member. *See 1991 Op. Atty. Gen. No. 91-37.*

How to Avoid Disrupting a Meeting

The following conduct may disrupt a meeting and subject the offending member to sanctions under Robert's Rules (11th Edition) if the member refuses to obey a call to order

1. Speaking without being recognized by the presiding officer, when not in order
2. Interrupting speakers without proper reason
3. Carrying on a private conversation during a meeting
4. Asking questions or making comments not relevant to the business at hand
5. Involving personalities in comments
6. Making frivolous motions
7. Arguing with the presiding officer; making unnecessary points of order or appeals from rulings of the chair
8. Making political speeches
9. Refusing to abide by a legitimate ruling or order of the presiding officer

The Freedom of Information Act "does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of a meeting is seriously compromised." *S.C. Code Ann. § 30-4-70(c)*.

Robert's Rules states: "If a person—whether a member of the assembly or not—refuses to obey the order of proper authority to leave the hall during a meeting, the chair should take necessary measures to see that the order is enforced, but should be guided by a judicious appraisal of the situation." (Consult the municipal attorney.)

How to Adjourn a Meeting

When it is obvious all business is concluded, the presiding officer can simply announce: "Without objection, the meeting is adjourned." This action must receive unanimous consent. If a member objects, the meeting cannot be adjourned without a proper motion.

A motion to adjourn requires a second and takes precedence over all other motions. It may not be debated or amended. The member may not interrupt a speaker to make the motion. A common form of the motion is "I move that we adjourn." It is adopted by majority vote and cannot be reconsidered.

If an intermission is desired rather than adjournment, the motion would be "I move that we recess for (amount of time or until a time certain)." A motion for a recess is subject to the same rules as a motion to adjourn, except that it can be amended.

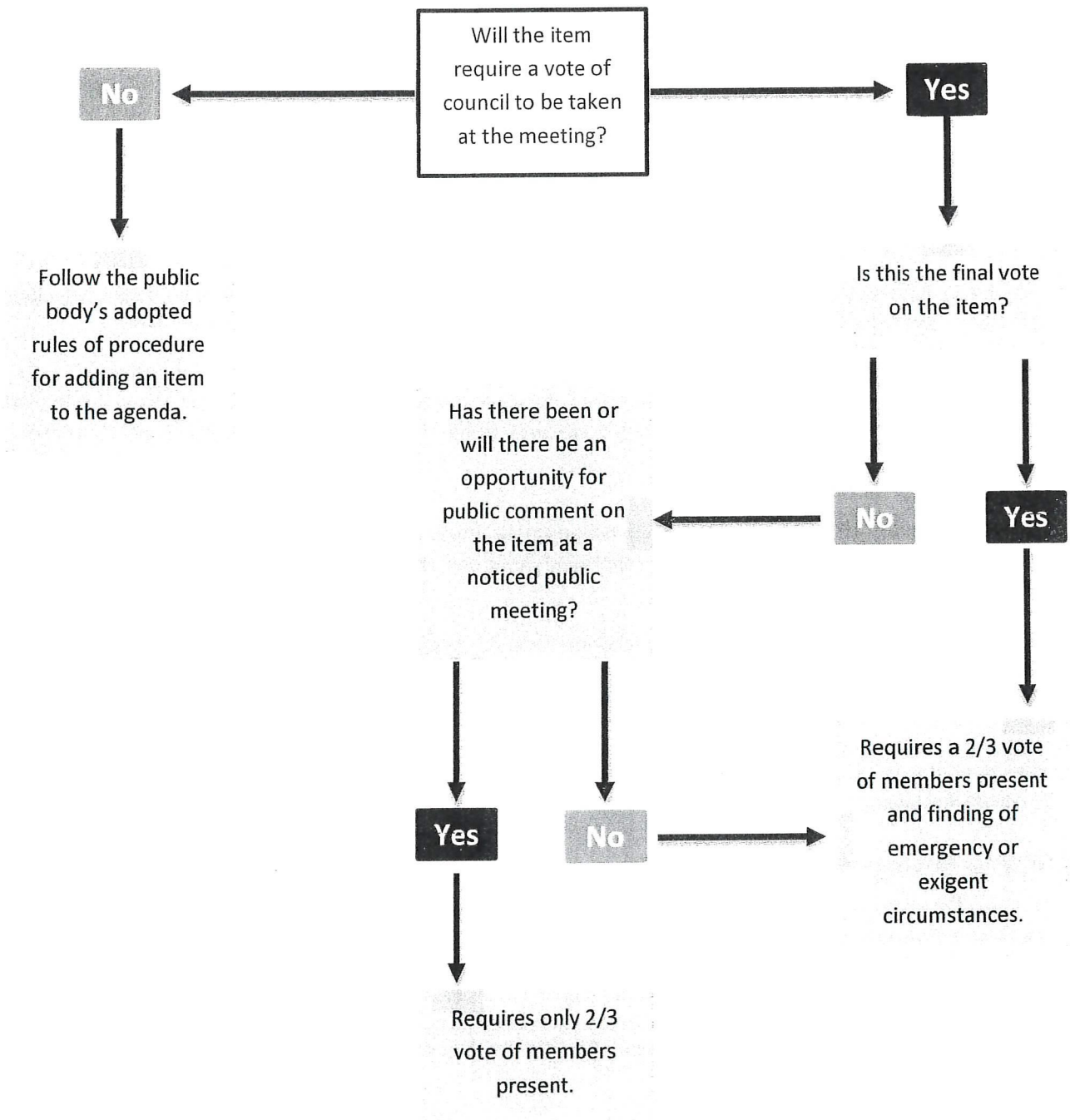
Reacting to Disagreeable Decisions

A council is a legislative body, and its members are bound by the decisions made pursuant to the rules of procedure. A member of council who is not satisfied with the outcome of council's vote has no legal standing to challenge the decision. *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997). In *Newman*, the court noted that the legislative process involves interaction of competing ideas that resolve themselves in a decision that may not satisfy all members, and the process should not be compromised by allowing dissenting members a right of appeal. If a member desires a change in the decision, he must go through the legislative process.

Robert's Rules states: "The great lesson from democracies to learn is for the majority to give the minority a full, free opportunity to present their side of the case, and then for the minority, having failed to win a majority to their views, gracefully to submit and to recognize the action as that of the entire organization, and cheerfully to assist in carrying it out, until they can secure its repeal."

Appendix A - Amending an Agenda Flowchart

Procedure to add item to a public meeting agenda
within 24 hours of the meeting



Appendix B - Sample Rules of Order

The sample ordinance and comments listed below can help draft and adopt adequate rules of procedure. It is not sufficient to simply adopt Robert's Rules because those rules do not address some matters specific to municipal government (e.g., voting by the presiding officer). The sample rules of order contains a combination of procedures recommended by the Association and actions mandated by state law or court rulings which are referenced by appropriate citations or notes.

Ordinance Adopting Rules Of Order For Council Meetings And Enactment Of Ordinances

WHEREAS, S.C. Code Ann. § 5-7-250 (1976) requires council to determine its own rules and order of business, and S.C. Code Ann. §§ 5-7-260 through 5-7-290 provide for the form, method of adoption, and codification of ordinances;

Note: S.C. Code Ann. §5-7-250 authorizes a council to adopt its own rules and order of business. Rules must not conflict with general state law.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the [City or Town] of _____ and shall be codified: that the following rules of order are adopted

Section 1. Quorum and rules of order.

A majority of councilmembers serving constitutes a quorum for the conduct of business at any meeting. The mayor shall serves as presiding officer. Immediately after any general election for the council, the council shall elect one member of their body as a mayor pro tempore to serve as such for two years, who shall act as mayor during the absence or disability of the mayor, and if a vacancy occurs, shall act as mayor until a successor is duly qualified and elected.

if both the mayor and mayor pro tempore are absent, the members present shall elect a presiding member. A member present but disqualified from voting on a question by state law due to a conflict of interest shall be counted for purposes of a quorum.

Notes: The FOI Act [S.C. Code Ann. § 30-4-20(e)] provides that a quorum is a majority of the constituent membership unless otherwise defined by applicable law.

In the council and council-manager forms of government, the mayor presides over meetings by tradition.

S.C. Code Ann. § 5-7-190 provides that the mayor pro tempore shall act in the absence of the mayor.

Except as otherwise required by state law or this code, all proceedings shall be governed by Robert's Rules of Order, 11th Edition, and the [City/Town] attorney shall act as parliamentarian. The mayor, without debate, will decide questions of order. The decision is subject to appeal to the council. A two-thirds vote is required to overturn a ruling by the mayor.

Note: Suggested as a local rule.

Section 2. Meetings of council.

Regular meetings of council shall be held at _____ [a.m./p.m.] on the _____ in each month unless changed by majority vote of members present at any regular or special meeting.

Note: S.C. Code Ann. § 5-7-250(a) requires a council to meet at least once in every month at times and places the council may prescribe by rule.

Special meetings of council may be held on the call of the mayor or a majority of members of council.

Note: S.C. Code Ann. § 5-7-250(a) authorizes special meetings at the call of the mayor or a majority of members of council. Notice and agenda provisions must meet FOIA requirements.

All regular and special meetings of council shall be open to the public.

Note: The FOI Act [S.C. Code Ann. § 30-4-60] requires every meeting of a public body to be open to the public unless closed pursuant to S.C. Code Ann. § 30-4-70 authorizing executive sessions.

Section 3. Public notice and agenda.

For all regularly scheduled meetings, the [city/town] clerk shall **give written public notice** of the municipality's regular meetings at the beginning of each calendar year. The annual meeting notice shall include the dates, times and places of all regularly scheduled meetings pursuant to S.C. Code Ann. § 30-4-80(a) and (d).

For all special, called or rescheduled meetings, the [city/town] clerk shall **give written public notice** of the meeting by posting the notice on a bulletin board in a publicly accessible place at the office or meeting place of council and on the [city/town] website at least 24 hours prior to such meetings.

The public meeting notice shall include the agenda, date, time and place of the meeting and shall be posted as early as is practicable but not later than 24 hours before the meeting.

Notice of meetings shall also be provided to all available members of council, and persons, organizations and news media which request notification.

A written agenda, listing the items to be considered by council, is required for all regular, special, called or rescheduled meetings. The required agenda shall be posted on a bulletin board in a publicly accessible place at the office or meeting place of council and on the [city/town] website at least 24 hours prior to such meetings.

Note: Posting the meeting notice and agenda to the municipal web site is only required if the municipality has a website. This language may be removed if there is not a municipal website.

The deadline for agenda item requests from members of council is _____.

Section 4. 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 requires distinct actions to authorize the item to be added to the agenda. The required categories and actions are as follow:

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 by a majority vote.

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.

The following motion shall be used to amend an agenda by emergency or exigent circumstances.

In accordance with S.C. Code Annotated § 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.

Note: 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. See Appendix A for flow chart on adding items to the agenda.

Section 5. Executive sessions.

By majority vote in a public meeting, council may hold an executive session as permitted by the South Carolina Freedom of Information Act. *S.C. Code Ann. § 30-4-70*. The motion to enter executive session shall include a detailed description of the purpose for the executive session and cite all of the specific subsections of Section 30-4-70 (a) that apply to the executive session. Authorized purposes 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.)*

Note: For more details of proper method to go into executive session, refer to page 8 in this publication.

No vote or formal action shall be taken in executive session except to adjourn or return to public session.

Note: The FOI Act [S.C. Code Ann. § 30-4-70(b)] prohibits a vote or action in executive session except to adjourn or return to public session.

Minutes of executive sessions will not be taken.

Note: The FOI Act [S.C. Code Ann. § 30-04-90] requires minutes of all public meetings. Minutes are not required for executive sessions. If minutes of executive sessions are kept, they are not public records. S.C. Code Ann. §30-4-50(7).

It shall be unlawful for a member of council or person in attendance at an executive session to disclose to another person or make public the substance of a matter discussed.

Note: Suggested as a possible local rule. This provision should be regarded as a rule governing conduct of members of council. It does not conflict with the FOIA. It may be defended as a limitation on the freedom of speech for an overriding public interest in having government business conducted properly.

Section 6. Voting requirements.

All actions of council shall be by majority vote of members present at a public meeting, including suspension of a rule of order, provided that an ordinance amending rules of order shall be adopted by a majority of members serving.

Note: Suggested as a local rule.

Every member of council present, including the mayor or presiding member, shall vote on every question except when required to refrain from voting by state law.

Note: Suggested as a local rule. If voluntary abstentions are allowed, a provision that an abstention shall be recorded in the minutes as a vote in favor of the motion is suggested.

A roll call vote may be required by any member of council.

Note: Suggested as a local rule.

The vote on every question shall be recorded in the minutes.

Note: Required by the FOIA. S.C. Code Ann. § 30-4-50(7)

No member of council may leave the council chamber while in public session without permission of the presiding officer.

Note: Suggested as a local rule.

Section 7. Motions.

A motion may be made orally or in writing; however, a motion shall be reduced to writing at the request of any member of council.

Note: Suggested as a local rule.

A motion to reconsider must be made by a member who voted with the majority. It must be made at the same or next meeting.

Note: Robert's Rules allow a motion to reconsider only on the same day the vote was taken. Allowing a motion to reconsider at the next meeting is suggested as a local rule.

A substitute motion may be made only to restate and clarify a pending motion and amendments. It may not be used to introduce a new or alternative proposal.

Note: This provision conforms to Robert's Rules and is suggested as a reminder.

Section 8. Minutes of meetings.

The [city/town] clerk shall keep minutes of all public meetings which shall be a matter of permanent public record. At each regular council meeting, the minutes of the previous meeting must be presented for approval. Minutes do not constitute the official record of a meeting until approved by council. A member of council may place a written expression of position on a matter in the minutes no later than the next regular meeting.

Note: S.C. Code Ann. § 5-7-220 requires the clerk to keep minutes of council meetings which are made public records by S.C. Code Ann. § 5-7-250(b) and the FOI Act [S.C. Code Ann. § 30-4-50(7)].

Section 9. Appearance of citizens.

Any citizen of the municipality may speak at a regular meeting on a matter pertaining to municipal services and operations, except personnel matters, by signing an agenda list maintained by the clerk prior to the meeting stating the subject and purpose for speaking. Each person who gives notice may speak at a time designated by the presiding officer and may be limited to a [two] minute presentation at the discretion of the presiding officer.

Note: Suggested as a local rule.

Section 10. Attorney to attend; parliamentarian; duties.

The [city/town] attorney shall attend all meetings of council unless excused by council. The attorney shall act as parliamentarian; draft ordinances and resolutions; review all ordinances, resolutions and documents presented to council; and give opinions on questions of procedure, form and law to members of council.

Note: Suggested as a local rule. If the attorney is not required to attend all meetings, the council should designate a parliamentarian.

Section 11. Clerk to attend; duties.

The [city/town] clerk shall give notices of meetings, post agendas, attend regular and special meetings, record votes of council, keep minutes of council meetings and perform such other duties as may be assigned.

Note: Statutory duties of the clerk are prescribed in S.C. Code Ann. § 5-7-220.

Section 12. Hearings by committee.

Council may appoint a special committee to assist in or hold a public hearing for council at any time upon any matter pending before it. Minutes or reports of hearings held by special committee shall be filed with the [city/town] clerk as a public record.

Note: Suggested as a local rule.

Section 13. Ordinances required.

a) Council shall act by ordinance in all matters required by law to be done by ordinance, including

1. adopt or amend an administrative code or establish, alter or abolish any municipal department, office or agency;
2. provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violation;
3. appropriate funds and adopt a budget;
4. grant, renew or extend franchises, licenses, or rights in public streets or public property, and close abandoned streets, after public newspaper notice and public hearing;
5. levy taxes, assess property for improvements or establish service charges for services;

6. annex area to the municipality;
7. convey or lease or authorize the conveyance or lease of any lands of the municipality; and
8. amend or repeal any ordinance.

b) In all other matters, council may act either by ordinance or resolution recorded in the minutes, unless otherwise required by local rule.

Note: Provisions of this section are required by S.C. Code Ann. § 5-7-260 and other statutes.

Section 14. Form of ordinances and resolutions.

- a) Every proposed ordinance shall be introduced in writing in the form required for final adoption which shall include
1. a title briefly describing the content;
 2. findings, reasons or basis for the ordinance, if desired and appropriate;
 3. an enacting clause;
 4. the provisions of the ordinance including section numbers if the ordinance is to be codified or amends an existing codified ordinance;
 5. citation of any ordinance repealed;
 6. effective date of the ordinance;
 7. name of the person requesting introduction of the ordinance;
 8. approval of the [city/town attorney] as to form and the assignment of an ordinance number;
 9. space for dates of readings and public hearing, if appropriate; and
 10. space for the signatures of the mayor or presiding member of council and the municipal clerk attesting notice, if required, and adoption.
- b) Written resolutions may be in similar form approved by the city attorney.

Note: All ordinances must be introduced in writing in the form required for final adoption pursuant to rules for adoption established by council. S.C. Code Ann. § 5-7-270.

Section 15. Introduction of ordinances.

Any member of council may propose an ordinance. A proposed ordinance shall be referred to the [city/town] attorney for approval as to form. After an ordinance is in proper form, the [city/town] attorney shall send the ordinance to the [city/town] clerk to be held for public inspection. An ordinance is considered to be introduced when it appears on an agenda for a public meeting of council and its title is read.

Note: Suggested as a local rule.

Section 16. Enactment of ordinances.

An ordinance must be prepared in writing and introduced in the form required for final adoption as required by Section 14. No ordinance may be adopted until it has been read two times and on separate days with at least six days between each reading.

Note: Some municipalities by local rules require three readings. State law only requires two readings.

An emergency ordinance may be adopted on one reading, without notice or hearing, by affirmative vote of two-thirds of members present. An emergency ordinance may not levy taxes or relate to a franchise or a service fee. An emergency ordinance expires automatically on the 61st day following enactment.

Note: Required by S.C. Code Ann. §§ 5-7-250 and 270.

The introduction and reading of any ordinance shall be by the reading of the title only unless full reading is requested by a member of council.

Note: Suggested as a local rule.

After the introduction of an ordinance, a member of council may request a public hearing which may be held if approved by a majority of council present and set for a time prior to final adoption of the ordinance. A public hearing may be held on the same date as the final reading.

Note: Suggested as a local rule.

Any ordinance may be amended on final reading.

Note: Suggested as a local rule.

Upon final adoption by vote of council, an ordinance shall be signed by the mayor or presiding member of council and attested by the [city/town] clerk, who shall file the original with the minutes in the permanent public records.

Note: Suggested as a local rule.

Section 17. Introduction of resolutions.

Resolutions may be introduced in writing or orally. A voice motion is used to introduce an oral resolution, which requires no written record other than a notation in the meeting minutes. A resolution proposed in writing shall be introduced in the same manner as an ordinance.

Note: Suggested as a local rule.

Section 18. Adoption of resolutions.

Written resolutions may be adopted on one reading unless a public hearing is set by majority vote of members present.

Note: Suggested as a local rule.

Section 19. Codification of ordinances.

All ordinances shall be codified and updated annually in a loose-leaf Code of Ordinances, except those adopted by reference and maintained in separate volumes. Copies shall be available for public inspection and purchase at a reasonable cost.

Note: S.C. Code Ann. § 5-7-290 requires codification of ordinances and provision for public inspection.

Section 20. Electronic Council or Committee Meeting Attendance.

Council members may participate electronically in council or committee meetings and possess the same authority as members who are physically present at the meeting, provided that all of the following conditions are met:

1. A quorum of the council members are physically present at the meeting place and remain physically present throughout the meeting;
2. The presiding officer is physically present at the meeting;
3. Council members, attending in person and by electronic means, and persons in attendance at the council meeting can hear any and all comments made at the meeting; and,
4. All comments, motions and votes of the member(s) attending telephonically are recorded in the minutes of the meeting.

Electronic participation shall be limited to situations that prevent physical attendance at meetings and not used as the primary method of meeting attendance.

Appendix C - Table Of Common Motions

To Do This	Say This	Second?	Debatable?	Amend?
Approve Ordinance	"I Move that Ordinance No. ____ be approved on first reading."	Yes	Yes	Yes
Adopt Ordinance on Second Reading	"I Move that Ordinance No. ____ be adopted."	Yes	Yes	Yes
Adopt a Resolution	"I move that Resolution No. ____ be adopted."	Yes	Yes	Yes
Amend a Motion	"I move to amend the motion by ____."	Yes	Yes	Yes
Move to Substitute	"I move to substitute for the pending motion (or section) the following: ____." (Treated as a motion to Amend.)	Yes	Yes	Yes
Table a Motion	"I move to table the motion." (Temporarily suspend consideration).	Yes	No	No
Take Matter Off The Table	"I move to take from the table ____"	Yes	No	No
Postpone Action	"I move to postpone the ____ until ____."	Yes	Yes	Yes
Call for the Question	"I move the previous question," or "I call for the question."	Yes	No	No
Suspend the Rules	"I move to suspend the rules so that ____" (Requires 2/3 vote unless local rule provides otherwise.)	Yes	No	No
Appeal Ruling of the Chair	"I appeal from the decision of the chair (mayor)." (May interrupt)	Yes	Yes	No
Protest Breach of Rules	"Point of Order." (May interrupt speaker without being recognized)	No	No	No
Request Information	"A point of information, please." (May interrupt)	No	No	No
Reconsider an Action	"I move to reconsider the vote on ____." (May interrupt)	Yes	Same as Orig.	No
Go into Executive	"I move that council go into executive session for the purpose of ____." (State specific purpose - see FOI Act).	Yes	Yes	Yes
Recess Meeting	"I move that we recess for ____ (time)."	Yes	No	Yes
Adjourn Meeting	"I move that we adjourn." (Takes precedence over all other motions)	Yes	No	No

Staying Out of Court while Serving on a County Appeals Board

By John K. DeLoache, SCAC Senior Staff Attorney

Every year, county councils across South Carolina appoint hundreds of citizens to voluntarily serve on a variety of county appeals boards. These boards hear citizens' appeals from the decisions related to property tax assessments, variances from zoning requirements, and land development activities. Each plays an important role in ensuring that county ordinances or regulations are applied evenly and fairly.

The citizens appointed to serve on these boards have tremendous authority to approve or deny citizen disputes. For that reason, it is vital that board members understand the importance of uniformity and procedures when tasked with decisions involving individual citizen applicants. Two of the most important concepts for board members to understand is providing every citizen their guarantee to due process and equal protection, both of which are rights granted in the U.S. Constitution.

As an appeals board member, the first question that may be asked is what exactly is due process? The next question is, of course, how do you provide it in every case? The fundamental requirements of procedural due process include providing applicants adequate notice of any scheduled hearing, an opportunity to be heard in a meaningful way, and the opportunity for judicial review of any decision of the appeal board.

In many cases, state statutes or local ordinances will prescribe the method of providing the applicant notice of hearings. If not, the board's local rules should specifically provide a uniform method of notifying all parties of a planned hearing. The notice to the applicant should provide all of the relevant information they will need to prepare for their hearing. This information should include not just time date and location, but also the rules and process that the board will follow.

The burden of proving any appeal lies with the citizen applicant. Once the applicant gets before the board, it is important

that specific procedures are followed that provide the applicant with sufficient information concerning the type of evidence that can be introduced to support the basis of their appeal, and their ability to rebut evidence presented by the county. Both citizens and appeals board members should also understand that the



right to due process does not require the board to follow all of the formal rules and evidentiary procedures required of trial-type hearings before the various state and federal courts. Due process before administrative boards is flexible and calls for such procedural protections as the particular situation demands.

The final element of due process is the citizen's right of appellate review. Citizens have the right for review in the state courts of the final orders of administrative boards for errors of law. The process for appellate review is generally provided by state statute or in the local ordinance. Appellate review is initiated by the citizen by filing notice of appeal to the Administrative Law Court in the case of Boards of Tax Assessment orders, or to the circuit court in the case of Board of Zoning Appeals and Planning Commission orders. The burden of proving any appellate review

(Continued on next page)

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(Continued from previous page)

lies with the citizen.

The other important constitutional protection granted to citizens is the right to equal protection. Equal protection in administrative hearings refers to two basic concepts. First, it means that the ordinance or regulation that forms the basis of a citizen's appeal is a reasonable regulation meant to achieve a legitimate government interest and is not arbitrary in its application. Local regulations and ordinances should clearly define what conditions or requirements that a citizen must follow. For example, if a county has enacted a land development ordinance, then that ordinance must provide anyone applying for a land development activity with all of the specific requirements that must be met for approval of the activity.

The second part of the equal protection doctrine is that the appeals board must treat citizens that are similarly situated to each other in the same manner, using the same criteria. For example, two separate developers seeking to develop land in the county must have their projects approved or denied based on adopted criteria if the projects are substantially the same.

Understanding and respecting the constitutional rights citizens possess is vital in establishing citizen acceptance and trust in administrative decisions. It is the responsibility of every board member to ensure that their decisions are based on specific requirements contained in the local ordinances and regulations governing activity in the county. 



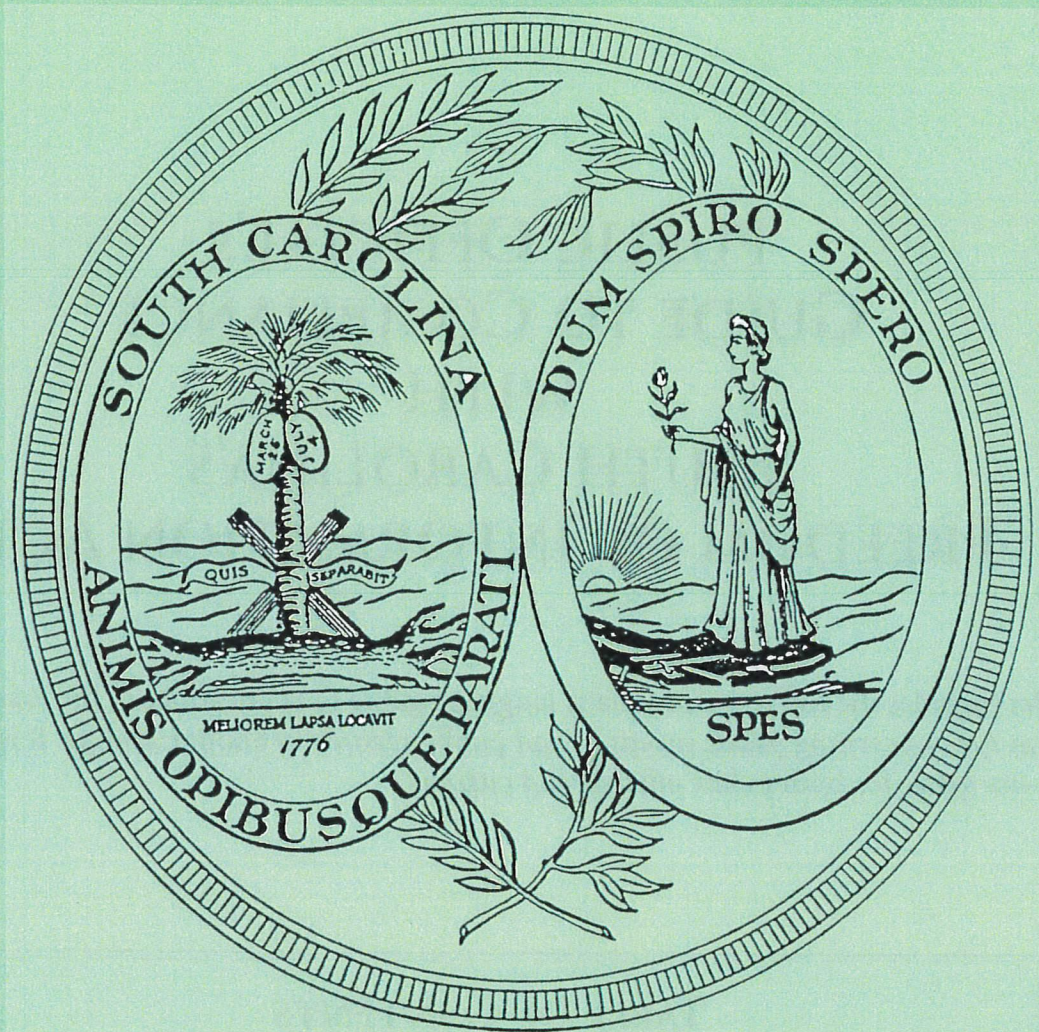
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PUBLIC OFFICIAL'S
GUIDE TO COMPLIANCE
WITH
SOUTH CAROLINA'S
FREEDOM OF INFORMATION ACT

Correct as of May 2017

PUBLIC OFFICIAL'S GUIDE TO COMPLIANCE WITH SOUTH CAROLINA'S FREEDOM OF INFORMATION ACT

This booklet includes the full text and a plain-language guide to applications of the Freedom of Information Act concerning public meetings and public records in South Carolina. It is designed as an easy-to-use guide for both public officials and citizens.

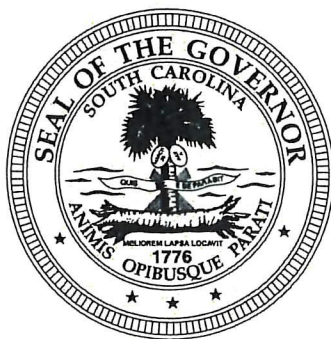
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Additional copies of this booklet are available from the South Carolina Press Association. Please call SCPA at (803) 750-9561 or email jfaulkner@scpress.org to request copies. The cost is \$4 each, which includes shipping and handling. Bulk discounts are available. This guide can also be downloaded for free as a PDF at scpress.org.



HENRY McMASTER
GOVERNOR



Friends,

Recently, I was pleased to sign into law a bill that modernizes and improves our state's Freedom of Information Act (FOIA). This updated FOIA guide will serve as a wonderful resource for public officials in South Carolina.

The new law will allow state and local government agencies to become more responsive and reliable in providing easier and less costly access to public information and documents. I would like to thank the South Carolina Press Association for its hard work on making this FOIA reform a reality.

As public servants we should always endeavor to maintain the public's trust and confidence in their government. In that spirit, I hope you will remember "When in doubt - disclose."

Yours very truly,

A handwritten signature in blue ink, reading "Henry McMaster". The signature is fluid and cursive, with the first name "Henry" and last name "McMaster" clearly legible.

Henry McMaster
Governor



AN INTRODUCTION TO THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT

There should be no need for the state to have a Freedom of Information Act. Clearly, our founding fathers knew that a government operating behind closed doors, unchecked by and unaccountable to its citizenry, is not a government of, by and for the people. Rather, it is a government of, by and for itself. But time and again, evidence tells us our forefathers' intentions in framing the Constitution need shoring up with individual states' Sunshine Laws.

Borrowing from human nature, there is a tendency among governments at all levels, when allowed to operate in the dark, to gravitate under a shroud of secrecy. As a result, and all too often, elected and appointed bodies begin to see themselves as more than what they are, more than what they were intended to be, creating a disconnect from the very people for whom they work and to whom they are accountable. Our state's Freedom of Information Act (or Sunshine Law) was born in 1976, appropriately it would seem, during our nation's bicentennial, and has since been revised and updated on several occasions.

It is a fluid document that must continue to be updated and revised, especially with the changes wrought by this digital age when emails, texts, FaceTime and Skype can provide the means to skirt the law for those who want to do so deliberately. Our digital era also reduces what was largely a paper filing system, making it far easier not only to locate public documents, but also make them readily available, and transmittable. Finally, after a seven-year attempt, our state's FOIA laws were again revised as the Legislature gave its support to meaningful changes that were signed into law by Gov. Henry McMaster on May 19, 2017. The changes signed into law are substantial victories for the public's access to how the government operates, what it is doing, and how and where it is spending taxpayer dollars.

The amount of time public bodies and officials have to even simply acknowledge receipt of a request for information has been abbreviated from 15 to 10 business days. Exorbitant fees some officials have cobbled together in an effort to dissuade the public from accessing information have been reined in and no longer will ridiculous fees be assessed for documentation that can easily be transmitted electronically. These are but a few of the positive changes made to the law, changes that will further empower the taxpaying public.

While the FOIA is written for the people of South Carolina as a means to strengthen the people's access to public information, it is also the vehicle by which the media, long held as the people's representative as the governmental watchdog, access and share public information. As such, the media, particularly the South Carolina Press Association and its FOI committee, remain on the front line in defending the public's right to know and in leading effective changes in the state's FOIA law that strengthen public access. Such efforts are often in concert with like-minded lawmakers who recognize the need for and see the inherent value in government transparency.

This booklet spells out the state's Freedom of Information Act, plus provides clarity regarding the law's intent and application, with additional plain-language text. The booklet's intent is to help guide both the public and governmental bodies through the law's intent in an effort to keep government operating as it should – openly, honestly, transparently and for the people it serves.

As a newspaper journalist for more than 30 years, I leave you with the words of President Thomas Jefferson, who made no secret of his emphatic belief in the need for open government:

"The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, & to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers & be capable of reading them."



**BY RICHARD
WHITING**
CHAIR, S.C. PRESS
ASSOCIATION FREEDOM OF
INFORMATION COMMITTEE,
AND EXECUTIVE EDITOR
OF THE INDEX-JOURNAL
IN GREENWOOD



ALAN WILSON
ATTORNEY GENERAL



Dear Public Official:

The Freedom of Information Act (FOIA) was enacted to provide direct access to the functions of government to the general public and the press. Recently, the General Assembly enacted significant amendments to FOIA in furtherance of the State's commitment to open government and as a further recognition that sunlight is essential to the survival of our representative democracy. Government agencies and public officials have a duty to disclose any public information requested through FOIA unless the information is protected from disclosure by law.

While drafting South Carolina's FOIA, the General Assembly found the following:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.

Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings. (S.C. Code § 30-4-15)

As public officials, the people of this State have placed a great amount of trust in our ability to perform the tasks of government. In turn, we have an obligation not only to adhere to the letter of the law, but also live up to its spirit through compliance with every reasonable FOIA request without delay or obstruction to the individual or entity seeking their right to public records.

The Attorney General's Office uses and recommends the following FOIA guidelines:

- When in doubt, disclose the public record
- When in doubt, post the time, place, and purpose of the meeting
- When in doubt, open the meetings to the public

The following guide provided by the S.C. Press Association should answer the majority of questions you may have regarding FOIA requests. When fulfilling a request, remember a vigilant press corps is a requisite for good government. As public officials, we have an added obligation to aid members of the media with their quest to properly inform the public.

Sincerely,

Alan Wilson
Attorney General

The exact words of the law are shown in regular type. Plain language explanations are printed in italic type within the double rules above the section to which they refer.

FREEDOM OF INFORMATION ACT

South Carolina Code of Laws – Title 30, Chapter 4

SECTION 30-4-10. Short title.

This chapter shall be known and cited as the “Freedom of Information Act”.

The following section should be considered the Golden Rule for government officials who are trying to obey the law and follow the spirit of the Freedom of Information Act. Whether you're deciding to open a meeting or how much to charge for producing documents, these words explain the intent of the law. The section spells out the basic premise behind the FOIA and should be used when in doubt about whether an official action passes FOIA muster. Public officials who take this section to heart will seldom find themselves at odds with the public, the news media or the courts on FOI matters.

SECTION 30-4-15. Findings and purpose.

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

The next section defines a public body. If a body is supported by public funds, even in part, or expends public funds, it is subject to the FOIA. Calling your group or meeting something other than its common name does not relieve it from responsibility. It simply does not matter what the group is called – including study committee, ad hoc committee or advisory committee. It is the composition, not the name, that is the deciding factor. Calling a meeting a “work session” does not exempt it from the FOIA. The section also says that if you are involved in health care, such things as medical disciplinary matters, case evaluations or peer reviews are exempt from the FOIA.

SECTION 30-4-20. Definitions.

(a) “Public body” means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, 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, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

The definition of “person” also includes businesses and organizations.

(b) “Person” includes any individual, corporation, partnership, firm, organization or association.

This subsection defines public records covered by the FOIA. These include all types of records, including digital data, prepared by or in the possession of a public body. There are exceptions, including some domestic security information.

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

Here the FOIA clears up any doubt about what constitutes a meeting. Some public bodies have had difficulty determining whether they were actually meeting or not. Under terms of this subsection, you are having a meeting when you have a quorum – enough present for an official vote – regardless of whether you are meeting in person, at a social gathering or on a conference telephone call. In other words, if you're discussing public business and you have a quorum present, such meetings should be announced to the public and press beforehand and be open.

(d) "Meeting" means 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.

No complicated language here: A quorum is a simple majority unless some other section of the law states otherwise.

(e) "Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

The next section sets basic rules for access to public records. It says any person has the right to inspect a public document unless it is specifically exempt by other parts of the law. It also specifies that an individual has the right to inspect, copy or receive a public record by electronic transmission. However, the law expressly states that a public body is not required to create an electronic version of a public record where one does not exist. It also bars incarcerated individuals from submitting FOIA requests.

SECTION 30-4-30. Electronic records; prisoner rights; fees; deposits.

(A)(1) A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in another state, or in a federal correctional facility; however, this may not be construed to prevent those individuals from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution under the South Carolina Rules of Criminal Procedure.

(2) A public body is not required to create an electronic version of a public record when one does not exist to fulfill a records request.

The message below is that you may charge for searching, retrieving, redacting and copying records. But charging is not mandatory. While a public body may not charge a fee to review a record to determine if it is subject to disclosure, under the most recent amendment, a public body may now charge for the time it takes to redact information in the record that is to be withheld. Public bodies cannot charge one fee for one person and a different fee for another. The law requires public bodies to develop and post online a schedule of the fees for fulfilling FOIA requests, including the fees for searching, retrieving, redacting and copying records. The law states that the production fees should be based on the hourly wage of the lowest paid staff employee who has the skills and training to fulfill the request. The law limits the copy rate to not exceed the prevailing commercial rate for making copies (rate charged by local commercial copiers like Staples). Copy charges may not apply for records transmitted electronically. The law states that records must be furnished at the lowest possible cost and in a convenient and practical form. There is also a provision to provide the documents free when the information is "primarily benefiting the general public." News reports based on public documents almost always benefit the public. Fees may not be charged for examining and reviewing a document to see if it is subject to disclosure. The law limits deposits, if any, to no more than 25% of the reasonably anticipated cost for gathering and reproducing the records.

(B) The public body may establish and collect fees as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

Public bodies must respond to a written FOIA request in a timely fashion but no longer than 10 business days unless the requested record is more than 24 months old, in which case the deadline is 20 business days. If no response is received within the set limits, the request must be considered granted for nonexempt records or information. The public body is not required to make decisions about how a record may need to be redacted within this response period. The law requires the public body to produce the requested records within 30 calendar days from the date it initially responds that the request will be fulfilled. When the public body requires a deposit, it must produce the records within 30 days of receiving the deposit. That deadline is 35 days for records that are more than 24 months old. The law allows production and response/determination timelines to be extended by written mutual consent.

(C) Each public body, upon written request for records made under this chapter, shall within ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request of its determination and the reasons for it; provided, however, that if the record is more than twenty-four months old at the date the request is made, the public body has twenty days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification. This determination must constitute the final opinion of the public body as to the public availability of the requested public record, however, the determination is not required to include a final decision or express an opinion as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by Section 30-4-40 or other state or federal laws. If the request is granted, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the final determination was provided. If a deposit as

provided in subsection (B) is required by the public body, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the deposit is received, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the deposit was received to fulfill the request. The full amount of the total cost must be paid at the time of the production of the request. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed, electronically transmitted, nor personally delivered to the person requesting the document within the time set forth by this section, the request must be considered approved as to nonexempt records or information. Exemptions from disclosure as set forth in Section 30-4-40 or by other state or federal laws are not waived by the public body's failure to respond as set forth in this subsection. The various response, determination, and production deadlines provided by this subsection are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld.

This section requires that certain basic records be made available to the public during business hours without a written request. There is no waiting period to view these records. These records are: minutes of meetings, documents distributed to or reviewed by members of a public body during a public meeting, records containing basic details of a crime and documents showing who is being held in jail. To ease the burden on public officials, there are time limits as to how far back these records must be kept ready for immediate access. While providing access to these records on a publicly available website complies with this requirement, a public body is still required to produce the documents upon request.

(D) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body, unless the record is exempt pursuant to Section 30-4-40 or other state or federal laws, without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

- (1) minutes of the meetings of the public body for the preceding six months;
- (2) all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day;
- (3) documents identifying persons confined in a jail, detention center, or prison for the preceding three months; and
- (4) 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.

(E) A public body that places the records in a form that is both convenient and practical for use on a publicly available Internet website is deemed to be in compliance with the provisions of subsection (D), provided that the public body also shall produce documents pursuant to this section upon request.

*This section begins the list of documents exempt from the FOIA. It points out that exemptions are not mandatory and a public body may release exempt documents. Please note that the S.C. Supreme Court, in *Bellamy v. Brown*, ruled that a public official faces no liability for releasing a public document.*

SECTION 30-4-40. Matters exempt from disclosure; law enforcement records.

(a) A public body may but is not required to exempt from disclosure the following information:

If you're doing business or dealing with a company whose proprietary interests are contained in records, those documents do not have to be made public. Other documents exempt from the law are records containing paid subscriber information and customer lists. The definition of trade secret establishes the outer limit of what may be withheld.

- (1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

This is an often-abused area within the FOIA because it's made into an overly broad blanket to cover things that don't need covering. The personal privacy spoken of here involves the privacy of Joe Citizen, who deserves such protection. Public officials, in whom trust is an important factor, are held to higher standards. They not only need to be clean in the performance of their duties but they need to be perceived as clean. Private details about public officials, when such information has no bearing on official duties, may be withheld. The law exempts from release audio recordings of a victim's dying statements over a 911 call, and requires that they be redacted from any audio recording before production unless a victim's next of kin waives privacy.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses, information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap, and any audio recording of the final statements of a dying victim in a call to 911 emergency services. Any audio of the victim's statements must be redacted prior to the release of the recording unless the privacy interest is waived by the victim's next of kin. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

The following list of law enforcement records allows secrecy for information about: informants, information that may lead to an arrest or prosecution, special investigation methods, information that could lead to personal harm, and intercepted communication. The law expands the list of law enforcement-related exemptions to include records compiled for law enforcement purposes where production would interfere with law enforcement proceedings, deprive someone of a right to a fair trial, constitute an unreasonable invasion of privacy, or disclose techniques and procedures for investigations or prosecutions where the disclosure would "risk circumvention of the law."

- (3) Records, video or audio recordings, or other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
- (A) would interfere with a prospective law enforcement proceeding;
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication;
 - (C) would constitute an unreasonable invasion of personal privacy;
 - (D) would disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation, by an agency conducting a lawful security intelligence investigation, or information furnished by a confidential source;
 - (E) would disclose current techniques and procedures for law enforcement investigations or prosecutions, or would disclose current guidelines for law enforcement investigations or prosecutions if such disclosure would risk circumvention of the law;
 - (F) would endanger the life or physical safety of any individual;
 - (G) would disclose any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.
-

Here's where it becomes necessary to be familiar with other sections of law where FOIA exemptions exist. Those include: Social Security numbers, medical peer review documents and student academic records.

- (4) Matters specifically exempted from disclosure by statute or law.

If there's a contract or a property sale being negotiated, such records may be sheltered from view until after the deal is done. Certain confidential proprietary information, such as a loan application, is not required to be disclosed.

(5) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property; however:

- (a) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;
 - (b) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;
 - (c) confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.
-

Some years ago the salaries paid to public officials were easily kept from public view, except for those paid to agency or department heads. Then along came Jehan Sadat, widow of former Egyptian President Anwar Sadat and instructor at the University of South Carolina. Records of her salary and perks were withheld from the public and news media and an FOIA lawsuit was brought. Under a landmark ruling, the records were opened and they showed that Mrs. Sadat was paid an amazingly high salary and had other lavish benefits. The attention brought to this case prompted the General Assembly to revise this section of the law to make certain salaries public record within certain limits.

(6) All compensation paid by public bodies except as follows:

It is worth noting that the word compensation is used here, not merely "salary." Such income may include honoraria, payment for speeches and performances, etc. The public is entitled to know the "exact compensation" paid to such persons. Part-time employees such as Mrs. Sadat would be clearly covered by this section.

(A) For those persons receiving compensation of fifty thousand dollars or more annually, for all part-time employees, for any other persons who are paid honoraria or other compensation for special appearances, performances, or the like, and for employees at the level of agency or department head, the exact compensation of each person or employee;

Classified and unclassified employees not covered by subsection A above are covered under this language if they make between \$30,000 and \$50,000 annually. Such government salaries are public record in ranges with \$4,000 increments.

(B) For classified and unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation between, but not including, thirty thousand dollars and fifty thousand dollars annually, the compensation level within a range of four thousand dollars, such ranges to commence at thirty thousand dollars and increase in increments of four thousand dollars;

Classified employees who make less than \$30,000 annually may have their salaries disclosed according to classification and longevity.

(C) For classified employees not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the salary schedule showing the compensation range for that classification including longevity steps, where applicable;

Unclassified employees and contract teachers who make less than \$30,000 per year may have their salaries released in ranges starting at \$2,000 and increasing in stages of \$4,000.

(D) For unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the compensation level within a range of four thousand dollars, such ranges to commence at two thousand dollars and increase in increments of four thousand dollars.

The following section ensures that agency or department heads are clearly defined.

(E) For purposes of this subsection (6), "agency head" or "department head" means any person who has authority and responsibility for any department of any institution, board, commission, council, division, bureau, center, school, hospital, or other facility that is a unit of a public body.

Because some legal documents should be kept confidential to protect lawyer-client privilege, this section was placed in the FOIA. It was not put there, however, to protect all documents ever handled by a lawyer or his staff.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

This is where the General Assembly exempts itself from the FOIA when it comes to legislation in progress. Other supporting information kept by lawmakers, however, is probably available under the FOIA.

(8) Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

This provides access to financial details on economic development agreements and applies at all levels of government.

(9) Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body to attract business or industry to invest within South Carolina; however, an incentive agreement made with an industry or business:

- (1) requiring the expenditure of public funds or the transfer of anything of value,
 - (2) reducing the rate or altering the method of taxation of the business or industry, or
 - (3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:
 - (a) the offer to attract an industry or business to invest or locate in the offeror's jurisdiction is accepted by the industry or business to whom the offer was made; and
 - (b) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.
-

If there were a way to determine the chances of getting audited by the tax man, the language below keeps the public and press from finding it.

(10) Any standards used or to be used by the South Carolina Department of Revenue for the selection of returns for examination, or data used or to be used for determining such standards, if the commission determines that such disclosure would seriously impair assessment, collection, or enforcement under the tax laws of this State.

This language was placed in the FOIA to protect the identity of university donors, except those who do business with a school or other arm of government. The reasoning behind not protecting those with business ties is obvious – the legislature wants to make sure there is no quid pro quo for gift givers.

(11) Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. For the purposes of this item, "gift to a public body" includes, but is not limited to, gifts to any of the state-supported colleges or universities and museums. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure.

This language refers to other sections of S.C. law dealing with discussion of investment of retirement funds.

(12) Records exempt pursuant to Section 9-16-80(B) and 9-16-320(D).

This section exempts employment applications from release except for information regarding persons seriously considered for a position. It requires that all material relating to no fewer than three final applicants for a public job must be made public. Certain material, including tax or medical records can be blacked out before release.

(13) All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item "materials relating to not fewer than the final three applicants" do not include an applicant's income tax returns, medical records, social security number, or information otherwise exempt from disclosure by this section.

This section of the law shields from view research records and data collected by faculty members at state institutions of higher education. This exemption does not deal with financial or administrative records – just the research material itself.

(14)(A) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data, records, or information has not been publicly released, published, copyrighted, or patented.

(B) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education or any public or private entity supporting or participating in the activities of a state institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until the information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This item applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative works.

(C) The exemptions in this item do not extend to the institution's financial or administrative records.

Here the Legislature exempts from release the names of environmental whistle blowers and others making complaints to state regulatory agencies.

(15) The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a state regulatory agency.

The following exemptions deal with reports and plans for investment of endowment and pension funds [Section 16], bridge structural plans and designs [Sections 17(A-B)] and autopsy images but not reports [Section 18]. The S.C. Supreme Court ruled in 2014 that autopsy records are medical records and may not be disclosed.

(16) Records exempt pursuant to Sections 59-153-80(B) and 59-153-320(D).

(17) Structural bridge plans or designs unless:

(A) the release is necessary for procurement purposes; or

(B) the plans or designs are the subject of a negligence action, an action set forth in Section 15-3-530, or an action brought pursuant to Chapter 78 of Title 15, and the request is made pursuant to a judicial order.

(18) Photographs, videos, and other visual images, and audio recordings of an related to the performance of an autopsy, except that the photographs, videos, images, or recordings may be viewed and used by the persons identified in Section 17-5-535 for the purposes contemplated or provided for in that section.

(19) Private investment and other proprietary financial data provided to the Venture Capital Authority by a designated investor group or an investor as those terms are defined by Section 11-45-30.

This is a very important clause in the FOIA. It tells government officials and employees that they can only withhold those portions of records that are exempt from disclosure. In other words, if parts of the record or document are not exempt, those portions must be made available. Exempt portions may be blacked out, or redacted.

(b) If any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

Unlike other records, which may be withheld from public inspection and copying, those records identified in 30-4-45 (which pertain to facilities vulnerable to terrorism) must be withheld.

(c) Information identified in accordance with the provisions of Section 30-4-45 is exempt from disclosure except as provided therein and pursuant to regulations promulgated in accordance with this chapter. Sections 30-4-30, 30-4-50, and 30-4-100 notwithstanding, no custodian of information subject to the provisions of Section 30-4-45 shall release the information except as provided therein and pursuant to regulations promulgated in accordance with this chapter. “

(d) A public body may not disclose a “privileged communication”, “protected information”, or a “protected identity”, as defined in Section 23-50-15 pursuant to a request under the South Carolina Freedom of Information Act. These matters may only be disclosed pursuant to the procedures set forth in Section 23-50-45.

Certain information regarding facilities vulnerable to terrorism must not be provided except to government authorities or people who live or work within a “vulnerable zone.”

SECTION 30-4-45. Information concerning safeguards and off-site consequence analyses; regulation of access; vulnerable zone defined.

(A) The director of each agency that is the custodian of information subject to the provisions of 42 U.S.C. 7412(r) (7)(H), 40 CFR 1400 “Distribution of Off-site Consequence Analysis Information”, or 10 CFR 73.21 “Requirements for the protection of safeguards information”, must establish procedures to ensure that the information is released only in accordance with the applicable federal provisions.

(B) The director of each agency that is the custodian of information, the unrestricted release of which could increase the risk of acts of terrorism, may identify the information or compilations of information by notifying the Attorney General in writing, and shall promulgate regulations in accordance with the Administrative Procedures Act, Sections 1-23-110 through 1-23-120(a) and Section 1-23-130, to regulate access to the information in accordance with the provisions of this section.

(C) Regulations to govern access to information subject to subsections (A) and (B) must at a minimum provide for:

(1) disclosure of information to state, federal, and local authorities as required to carry out governmental functions; and

(2) disclosure of information to persons who live or work within a vulnerable zone.

For purposes of this section, “vulnerable zone” is defined as a circle, the center of which is within the boundaries of a facility possessing hazardous, toxic, flammable, radioactive, or infectious materials subject to this section, and the radius of which is that distance a hazardous, toxic, flammable, radioactive, or infectious cloud, overpressure, radiation, or radiant heat would travel before dissipating to the point it no longer threatens serious short-term harm to people or the environment.

Disclosure of information pursuant to this subsection must be by means that will prevent its removal or mechanical reproduction. Disclosure of information pursuant to this subsection must be made only after the custodian has ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person and after the person has signed a register kept for the purpose.

In the following section, the Legislature makes certain that specified types of information are clearly public records. The list is very straightforward and includes all information about the expenditure and receipt of public funds.

SECTION 30-4-50. Inclusions; law enforcement records; judicial relief.

(A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

- (1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;
- (2) administrative staff manuals and instructions to staff that affect a member of the public;
- (3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;
- (5) written planning policies and goals and final planning decisions;
- (6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
- (7) the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 30-4-70;
- (8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report;

The law adds dashcam video to the list of public documents subject to disclosure under the FOIA, and outlines how a law enforcement entity may apply to the circuit court for an order preventing disclosure. A court may only order a video not be disclosed if there is clear and convincing evidence that the recording is exempt, and its exemption outweighs the public's interest in disclosure.

- (9) notwithstanding any other provision of the law, data from a video or audio recording made by a law enforcement vehicle-mounted recording device or dashboard camera that involves an officer involved incident resulting in death, injury, property damage, or the use of deadly force.
 - (a) A law enforcement or public safety agency may apply to the circuit court for an order to prevent the disclosure of the video or audio recording data. Notice of the request and of the hearing must be provided to the person seeking the record. A hearing must be requested within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request for disclosure and the hearing shall be held in-camera.
 - (b) The court may order the recording data not be disclosed upon a showing by clear and convincing evidence that the recording is exempt from disclosure as specified in Section 30-4-40(a)(3) and that the reason for the exemption outweighs the public interest in disclosure. A court may order the recording data be edited to redact specific portions of the data and then released, upon a showing by clear and convincing evidence that portions of the recording are not exempt from disclosure as specified in Section 30-4-40(a)(3).
 - (c) A court order to withhold the release of recording data under this section must specify a definite time period for the withholding of the release of the recording data and must include the court's findings.
 - (d) A copy of the order shall be made available to the person requesting the release of the recording data.
- (10) statistical and other empirical findings considered by the Legislative Audit Council in the development of an audit report.

The following subsection is on the books at the behest of law enforcement officials who want to keep certain businesses from getting the names and addresses from incident reports and using that information to solicit business. The key words here are "commercial solicitation." Neither the general public nor the press are affected. For additional code statute on commercial solicitation from other public records, see page 21 to review 30-2-50.

(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

The following section mandates that state, county and city governments are forthcoming of any deals they cut with businesses or industries they are recruiting. Once the deals are cut, the terms are public record, along with fiscal impact statements that outline the effect on the tax base. Trade secrets, as defined in Section 30-4-40, including marine terminal service agreements, may remain closed to the public along with proprietary corporate information. Documents pursuant to the final deal may also remain secret as is specified earlier in the FOIA.

SECTION 30-4-55. Disclosure of fiscal impact on public bodies offering economic incentives to business; cost-benefit analysis required.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

(a) the offered incentive or expenditure is accepted, and

(b) the project has been publicly announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. Notwithstanding the requirements of this section, information that is otherwise exempt from disclosure under Section 30-4-40(a)(1), (a)(5)(c), and (a)(9) remains exempt from disclosure.

The next sentence presents a simple statement of purpose regarding meetings: THEY ARE OPEN unless otherwise specified.

SECTION 30-4-60. Meetings of public bodies shall be open.

Every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70 of this chapter.

The following section would give the governor the option of closing his or her cabinet meetings unless they are convened to act upon a matter over which the governor has granted the cabinet jurisdiction or advisory power. Most governors favor open government so this section would clearly present a conflict should cabinet meetings be closed in the future.

SECTION 30-4-65. Cabinet meetings are subject to chapter provisions; cabinet defined.

(A) The Governor's cabinet meetings are subject to the provisions of this chapter only when the Governor's cabinet is convened to discuss or act upon a matter over which the Governor has granted to the cabinet, by executive order, supervision, control, jurisdiction, or advisory power.

(B) For purposes of this chapter, "cabinet" means the directors of the departments of the executive branch of state government appointed by the Governor pursuant to the provisions of Section 1-30-10(B)(1)(i) when they meet as a group and a quorum is present.

Meetings must start in public, but may be closed for certain, specified discussions.

SECTION 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

This exemption deals with individual employment matters. However, employees have the right to demand an open hearing.

(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; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.

This section addresses exemptions for discussions related to contract negotiations and the receipt of legal advice. Contracts are open once they are entered into, but may be discussed behind closed doors. Note that any vote on a contract must be taken in public. Public bodies may receive legal advice behind closed doors when it relates to a pending claim, the position of the public body in an adversarial matter or any matter covered by attorney-client privilege. Such exemptions are put into the law to provide shelter when necessary. Having an attorney present is not a carte blanche excuse for secrecy.

- (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.
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When it comes to government security, it is reasonable to expect discussions of it be held in private.

- (3) Discussion regarding the development of security personnel or devices.
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This subsection protects discussions that may lead to criminal prosecution.

- (4) Investigative proceedings regarding allegations of criminal misconduct.
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This is a business recruitment/economic development exemption. Competition to bring business and industry into a state, county or community can be intense. Other government entities may be trying to lure the same company so it is understandable that premature knowledge of the deal could harm such efforts. Once an industrial contract is entered into, it is open to the public under Section 30-4-40(a)(5).

- (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.
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Certain meetings to discuss investment of public employee retirement funds may be closed to the public.

- (6) The Retirement System Investment Commission, if the meeting is in executive session specifically pursuant to Section 9-16-80(A) or 9-16-320(C).
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There are two keys for public bodies preparing to enter an executive session: "votes" and "specific purposes." To adjourn into executive session, a vote must be taken in public. The only actions that can be taken in executive sessions are to adjourn or return to public session. The law says the presiding officer must state the specific purpose of the executive session. This statement of specific purpose requirement is not satisfied by making a general statement such as "personnel matter" or "contractual matter." However, the identity of individuals or firms otherwise shielded from release need not be disclosed. Finally, no informal polling about a course of action may be taken in executive session.

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

Some public bodies have abused the FOIA through "chance" meetings at parties, over meals or through telephone or digital conferences. This kind of activity is illegal and the following language spells it out.

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

The next sentence gives public bodies the right to expel disruptive people.

(d) This chapter does not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

The state Constitution lets the General Assembly or houses thereof have executive sessions. Some legislators believe such meetings run contrary to the concept of open government. But these secret meetings are allowed.

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

(f) The Board of Trustees of the respective institution of higher learning, while meeting as the trustee of its endowment funds, if the meeting is in executive session specifically pursuant to Sections 59-153-80(A) or 59-153-320(C).

This section of the FOIA is important, particularly for the staff employed by public bodies. It spells out notice requirements for meetings and the content of such notices. It says an agenda should be made available at least 24 hours before scheduled meetings. For special meetings, notice of the time, place and agenda must be given. Again, the deadline is no later than 24 hours in advance. Emergency meetings are the exception and they can be held on a moment's notice, but the purpose must be clearly of an emergency nature. Meeting notices must be in writing. Agendas can be amended within 24 hours with a 2/3rds vote. If a final action is added, and there is no chance for public comment, a finding of an emergency or exigent circumstance is required. See chart on page 23 for additional information.

SECTION 30-4-80. Notice of meetings of public bodies.

(A) All public bodies, except as provided in subsections (B) and (C) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. An agenda for regularly scheduled or special 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 a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board or website, if any, public notice for any called, special, or rescheduled meetings. Such notice must include the agenda, date, time, and place of the meeting, and must be posted as early as is practicable but not later than twenty-four hours before the meeting. This requirement does not apply to emergency meetings of public bodies. Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. Nothing herein relieves a public body of any notice requirement with regard to any statutorily required public hearing.

Standing legislative committees must post notices of their meetings while the General Assembly is in session or when special meetings are called. Subcommittees should also give notice during the session if "practicable."

(B) Legislative committees must post their meeting times during weeks of the regular session of the General Assembly and must comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees must give notice during weeks of the legislative session only if it is practicable to do so.

This subsection covers all other non-legislative subcommittees, which are required to give notice in a reasonable and timely fashion.

(C) Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (A), must make reasonable and timely efforts to give notice of their meetings.

If there were any doubt about meeting notices being in writing, this clears it up. Such efforts must include posting a meeting announcement where the public body commonly meets.

(D) Written public notice must include 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 in which the meeting is to be held.

Here's where some public bodies cross swords with citizens and the press. This area of the law requires that public bodies notify those who ask for notification and that they record, in their minutes, that such efforts were made and how they were made. Public bodies that ignore or forget this requirement can expect to hear from aggravated citizens and reporters.

(E) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

The following section requires that written minutes be kept of all public meetings.

SECTION 30-4-90. Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

- (1) The date, time and place of the meeting.
 - (2) The members of the public body recorded as either present or absent.
 - (3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.
 - (4) Any other information that any member of the public body requests be included or reflected in the minutes.
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The public and press are entitled to copies of minutes and they should be available soon after the meeting. Minutes of meeting for the preceding six months are to be made available for inspection without a written request being made [30-4-30(d)(1)].

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with Section 30-4-70 of this chapter.

Public meetings, except for executive sessions, may be recorded by the public body or by any citizen or journalist.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed pursuant to Section 30-4-70 of this chapter, provided that in so recording there is no active interference with the conduct of the meeting. Provided, further, that the public body is not required to furnish recording facilities or equipment.

This section gives any citizen the right to ask a circuit court to determine whether an FOIA violation has occurred. The statute of limitations is one year. A judge determines the appropriate relief. The law says the circuit court's chief administrative judge is required to schedule an initial hearing within 10 days of service on all parties. If the court determines it cannot reach a final decision at that initial hearing, the court may establish a scheduling order to conclude the action within six months and may extend the timeline further for good cause.

SECTION 30-4-100. Equitable remedies, time constraints for court hearings.

(A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

If a member of the public or press sues a public body and wins, or prevails in part, all costs of litigation – including attorney fees – may be awarded. Courts set such awards.

(B) If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

The law allows a public body to request a hearing in circuit court for relief from unduly burdensome, overly broad, vague, repetitive or otherwise improper requests. It also allows a public body to request a hearing when it is unable to make a good faith determination regarding information's exemption from disclosure.

SECTION 30-4-110. Penalties, remedies.

(A) A public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

The law allows a third party to request a hearing if it has an interest in exempt information or records that may be released as part of an FOIA request.

(B) If a request for disclosure may result in the release of records or information exempt from disclosure under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19), a person or entity with a specific interest in the underlying records or information shall have the right to request a hearing with the court or to intervene in an action previously filed.

The law allows a court to order equitable relief, actual or compensatory damages, or reasonable attorney's fees and costs to the prevailing party. It creates a good faith finding if the court conducting the initial hearing determines that records requested are not subject to disclosure. This good faith finding protects the public body and officials from being required to pay attorney's fees and costs if the initial court's ruling is subsequently overturned on appeal.

(C) If a person or entity seeking relief under this section prevails, the court may order:

- (1) equitable relief as he considers appropriate,
- (2) actual or compensatory damages, or
- (3) reasonable attorney's fees and other costs of litigation specific to the request, unless there is a finding of good faith. The finding of good faith is a bar to the award of attorney's fees and costs.

(D) If a court determines that records are not subject to disclosure, the determination constitutes a finding of good faith on the part of the public body or public official, and acts as a complete bar against the award of attorney's fees or other costs to the prevailing party should the court's determination be reversed on appeal.

(E) If the person or entity prevails in part, he may be awarded reasonable attorney's fees or other costs of litigation specific to the request, or an appropriate portion thereof, unless otherwise barred.

The law eliminates a violation of FOIA as a crime punishable by jail time. If a court finds that the violation was arbitrary or capricious, it may assess a civil fine of \$500.

(F) If the court finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record, it may, in addition to actual or compensatory damages or equitable relief, impose a civil fine of five hundred dollars.

Following a national trend of protecting personal information, the legislature has put Social Security numbers and drivers' license photographs off limits, with the onus being placed on the state Department of Public Safety to withhold that information, including other personal data such as height, weight or race.

SECTION 30-4-160. Sale of Social Security number or driver's license photograph or signature.

(A) This chapter does not allow the Department of Motor Vehicles to sell, provide, or otherwise furnish to a private party Social Security numbers in its records, copies of photographs, or signatures, whether digitized or not, taken for the purpose of a driver's license or personal identification card.

(B) Photographs, signatures, and digitized images from a driver's license or personal identification card are not public records.

SECTION 30-4-165. Privacy of driver's license information.

(A) The Department of Motor Vehicles may not sell, provide, or furnish to a private party a person's height, weight, race, social security number, photograph, or signature in any form that has been compiled for the purpose of issuing the person a driver's license or special identification card. The department shall not release to a private party any part of the record of a person under fifteen years of age who has applied for or has been issued a special identification card.

(B) A person's height, weight, race, photograph, signature, and digitized image contained in his driver's license or special identification card record are not public records.

(C) Notwithstanding another provision of law, a private person or private entity shall not use an electronically-stored version of a person's photograph, social security number, height, weight, race, or signature for any purpose, when the electronically-stored information was obtained from a driver's license record.

This statute expands the crime of knowingly obtaining personal information for commercial solicitation to include information received from local governments and political subdivisions in addition to state agencies already covered by the law. It requires local governments and political subdivisions to provide notice of the prohibition against using the personal information for commercial solicitation and says they must take reasonable steps against improper access. The law does not specify what steps must be taken, but the public body's attorney should determine how this required notice should be given to those requesting information. This statement could, for example, be included in the public body's initial response or included in a form the requesting party completes when the request is fulfilled.

SECTION 30-2-50. Disclosable personal information, commercial solicitation use, local governments

(A) A person or private entity shall not knowingly obtain or use personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(B) Each state agency, local government, and political subdivision of the State shall provide a notice to all requestors of records pursuant to this chapter and to all persons who obtain records pursuant to this chapter that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

(C) All state agencies, local governments, and political subdivisions of the State shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both.

RESPONDING TO AN FOIA REQUEST

These are some simple tips for government officials on how to respond when an FOIA request is received from the public or the news media:

1. Jot down the date on the letter immediately so you'll know later when it arrived.
2. Calculate how many "working" days, excluding weekends and holidays, between the arrival date and the end of the 10 days allowed for a reply.
3. Check to see if the information sought is available online. If so, notify requestor.
4. Check to see if the request is for copies of documents or for an opportunity to inspect documents or receive them electronically. The public and news media are entitled to all.
5. Determine whether there will be costs other than those for simple copying. You may charge a fee not to exceed the actual cost for search, retrieval, redaction and copying. Copies may not exceed the prevailing commercial rate. Keep in mind that costs can be waived if the information is in the "public interest" to release. Many citizen and news media requests fall into this classification.
6. Notify in writing the requesting party that the request has been received and give a reasonable timetable for your response, normally not to exceed 30 days. Include information about costs, including deposit, if any. Try not to wait the maximum time limit. Some public bodies tend to delay as long as possible, but this runs contrary to the intent of the law and doesn't help your relationships with the public or press.
7. Try to determine the best way to make the requested information available. In other words, a phone conversation with the requesting party might be in order.
8. Remember that the public is granted access to public records and that includes all books, maps, photos, papers, cards, recordings and electronic data, or other documentary materials in the possession of a public body.
9. Invest a little effort in being cordial. It'll be time well-spent.

SUPREME COURT'S BELLAMY V. BROWN RULING PROTECTS PUBLIC OFFICIALS WHEN RELEASING PUBLIC RECORDS

By Jay Bender

*Retired Reid H. Montgomery Freedom of Information Chair
University of South Carolina*

Many public officials are concerned that if they release information from a public record about a private citizen, they could be sued for an invasion of privacy.

In 1991, the S.C. Supreme Court decided the case of *Bellamy v. Brown*, 408 S.E.2d 219, which should give comfort to public officials wishing to disclose information contained in public records.

In that case, the court ruled that even if information identifying an individual came within one of the statutory exceptions to mandatory disclosure, a citizen identified in the record had no claim against the government for an invasion of privacy.

The Supreme Court said forcefully, "[W]e find that the essential purpose of the FOIA is to protect the public from secret government activity."

Addressing the question of the release of information that could lawfully be withheld from disclosure under the FOIA, the court said:

"The FOIA creates an affirmative duty on the part of public bodies to disclose information. The purpose of the Act is to protect the public by providing for the disclosure of information. However, the exemptions from disclosure contained in (sections) 30-4-40 and -70 do not create a duty not to disclose.

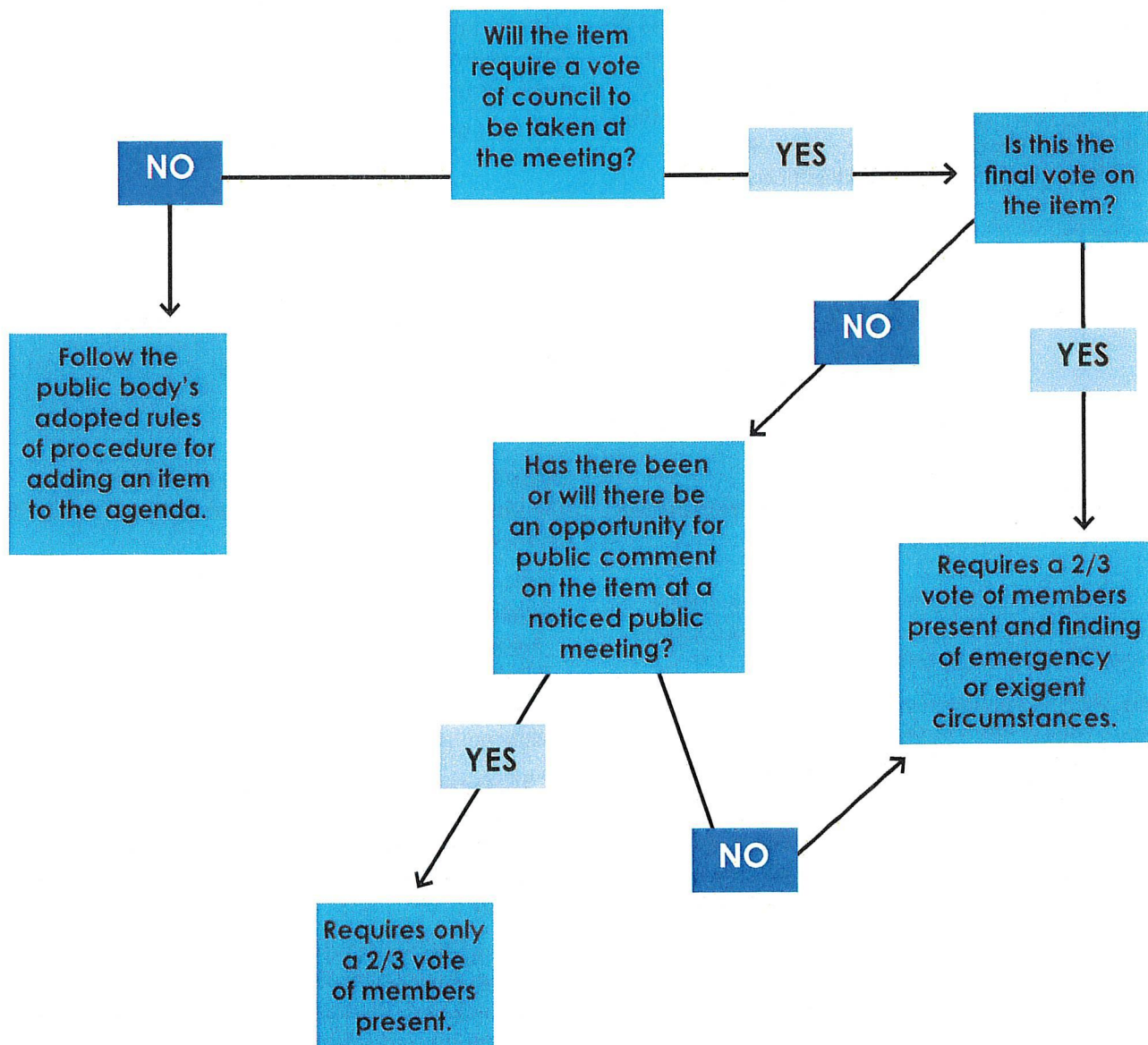
"These exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure. No legislative intent to create a duty of confidentiality can be found in the language of the Act."

Following this Supreme Court decision, the General Assembly amended the FOIA to state clearly that a public body may disclose any record that is subject to an exemption from mandatory disclosure. Section 30-4-40(a).

FLOWCHART FOR AMENDING AGENDAS

"Section 30-4-80. (A) All public bodies, except as provided in subsections (B) and (C) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. An agenda for regularly scheduled or special 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 a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board or website, if any, public notice for any called, special, or rescheduled meetings. Such notice must include the agenda, date, time, and place of the meeting, and must be posted as early as is practicable but not later than twenty-four hours before the meeting. This requirement does not apply to emergency meetings of public bodies. Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. Nothing herein relieves a public body of any notice requirement with regard to any statutorily required public hearing.

PROCEDURE TO ADD ITEM TO A PUBLIC MEETING AGENDA WITHIN 24 HRS. OF THE MEETING



FREEDOM OF INFORMATION ACT INDEX

TOPIC	PAGE # • FOIA SECTION	TOPIC	PAGE # • FOIA SECTION
Definitions		Records	
Agency head	page 11 • 30-4-40(a)(6)(E)	Autopsies	page 13 • 30-4-40(a)(18)
Department head	page 11 • 30-4-40(a)(6)(E)	Charges/fees	page 7 • 30-4-30(B)
Meeting	page 6 • 30-4-20(d)	Commercial solicitation	page 14 • 30-4-50(B) & page 21 • 30-2-50
Person	page 5 • 30-4-20(b)	Contract negotiations	page 16 • 30-4-70(a)(2)
Public body	page 5 • 30-4-20(a)	Copying	pages 6-7 • 30-4-30(A-B)
Public record	page 6 • 30-4-20(c)	Dashcam video	page 14 • 30-4-50(A)(9)
Quorum	page 6 • 30-4-20(e)	Deposit	page 7 • 30-4-30(B)
Meetings		Dept. of Public Safety info	page 20 • 30-4-160,165
Agendas	pages 17-18 • 30-4-80 & page 23 (<i>Flowchart on amending agendas</i>)	Docs. available without request	page 8 • 30-4-30(D)
Basic law of openness	page 15 • 30-4-60	Docs. distributed at public meetings ...	page 8 • 30-4-30(D)(4)
Chance meetings	page 16 • 30-4-70(c)	Electronic records	page 6 • 30-4-30(A)(1-2)
Committees	page 5 • 30-4-20(a)	Employee data (basic)	page 14 • 30-4-50(A)(1)
Disruptions	page 17 • 30-4-70(d)	Exemptions	pages 8-13 • 30-4-40
Executive sessions		Contracts	page 10 • 30-4-40(a)(5)
Entering	pages 15-17 • 30-4-70	Gift givers	page 11 • 30-4-40(a)(11)
Polling forbidden	pages 16 • 30-4-70 (b)	Final job applicant's paperwork ...	page 12 • 30-4-40(a)(13)
Reasons to close	pages 15-16 • 30-4-70(a)(1-6)	Land buys	page 10 • 30-4-40(a)(5)(a)
Voting to close	page 16 • 30-4-70(b)	Law enforcement	page 9 • 30-4-40(a)(3)(A-G)
Exemptions for closing		Legal work products	page 11 • 30-4-40(a)(7)
Contract negotiations	page 16 • 30-4-70(a)(2)	Legislative papers	page 11 • 30-4-40(a)(8)
Discipline/firing	page 15 • 30-4-70(a)(1)	Private information	page 9 • 30-4-40(a)(2)
Employment matters	page 15 • 30-4-70(a)(1)	Recruitment, industrial	page 11 • 30-4-40(a)(9) & page 16 • 30-4-70(a)(5)
General Assembly	page 17 • 30-4-70(e)	Scholarly research	pages 12 • 30-4-40(a)(14)
Industrial expansion	page 16 • 30-4-70(a)(5)	Structural plans	page 12 • 30-4-40 (a)(17)
Investigations, criminal	page 16 • 30-4-70(a)(4)	Trade secrets	page 8 • 30-4-40(a)(1)
Security	page 16 • 30-4-70(a)(3)	Vulnerable zone data	page 13 • 30-4-45
Legislative committees	page 17 • 30-4-80(B)	Fee schedules	page 7 • 30-4-30(B)
Minutes (taking of)	page 18 • 30-4-90(a)	Financial info	page 14 • 30-4-50(A)(6)
Notice requirements	pages 17-18 • 30-4-80(A-E)	Format of records	page 7 • 30-4-30(B)
Recording	page 18 • 30-4-90(c)	Minutes (copies of)	page 14 • 30-4-50(A)(7) & page 18 • 30-4-90(b)
Subcommittees	page 5 • 30-4-20(a) & pages 17-18 • 30-4-80(B-C)	Opinions (final)	page 14 • 30-4-50(A)(3)
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Penalties and enforcement		Police crime reports	page 14 • 30-4-50(A)(8) & page 9 • 30-4-40(a)(3)
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Civil fines	page 20 • 30-4-110(F)	Requests from inmates	page 6 • 30-4-30(A)(1)
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Purpose statement		Staff manuals	page 14 • 30-4-50(A)(2)
	page 5 • 30-4-15	Statute of limitations	page 19 • 30-4-100(A)
		Tax commission standards	page 11 • 30-4-40(a)(10)
		Timeline for response	pages 7-8 • 30-4-30(C)
		Timeline for production	pages 7-8 • 30-4-30(C)

Agenda Item Summary

Ordinance # / Resolution #:
Contact Person / Sponsor:
Department: Board of Zoning Appeals
Date Requested to be on Agenda: 4/2/2024

Issue for Consideration:

Points to Consider:

Recommendation:

ATTACHMENTS:

Description	Upload Date	Type
Clean Draft of Rules & Rocedures	3/22/2024	Exhibit

Board of Zoning Appeals - Rules and Procedures

Article I Organization

Section 1. Rules. These rules and procedures are adopted pursuant to S.C. Code 6-29-790 and Chapter 9 of the Lancaster County Unified Development Ordinance (UDO) adopted November 28, 2016.

Section 2. Officers. The officers of the Board shall be a chair and vice-chair elected for one year terms at the first meeting of the Board in June of each calendar year. The zoning administrator or designee shall serve as secretary of the Board.

Section 3, Chair. The chair shall be a member of the Board and has the power to:

- a. Call meetings of the Board;
- b. Preside at meetings and hearings;
- c. Act as spokesperson for the Board;
- d. Sign documents for the Board;
- e. Decide all points of procedure; and
- f. Perform other duties approved by the Board.

Section 4. Vice-Chair. The vice-chair shall exercise the duties of the chair in the absence, disability, or disqualification of the chair. In the absence of the chair and vice-chair, an acting chair shall be elected by the members present.

Section 5. Secretary. The secretary shall:

- a. Shall be assigned by the Zoning Administrator or their designee;
- b. Provide and publish all required notice of meetings and hearings;
- c. See that all required signage for a property is properly posted;
- d. Prepare written meeting agenda and meeting scripts – See Exhibit A;
- e. Swear-in participants and witnesses;
- f. Collect relevant evidence presented during meetings and hearings;
- g. Keep minutes of meetings and hearings;
- h. Serve written Board decisions to all affected parties;
- i. Transmit Board meeting minutes and records to the office of the Administrator of Lancaster County for filing as public records;
- j. Attend to Board correspondence;
- k. Perform other duties normally carried out by a secretary.

Article II Meetings

Section 1. Time and Place. Regular meetings shall be held on the second Tuesday of each month at 6:30 p.m. in County Council Chambers. The annual regular meeting schedule for the coming year shall be posted in December on the County's Website. Revisions and adjustments to regular meeting dates can be approved by a majority vote of the Board at least thirty (30) days prior to any scheduled meeting date. Special meetings may be called by the chair or by a majority vote of the Board. Public notice of all meetings of the Board shall be provided to the news media and posted according to prevailing County practices.

Section 4. Quorum. A majority of the Board's members shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling a meeting. To maintain the integrity of the Board and insure a quorum, members are expected to attend every meeting unless and an absence is declared at least thirty (30) days before the affected regular meeting. Board members shall make an immediate notification of their unexpected, unavoidable meeting absence so Board member polling can be made to verify a meeting quorum and/or initiate other actions or make adjustments. Also see section 9.1.5(B)(2) of the Unified Development Ordinance regarding a withdrawn Board member.

Section 5. Rules of Order. Robert's Rules of Order Newly Revised, latest edition, shall govern the conduct of meetings except as otherwise provided by these Rules and Procedures.

Section 6. Cancellation, Other than the scheduled first meeting of the year, whenever there are no appeals to be considered or other business to be transacted by the Board, the secretary shall notify each Board member of these cancellations as soon as it is known but not less than twenty-four (24) hours prior to the time of a regular meeting.

Section 7. Open to the Public. All meetings shall be open to the public, except that the Board may go into executive session in accordance with the provisions of the Code of Laws of South Carolina and the ordinances of the Lancaster County.

Article III Application Prehearing Procedure

Section 1. Form, Appeals from administrative decisions, applications for variances, and applications for special exceptions shall be filed on approved forms provided to applicants by the Zoning Office. The Board may require additional information deemed necessary. The failure to submit a completed application and required documentation necessary for the Board to address the matter may be grounds for dismissal. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

Section 2. Calendar and Docket. Appeals and applications shall be marked with the date of receipt, placed on the docket in the order in which received. Form shall be numbered serially, begin anew on January of each year and shall be hyphenated with the number of the year in which the appeal is filed.

Section 3. Time of Hearing. All completed appeal or hearing applications must be filed within thirty (30) days after the actual written notice of a decision with a deadline of thirty (30) days before the next regular scheduled Board meeting unless a different date is specifically set for such hearing by the Board.

Section 4. Withdrawal of Appeal or Application. An appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. Withdrawn applications for variances and special exceptions may be re-filed after six (6) months and shall be placed on the calendar according to the date re-filed. An appeal from an administrative decision that is withdrawn may not be refiled after the thirty (30) day time for appeal has expired.

Section 5. Continuances and Deferrals. The Board may continue or defer an application for good cause shown upon its own motion or at the request of any applicant. An applicant's request for deferral must be in written signed document by the applicant or agent listing the specific reasons for a deferral. A deferral will be heard at the next regularly scheduled meeting and one only one such deferral will be allowed.

Section 6. Notice. Public notice of a hearing of the Board shall be published in a local newspaper, posted in the County Administrative Building, on the County's website, on or adjacent to the property affected at least fifteen (15) days prior to the hearing. Requesting persons and media on file with the Clerk of Council will receive at least a twenty-four (24) hours notification. Meeting agenda and information packet will be mailed to Board members at least seven (7) day before a scheduled meeting. In addition to any other matters required by law, the notice shall contain a description of each matter to be heard and identify the applicant and property affected. UDO Chapter 9 notice requirements will also be followed.

Article IV Hearing Procedure

Section 1. Appearances. The applicant or any party in interest may appear in person, by agent or attorney. The Board may postpone or proceed with disposing of a matter on record before it on behalf of an applicant or appellant even in the event of their absence from the proceedings.

Section 2. Equal Consideration. The Board shall make every effort to afford equal treatment to all appearing before it as well as other Board members with all due respect. It shall be the standard to address all males with the title "Mr." and all females with the title "Ms.". All evidence presented to the Board shall be given due consideration when weighting conclusions.

Section 3. Witnesses. Witnesses must present testimony under oath or affirmation. Witnesses may be compelled to attend by a subpoena, approved and signed by the Board chair, requested at least ten (10) days prior to a hearing. The Board may call its own witnesses when deemed appropriate. Each witness shall state their name and address for the record.

Section 4. Cross examination. No party shall have the right to cross-examine witnesses. Intimidation of witnesses will not be allowed. Contempt of the Board may certify this fact to circuit court pursuant to S.C. Code Section 6-29-810.

Section 5. Evidence. Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative or hearsay will be received. The chair will rule on all evidentiary matters. Evidence will be placed in the record with an objection noted.

Section 6. Conduct of Hearing.

- a. The following statement and oath/affirmation shall be administered by the secretary.
“Would the (applicant)/(county representative) please step forward and state your name. Please raise your right hand. Do you __ (name) __ solemnly affirm that the testimony you are about to give is the truth and nothing but the truth?”
- b. As a guideline, the order of hearing should be:
 - (1) Statement by staff, secretary or chair of matter to be heard;
 - (2) Presentation by applicant (eight (8) minute limit);
 - (3) Presentation by zoning staff (eight (8) minute limit);
 - (4) Citizen comments or presentation (four (4) minute limit per opponent);
 - (5) Rebuttal applicant or appellant (three (3) minute limit);
 - (6) The above, prior to speaking, the chair may grant a request for a stated amount of addition time.
- c. All presenters after being recognized or called by the chair shall approach the podium; state their full name, address and whom they represent.
- d. Chair shall call for citizen’s comments. Upon being recognized by the chair, citizens shall approach the podium; state their full name, address and sign the appropriate sign-in sheet at the podium.
- e. The Board may question participants at any point in the hearing. Matters in which additional time is granted may be moved to end of the agenda. No person shall speak at a Board meeting unless invited to do so by the Board.
- f. Modification of Procedure.
 - (1) The chair may modify the procedure of hearing.
 - (2) Any Board member may move to modify the procedure or to overrule the chair's decision to modify the procedure. Both motions are debatable and require a majority vote in order to be adopted.

- (3) The intent of the rules is that the procedure at the hearing will reflect such concerns as fairness and the importance and complexity of the matter at issue. Therefore, modifications in procedure should be used where a change will substantially improve the decision process and should be made in terms of such concerns as the importance and complexity of the decision, repetition, agenda length and time spent as a result of questions from the Board, and fairness.

g. Following the conclusion of evidence presentation, the chair shall call for voting. The Board shall affirm (wholly or partly) or shall modify the order, requirement, decision, or determine or the determination appealed and shall make any order, requirement, decision or determination that in its opinion should be made in the matters brought before it. In the execution of its duties, the Board may subpoena witnesses in the case of contempt.

h. Board members will cast their evidence based votes considering the following guidelines:

- (1) The evidence presented does or does not meet the requirements and standards of the UDO
- (2) The evidence presented is or is not compatible with the current planned land uses or zoning
- (3) The evidence will or will not diminish the value of adjacent property or property in the general area.
- (4) The evidence presented will or will not have a positive impact on the general health, safety and welfare of the citizens of the area and Lancaster County.
- (5) Any guidelines or conditions the Board may approve by a simple majority.

Section 7. Voting and Disposition. A Board member must be present to vote and shall vote on every question unless member is recuse or is otherwise disqualified The Board may deliberate and make final disposition of a matter by majority vote of members qualified to vote. In the case of a tie vote the motion fails. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which they have not heard. Deliberating and voting shall be done in public. Where the Board authorizes any variation or imposes any condition with respect to an appeal or application, such variation and condition shall be specifically stated in the motion.

Section 8. Adjournments. When all appeals and applications cannot be disposed of on a set day, the Board may adjourn and set a continuance date of the meeting with further notice not required.

Section 9. Form of Order. An order, signed by the chair or vice-chair, shall be issued disposing of a matter by granting or denying relief with such conditions as may be deemed necessary or by affirming, modifying, remanding, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. The final written decision must contain all the findings and conclusions and shall be stated in the document. The hearing transcript, record, and official minutes shall be considered as evidence and indications of findings and conclusions.

Section 10. Service of Order. -The secretary shall deliver a copy of an order to the applicant and each party in interest by certified mail within ten (10) calendar days after the decision of the Board is rendered.

Section 11. Appeal. Appeals from the Board may be made to circuit court pursuant to S.C. Code of Laws Annotated Section 6-29-820, which provides:

“A person who may have a substantial interest in any decision of the Board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the Board to circuit court in and for the county by filing with the clerk a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed thirty days after the decision of the Board is mailed.”

Section 12. Rehearing. Requests for rehearing shall be delivered to the Zoning Administrator in writing, setting forth plainly, fully, and distinctly why the decision of the Board is in error, and setting forth the new evidence. Unless the Zoning Administrator finds that the submitted and substantial new evidence could not reasonably have been presented at the previous hearing, or upon a finding of fraud, misrepresentation or other misconduct of a party, no request for a rehearing will be granted within twelve (12) months of a denial by the Board shall be entertained. Numerous requests for rehearing shall be denied. Once the request for rehearing is placed on the agenda, the party requesting the rehearing shall be notified to appear before the Board and the case shall be put on the calendar for a hearing. Rehearing shall be subject to the same notice as original hearings.

Article V Conduct and Communication

Section 1. Conduct. Board members shall avoid all situations, communications and circumstances that may lead to a bias or prejudice opinion upon matters presented to the Board. Also, Board members shall not issue individual opinions regarding matters to be considered by the Board prior to the hearing and until the effective date of the final decision.

Section 2. Contact. Any contact and communication with applicants, other parties of interest or opponents of any matter to come before the Board shall be reported to the chair. It shall be the duty of each Board member to conduct themselves to discourage such contact and/or communication.

Article VI Records

Section 1. Minutes. The secretary or designee shall record all meetings and hearings of the Board electronically which shall be preserved in accordance with the records retention schedules as publicized by the South Carolina Department of Archives and History and as adopted by Lancaster County. The secretary or designee shall prepare minutes of each meeting for approval by the Board at the next regular meeting. Minutes shall be maintained as public records.

Section 2. Orders and Documents. The secretary or designee shall assist in the preparation and service of all orders of the Board in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.

Article VII Amendment and Adoption

Section 1. Adoption. These rules and procedures are adopted the members of the Board at a regular public meeting on _____. These rules and procedures may be amended at any regular meeting or at any special meeting of the Board by majority vote of the members of the Board.

Chair
Name typed

----- **Signature**

Vice-Chair
Name typed

----- **Signature**

Attested
Secretary
Name typed

----- **Signature**

Exhibit A

THE LANCASTER COUNTY BOARD OF APPEALS

Order of Meeting

- 1. THE BOARD OF APPEALS, PLANNING DEPARTMENT, AND THE BUILDING AND ZONING DEPARTMENT, WELCOME ALL OF YOU TO OUR MEETING TONIGHT.**
- 2. BY ATTENDING OUR MEETING WE SINCERELY HOPE THE RESULTS ARE INFORMATIVE TO YOU ON HOW THE SYSTEM HANDLES EACH APPLICATION, BECAUSE ALL REQUESTS ARE DIFFERENT.**
- 3. OUR BOARD MEMBERS ARE: #1 REID RUSHING, DON BROUWER, HARVEY CARNES, LAVILLA BREVARD, FRANCES LIU, WAYLON WILSON.**
- 4. MADAM SECRETARY – WILL YOU PLEASE CALL THE ATTENDANCE ROLL?**
- 5. AT THIS TIME I WILL ASK ALL MEMBERS OF STAFF TO PLEASE STAND, STATE YOUR NAME AND YOUR DUTIES WITHIN THE COUNTY. PLEASE REMAIN STANDING, OUR SECRETARY WILL PLACE EACH OF YOU UNDER OATH.**
- 6. IS THERE ANY BOARD MEMBER THAT HAS NOT RECEIVED A PACKET FROM THE PLANNING DEPARTMENT CONTAINING THE NECESSARY INFORMATION FOR OUR MEETING?**
- 7. OUR FIRST ORDER OF BUSINESS IS TO APPROVE THE AGENDA. ARE THERE ANY CHANGES TO THE AGENDA? ASK FOR MOTION TO APPROVE, SECOND, DISCUSS, APPROVE.**
- 8. THE NEXT ORDER OF BUSINESS IS TO APPROVE THE MINUTES. ARE THERE ANY CHANGES? ASK FOR MOTION TO APPROVE, SECOND, DISCUSS, APPROVE.**
- 9. HAS PLANNING MADE IT POSSIBLE FOR ALL APPLICANTS TO RECEIVE INFORMATION OF THIS MEETING? HAVE ALL ADJACENT PROPERTY OWNERS BEEN NOTIFIED? WAS THERE A NOTICE OF THIS MEETING PUBLISHED IN THE**

**LOCAL NEWSPAPER TO INCLUDE THE MEETING PLACE, DATE,
TIME, AND THE AGENDA?
IS THERE A COPY ON FILE?**

**10. THE ZONING BOARD OF APPEALS DUTIES ARE WITHIN THREE
SPECIFIC AREAS,**

**A. ADMINISTRATIVE REVIEW IS AN APPEAL OF AN ORDER, OR
DECISION OF THE ADMINISTRATOR THAT HAS ALLEDGED
ERROR.**

**B. THE POWER TO GRANT A VARIANCE IS GIVEN TO THE
BOARD OF ZONING APPEALS BY THE STATE OF SOUTH
CAROLINA. VARIANCES MAY BE GRANTED WHEN STRICT
APPLICATION OF THE ZONING ORDINANCE WOULD NOT
CAUSE UNNECESARY HARDSHIP AND THE GRANTING OF THE
VARIANCE WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO
ADJACENT PROPERTIES OR THE PUBLIC GOOD.**

**C. SPECIAL EXCEPTIONS ARE PERMITTED USES WITHIN A
ZONING DISTRICT, BUT REQUIRES A PUBLIC HEARING PRIOR
TO GRANTING FINAL APPROVAL.**

**12. A PUBLIC HEARING IS CONDUCTED TO REVIEW
COMMENTS AND INFORMATION, BOTH FOR AND AGAINST THE
PROPOSED APPLICATION. DURING THE PUBLIC HEARING
PORTION OF THE MEETING, ALL INTERESTED PARTIES WILL
BE GIVEN THE OPPORTUNITY TO SPEAK AND GIVE FACTUAL
INFORMATION OR PRESENT FACTUAL DOCUMENTATION. ALL
PERSONS SPEAKING WILL BE PLACED UNDER OATH.
ALL PERSONS WISHING TO SPEAK WILL SIGN THE REGISTER
PRIOR TO SPEAKING.**

**ANYONE SPEAKING WILL COME FORWARD TO THE PODIUM,
SPEAK INTO THE MICROPHONE AND STATE A) NAME, B)
ADDRESS, C) TELEPHONE NUMBER.**

**WE MUST RECORD ALL INFORMATION FOR THE RECORD.
THE APPLICANT WILL SPEAK FIRST AND WILL HAVE AN
OPPORTUNITY FOR A REBUTTAL.**

**PLEASE, LIMIT YOUR COMMENTS TO NO MORE THAN 5
MINUTES.**

13. A. STAFF WILL NOW READ THE STATEMENT OF MATTER.

**B. IF THE APPLICANT AGREES WITH THE STATEMENT OF
MATTER AS READ, PLEASE SIGN.**

**IF AN AMENDMENT IS NEEDED, THEN CORRECT THE
DOCUMENT AND SIGN IT.**

14. I WILL NOW PROCLAIM THE PUBLIC PORTION OF OUR MEETING OPEN. CALL EACH SPEAKER TO THE PODIUM.

15. THE PUBLIC PORTION OF THE MEETING IS NOW CLOSED. ACKNOWLEDGE ANY CALLS OR LETTERS RECEIVED BY STAFF.

HAS A SITE CHECK BEEN MADE BY STAFF?

HAVE ALL MEASUREMENTS BEEN VERIFIED?

**16. BOARD MEMBERS QUESTIONS TO APPLICANT.
BOARD MEMBERS QUESTIONS TO STAFF.
DISCUSSION**

THE CHAIR WILL ENTERTAIN A MOTION TO: 1) APPROVE THE APPLICATION, 2) DENY THE APPLICATION, 3) APPROVE WITH ANY STIPULATIONS, OR 4) IF THE INFORMATION PROVIDED IS NOT SUFFICIENT FOR THE BOARD TO MAKE A DECISION, THEN A MOTION TO POSTPONE THIS APPLICATION UNTIL THE NEXT MEETING WOULD BE APPROPRIATE.

NEXT APPLICATION.

IF NO FURTHER BUSINESS, ADJOURN, PAUSE, ADJOURN.

Reference 1

ROBERTS RULES CHEAT SHEET

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Adjourn	"I move that we adjourn"	No	Yes	No	No	Majority
Recess	"I move that we recess until..."	No	Yes	No	Yes	Majority
Complain about noise, room temp., etc.	"Point of privilege"	Yes	No	No	No	Chair Decides
Suspend further consideration of something	"I move that we table it"	No	Yes	No	No	Majority
End debate	"I move the previous question"	No	Yes	No	No	2/3
Postpone consideration of something	"I move we postpone this matter until..."	No	Yes	Yes	Yes	Majority
Amend a motion	"I move that this motion be amended by..."	No	Yes	Yes	Yes	Majority
Introduce business (a primary motion)	"I move that..."	No	Yes	Yes	Yes	Majority

The above listed motions and points are listed in established order of precedence. When any one of them is pending, you may not introduce another that is listed below, but you may introduce another that is listed above it.

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Object to procedure or personal affront	"Point of order"	Yes	No	No	No	Chair decides
Request information	"Point of information"	Yes	No	No	No	None
Ask for vote by actual count to verify voice vote	"I call for a division of the house"	Must be done before new motion	No	No	No	None unless someone objects
Object to considering some undiplomatic or improper matter	"I object to consideration of this question"	Yes	No	No	No	2/3
Take up matter previously tabled	"I move we take from the table..."	Yes	Yes	No	No	Majority
Reconsider something already disposed of	"I move we now (or later) reconsider our action relative to..."	Yes	Yes	Only if original motion was debatable	No	Majority
Consider something out of its scheduled order	"I move we suspend the rules and consider..."	No	Yes	No	No	2/3
Vote on a ruling by the Chair	"I appeal the Chair's decision"	Yes	Yes	Yes	No	Majority

The motions, points and proposals listed above have no established order of preference; any of them may be introduced at any time except when meeting is considering one of the top three matters listed from the first chart (Motion to Adjourn, Recess or Point of Privilege).

January 2017